

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

For special rules on applicability of amendments by subtitles A (§§101-107) and B (§§111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of Title 26, Internal Revenue Code.

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

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

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

(a) Minimum required contribution

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

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

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

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

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

(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) equals or exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced (but not below zero) by such excess.

(b) Target normal cost

For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term “target normal cost” means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

(c) Shortfall amortization charge

(1) In general

For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total (not less than zero) of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

(2) Shortfall amortization installment

For purposes of paragraph (1)—

(A) Determination

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

(B) Shortfall installment

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

(C) Segment rates

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

(3) Shortfall amortization base

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

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

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

(4) Funding shortfall

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

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

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

(5) Exemption from new shortfall amortization base

(A) In general

In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

(B) Transition rule

(i) In general

Except as provided in clauses (iii) and (iv), in the case of plan years beginning after 2007 and before 2011, only the applica-

ble percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for the plan year for purposes of subparagraph (A).

(ii) Applicable percentage

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

In the case of a plan year beginning in calendar year:	The applicable percentage is
2008	92
2009	94
2010	96.

(iii) Limitation

Clause (i) shall not apply with respect to any plan year after 2008 unless the shortfall amortization base for each of the preceding years beginning after 2007 was zero (determined after application of this subparagraph).

(iv) Transition relief not available for new or deficit reduction plans

Clause (i) shall not apply to a plan—

(I) which was not in effect for a plan year beginning in 2007, or

(II) which was in effect for a plan year beginning in 2007 and which was subject to section 1082(d) of this title (as in effect for plan years beginning in 2007), determined after the application of paragraphs (6) and (9) thereof.

(6) Early deemed amortization upon attainment of funding target

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

(d) Rules relating to funding target

For purposes of this section—

(1) Funding target

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

(2) Funding target attainment percentage

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

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

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

(e) Waiver amortization charge

(1) Determination of waiver amortization charge

The waiver amortization charge (if any) for a plan for any plan year is the aggregate total

of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

(2) Waiver amortization installment

For purposes of paragraph (1)—

(A) Determination

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

(B) Waiver installment

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

(3) Interest rate

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

(4) Waiver amortization base

The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 1082(c) of this title.

(5) Early deemed amortization upon attainment of funding target

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

(f) Reduction of minimum required contribution by prefunding balance and funding standard carryover balance

(1) Election to maintain balances

(A) Prefunding balance

The plan sponsor of a single-employer plan may elect to maintain a prefunding balance.

(B) Funding standard carryover balance

(i) In general

In the case of a single-employer plan described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

(ii) Plans maintaining funding standard account in 2007

A plan is described in this clause if the plan—

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

(II) had a positive balance in the funding standard account under section

1082(b) of this title as in effect for such plan year and determined as of the end of such plan year.

(2) Application of balances

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

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

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

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

(3) Election to apply balances against minimum required contribution

(A) In general

Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the prefunding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced as of the first day of the plan year by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 1082(c) of this title.

(B) Coordination with funding standard carryover balance

To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the prefunding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

(C) Limitation for underfunded plans

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

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

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

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

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

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

(A) Applicability of shortfall amortization base

For purposes of subsection (c)(5), the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance, but only if an election under paragraph (2) applying any portion of the prefunding balance in reducing the minimum required contribution is in effect for the plan year.

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

(i) In general

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

(ii) Special rule for certain binding agreements with PBGC

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

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

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

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

(A) In general

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

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

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

(6) Prefunding balance**(A) In general**

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

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

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

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

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

(ii) Adjustments for interest

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

(iii) Certain contributions necessary to avoid benefit limitations disregarded

The excess described in clause (i) with respect to any preceding plan year shall be reduced (but not below zero) by the amount of contributions an employer would be required to make under paragraph (1), (2), or (4) of section 1056(g) of this title to avoid a benefit limitation which would otherwise be imposed under such paragraph for the preceding plan year. Any contribution which may be taken into account in satisfying the requirements of more than 1 of such paragraphs shall be taken into account only once for purposes of this clause.

(C) Decrease

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

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

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

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

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

(B) Beginning balance

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

(C) Decreases

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

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

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

(8) Adjustments for investment experience

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

(9) Elections

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

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

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

(2) Valuation date

For purposes of this section—

(A) In general

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

(B) Exception for small plans

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

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

For purposes of this paragraph—

(i) Plans not in existence in preceding year

In the case of the first plan year of any plan, subparagraph (B) shall apply to such

plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

(ii) Predecessors

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

(3) Determination of value of plan assets

For purposes of this section—

(A) In general

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

(B) Averaging allowed

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

- (i) is permitted under regulations prescribed by the Secretary of the Treasury,
- (ii) does not provide for averaging of such values over more than the period beginning on the last day of the 25th month preceding the month in which the valuation date occurs and ending on the valuation date (or a similar period in the case of a valuation date which is not the 1st day of a month), and
- (iii) does not result in a determination of the value of plan assets which, at any time, is lower than 90 percent or greater than 110 percent of the fair market value of such assets at such time.

Any such averaging shall be adjusted for contributions and distributions (as provided by the Secretary of the Treasury).

(4) Accounting for contribution receipts

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

(A) Prior year contributions

If—

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

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

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

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

(i) such contributions, and

(ii) interest on such contributions for the period between the date of the contributions and the valuation date, determined by using the effective interest rate for the plan year.

(h) Actuarial assumptions and methods

(1) In general

Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

- (A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and
- (B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(2) Interest rates

(A) Effective interest rate

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

(B) Interest rates for determining funding target

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

- (i) in the case of benefits reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,
- (ii) in the case of benefits reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and
- (iii) in the case of benefits reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

(C) Segment rates

For purposes of this paragraph—

(i) First segment rate

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

(ii) Second segment rate

The term "second segment rate" means, with respect to any month, the single rate

of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

(iii) Third segment rate

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

(D) Corporate bond yield curve

For purposes of this paragraph—

(i) In general

The term “corporate bond yield curve” means, with respect to any month, a yield curve which is prescribed by the Secretary of the Treasury for such month and which reflects the average, for the 24-month period ending with the month preceding such month, of monthly yields on investment grade corporate bonds with varying maturities and that are in the top 3 quality levels available.

(ii) Election to use yield curve

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

(E) Applicable month

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

(F) Publication requirements

The Secretary of the Treasury shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 1055(g)(3)(B)(iii)(I) of this title) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary of the Treasury shall also publish

a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan’s projection of future interest rates.

(G) Transition rule

(i) In general

Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2008 or 2009, the first, second, or third segment rate for a plan with respect to any month shall be equal to the sum of—

(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

(II) the product of the rate determined under the rules of section 1082(b)(5)(B)(ii)(II) of this title (as in effect for plan years beginning in 2007), multiplied by a percentage equal to 100 percent minus the applicable percentage.

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is 33 $\frac{1}{3}$ percent for plan years beginning in 2008 and 66 $\frac{2}{3}$ percent for plan years beginning in 2009.

(iii) New plans ineligible

Clause (i) shall not apply to any plan if the first plan year of the plan begins after December 31, 2007.

(iv) Election

The plan sponsor may elect not to have this subparagraph apply. Such election, once made, may be revoked only with the consent of the Secretary of the Treasury.

(3) Mortality tables

(A) In general

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

(B) Periodic revision

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

(C) Substitute mortality table

(i) In general

Upon request by the plan sponsor and approval by the Secretary of the Treasury, a mortality table which meets the requirements of clause (iii) shall be used in deter-

mining any present value or making any computation under this section during the period of consecutive plan years (not to exceed 10) specified in the request.

(ii) Early termination of period

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

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

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

(iii) Requirements

A mortality table meets the requirements of this clause if—

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

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

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

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

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

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

(v) Deadline for submission and disposition of application

(I) Submission

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

(II) Disposition

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

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

(D) Separate mortality tables for the disabled

Notwithstanding subparagraph (A)—

(i) In general

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

(ii) Special rule for disabilities occurring after 1994

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

(iii) Periodic revision

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

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

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

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

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

(5) Approval of large changes in actuarial assumptions

(A) In general

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

(B) Plans to which paragraph applies

This paragraph shall apply to a plan only if—

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

(ii) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 1306(a)(3)(E)(iii) of this title) of such plan and all other plans maintained by the contributing sponsors (as defined in section 1301(a)(13) of this title) and members of such sponsors' controlled groups (as defined in section 1301(a)(14) of this title) which are covered by subchapter III (disregarding plans with no unfunded vested benefits) exceed \$50,000,000, and

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

(i) Special rules for at-risk plans

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

(A) In general

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

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

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

(B) Additional actuarial assumptions

The actuarial assumptions described in this subparagraph are as follows:

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

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

(C) Loading factor

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

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

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

(2) Target normal cost of at-risk plans

In the case of a plan which is in at-risk status for a plan year, the target normal cost

of the plan for such plan year shall be equal to the sum of—

(A) the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B), plus

(B) in the case of a plan which also has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor equal to 4 percent of the target normal cost (determined without regard to this paragraph) of the plan for the plan year.

(3) Minimum amount

In no event shall—

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

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

(4) Determination of at-risk status

For purposes of this subsection—

(A) In general

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

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

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

(B) Transition rule

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

(i) 65 percent in the case of 2008.

(ii) 70 percent in the case of 2009.

(iii) 75 percent in the case of 2010.

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

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

(i) In general

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

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

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

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

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

(ii) Specified automobile manufacturer

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

(I) any manufacturer of automobiles, and

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

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

(A) In general

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

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

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

(B) Transition percentage

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

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

(C) Years before effective date

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

(6) Small plan exception

If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan shall not be treated as in at-risk status for the plan year. For purposes of this paragraph, all defined benefit plans (other than multiemployer plans) maintained by the same

employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account and the rules of subsection (g)(2)(C) shall apply.

(j) Payment of minimum required contributions

(1) In general

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

(2) Interest

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

(3) Accelerated quarterly contribution schedule for underfunded plans

(A) Failure to timely make required installment

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

(B) Amount of underpayment, period of underpayment

For purposes of subparagraph (A)—

(i) Amount

The amount of the underpayment shall be the excess of—

(I) the required installment, over

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

(ii) Period of underpayment

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

(iii) Order of crediting contributions

For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(C) Number of required installments; due dates

For purposes of this paragraph—

(i) Payable in 4 installments

There shall be 4 required installments for each plan year.

(ii) Time for payment of installments

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

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

(D) Amount of required installment

For purposes of this paragraph—

(i) In general

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

(ii) Required annual payment

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

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

(II) 100 percent of the minimum required contribution (determined without regard to this subsection or to any waiver under section 1082(c) of this title) to the plan for the preceding plan year.

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

(E) Fiscal years and short years

(i) Fiscal years

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

(ii) Short plan year

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

(4) Liquidity requirement in connection with quarterly contributions

(A) In general

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

(B) Plans to which paragraph applies

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

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

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

(C) Period of underpayment

For purposes of paragraph (3)(A), any portion of an installment that is treated as not

paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

(D) Limitation on increase

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

(E) Definitions

For purposes of this paragraph—

(i) Liquidity shortfall

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

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

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

(ii) Base amount

(I) In general

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

(II) Special rule

If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary of the Treasury that such excess is the result of non-recurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) Disbursements from the plan

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

(iv) Adjusted disbursements

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

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

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

(v) Liquid assets

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

(vi) Quarter

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

(F) Regulations

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

(k) Imposition of lien where failure to make required contributions**(1) In general**

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

(A) any person fails to make a contribution payment required by section 1082 of this title and this section before the due date for such payment, and

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

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

(2) Plans to which subsection applies

This subsection shall apply to a single-employer plan covered under section 1321 of this title for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

(3) Amount of lien

For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 1082 of this title for which payment has not been made before the due date.

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

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

(B) Period of lien

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

be described in paragraph (2) during the period referred to in the preceding sentence.

(C) Certain rules to apply

Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 1368 of this title shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

(5) Enforcement

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

(6) Definitions

For purposes of this subsection—

(A) Contribution payment

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

(B) Due date; required installment

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

(C) Controlled group

The term “controlled group” means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of title 26.

(I) Qualified transfers to health benefit accounts

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

(Pub. L. 93-406, title I, §303, as added Pub. L. 109-280, title I, §102(a), Aug. 17, 2006, 120 Stat. 789.)

REFERENCES IN TEXT

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

PRIOR PROVISIONS

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

EFFECTIVE DATE

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

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

For special rules on applicability of amendments by subtitles A (§§101-107) and B (§§111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of Title 26, Internal Revenue Code.

MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS

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

§ 1084. Minimum funding standards for multiemployer plans**(a) In general**

For purposes of section 1082 of this title, the accumulated funding deficiency of a multiemployer plan for any plan year is—

(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 1423 of this title.

(b) Funding standard account**(1) Account required**

Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) Charges to account

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

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

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

(i) in the case of a plan which comes into existence on or after January 1, 2008, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net increase (if any) in unfunded

past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

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

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

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 1082(c)(3) of this title) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

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

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

(3) Credits to account

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

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

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

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

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

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

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

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