

plan, on the first day of the first plan year beginning on or after the earlier of—

“(1) the date on which the last collective-bargaining agreement providing for employer contributions under the plan, which was in effect on the date of the enactment of this Act [Sept. 26, 1980], expires, without regard to extensions agreed to after such date of enactment, or

“(2) 3 years after the date of the enactment of this Act [Sept. 26, 1980].

“(c) The amendments made by section 209 [enacting section 194 of this title, and amending sections 501 and 4975 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Sept. 26, 1980].”

#### § 418A. Notice of reorganization and funding requirements

##### (a) Notice requirement

###### (1) In general

If—

(A) a multiemployer plan is in reorganization for a plan year, and

(B) section 418B would require an increase in contributions for such plan year,

the plan sponsor shall notify the persons described in paragraph (2) that the plan is in reorganization and that, if contributions to the plan are not increased, accrued benefits under the plan may be reduced or an excise tax may be imposed (or both such reduction and imposition may occur).

###### (2) Persons to whom notice is to be given

The persons described in this paragraph are—

(A) each employer who has an obligation to contribute under the plan (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974), and

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

###### (3) Overburden credit not taken into account

The determination under paragraph (1)(B) shall be made without regard to the overburden credit provided by section 418C.

##### (b) Additional requirements

The Pension Benefit Guaranty Corporation may prescribe additional or alternative requirements for assuring, in the case of a plan with respect to which notice is required by subsection (a)(1), that the persons described in subsection (a)(2)—

(1) receive appropriate notice that the plan is in reorganization,

(2) are adequately informed of the implications of reorganization status, and

(3) have reasonable access to information relevant to the plan's reorganization status.

(Added Pub. L. 96-364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1274.)

#### REFERENCES IN TEXT

Section 4212(a) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(A), is classified to section 1392(a) of Title 29, Labor.

#### § 418B. Minimum contribution requirement

##### (a) Accumulated funding deficiency in reorganization

###### (1) In general

For any plan year in which a multiemployer plan is in reorganization—

(A) the plan shall continue to maintain its funding standard account, and

(B) the plan's accumulated funding deficiency under section 412(a)<sup>1</sup> for such plan year shall be equal to the excess (if any) of—

(i) the sum of the minimum contribution requirement for such plan year (taking into account any overburden credit under section 418C(a)) plus the plan's accumulated funding deficiency for the preceding plan year (determined under this section if the plan was in reorganization during such plan year or under section 412(a)<sup>1</sup> if the plan was not in reorganization), over

(ii) amounts considered contributed by employers to or under the plan for the plan year (increased by any amount waived under subsection (f) for the plan year).

###### (2) Treatment of withdrawal liability payments

For purposes of paragraph (1), withdrawal liability payments (whether or not received) which are due with respect to withdrawals before the end of the base plan year shall be considered amounts contributed by the employer to or under the plan if, as of the adjustment date, it was reasonable for the plan sponsor to anticipate that such payments would be made during the plan year.

##### (b) Minimum contribution requirement

###### (1) In general

Except as otherwise provided in this section for purposes of this subpart the minimum contribution requirement for a plan year in which a plan is in reorganization is an amount equal to the excess of—

(A) the sum of—

(i) the plan's vested benefits charge for the plan year; and

(ii) the increase in normal cost for the plan year determined under the entry age normal funding method which is attributable to plan amendments adopted while the plan was in reorganization, over

(B) the amount of the overburden credit (if any) determined under section 418C for the plan year.

###### (2) Adjustment for reductions in contribution base units

If the plan's current contribution base for the plan year is less than the plan's valuation contribution base for the plan year, the minimum contribution requirement for such plan year shall be equal to the product of the amount determined under paragraph (1) (after any adjustment required by this subpart other than this paragraph) multiplied by a fraction—

(A) the numerator of which is the plan's current contribution base for the plan year, and

<sup>1</sup> See References in Text note below.

(B) the denominator of which is the plan's valuation contribution base for the plan year.

**(3) Special rule where cash-flow amount exceeds vested benefits charge**

**(A) In general**

If the vested benefits charge for a plan year of a plan in reorganization is less than the plan's cash-flow amount for the plan year, the plan's minimum contribution requirement for the plan year is the amount determined under paragraph (1) (determined before the application of paragraph (2)) after substituting the term "cash-flow amount" for the term "vested benefits charge" in paragraph (1)(A).

**(B) Cash-flow amount**

For purposes of subparagraph (A), a plan's cash-flow amount for a plan year is an amount equal to—

(i) the amount of the benefits payable under the plan for the base plan year, plus the amount of the plan's administrative expenses for the base plan year, reduced by

(ii) the value of the available plan assets for the base plan year determined under regulations prescribed by the Secretary,

adjusted in a manner consistent with section 418(b)(4).

**(c) Current contribution base; valuation contribution base**

**(1) Current contribution base**

For purposes of this subpart, a plan's current contribution base for a plan year is the number of contribution base units with respect to which contributions are required to be made under the plan for that plan year, determined in accordance with regulations prescribed by the Secretary.

**(2) Valuation contribution base**

**(A) In general**

Except as provided in subparagraph (B), for purposes of this subpart a plan's valuation contribution base is the number of contribution base units for which contributions were received for the base plan year—

(i) adjusted to reflect declines in the contribution base which have occurred (or could reasonably be anticipated) as of the adjustment date for the plan year referred to in paragraph (1),

(ii) adjusted upward (in accordance with regulations prescribed by the Secretary) for any contribution base reduction in the base plan year caused by a strike or lock-out or by unusual events, such as fire, earthquake, or severe weather conditions, and

(iii) adjusted (in accordance with regulations prescribed by the Secretary) for reductions in the contribution base resulting from transfers of liabilities.

**(B) Insolvent plans**

For any plan year—

(i) in which the plan is insolvent (within the meaning of section 418E(b)(1)), and

(ii) beginning with the first plan year beginning after the expiration of all relevant collective bargaining agreements which were in effect in the plan year in which the plan became insolvent,

the plan's valuation contribution base is the greater of the number of contribution base units for which contributions were received for the first or second plan year preceding the first plan year in which the plan is insolvent, adjusted as provided in clause (ii) or (iii) of subparagraph (A).

**(3) Contribution base unit**

For purposes of this subpart, the term "contribution base unit" means a unit with respect to which an employer has an obligation to contribute under a multiemployer plan (as defined in regulations prescribed by the Secretary).

**(d) Limitation on required increases in rate of employer contributions**

**(1) In general**

Under regulations prescribed by the Secretary, the minimum contribution requirement applicable to any plan for any plan year which is determined under subsection (b) (without regard to subsection (b)(2)) shall not exceed an amount which is equal to the sum of—

(A) the greater of—

(i) the funding standard requirement for such plan year, or

(ii) 107 percent of—

(I) if the plan was not in reorganization in the preceding plan year, the funding standard requirement for such preceding plan year, or

(II) if the plan was in reorganization in the preceding plan year, the sum of the amount determined under this subparagraph for the preceding plan year and the amount (if any) determined under subparagraph (B) for the preceding plan year, plus

(B) if for the plan year a change in benefits is first required to be considered in computing the charges under section 412(b)(2)(A) or (B),<sup>1</sup> the sum of—

(i) the increase in normal cost for a plan year determined under the entry age normal funding method due to increases in benefits described in section 418(b)(4)(A)(ii) (determined without regard to section 418(b)(4)(B)(ii)), and

(ii) the amount necessary to amortize in equal annual installments the increase in the value of vested benefits under the plan due to increases in benefits described in clause (i) over—

(I) 10 years, to the extent such increase in value is attributable to persons in pay status, or

(II) 25 years, to the extent such increase in value is attributable to other participants.

**(2) Funding standard requirement**

For purposes of paragraph (1), the funding standard requirement for any plan year is an

amount equal to the net charge to the funding standard account for such plan year (as defined in section 418(b)(2)).

**(3) Special rule for certain plans**

**(A) In general**

In the case of a plan described in section 4216(b) of the Employee Retirement Income Security Act of 1974, if a plan amendment which increases benefits is adopted after January 1, 1980—

(i) paragraph (1) shall apply only if the plan is a plan described in subparagraph (B), and

(ii) the amount under paragraph (1) shall be determined without regard to subparagraph (1)(B).

**(B) Eligible plans**

A plan is described in this subparagraph if—

(i) the rate of employer contributions under the plan for the first plan year beginning on or after the date on which an amendment increasing benefits is adopted, multiplied by the valuation contribution base for that plan year, equals or exceeds the sum of—

(I) the amount that would be necessary to amortize fully, in equal annual installments, by July 1, 1986, the unfunded vested benefits attributable to plan provisions in effect on July 1, 1977 (determined as of the last day of the base plan year); and

(II) the amount that would be necessary to amortize fully, in equal annual installments, over the period described in subparagraph (C), beginning with the first day of the first plan year beginning on or after the date on which the amendment is adopted, the unfunded vested benefits (determined as of the last day of the base plan year) attributable to each plan amendment after July 1, 1977; and

(ii) the rate of employer contributions for each subsequent plan year is not less than the lesser of—

(I) the rate which when multiplied by the valuation contribution base for that subsequent plan year produces the annual amount that would be necessary to complete the amortization schedule described in clause (i), or

(II) the rate for the plan year immediately preceding such subsequent plan year, plus 5 percent of such rate.

**(C) Period**

The period determined under this subparagraph is the lesser of—

(i) 12 years, or

(ii) a period equal in length to the average of the remaining expected lives of all persons receiving benefits under the plan.

**(4) Exception in case of certain benefit increases**

Paragraph (1) shall not apply with respect to a plan, other than a plan described in paragraph (3), for the period of consecutive plan years in each of which the plan is in reorga-

nization, beginning with a plan year in which occurs the earlier of the date of the adoption or the effective date of any amendment of the plan which increases benefits with respect to service performed before the plan year in which the adoption of the amendment occurred.

**(e) Certain retroactive plan amendments**

In determining the minimum contribution requirement with respect to a plan for a plan year under subsection (b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under section 412(c)(8).<sup>1</sup>

**(f) Waiver of accumulated funding deficiency**

**(1) In general**

The Secretary may waive any accumulated funding deficiency under this section in accordance with the provisions of section 412(d)(1).<sup>1</sup>

**(2) Treatment of waiver**

Any waiver under paragraph (1) shall not be treated as a waived funding deficiency (within the meaning of section 412(d)(3)).<sup>1</sup>

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

For purposes of making any determination under this subpart, the requirements of section 412(c)(3)<sup>1</sup> shall apply.

(Added Pub. L. 96-364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1274.)

REFERENCES IN TEXT

Section 412, referred to in subsecs. (a)(1)(B), (d)(1)(B), and (e) to (g), was amended generally by Pub. L. 109-280, title I, §111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, provisions formerly contained in section 412(a), (b)(2)(A), (B), (c)(3), (8), (d)(1), and (3), have been revised and restated elsewhere in, or omitted from, the section.

Section 4216(b) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(3)(A), is classified to section 1396(b) of Title 29, Labor.

**§ 418C. Overburden credit against minimum contribution requirement**

**(a) General rule**

For purposes of determining the contribution under section 418B (before the application of section 418B(b)(2) or (d)), the plan sponsor of a plan which is overburdened for the plan year shall apply an overburden credit against the plan's minimum contribution requirement for the plan year (determined without regard to section 418B(b)(2) or (d) and without regard to this section).

**(b) Definition of overburdened plan**

A plan is overburdened for a plan year if—

(1) the average number of pay status participants under the plan in the base plan year exceeds the average of the number of active participants in the base plan year and the 2 plan years preceding the base plan year, and

(2) the rate of employer contributions under the plan equals or exceeds the greater of—

(A) such rate for the preceding plan year, or

(B) such rate for the plan year preceding the first year in which the plan is in reorganization.