

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).¹

(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).¹

(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)).¹

(g) Actuarial assumptions must be reasonable

For purposes of making any determination under this subpart, the requirements of section 412(c)(3)¹ 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.

(c) Amount of overburden credit

The amount of the overburden credit for a plan year is the product of—

- (1) one-half of the average guaranteed benefit paid for the base plan year, and
- (2) the overburden factor for the plan year.

The amount of the overburden credit for a plan year shall not exceed the amount of the minimum contribution requirement for such year (determined without regard to this section).

(d) Overburden factor

For purposes of this section, the overburden factor of a plan for the plan year is an amount equal to—

- (1) the average number of pay status participants for the base plan year, reduced by
- (2) the average of the number of active participants for the base plan year and for each of the 2 plan years preceding the base plan year.

(e) Definitions

For purposes of this section—

(1) Pay status participant

The term “pay status participant” means, with respect to a plan, a participant receiving retirement benefits under the plan.

(2) Number of active participants

The number of active participants for a plan year shall be the sum of—

(A) the number of active employees who are participants in the plan and on whose behalf contributions are required to be made during the plan year;

(B) the number of active employees who are not participants in the plan but who are in an employment unit covered by a collective bargaining agreement which requires the employees’ employer to contribute to the plan unless service in such employment unit was never covered under the plan or a predecessor thereof, and

(C) the total number of active employees attributed to employers who made payments to the plan for the plan year of withdrawal liability pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974, determined by dividing—

- (i) the total amount of such payments, by
- (ii) the amount equal to the total contributions received by the plan during the plan year divided by the average number of active employees who were participants in the plan during the plan year.

The Secretary shall by regulations provide alternative methods of determining active participants where (by reason of irregular employment, contributions on a unit basis, or otherwise) this paragraph does not yield a representative basis for determining the credit.

(3) Average number

The term “average number” means, with respect to pay status participants for a plan year, a number equal to one-half the sum of—

- (A) the number with respect to the plan as of the beginning of the plan year, and

(B) the number with respect to the plan as of the end of the plan year.

(4) Average guaranteed benefit

The average guaranteed benefit paid is 12 times the average monthly pension payment guaranteed under section 4022A(c)(1) of the Employee Retirement Income Security Act of 1974 determined under the provisions of the plan in effect at the beginning of the first plan year in which the plan is in reorganization and without regard to section 4022A(c)(2).

(5) First year in reorganization

The first year in which the plan is in reorganization is the first of a period of 1 or more consecutive plan years in which the plan has been in reorganization not taking into account any plan years the plan was in reorganization prior to any period of 3 or more consecutive plan years in which the plan was not in reorganization.

(f) No overburden credit in case of certain reductions in contributions**(1) In general**

Notwithstanding any other provision of this section, a plan is not eligible for an overburden credit for a plan year if the Secretary finds that the plan’s current contribution base for any plan year was reduced, without a corresponding reduction in the plan’s unfunded vested benefits attributable to pay status participants, as a result of a change in an agreement providing for employer contributions under the plan.

(2) Treatment of certain withdrawals

For purposes of paragraph (1), a complete or partial withdrawal of an employer (within the meaning of part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974) does not impair a plan’s eligibility for an overburden credit, unless the Secretary finds that a contribution base reduction described in paragraph (1) resulted from a transfer of liabilities to another plan in connection with the withdrawal.

(g) Mergers

Notwithstanding any other provision of this section, if 2 or more multiemployer plans merge, the amount of the overburden credit which may be applied under this section with respect to the plan resulting from the merger for any of the 3 plan years ending after the effective date of the merger shall not exceed the sum of the used overburden credit for each of the merging plans for its last plan year ending before the effective date of the merger. For purposes of the preceding sentence, the used overburden credit is that portion of the credit which does not exceed the excess of the minimum contribution requirement determined without regard to any overburden credit under this section over the employer contributions required under the plan.

(Added Pub. L. 96-364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1278.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (e)(2)(C), (4), and (f)(2), is

Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 is classified generally to part 1 (§1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29, Labor. Section 4022A of the Employee Retirement Income Security Act of 1974 is classified to section 1322a of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

§ 418D. Adjustments in accrued benefits

(a) Adjustments in accrued benefits

(1) In general

Notwithstanding section 411, a multiemployer plan in reorganization may be amended, in accordance with this section, to reduce or eliminate accrued benefits attributable to employer contributions which, under section 4022A(b) of the Employee Retirement Income Security Act of 1974, are not eligible for the Pension Benefit Guaranty Corporation's guarantee. The preceding sentence shall only apply to accrued benefits under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreement entered into after March 26, 1980.

(2) Adjustment of vested benefits charge

In determining the minimum contribution requirement with respect to a plan for a plan year under section 418B(b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under this section or section 412(c)(8),¹ but only if the amendment is adopted and effective no later than 2½ months after the end of the plan year, or within such extended period as the Secretary may prescribe by regulations under section 412(c)(10).¹

(b) Limitation on reduction

(1) In general

Accrued benefits may not be reduced under this section unless—

(A) notice has been given, at least 6 months before the first day of the plan year in which the amendment reducing benefits is adopted, to—

- (i) plan participants and beneficiaries,
- (ii) each employer who has an obligation to contribute (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974) under the plan, and
- (iii) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer,

that the plan is in reorganization and that, if contributions under the plan are not increased, accrued benefits under the plan will be reduced or an excise tax will be imposed on employers;

(B) in accordance with regulations prescribed by the Secretary—

- (i) any category of accrued benefits is not reduced with respect to inactive participants to a greater extent proportionally than that such category of accrued benefits

is reduced with respect to active participants,

(ii) benefits attributable to employer contributions other than accrued benefits and the rate of future benefit accruals are reduced at least to an extent equal to the reduction in accrued benefits of inactive participants, and

(iii) in any case in which the accrued benefit of a participant or beneficiary is reduced by changing the benefit form or the requirements which the participant or beneficiary must satisfy to be entitled to the benefit, such reduction is not applicable to—

(I) any participant or beneficiary in pay status on the effective date of the amendment, or the beneficiary of such a participant, or

(II) any participant who has attained normal retirement age, or who is within 5 years of attaining normal retirement age, on the effective date of the amendment, or the beneficiary of any such participant; and

(C) the rate of employer contributions for the plan year in which the amendment becomes effective and for all succeeding plan years in which the plan is in reorganization equals or exceeds the greater of—

(i) the rate of employer contributions, calculated without regard to the amendment, for the plan year in which the amendment becomes effective, or

(ii) the rate of employer contributions for the plan year preceding the plan year in which the amendment becomes effective.

(2) Information required to be included in notice

The plan sponsors shall include in any notice required to be sent to plan participants and beneficiaries under paragraph (1) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(c) No recoupment

A plan may not recoup a benefit payment which is in excess of the amount payable under the plan because of an amendment retroactively reducing accrued benefits under this section.

(d) Benefit increases under multiemployer plan in reorganization

(1) Restoration of previously reduced benefits

(A) In general

A plan which has been amended to reduce accrued benefits under this section may be amended to increase or restore accrued benefits, or the rate of future benefit accruals, only if the plan is amended to restore levels of previously reduced accrued benefits of inactive participants and of participants who are within 5 years of attaining normal retirement age to at least the same extent as any such increase in accrued benefits or in the rate of future benefit accruals.

¹ See References in Text note below.