

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.

(B) Benefit increases and benefit restorations

For purposes of this subsection, in the case of a plan which has been amended under this section to reduce accrued benefits—

(i) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit increase to the extent that the benefit, or the accrual rate, is thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan before the effective date of the amendment reducing accrued benefits, and

(ii) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit restoration to the extent that the benefit, or the accrual rate, is not thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan immediately before the effective date of the amendment reducing accrued benefits.

(2) Uniformity in benefit restoration

If a plan is amended to partially restore previously reduced accrued benefit levels, or the rate of future benefit accruals, the benefits of inactive participants shall be restored in at least the same proportions as other accrued benefits which are restored.

(3) No benefit increases in year of benefit reduction

No benefit increase under a plan may take effect in a plan year in which an amendment reducing accrued benefits under the plan, in accordance with this section, is adopted or first becomes effective.

(4) Retroactive payments

A plan is not required to make retroactive benefit payments with respect to that portion of an accrued benefit which was reduced and subsequently restored under this section.

(e) Inactive participant

For purposes of this section, the term “inactive participant” means a person not in covered service under the plan who is in pay status under the plan or who has a nonforfeitable benefit under the plan.

(f) Regulations

The Secretary may prescribe rules under which, notwithstanding any other provision of this section, accrued benefit reductions or benefit increases for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors reflecting differences in negotiated levels of financial support for plan benefit obligations.

(Added Pub. L. 96-364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1280.)

REFERENCES IN TEXT

Section 4022A(b) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(1), is classified to section 1322a(b) of Title 29, Labor.

Section 412, referred to in subsec. (a)(2), was amended generally by Pub. L. 109-280, title I, §111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, no longer contains a subsec. (c)(8) or (10).

Section 4212(a) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(1)(A)(ii), is classified to section 1392(a) of Title 29.

§ 418E. Insolvent plans**(a) Suspension of certain benefit payments**

Notwithstanding section 411, in any case in which benefit payments under an insolvent multiemployer plan exceed the resource benefit level, any such payments of benefits which are not basic benefits shall be suspended, in accordance with this section, to the extent necessary to reduce the sum of such payments and the payments of such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the Pension Benefit Guaranty Corporation under section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974.

(b) Definitions

For purposes of this section, for a plan year—

(1) Insolvency

A multiemployer plan is insolvent if the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year, or if the plan is determined to be insolvent under subsection (d).

(2) Resource benefit level

The term “resource benefit level” means the level of monthly benefits determined under subsections (c)(1) and (3) and (d)(3) to be the highest level which can be paid out of the plan's available resources.

(3) Available resources

The term “available resources” means the plan's cash, marketable assets, contributions, withdrawal liability payments, and earnings, less reasonable administrative expenses and amounts owed for such plan year to the Pension Benefit Guaranty Corporation under section 4261(b)(2) of the Employee Retirement Income Security Act of 1974.

(4) Insolvency year

The term “insolvency year” means a plan year in which a plan is insolvent.

(c) Benefit payments under insolvent plans**(1) Determination of resource benefit level**

The plan sponsor of a plan in reorganization shall determine in writing the plan's resource benefit level for each insolvency year, based on the plan sponsor's reasonable projection of the plan's available resources and the benefits payable under the plan.

(2) Uniformity of the benefit suspension

The suspension of benefit payments under this section shall, in accordance with regulations prescribed by the Secretary, apply in substantially uniform proportions to the benefits of all persons in pay status (within the meaning of section 418(b)(6)) under the plan, except that the Secretary may prescribe rules under which benefit suspensions for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors including differences in negotiated levels of financial support for plan benefit obligations.

(3) Resource benefit level below level of basic benefits

Notwithstanding paragraph (2), if a plan sponsor determines in writing a resource bene-