

then such plan shall be treated as a plan in critical status for such plan year for purposes of applying section 4971(g)(1)(A) of such Code, section 302(b)(3) of such Act [29 U.S.C. 1082(b)(3)] (without regard to the second sentence thereof), and section 412(b)(3) of such Code (without regard to the second sentence thereof).

“(c) ELECTION AND NOTICE.—

“(1) ELECTION.—An election under subsection (a) shall—

“(A) be made at such time and in such manner as the Secretary of the Treasury or the Secretary’s delegate may prescribe and, once made, may be revoked only with the consent of the Secretary, and

“(B) if the election is made—

“(i) before the date the annual certification is submitted to the Secretary or the Secretary’s delegate under section 305(b)(3) of such Act [29 U.S.C. 1085(b)(3)] and section 432(b)(3) of such Code, be included with such annual certification, and

“(ii) after such date, be submitted to the Secretary or the Secretary’s delegate not later than 30 days after the date of the election.

“(2) NOTICE TO PARTICIPANTS.—

“(A) IN GENERAL.—Notwithstanding section 305(b)(3)(D) of such Act and section 431(b)(3)(D) of such Code, if the plan is neither in endangered nor critical status by reason of an election made under subsection (a)—

“(i) the plan sponsor of a multiemployer plan shall not be required to provide notice under such sections, and

“(ii) the plan sponsor shall provide to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor a notice of the election and such other information as the Secretary of the Treasury (in consultation with the Secretary of Labor) may require—

“(I) if the election is made before the date the annual certification is submitted to the Secretary or the Secretary’s delegate under section 305(b)(3) of such Act and section 432(b)(3) of such Code, not later than 30 days after the date of the certification, and

“(II) if the election is made after such date, not later than 30 days after the date of the election.

“(B) NOTICE OF ENDANGERED STATUS.—Notwithstanding section 305(b)(3)(D) of such Act and section 431(b)(3)(D) of such Code, if the plan is certified to be in critical status for any plan year but is in endangered status by reason of an election made under subsection (a), the notice provided under such sections shall be the notice which would have been provided if the plan had been certified to be in endangered status.”

#### TEMPORARY EXTENSION OF THE FUNDING IMPROVEMENT AND REHABILITATION PERIODS FOR MULTIEMPLOYER PENSION PLANS IN CRITICAL AND ENDANGERED STATUS FOR 2008 OR 2009

Pub. L. 110-458, title II, §205, Dec. 23, 2008, 122 Stat. 5120, provided that:

“(a) IN GENERAL.—If the plan sponsor of a multiemployer plan which is in endangered or critical status for a plan year beginning in 2008 or 2009 (determined after application of section 204 [of Pub. L. 110-458, set out above]) elects the application of this section, then, for purposes of section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986—

“(1) except as provided in paragraph (2), the plan’s funding improvement period or rehabilitation period, whichever is applicable, shall be 13 years rather than 10 years, and

“(2) in the case of a plan in seriously endangered status, the plan’s funding improvement period shall be 18 years rather than 15 years.

“(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) ELECTION.—An election under this section shall be made at such time, and in such manner and form, as (in consultation with the Secretary of Labor) the Secretary of the Treasury or the Secretary’s delegate may prescribe.

“(2) DEFINITIONS.—Any term which is used in this section which is also used in section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such sections.

“(c) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2007.”

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

For applicability of this section 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 this title.

#### SUBPART B—BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS

Sec.

436. Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans.<sup>1</sup>

#### § 436. Funding-based limits on benefits and benefit accruals under single-employer plans

##### (a) General rule

For purposes of section 401(a)(29), a defined benefit plan which is a single-employer plan shall be treated as meeting the requirements of this section if the plan meets the requirements of subsections (b), (c), (d), and (e).

##### (b) Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans

###### (1) In general

If a participant of a defined benefit plan which is a single-employer plan is entitled to an unpredictable contingent event benefit payable with respect to any event occurring during any plan year, the plan shall provide that such benefit may not be provided if the adjusted funding target attainment percentage for such plan year—

(A) is less than 60 percent, or

(B) would be less than 60 percent taking into account such occurrence.

###### (2) Exemption

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the occurrence referred to in paragraph (1), and

(B) in the case of paragraph (1)(B), the amount sufficient to result in an adjusted

<sup>1</sup> So in original. Does not conform to section catchline.

funding target attainment percentage of 60 percent.

**(3) Unpredictable contingent event benefit**

For purposes of this subsection, the term “unpredictable contingent event benefit” means any benefit payable solely by reason of—

(A) a plant shutdown (or similar event, as determined by the Secretary), or

(B) an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

**(c) Limitations on plan amendments increasing liability for benefits**

**(1) In general**

No amendment to a defined benefit plan which is a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any plan year if the adjusted funding target attainment percentage for such plan year is—

(A) less than 80 percent, or

(B) would be less than 80 percent taking into account such amendment.

**(2) Exemption**

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the amendment, and

(B) in the case of paragraph (1)(B), the amount sufficient to result in an adjusted funding target attainment percentage of 80 percent.

**(3) Exception for certain benefit increases**

Paragraph (1) shall not apply to any amendment which provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment.

**(d) Limitations on accelerated benefit distributions**

**(1) Funding percentage less than 60 percent**

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, the plan may not pay any prohibited payment after the valuation date for the plan year.

**(2) Bankruptcy**

A defined benefit plan which is a single-employer plan shall provide that, during any pe-

riod in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, the plan may not pay any prohibited payment. The preceding sentence shall not apply on or after the date on which the enrolled actuary of the plan certifies that the adjusted funding target attainment percentage of such plan is not less than 100 percent.

**(3) Limited payment if percentage at least 60 percent but less than 80 percent**

**(A) In general**

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is 60 percent or greater but less than 80 percent, the plan may not pay any prohibited payment after the valuation date for the plan year to the extent the amount of the payment exceeds the lesser of—

(i) 50 percent of the amount of the payment which could be made without regard to this section, or

(ii) the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under section 417(e)) of the maximum guarantee with respect to the participant under section 4022 of the Employee Retirement Income Security Act of 1974.

**(B) One-time application**

**(i) In general**

The plan shall also provide that only 1 prohibited payment meeting the requirements of subparagraph (A) may be made with respect to any participant during any period of consecutive plan years to which the limitations under either paragraph (1) or (2) or this paragraph applies.

**(ii) Treatment of beneficiaries**

For purposes of this subparagraph, a participant and any beneficiary on his behalf (including an alternate payee, as defined in section 414(p)(8)) shall be treated as 1 participant. If the accrued benefit of a participant is allocated to such an alternate payee and 1 or more other persons, the amount under subparagraph (A) shall be allocated among such persons in the same manner as the accrued benefit is allocated unless the qualified domestic relations order (as defined in section 414(p)(1)(A)) provides otherwise.

**(4) Exception**

This subsection shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on September 1, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

**(5) Prohibited payment**

For purpose of this subsection, the term “prohibited payment” means—

(A) any payment, in excess of the monthly amount paid under a single life annuity

(plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during any period a limitation under paragraph (1) or (2) is in effect,

(B) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(C) any other payment specified by the Secretary by regulations.

Such term shall not include the payment of a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant.

**(e) Limitation on benefit accruals for plans with severe funding shortfalls**

**(1) In general**

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, benefit accruals under the plan shall cease as of the valuation date for the plan year.

**(2) Exemption**

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

**(f) Rules relating to contributions required to avoid benefit limitations**

**(1) Security may be provided**

**(A) In general**

For purposes of this section, the adjusted funding target attainment percentage shall be determined by treating as an asset of the plan any security provided by a plan sponsor in a form meeting the requirements of subparagraph (B).

**(B) Form of security**

The security required under subparagraph (A) shall consist of—

(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974,

(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

(iii) such other form of security as is satisfactory to the Secretary and the parties involved.

**(C) Enforcement**

Any security provided under subparagraph (A) may be perfected and enforced at any time after the earlier of—

(i) the date on which the plan terminates,

(ii) if there is a failure to make a payment of the minimum required contribu-

tion for any plan year beginning after the security is provided, the due date for the payment under section 430(j), or

(iii) if the adjusted funding target attainment percentage is less than 60 percent for a consecutive period of 7 years, the valuation date for the last year in the period.

**(D) Release of security**

The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at such time as the Secretary may prescribe in regulations, including regulations for partial releases of the security by reason of increases in the adjusted funding target attainment percentage.

**(2) Prefunding balance or funding standard carryover balance may not be used**

No prefunding balance or funding standard carryover balance under section 430(f) may be used under subsection (b), (c), or (e) to satisfy any payment an employer may make under any such subsection to avoid or terminate the application of any limitation under such subsection.

**(3) Deemed reduction of funding balances**

**(A) In general**

Subject to subparagraph (C), in any case in which a benefit limitation under subsection (b), (c), (d), or (e) would (but for this subparagraph and determined without regard to subsection (b)(2), (c)(2), or (e)(2)) apply to such plan for the plan year, the plan sponsor of such plan shall be treated for purposes of this title as having made an election under section 430(f) to reduce the prefunding balance or funding standard carryover balance by such amount as is necessary for such benefit limitation to not apply to the plan for such plan year.

**(B) Exception for insufficient funding balances**

Subparagraph (A) shall not apply with respect to a benefit limitation for any plan year if the application of subparagraph (A) would not result in the benefit limitation not applying for such plan year.

**(C) Restrictions of certain rules to collectively bargained plans**

With respect to any benefit limitation under subsection (b), (c), or (e), subparagraph (A) shall only apply in the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers.

**(g) New plans**

Subsections (b), (c), and (e) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

**(h) Presumed underfunding for purposes of benefit limitations**

**(1) Presumption of continued underfunding**

In any case in which a benefit limitation under subsection (b), (c), (d), or (e) has been

applied to a plan with respect to the plan year preceding the current plan year, the adjusted funding target attainment percentage of the plan for the current plan year shall be presumed to be equal to the adjusted funding target attainment percentage of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual adjusted funding target attainment percentage of the plan for the current plan year.

**(2) Presumption of underfunding after 10th month**

In any case in which no certification of the adjusted funding target attainment percentage for the current plan year is made with respect to the plan before the first day of the 10th month of such year, for purposes of subsections (b), (c), (d), and (e), such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the plan's adjusted funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of such first day.

**(3) Presumption of underfunding after 4th month for nearly underfunded plans**

In any case in which—

(A) a benefit limitation under subsection (b), (c), (d), or (e) did not apply to a plan with respect to the plan year preceding the current plan year, but the adjusted funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such subsection to apply to the plan with respect to such preceding plan year, and

(B) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual adjusted funding target attainment percentage of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the adjusted funding target attainment percentage of the plan as of such first day shall, for purposes of such subsection, be presumed to be equal to 10 percentage points less than the adjusted funding target attainment percentage of the plan for such preceding plan year.

**(i) Treatment of plan as of close of prohibited or cessation period**

For purposes of applying this title—

**(1) Operation of plan after period**

Unless the plan provides otherwise, payments and accruals will resume effective as of the day following the close of the period for which any limitation of payment or accrual of benefits under subsection (d) or (e) applies.

**(2) Treatment of affected benefits**

Nothing in this subsection shall be construed as affecting the plan's treatment of benefits which would have been paid or accrued but for this section.

**(j) Terms relating to funding target attainment percentage**

For purposes of this section—

**(1) In general**

The term “funding target attainment percentage” has the same meaning given such term by section 430(d)(2).

**(2) Adjusted funding target attainment percentage**

The term “adjusted funding target attainment percentage” means the funding target attainment percentage which is determined under paragraph (1) by increasing each of the amounts under subparagraphs (A) and (B) of section 430(d)(2) by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in section 414(q)) which were made by the plan during the preceding 2 plan years.

**(3)<sup>1</sup> Application to plans which are fully funded without regard to reductions for funding balances**

**(A) In general**

In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to the reduction in the value of assets under section 430(f)(4)), the funding target attainment percentage for purposes of paragraphs (1) and (2) shall be determined without regard to such reduction.

**(B) Transition rule**

Subparagraph (A) shall be applied to plan years beginning after 2007 and before 2011 by substituting for “100 percent” the applicable percentage 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.

**(C) Limitation**

Subparagraph (B) shall not apply with respect to any plan year beginning after 2008 unless the funding target attainment percentage (determined without regard to the reduction in the value of assets under section 430(f)(4)) of the plan for each preceding plan year beginning after 2007 was not less than the applicable percentage with respect to such preceding plan year determined under subparagraph (B).

**(3)<sup>1</sup> Special rule for certain years**

Solely for purposes of any applicable provision—

**(A) In general**

For plan years beginning on or after October 1, 2008, and before October 1, 2010, the adjusted funding target attainment percentage of a plan shall be the greater of—

(i) such percentage, as determined without regard to this paragraph, or

(ii) the adjusted funding target attainment percentage for such plan for the plan year beginning after October 1, 2007, and before October 1, 2008, as determined under rules prescribed by the Secretary.

<sup>1</sup> So in original. Two pars. (3) have been enacted.

**(B) Special rule**

In the case of a plan for which the valuation date is not the first day of the plan year—

(i) subparagraph (A) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

(ii) subparagraph (A)(ii) shall apply based on the last plan year beginning before November 1, 2007, as determined under rules prescribed by the Secretary.

**(C) Applicable provision**

For purposes of this paragraph, the term “applicable provision” means—

(i) subsection (d), but only for purposes of applying such paragraph to a payment which, as determined under rules prescribed by the Secretary, is a payment under a social security leveling option which accelerates payments under the plan before, and reduces payments after, a participant starts receiving social security benefits in order to provide substantially similar aggregate payments both before and after such benefits are received, and

(ii) subsection (e).

**(k) Secretarial authority for plans with alternate valuation date**

In the case of a plan which has designated a valuation date other than the first day of the plan year, the Secretary may prescribe rules for the application of this section which are necessary to reflect the alternate valuation date.

**(l) Single-employer plan**

For purposes of this section, the term “single-employer plan” means a plan which is not a multiemployer plan.

**(m) Special rule for 2008**

For purposes of this section, in the case of plan years beginning in 2008, the funding target attainment percentage for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.

(Added Pub. L. 109-280, title I, § 113(a)(1)(B), Aug. 17, 2006, 120 Stat. 847; amended Pub. L. 110-458, title I, § 101(c)(2), Dec. 23, 2008, 122 Stat. 5097; Pub. L. 111-192, title II, § 203(a)(2), June 25, 2010, 124 Stat. 1300.)

## REFERENCES IN TEXT

Section 4022 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(3)(A)(ii), is classified to section 1322 of Title 29, Labor.

Section 412 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(1)(B)(i), is classified to section 1112 of Title 29, Labor.

## AMENDMENTS

2010—Subsec. (j)(3). Pub. L. 111-192 added par. (3) relating to special rule for certain years.

2008—Subsec. (b)(2). Pub. L. 110-458, § 101(c)(2)(A), substituted “section 430” for “section 303” in introductory provisions and “an adjusted funding” for “a funding” in subpar. (B).

Subsec. (b)(3). Pub. L. 110-458, § 101(c)(2)(B), inserted “benefit” after “event” in heading and substituted “an event” for “any event” in subpar. (B).

Subsec. (d)(5). Pub. L. 110-458, § 101(c)(2)(C), inserted concluding provisions.

Subsec. (f)(1)(D). Pub. L. 110-458, § 101(c)(2)(D)(i), inserted “adjusted” before “funding”.

Subsec. (f)(2). Pub. L. 110-458, § 101(c)(2)(D)(ii), substituted “prefunding balance or funding standard carryover balance under section 430(f)” for “prefunding balance under section 430(f) or funding standard carryover balance”.

Subsec. (j)(3)(A). Pub. L. 110-458, § 101(c)(2)(E)(i), struck out “without regard to this paragraph and” before “without regard to the reduction” and substituted “section 430(f)(4)” for “section 430(f)(4)(A)” and “paragraphs (1) and (2)” for “paragraph (1)”.

Subsec. (j)(3)(C). Pub. L. 110-458, § 101(c)(2)(E)(ii), substituted “without regard to the reduction in the value of assets under section 430(f)(4)” for “without regard to this paragraph” and inserted “beginning” before “after” in two places.

Subsecs. (k) to (m). Pub. L. 110-458, § 101(c)(2)(F), added subsecs. (k) and (l) and redesignated former subsec. (k) as (m).

## EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-192, title II, § 203(c), June 25, 2010, 124 Stat. 1300, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1056 of Title 29, Labor] shall apply to plan years beginning on or after October 1, 2008.

“(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2007.”

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of this title.

## EFFECTIVE DATE

Pub. L. 109-280, title I, § 113(b), Aug. 17, 2006, 120 Stat. 852, as amended by Pub. L. 110-458, title I, § 101(c)(3), Dec. 23, 2008, 122 Stat. 5098, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this subpart] shall apply to plan years beginning after December 31, 2007.

“(2) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before January 1, 2008, the amendments made by this section shall not apply to plan years beginning before the earlier of—

“(A) the later of—

“(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Aug. 17, 2006]), or

“(ii) the first day of the first plan year to which the amendments made by this section [enacting this subpart] would (but for this paragraph) apply, or

“(B) January 1, 2010.

For purposes of subparagraph (A)(i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.”

## TEMPORARY MODIFICATION OF APPLICATION OF LIMITATION ON BENEFIT ACCRUALS

Pub. L. 111-192, title II, § 203(b), June 25, 2010, 124 Stat. 1300, provided that: “Section 203 of the Worker, Retiree, and Employer Recovery Act of 2008 [Pub. L. 110-458, set out below] shall apply to a plan for any plan year in lieu of the amendments made by this section applying to sections 206(g)(4) of the Employee Retirement In-

come Security Act of 1974 [29 U.S.C. 1056(g)(4)] and 436(e) of the Internal Revenue Code of 1986 only to the extent that such section produces a higher adjusted funding target attainment percentage for such plan for such year.”

Pub. L. 110-458, title II, § 203, Dec. 23, 2008, 122 Stat. 5118, provided that: “In the case of the first plan year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, sections 206(g)(4)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056(g)(4)(A)) and 436(e)(1) of the Internal Revenue Code of 1986 shall be applied by substituting the plan’s adjusted funding target attainment percentage for the preceding plan year for such percentage for such plan year but only if the adjusted funding target attainment percentage for the preceding plan year is greater.”

#### 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 (§§ 101-108) 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 this title.

### Subchapter E—Accounting Periods and Methods of Accounting

Part	
I.	Accounting periods.
II.	Methods of accounting.
III.	Adjustments.

#### PART I—ACCOUNTING PERIODS

Sec.	
441.	Period for computation of taxable income.
442.	Change of annual accounting period.
443.	Returns for a period of less than 12 months.
444.	Election of taxable year other than required taxable year.

#### AMENDMENTS

1987—Pub. L. 100-203, title X, § 10206(a)(2), Dec. 22, 1987, 101 Stat. 1330-398, added item 444.

### § 441. Period for computation of taxable income

#### (a) Computation of taxable income

Taxable income shall be computed on the basis of the taxpayer’s taxable year.

#### (b) Taxable year

For purposes of this subtitle, the term “taxable year” means—

- (1) the taxpayer’s annual accounting period, if it is a calendar year or a fiscal year;
- (2) the calendar year, if subsection (g) applies;
- (3) the period for which the return is made, if a return is made for a period of less than 12 months; or
- (4) in the case of a DISC filing a return for a period of at least 12 months, the period determined under subsection (h).

#### (c) Annual accounting period

For purposes of this subtitle, the term “annual accounting period” means the annual period on the basis of which the taxpayer regularly computes his income in keeping his books.

#### (d) Calendar year

For purposes of this subtitle, the term “calendar year” means a period of 12 months ending on December 31.

#### (e) Fiscal year

For purposes of this subtitle, the term “fiscal year” means a period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has made the election provided by subsection (f) the term means the annual period (varying from 52 to 53 weeks) so elected.

#### (f) Election of year consisting of 52-53 weeks

##### (1) General rule

A taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always—

- (A) on whatever date such same day of the week last occurs in a calendar month, or
- (B) on whatever date such same day of the week falls which is nearest to the last day of a calendar month,

may (in accordance with the regulations prescribed under paragraph (3)) elect to compute his taxable income for purposes of this subtitle on the basis of such annual period. This paragraph shall apply to taxable years ending after the date of the enactment of this title.

##### (2) Special rules for 52-53-week year

##### (A) Effective dates

In any case in which the effective date or the applicability of any provision of this title is expressed in terms of taxable years beginning, including, or ending with reference to a specified date which is the first or last day of a month, a taxable year described in paragraph (1) shall (except for purposes of the computation under section 15) be treated—

- (i) as beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or
- (ii) as ending with the last day of the calendar month ending nearest to the last day of such taxable year,

as the case may be.

##### (B) Change in accounting period

In the case of a change from or to a taxable year described in paragraph (1)—

- (i) if such change results in a short period (within the meaning of section 443) of 359 days or more, or of less than 7 days, section 443(b) (relating to alternative tax computation) shall not apply;
- (ii) if such change results in a short period of less than 7 days, such short period shall, for purposes of this subtitle, be added to and deemed a part of the following taxable year; and
- (iii) if such change results in a short period to which subsection (b) of section 443 applies, the taxable income for such short period shall be placed on an annual basis for purposes of such subsection by multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions as described in sec-