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[T.D. 9467, 74 FR 53060, Oct. 15, 2009]

### § 1.436-1 Limits on benefits and benefit accruals under single employer defined benefit plans.

(a) *General rules*—(1) *Qualification requirement*. Section 401(a)(29) provides that a defined benefit pension plan that is subject to section 412 and that is not a multiemployer plan (within the meaning of section 414(f)) is a qualified plan only if it satisfies the requirements of section 436. This section provides rules relating to funding-based limitations on certain benefits under section 436, and the requirements of section 436 are satisfied only if the plan meets the requirements of this section beginning with the plan's first effective plan year. This section applies to single employer defined benefit plans (including multiple employer plans), but does not apply to multiemployer plans.

(2) *Organization of the regulation*. Paragraph (b) of this section describes limitations on shutdown benefits and other unpredictable contingent event benefits. Paragraph (c) of this section describes limitations on plan amendments increasing liabilities. Paragraph (d) of this section describes limitations on prohibited payments. Paragraph (e) of this section describes limitations on benefit accruals. Paragraph (f) of this section provides rules relating to methods to avoid or terminate benefit limitations. Paragraph (g) of this section provides rules for the operation of the plan in relation to benefit limitations under section 436. Paragraph (h) of this section describes related presumptions regarding underfunding that apply for purposes of the benefit limitations under section 436 and requirements relating to certifications. Paragraph (j) of this section contains definitions. Paragraph (k) of this section contains effective/applicability date provisions.

(3) *Special rules for certain plans*—(i) *New plans*. The limitations described in paragraphs (b), (c), and (e) of this section do not apply to a plan for the first 5 plan years of the plan. Except as otherwise provided by the Commissioner in guidance of general applicability, plan years of the plan include the following (in addition to plan years during which the plan was maintained by the employer or plan sponsor):

(A) Plan years when the plan was maintained by a predecessor employer within the meaning of § 1.415(f)-1(c)(1).

(B) Plan years of another defined benefit plan maintained by a predecessor employer within the meaning of § 1.415(f)-1(c)(2) within the preceding five years if any participants in the plan participated in that other defined benefit plan (even if the plan maintained by the employer is not the plan that was maintained by the predecessor employer).

(C) Plan years of another defined benefit plan maintained by the employer within the preceding five years if any participants in the plan participated in that other defined benefit plan.

(ii) *Application of section 436 after termination of a plan*—(A) *In general*. Except as otherwise provided in paragraph (a)(3)(ii)(B) of this section, any section 436 limitations in effect immediately before the termination of a plan do not cease to apply thereafter.

(B) *Exception for payments pursuant to plan termination*. The limitations under section 436(d) and paragraph (d) of this section do not apply to prohibited payments (within the meaning of paragraph (j)(6) of this section) that are made to carry out the termination of a plan in accordance with applicable law. For example, a plan sponsor's purchase of an irrevocable commitment from an insurer to pay benefit liabilities in connection with the standard termination of a plan in accordance with section 4041(b)(3) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and in accordance with 29 CFR 4041.28, does not violate section 436(d) or this section.

(iii) *Multiple employer plans*. In the case of a multiple employer plan to which section 413(c)(4)(A) applies, this section applies separately with respect to each employer under the plan, as if each employer maintained a separate plan. Thus, the benefit limitations under section 436 and this section could apply differently to participants who are employees of different employers under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to

apply), this section applies as if all participants in the plan were employed by a single employer.

(4) *Treatment of plan as of close of prohibited or cessation period*—(i) *Application to prohibited payments and accruals*—(A) *Resumption of prohibited payments*. If a limitation on prohibited payments under paragraph (d) of this section applied to a plan as of a section 436 measurement date (as defined in paragraph (j)(8) of this section), but that limit no longer applies to the plan as of a later section 436 measurement date, then the limitation on prohibited payments under the plan does not apply to benefits with annuity starting dates (as defined in paragraph (j)(2) of this section) that are on or after that later section 436 measurement date. Any amendment to eliminate an optional form of benefit that contains a prohibited payment with respect to an annuity starting date during a period in which the limitations of section 436(d) and paragraph (d) of this section do not apply to the plan is subject to the rules of section 411(d)(6).

(B) *Resumption of benefit accruals*. If a limitation on benefit accruals under paragraph (e) of this section applied to a plan as of a section 436 measurement date, but that limit no longer applies to the plan as of a later section 436 measurement date, then that limitation does not apply to benefit accruals that are based on service on or after that later section 436 measurement date, except to the extent that the plan provides that benefit accruals will not resume when the limitation ceases to apply. The plan must comply with the rules relating to partial years of participation and the prohibition on double proration under Department of Labor regulation 29 CFR 2530.204-2(c) and (d).

(ii) *Restoration of options and missed benefit accruals*—(A) *Option to amend plan*. A plan is permitted to be amended to provide participants who had an annuity starting date within a period during which a limitation under paragraph (d) of this section applied to the plan with the opportunity to make a new election under which the form of benefit previously elected is modified, subject to applicable qualification requirements. A participant who makes

such a new election is treated as having a new annuity starting date under sections 415 and 417. Similarly, a plan is permitted to be amended to provide that any benefit accruals which were limited under the rules of paragraph (e) of this section are credited under the plan when the limitation no longer applies, subject to applicable qualification requirements. Any such plan amendment with respect to a new annuity starting date or crediting of benefit accruals is subject to the requirements of section 436(c) and paragraph (c) of this section.

(B) *Automatic plan provisions.* A plan is permitted to provide that participants who had an annuity starting date within a period during which a limitation under paragraph (d) of this section applied to the plan will be provided with the opportunity to have a new annuity starting date (which would constitute a new annuity starting date under sections 415 and 417) under which the form of benefit previously elected may be modified, subject to applicable qualification requirements, once the limitations of paragraph (d) of this section cease to apply. In addition, subject to the rules of paragraph (c)(3) of this section, a plan is permitted to provide for the automatic restoration of benefit accruals that had been limited under section 436(e) as of the section 436 measurement date that the limitation ceases to apply.

(iii) *Shutdown and other unpredictable contingent event benefits.* If unpredictable contingent event benefits with respect to an unpredictable contingent event that occurs during the plan year are not permitted to be paid after the occurrence of the event because of the limitations of section 436(b) and paragraph (b) of this section, but are permitted to be paid later in the plan year as a result of additional contributions under paragraph (f)(2) of this section or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the plan year that meets the requirements of paragraph (g)(5)(ii)(B) of this section, then those unpredictable contingent event benefits must automatically become payable, retroactive to the period those benefits would have been payable under the terms of the plan (other than

plan terms implementing the requirements of section 436(b)). If the benefits do not become payable during the plan year in accordance with the preceding sentence, then the plan is treated as if it does not provide for those benefits. However, all or any portion of those benefits can be restored pursuant to a plan amendment that meets the requirements of section 436(c) and paragraph (c) of this section and other applicable qualification requirements.

(iv) *Treatment of plan amendments that do not take effect.* If a plan amendment does not take effect as of the effective date of the amendment because of the limitations of section 436(c) and paragraph (c) of this section, but is permitted to take effect later in the plan year as a result of additional contributions under paragraph (f)(2) of this section or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the plan year that meets the requirements of paragraph (g)(5)(ii)(C) of this section, then the plan amendment must automatically take effect as of the first day of the plan year (or, if later, the original effective date of the amendment). If the plan amendment cannot take effect during the plan year, then it must be treated as if it were never adopted, unless the plan amendment provides otherwise.

(v) *Example.* The following example illustrates the rules of this paragraph (a)(4):

*Example.* (i) Plan T is a non-collectively bargained defined benefit plan with a plan year that is the calendar year and a valuation date of January 1. As of January 1, 2011, Plan T does not have a funding standard carryover balance or a prefunding balance. Plan T's sponsor is not in bankruptcy. Beginning January 1, 2011, Plan T is subject to the restriction on prohibited payments under paragraph (d)(3) of this section based on a presumed adjusted funding target attainment percentage (AFTAP) of 75%.

(ii) U is a participant in Plan T. Participant U retires on February 1, 2011, and elects to receive benefits in the form of a single sum. Plan T may pay only a portion (generally, 50%) of the prohibited payment. Accordingly, U elects in accordance with paragraph (d)(3)(ii) of this section to receive 50% of U's benefit in a single sum (up to the 2011 PBGC maximum benefit guarantee amount described in paragraph (d)(3)(iii)(C) of this

section) and the remainder as an immediately commencing straight life annuity.

(iii) On March 1, 2011, the enrolled actuary for the Plan certifies that the AFTAP for 2011 is 80%. Accordingly, beginning March 1, 2011, Plan T is no longer subject to the restriction under paragraph (d)(3) of this section.

(iv) Effective March 1, 2011, Plan T is amended to provide that a participant whose benefits were restricted under paragraph (d)(3) of this section with respect to an annuity starting date between January 1, 2011, and February 28, 2011, may elect, within a specified period on or after March 1, 2011, a new annuity starting date and receive the remainder of his or her pension benefits in an accelerated form of payment. Plan T's enrolled actuary determines that the AFTAP, taking into account the amendment, would still be 80%. The amendment is permitted to take effect because Plan T would have an AFTAP of 80% taking into account the amendment and is therefore neither subject to the restriction on plan amendments in paragraph (c) of this section nor the restrictions on prohibited payments under paragraphs (d)(1) and (d)(3) of this section. Accordingly, Participant U may elect, within the specified period and subject to otherwise applicable qualification rules, including spousal consent, to receive the remainder of U's benefits in the form of a single sum on or after March 1, 2011.

(5) *Deemed election to reduce funding balances*—(i) *Limitations on accelerated benefit payments.* If a benefit limitation under paragraph (d)(1) or (d)(3) of this section would (but for this paragraph (a)(5)) apply to a plan, the employer is treated 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 the adjusted funding target attainment percentage to be at the applicable threshold (60 or 80 percent, as the case may be) in order for the benefit limitation not to apply to the plan. The determination of whether a benefit limitation under paragraph (d) of this section would apply to a plan is based on whether the plan provides for an optional form of benefit that would be limited under section 436(d) and is not based on whether any participant elects payment of benefits in such a form.

(ii) *Other limitations for collectively bargained plans*—(A) *General rule.* In the case of a collectively bargained plan to which a benefit limitation under paragraph (b), (c), or (e) of this section

would (but for this paragraph (a)(5)) apply, the employer is treated 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 the adjusted funding target attainment percentage to be at the applicable threshold (60 or 80 percent, as the case may be) in order for the benefit limitation not to apply to the plan, taking into account the adjustments described in paragraph (g)(2)(iii)(A), (g)(3)(ii)(A), or (g)(5)(i)(B) of this section, whichever applies.

(B) *Collectively bargained plans.* A plan is considered a collectively bargained plan for purposes of this paragraph (a)(5)(ii) if—

(1) At least 50 percent of the employees benefiting under the plan (within the meaning of § 1.410(b)-3(a)) are members of collective bargaining units for which the benefit levels under the plan are specified under a collective bargaining agreement; or

(2) At least 25 percent of the participants in the plan are members of collective bargaining units for which the benefit levels under the plan are specified under a collective bargaining agreement.

(iii) *Exception for insufficient funding balances*—(A) *In general.* Paragraphs (a)(5)(i) and (a)(5)(ii) of this section apply with respect to a benefit limitation for any plan year only if the application of those paragraphs would result in the corresponding benefit limitation not applying for such plan year. Thus, if the plan's prefunding and funding standard carryover balances were reduced to zero and the resulting increase in plan assets taken into account would still not increase the plan's adjusted funding target attainment percentage enough to reach the threshold percentage applicable to the benefit limitation, the deemed election to reduce those balances pursuant to paragraph (a)(5)(i) or (a)(5)(ii) of this section does not apply.

(B) *Presumed adjusted funding target attainment percentage less than 60 percent.* During any period when a plan is presumed to have an adjusted funding target attainment percentage of less than 60 percent as a result of paragraph

(h)(3) of this section, the plan is treated as if the prefunding balance and the funding standard carryover balance are insufficient to increase the adjusted funding target attainment percentage to the threshold percentage of 60 percent. Accordingly, the deemed election to reduce those balances pursuant to paragraphs (a)(5)(i) and (a)(5)(ii) of this section does not apply to the plan.

(iv) *Other rules—(A) Date of deemed election.* If an election is deemed to be made pursuant to this paragraph (a)(5), then the plan sponsor is treated as having made that election on the date as of which the applicable benefit limitation would otherwise apply.

(B) *Coordination with section 436 contributions.* The determination of whether one of the benefit limitations described in paragraph (a)(5)(ii)(A) of this section would otherwise apply is made without regard to any contribution described in paragraph (f)(2) of this section. Thus, the requirement to reduce the prefunding balance or funding standard carryover balance under paragraph (a)(5)(ii) of this section cannot be avoided through the use of a section 436 contribution.

(C) *Coordination with elections to offset minimum required contribution.* See § 1.430(f)-1(d)(1)(ii) for the coordination of elections to offset the minimum required contribution and the deemed election to reduce the prefunding and funding standard carryover balances under this paragraph (a)(5).

(v) *Example.* The following example illustrates the rules of this paragraph (a)(5):

*Example.* (i) Plan W is a collectively bargained, single employer defined benefit plan sponsored by Sponsor X, with a plan year that is the calendar year and a valuation date of January 1.

(ii) The enrolled actuary for Plan W issues a certification on March 1, 2010, that the 2010 AFTAP is 81%. Sponsor X adopts an amendment on March 25, 2010, to increase benefits under a formula based on participant compensation, with an effective date of May 1, 2010. (Because the formula is based on compensation, the exception in paragraph (c)(4)(i) of this section does not apply.) The plan's enrolled actuary determines that the plan's AFTAP for 2010 would be 75% if the benefits attributable to the plan amendment were taken into account in determining the funding target.

(iii) Because the AFTAP would be below the 80% threshold if the benefits attributable to the plan amendment were taken into account in determining the funding target, Sponsor X is deemed pursuant to paragraph (a)(5)(ii) of this section to have made an election to reduce Plan W's prefunding and funding standard carryover balances by the amount necessary for the AFTAP to reach the 80% threshold (reflecting the increase in funding target attributable to the plan amendment), provided that the amount of those balances is sufficient for this purpose.

(iv) If the deemed election described in paragraph (iii) of this example occurs, the plan amendment takes effect on its effective date (May 1, 2010). See paragraph (f) of this section for other methods to avoid or terminate benefit limitations (where, for example, the amount necessary for a benefit limitation not to apply for a plan year exceeds the sum of the prefunding balance and the funding standard carryover balance).

(6) *Notice requirements.* See section 101(j) of ERISA for rules requiring the plan administrator of a single employer plan to provide a written notice to participants and beneficiaries within 30 days after certain specified dates, which depend on whether the plan has become subject to a restriction described in the ERISA provisions that are parallel to Internal Revenue Code sections 436(b), 436(d), and 436(e) (ERISA sections 206(g)(1), 206(g)(3), and 206(g)(4), respectively).

(b) *Limitation on shutdown benefits and other unpredictable contingent event benefits—(1) In general.* Except as otherwise provided in this paragraph (b), a plan satisfies section 436(b) and this paragraph (b) only if it provides that unpredictable contingent event benefits with respect to any unpredictable contingent events occurring during a plan year will not be paid if the adjusted funding target attainment percentage for the plan year is—

(i) Less than 60 percent; or

(ii) 60 percent or more, but would be less than 60 percent if the adjusted funding target attainment percentage were redetermined applying an actuarial assumption that the likelihood of occurrence of the unpredictable contingent event during the plan year is 100 percent.

(2) *Exemption if section 436 contribution is made.* The prohibition on payment of

unpredictable contingent event benefits under paragraph (b)(1) of this section ceases to apply with respect to benefits attributable to an unpredictable contingent event occurring during the plan year upon payment by the plan sponsor of the contribution described in paragraph (f)(2)(iii) of this section with respect to that event. If the prior sentence applies with respect to an unpredictable contingent event, then all benefits with respect to the unpredictable contingent event must be paid, including benefits for periods prior to the contribution. See paragraph (f) of this section for additional rules.

(3) *Rules of application*—(i) *Participant-by-participant application*. The limitations of section 436(b) and this paragraph (b) apply on a participant-by-participant basis. Thus, whether payment or commencement of an unpredictable contingent event benefit under a plan is restricted with respect to a participant is determined based on whether the participant satisfies the plan's eligibility requirements (other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability) for such a benefit in a plan year in which the limitations of section 436(b) and this paragraph (b) apply.

(ii) *Multiple contingencies*. In the case of a plan that provides for a benefit that depends upon the occurrence of more than one unpredictable contingent event with respect to a participant, the unpredictable contingent event for purposes of section 436(b) and this paragraph (b) occurs upon the last to occur of those unpredictable contingent events.

(iii) *Cessation of benefits*. Cessation of a benefit under a plan upon the occurrence of a specified event is not an unpredictable contingent event for purposes of section 436(b) and this paragraph (b). Thus, section 436(b) and this paragraph (b) do not prohibit provisions of a plan that provide for cessation, suspension, or reduction of any benefits upon occurrence of any event. However, upon any subsequent recommencement of benefits (including any restoration of benefits), the rules

of section 436 and this section will apply.

(4) *Prior unpredictable contingent event*. Unpredictable contingent event benefits attributable to an unpredictable contingent event that occurred within a period during which no limitation under this paragraph (b) applied to the plan are not affected by the limitation described in this paragraph (b) as it applies in a subsequent period. For example, if a plant shutdown occurs in 2010 and the plan's funded status is such that benefits contingent upon that plant shutdown are not subject to the limitation described in this paragraph (b) for that calendar plan year, this paragraph (b) does not apply to restrict payment of those benefits even if another plant shutdown occurs in 2012 that results in the restriction of benefits that are contingent upon that later plant shutdown under this paragraph (b) (where the plan's adjusted funding target attainment percentage for 2012 would be less than 60 percent taking into account the liability attributable to those shutdown benefits).

(c) *Limitations on plan amendments increasing liability for benefits*—(1) *In general*. Except as otherwise provided in this paragraph (c), a plan satisfies section 436(c) and this paragraph (c) only if the plan provides that no amendment to the plan that 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 non-forfeitable will take effect in a plan year if the adjusted funding target attainment percentage for the plan year is—

(i) Less than 80 percent; or

(ii) 80 percent or more, but would be less than 80 percent if the benefits attributable to the amendment were taken into account in determining the adjusted funding target attainment percentage.

(2) *Exemption if section 436 contribution is made*—(i) *General rule*. The limitations on plan amendments in paragraph (c)(1) of this section cease to apply with respect to an amendment upon payment by the plan sponsor of the contribution described in paragraph (f)(2)(iv) of this section, so that

the amendment is permitted to take effect as of the later of the first day of the plan year or the effective date of the amendment. See paragraph (f) of this section for additional rules.

(ii) *Amendments that do not increase funding target.* If the amount of the contribution described in paragraph (f)(2)(iv) of this section is \$0 (because the amendment increases benefits solely for future periods), the amendment is permitted to take effect without regard to this paragraph (c). However, see § 1.430(d)-1(d)(2) for a rule that requires such an amendment to be taken into account in determining the funding target and the target normal cost in certain situations.

(3) *Rules of application regarding pre-existing plan provisions.* If a plan contains a provision that provides for the automatic restoration of benefit accruals that were not permitted to accrue because of the application of section 436(e) and paragraph (e) of this section, the restoration of those accruals is generally treated as a plan amendment that is subject to section 436(c). However, such a provision is permitted to take effect without regard to the limits of section 436(c) and this paragraph (c) if—

(i) The continuous period of the limitation is 12 months or less; and

(ii) The plan's enrolled actuary certifies that the adjusted funding target attainment percentage for the plan would not be less than 60 percent taking into account the restored benefit accruals for the prior plan year.

(4) *Exceptions—(i) Benefit increases based on compensation—(A) In general.* In accordance with section 436(c)(3), section 436(c) and this paragraph (c) do not apply to any amendment that provides for an increase in benefits under a formula that is not based on a participant's compensation, but only if the rate of increase in benefits does not exceed the contemporaneous rate of increase in average wages of participants covered by the amendment. The determination of the rate of increase in average wages is made by taking into consideration the net increase in average wages from the period of time beginning with the effective date of the most recent benefit increase applicable to all of those participants who are

covered by the current amendment and ending on the effective date of the current amendment.

(B) *Application to participants who are not currently employed.* If an amendment applies to both currently employed participants and other participants, all participants to whom the amendment applies are included in determining the increase in average wages of the participants covered by the amendment for purposes of this paragraph (c)(4)(i). For this purpose, participants who are not employees at any time during the period from the effective date of the most recent earlier benefit increase applicable to all of the participants who are covered by the current amendment and ending on the effective date of the current amendment are treated as having no increase or decrease in wages for the period after severance from employment.

(C) *Separate amendments for different plan populations.* In lieu of a single amendment that applies to both currently employed participants and other participants as described in paragraph (c)(4)(i)(B) of this section, the employer can adopt multiple amendments—such as one that increases benefits for participants currently employed on the effective date of the current amendment and another one that increases benefits for other participants. In that case, the two amendments are considered separately in determining the increase in average wages, and the exception in this paragraph (c)(4)(i) applies separately to each amendment. Thus, the increase in benefits for currently employed participants takes effect if it satisfies the exception under this paragraph (c)(4), but the amendment increasing benefits for other participants who received no increase in wages from the employer during the period over which the increase in average wages is separately subject to the rules of this paragraph (c) without regard to the rules of this paragraph (c)(4).

(ii) *Plan provisions providing for accelerated vesting.* To the extent that any amendment provides for (or any pre-existing plan provision results in) a mandatory increase in the vesting of benefits under the Code or ERISA (such as vesting rate increases pursuant to statute, plan termination amendments or

partial terminations under section 411(d)(3), and vesting increases required by the rules for top-heavy plans under section 416), that amendment (or pre-existing plan provision) does not constitute an amendment that changes the rate at which benefits become non-forfeitable for purposes of section 436(c) and this paragraph (c). However, this paragraph (c)(4)(ii) applies only to the extent the increase in vesting is necessary to enable the plan to continue to satisfy the requirements for qualified plans.

(iii) *Authority for additional exceptions.* The Commissioner may, in guidance of general applicability, issue additional rules under which other amendments to a plan are not treated as amendments to which section 436(c) and this paragraph (c) apply. See § 601.601(d)(2) relating to objectives and standards for publishing regulations, revenue rulings and revenue procedures in the Internal Revenue Bulletin.

(5) *Rule for determining when an amendment takes effect.* For purposes of section 436(c) and this paragraph (c), in the case of an amendment that increases benefits, the amendment takes effect under a plan on the first date on which any individual who is or could be a participant or beneficiary under the plan would obtain a legal right to the increased benefit if the individual were on that date to satisfy the applicable requirements for entitlement to the benefit (such as the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death, disability, or severance from employment).

(6) *Treatment of mergers, consolidations, and transfers of plan assets into a plan.* [Reserved]

(d) *Limitations on prohibited payments—(1) AFTAP less than 60 percent.* A plan satisfies the requirements of section 436(d)(1) and this paragraph (d)(1) only if the plan provides that, if the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, a participant or beneficiary is not permitted to elect an optional form of benefit that includes a prohibited payment, and the plan will not pay any prohibited payment, with an annuity starting date on or after

the applicable section 436 measurement date.

(2) *Bankruptcy.* A plan satisfies the requirements of section 436(d)(2) and this paragraph (d)(2) only if the plan provides that a participant or beneficiary is not permitted to elect an optional form of benefit that includes a prohibited payment, and the plan will not pay any prohibited payment, with an annuity starting date that occurs during any period in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, except for payments made within a plan year with an annuity starting date that occurs on or after the date on which the enrolled actuary of the plan certifies that the plan's adjusted funding target attainment percentage for that plan year is not less than 100 percent.

(3) *Limited payment if AFTAP at least 60 percent but less than 80 percent—(i) In general.* A plan satisfies the requirements of section 436(d)(3) and this paragraph (d)(3) only if the plan provides that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is 60 percent or more but is less than 80 percent, a participant or beneficiary is not permitted to elect the payment of an optional form of benefit that includes a prohibited payment, and the plan will not pay any prohibited payment, with an annuity starting date on or after the applicable section 436 measurement date, unless the present value, determined in accordance with section 417(e)(3), of the portion of the benefit that is being paid in a prohibited payment (which portion is determined under paragraph (d)(3)(iii)(B) of this section) does not exceed the lesser of—

(A) 50 percent of the present value (determined in accordance with section 417(e)(3)) of the benefit payable in the optional form of benefit that includes the prohibited payment; or

(B) 100 percent of the PBGC maximum benefit guarantee amount described in paragraph (d)(3)(iii)(C) of this section.

(ii) *Bifurcation if optional form unavailable—(A) Requirement to offer bifurcation.* If an optional form of benefit that is otherwise available under the terms of the plan is not available as of



the annuity starting date because of the application of paragraph (d)(3)(i) of this section, then the plan must permit the participant or beneficiary to elect to—

(1) Receive the unrestricted portion of that optional form of benefit (determined under the rules of paragraph (d)(3)(iii)(D) of this section) at that annuity starting date, determined by treating the unrestricted portion of the benefit as if it were the participant's or beneficiary's entire benefit under the plan;

(2) Commence benefits with respect to the participant's or beneficiary's entire benefit under the plan in any other optional form of benefit available under the plan at the same annuity starting date that satisfies paragraph (d)(3)(i) of this section; or

(3) Defer commencement of the payments to the extent described in paragraph (d)(5) of this section.

(B) *Rules relating to bifurcation.* If the participant or beneficiary elects payment of the unrestricted portion of the benefit as described in paragraph (d)(3)(ii)(A)(I) of this section, then the plan must permit the participant or beneficiary to elect payment of the remainder of the participant's or beneficiary's benefits under the plan in any optional form of benefit at that annuity starting date otherwise available under the plan that would not have included a prohibited payment if that optional form applied to the entire benefit of the participant or beneficiary. The rules of §1.417(e)-1 are applied separately to the separate optional forms for the unrestricted portion of the benefit and the remainder of the benefit (the restricted portion).

(C) *Plan alternative that anticipates election of payment that includes a prohibited payment.* With respect to an optional form of benefit that includes a prohibited payment and that is not permitted to be paid under paragraph (d)(3)(i) of this section, for which no additional information from the participant or beneficiary (such as information regarding a social security leveling optional form of benefit) is needed to make that determination, rather than wait for the participant or beneficiary to elect such optional form of benefit, a plan is permitted to provide

for separate elections with respect to the restricted and unrestricted portions of that optional form of benefit. However, the rule in the preceding sentence applies only if—

(1) The plan applies the rule to all such optional forms; and

(2) The plan identifies the option that the bifurcation election replaces.

(iii) *Definitions applicable to limited payment option—(A) In general.* The definitions in this paragraph (d)(3)(iii) apply for purposes of this paragraph (d)(3).

(B) *Portion of benefit being paid in a prohibited payment.* If a benefit is being paid in an optional form for which any of the payments is greater than the amount payable under a straight life annuity to the participant or beneficiary (plus any social security supplements described in the last sentence of section 411(a)(9) payable to the participant or beneficiary) with the same annuity starting date, then the portion of the benefit that is being paid in a prohibited payment is the excess of each payment over the smallest payment during the participant's lifetime under the optional form of benefit (treating a period after the annuity starting date and during the participant's lifetime in which no payments are made as a payment of zero).

(C) *PBGC maximum benefit guarantee amount.* The PBGC maximum benefit guarantee amount described in this paragraph (d)(3)(iii)(C) is 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 benefit guarantee with respect to a participant (based on the participant's age or the beneficiary's age at the annuity starting date) under section 4022 of ERISA for the year in which the annuity starting date occurs.

(D) *Unrestricted portion of the benefit—(1) General rule.* Except as otherwise provided in this paragraph (d)(3)(iii)(D), the unrestricted portion of the benefit with respect to any optional form of benefit is 50 percent of the amount payable under the optional form of benefit.

(2) *Special rule for forms which include social security leveling or a refund of employee contributions.* For an optional

form of benefit that is a prohibited payment on account of a social security leveling feature (as defined in § 1.411(d)-3(g)(16)) or a refund of employee contributions feature (as defined in § 1.411(d)-3(g)(11)), the unrestricted portion of the benefit is the optional form of benefit that would apply if the participant's or beneficiary's accrued benefit were 50 percent smaller.

(3) *Limited to PBGC maximum benefit guarantee amount.* After the application of the preceding rules of this paragraph (d)(3)(iii)(D), the unrestricted portion of the benefit with respect to the optional form of benefit is reduced, to the extent necessary, so that the present value (determined in accordance with section 417(e)) of the unrestricted portion of that optional form of benefit does not exceed the PBGC maximum benefit guarantee amount (described in paragraph (d)(3)(iii)(C) of this section).

(iv) *Other rules—(A) One time application.* A plan satisfies the requirements of this paragraph (d)(3) only if the plan provides that, in the case of a participant with respect to whom a prohibited payment (or series of prohibited payments under a single optional form of benefit) is made pursuant to paragraph (d)(3)(i) or (ii) of this section, no additional prohibited payment may be made with respect to that participant during any period of consecutive plan years for which prohibited payments are limited under this paragraph (d).

(B) *Treatment of beneficiaries.* For purposes of this paragraph (d)(3), benefits provided with respect to a participant and any beneficiary of the participant (including an alternate payee, as defined in section 414(p)(8)) are aggregated. If the only benefits paid under the plan with respect to the participant are death benefits payable to the beneficiary, then paragraph (d)(3)(iii)(B) of this section is applied by substituting the lifetime of the beneficiary for the lifetime of the participant. If the accrued benefit of a participant is allocated to such an alternate payee and one or more other persons, then the unrestricted amount under paragraph (d)(3)(iii)(D) of this section is allocated among such persons in the same manner as the accrued benefit is allocated, unless a qualified domestic

relations order (as defined in section 414(p)(1)(A)) with respect to the participant or the alternate payee provides otherwise. See paragraphs (j)(2)(ii) and (j)(6)(ii) of this section for other special rules relating to beneficiaries.

(C) *Treatment of annuity purchases and plan transfers.* This paragraph (d)(3)(iv)(C) applies for purposes of applying paragraphs (d)(3)(i) and (iii)(D) of this section. In the case of a prohibited payment described in paragraph (j)(6)(i)(B) of this section (relating to purchase from an insurer), the present value of the portion of the benefit that is being paid in a prohibited payment is the cost to the plan of the irrevocable commitment and, in the case of a prohibited payment described in paragraph (j)(6)(i)(C) of this section (relating to certain plan transfers), the present value of the portion of the benefit that is being paid in a prohibited payment is the present value of the liabilities transferred (determined in accordance with section 414(1)). In addition, the present value of the accrued benefit is substituted for the present value of the benefit payable in the optional form of benefit that includes the prohibited payment in paragraph (d)(3)(i)(A) of this section. (Further, see § 1.411(d)-4, A-2(a)(3)(ii), for a rule under section 411(d)(6) that applies to an optional form of benefit that includes a prohibited payment described in paragraph (j)(6)(i)(B) of this section.)

(v) *Examples.* The following examples illustrate the rules of this paragraph (d)(3):

*Example 1.* (i) Plan A has a plan year that is the calendar year, and is subject to the restriction on prohibited payments under paragraph (d)(3) of this section for the 2010 plan year. Participant P is not married, and retires at age 65 during 2010, while the restriction under paragraph (d)(3) of this section applies to Plan A. P's accrued benefit is \$10,000 per month, payable commencing at age 65 as a straight life annuity. Plan A provides for an optional single-sum payment (subject to the restrictions under section 436) equal to the present value of the participant's accrued benefit using actuarial assumptions under section 417(e). P's single-sum payment, determined without regard to this paragraph (d), is calculated to be \$1,416,000, payable at age 65.

(ii) The PBGC guaranteed monthly benefit for a straight life annuity payable at age 65

in 2010 (for purposes of this example) is assumed to be \$4,500. The PBGC maximum benefit guarantee amount at age 65 is assumed to be \$637,200 for 2010.

(iii) Because Participant P retires during a period when the restriction in paragraph (d)(3) of this section applies to Plan A, only a portion of the benefit can be paid in the form of a single sum. P elects a single-sum payment. Because a single-sum payment is a prohibited payment, a determination must be made whether the payment can be paid under paragraph (d)(3)(i) of this section. In this case, because the present value of the portion of Participant P's benefit that is being paid in a prohibited payment exceeds the lesser of 50% of the benefit or the PBGC maximum benefit guarantee amount, it cannot be paid under paragraph (d)(3)(i) of this section. Accordingly, the maximum single sum that P can receive is \$637,200 (that is, the lesser of 50% of \$1,416,000 or \$637,200).

(iv) Pursuant to paragraph (d)(3)(ii) of this section, Plan A must offer P the option to bifurcate the benefit into unrestricted and restricted portions. The unrestricted portion is a monthly straight life annuity of \$4,500, which can be paid in a single sum of \$637,200. If P elects to receive the unrestricted portion of the benefit in the form of a single sum, then, with respect to the \$5,500 restricted portion, Plan A must permit P to elect any form of benefit that would otherwise be permitted with respect to the full \$10,000 and that is not a prohibited payment. Alternatively, Plan A may provide that P is permitted to elect to defer commencement of the restricted portion, subject to applicable qualification rules.

*Example 2.* (i) The facts are the same as in *Example 1*. In addition, Plan A provides an optional form of payment (subject to any benefit restrictions under section 436) that consists of a partial payment equal to the total return of employee contributions to the plan accumulated with interest, with an annuity payment for the remainder of the participant's benefit.

(ii) Participant Q is not married, and retires at age 65 during 2010, while Plan A is subject to the restriction under paragraph (d)(3) of this section. Participant Q has an accrued benefit equal to a straight life annuity of \$3,000 per month. Under the optional form described in paragraph (i) of this *Example 2*, Q may elect a partial payment of \$99,120 (representing the return of employee contributions accumulated with interest), plus a straight life annuity of \$2,300 per month. The present value of Participant Q's accrued benefit, using actuarial assumptions under section 417(e), is \$424,800.

(iii) Because the present value of the portion of Q's benefit that is being paid in a prohibited payment (\$99,120) does not exceed the lesser of 50% of the present value of benefits (50% of \$424,800) or 100% of the PBGC maximum

benefit guarantee amount (\$637,200 at age 65 for 2010), the optional form described in paragraph (i) of this *Example 2* is permitted to be paid under paragraph (d)(3)(i) of this section.

*Example 3.* (i) The facts are the same as in *Example 1*. In addition, Plan A provides an optional form of payment under a social security leveling option (subject to any benefit restrictions under section 436) that consists of an increased temporary benefit payable until age 62, with reduced payments beginning at age 62. The benefit is structured so that the combination of the participant's pension benefit and Social Security benefit provides an approximately level income for the participant's lifetime. The PBGC maximum benefit guarantee amount at age 55 is assumed to be \$362,776 for 2010.

(ii) Participant R retires at age 55 in 2010 and is eligible to receive a level lifetime annuity of \$1,200 per month beginning immediately. Instead, Participant R elects to receive a benefit under the social security leveling optional form of payment. Participant R's Social Security benefit payable at age 62 is projected, under the terms specified in Plan A, to be \$1,500 per month. The Plan A adjustment factor for the social security leveling option using the minimum present value requirements of section 417(e)(3) is .590 at age 55. Therefore, Participant R's benefit payable from age 55 to age 62 is \$2,085 per month ( $\$1,200 + .590 \times \$1,500$ ), and the benefit payable for Participant's lifetime, beginning after age 62, is \$585 per month ( $\$2,085 - \$1,500$ ).

(iii) Because the optional form provides some payments which are greater than payments described in paragraph (j)(6)(i)(A) of this section (\$1,200), the portion of the benefit that is being paid in a prohibited payment is \$1,500 per month which is payable from age 55 to age 62. Using the applicable interest and mortality rates under section 417(e) as in effect for Plan A at the time the benefit commences, the present value of a temporary benefit of \$1,500 per month ( $\$2,085 - \$585$ ) payable from age 55 to age 62 is \$106,417, and the present value of the entire benefit (a temporary benefit of \$2,085 per month payable from age 55 to age 62 plus a deferred lifetime benefit of \$585 commencing at age 62) is \$207,468.

(iv) Because \$106,417 is more than 50% of \$207,468 (and because 50% of Participant R's benefit is less than \$362,776, which is the PBGC maximum guaranteed benefit amount at age 55 for 2010), Participant R can only receive 50% of the benefit in the form of the social security leveling option. Pursuant to paragraph (d)(3)(ii) of this section, Plan A must offer Participant R the option to bifurcate the benefit into unrestricted and restricted portions. Participant R elects to receive the restricted portion of the early retirement benefit as a level lifetime annuity of \$600 commencing at age 55.

(v) Participant R elects to receive the unrestricted portion of the early retirement benefit in the social security leveling form of payment. This portion of the benefit is determined under the social security leveling form of payment as if Participant R's benefit was one-half of the early retirement benefit, or \$600. However, using a monthly level lifetime benefit of \$600 and a monthly social security benefit of \$1,500, Participant R would have a negative benefit after age 62 ( $\$600 + .590 \times \$1,500$  is only \$1,485; offsetting \$1,500 at age 62 would produce a negative amount). Plan A provides that in this situation, the benefit under the social security leveling option is an actuarially equivalent monthly annuity payable until age 62, with zero payable thereafter. Using the actuarial equivalence factor of .590 at age 55, the plan administrator determines that the unrestricted portion of Participant R's benefit is \$1,463 per month, payable from age 55 to age 62 ( $\$600 + .590 \times \$1,463 = \$1,463$  payable until age 62;  $\$1,463 - \$1,463 = \text{zero}$  payable after age 62).

(vi) Combining the unrestricted and restricted portions of the benefit, Participant R will receive a total of \$2,063 per month from age 55 to age 62 (\$1,463 from the unrestricted portion of the benefit plus \$600 from the restricted portion of the benefit), and \$600 per month beginning at age 62 (zero from the unrestricted portion of the benefit plus \$600 from the restricted portion of the benefit).

(4) *Exception for cessation of benefit accruals.* This paragraph (d) does not apply to a plan for a plan year if the terms of the plan, as in effect for the period beginning on September 1, 2005, provided for no benefit accruals with respect to any participants. If a plan that is described in this paragraph (d)(4) provides for benefit accruals during any time on or after September 1, 2005 (treating benefit increases pursuant to a plan amendment as benefit accruals), this paragraph (d)(4) ceases to apply for the plan as of the date any benefits accrue under the plan (or the date the amendment takes effect). For example, the exception in this paragraph (d)(4) does not apply to a plan after the plan increases benefits to take into account increases in the limitations under section 415(b) on or after September 1, 2005.

(5) *Right to delay commencement.* If a participant or beneficiary requests a distribution in an optional form of benefit that includes a prohibited payment that is not permitted to be paid under paragraph (d)(1), (d)(2), or (d)(3) of this section, the participant retains the

right to delay commencement of benefits in accordance with the terms of the plan and applicable qualification requirements (such as sections 411(a)(11) and 401(a)(9)).

(6) *Plan alternative for special optional forms.* A plan is permitted to offer optional forms of benefit that are solely available during the period in which paragraph (d)(1), (d)(2), or (d)(3) of this section applies to limit prohibited payments under the plan. For example, a plan may permit participants or beneficiaries who commence benefits during the period in which paragraph (d)(1) of this section (or paragraph (d)(2) of this section) applies to limit prohibited payments under the plan to elect, within a specified period after the date on which that paragraph ceases to apply to limit prohibited payments under the plan, to receive the remaining benefit in the form of a single-sum payment equal to the present value of the remaining benefit, but only to the extent then permitted under this paragraph (d). As another example, during a period when paragraph (d)(3) of this section applies to a plan, the plan may permit participants and beneficiaries to elect payment in an optional form of benefit that provides for the current payment of the unrestricted portion of the benefit, with a delayed commencement for the restricted portion of the benefit (subject to other applicable qualification requirements, such as sections 411(a)(11) and 401(a)(9)), or may satisfy paragraph (d)(3)(i) of this section by permitting participants and beneficiaries to elect an optional form of benefit that combines an unsubsidized single-sum payment for over 50 percent of the accrued benefit with a subsidized early retirement life annuity for the remainder of the accrued benefit. Any such optional forms must satisfy this paragraph (d) and applicable qualification requirements, including satisfaction of section 417(e) and section 415 (at each annuity starting date).

(7) *Exception for distributions permitted without consent of the participant under section 411(a)(11).* [Reserved]

(e) *Limitation on benefit accruals for plans with severe funding shortfalls—(1)*

*In general.* Except as otherwise provided in this paragraph (e), a plan satisfies the requirements of section 436(e) and this paragraph (e) only if it provides 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 will cease as of the applicable section 436 measurement date. If a plan is required to cease benefit accruals under this paragraph (e), then the plan is not permitted to be amended in a manner that would increase the liabilities of the plan by reason of an increase in benefits or establishment of new benefits. The preceding sentence applies regardless of whether an amendment would otherwise be permissible under paragraph (c)(2) or (c)(3) of this section.

(2) *Exemption if section 436 contribution is made.* The prohibition on additional benefit accruals under a plan described in paragraph (e)(1) of this section ceases to apply with respect to a plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of the contribution described in paragraph (f)(2)(v) of this section. See paragraph (f) of this section for additional rules.

(3) *Special rule under section 203 of the Worker, Retiree, and Employer Recovery Act of 2008.* [Reserved]

(f) *Methods to avoid or terminate benefit limitations—(1) In general.* This paragraph (f) sets forth rules relating to employer contributions and other methods to avoid or terminate the application of section 436 limitations under a plan for a plan year. In general, there are four methods a plan sponsor may utilize to avoid or terminate one or more of the benefit limitations under this section for a plan year. Two of these methods (where the plan sponsor elects to reduce the prefunding balance or funding standard carryover balance and where the plan sponsor makes additional contributions under section 430 for the prior plan year within the time period provided by section 430(j)(1) that are not added to the prefunding balance) involve increasing the amount of plan assets which are taken into account in determining the adjusted funding target attainment percentage. The other two methods

(making a contribution that is specifically designated as a current year contribution to avoid or terminate application of a benefit limitation under paragraph (b), (c), or (e) of this section, and providing security under section 436(f)(1)) are described in paragraphs (f)(2) and (f)(3) of this section, respectively.

(2) *Current year contributions to avoid or terminate benefit limitations—(i) General rules—(A) Amount of contribution—(1) In general.* This paragraph (f)(2) sets forth rules regarding contributions to avoid or terminate the application of section 436 limitations under a plan for a plan year that apply to unpredictable contingent event benefits, plan amendments that increase liabilities for benefits, and benefit accruals.

(2) *Interest adjustment.* Any contribution made by a plan sponsor pursuant to this paragraph (f)(2) on a date other than the valuation date for the plan year must be adjusted with interest at the plan's effective interest rate under section 430(h)(2)(A) for the plan year. If the plan's effective interest rate for the plan year has not been determined at the time of the contribution, then this interest adjustment must be made using the highest of the three segment rates as applicable for the plan year under section 430(h)(2)(C). In such a case, if the effective interest rate for the plan year under section 430(h)(2)(A) is subsequently determined to be less than that highest rate, the excess is recharacterized as an employer contribution taken into account under section 430 for the current plan year.

(B) *Timing requirement for section 436 contributions.* Any contribution described in this paragraph (f)(2) must be paid before the unpredictable contingent event benefits are permitted to be paid, the plan amendment is permitted to take effect, or the benefit accruals are permitted to resume. In addition, any contribution described in this paragraph (f)(2) must be paid during the plan year.

(C) *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 as a contribution described in this paragraph (f)(2). However, a plan sponsor is permitted

to elect to reduce the funding standard carryover balance or the prefunding balance in order to increase the adjusted funding target attainment percentage for a plan year. See paragraph (a)(5) of this section for a rule mandating such a reduction in certain situations.

(ii) *Section 436 contributions separate from minimum required contributions—(A) In general.* The contributions described in this paragraph (f)(2) are contributions described in sections 436(b)(2), 436(c)(2), and 436(e)(2), and are separate from any minimum required contributions under section 430. Thus, if a plan sponsor makes a contribution described in this paragraph (f)(2) for a plan year but does not make the minimum required contribution for the plan year, the plan fails to satisfy the minimum funding requirements under section 430 for the plan year. In addition, a contribution described in this paragraph (f)(2) is disregarded in determining the maximum addition to the prefunding balance under section 430(f)(6) and § 1.430(f)-1(b)(1)(ii).

(B) *Designation requirement.* Any contribution made by a plan sponsor pursuant to this paragraph (f)(2) must be designated as such at the time the contribution is used to avoid or terminate the limitations under this paragraph (f)(2), including designation of the benefits or amendments to which the limits do not apply because of the contribution. Except as specifically provided in paragraph (f)(2)(i)(A)(2), (g) or (h) of this section, such a contribution cannot be subsequently recharacterized with respect to any plan year as a contribution to satisfy a minimum required contribution obligation, or otherwise. The designation must be made in accordance with the rules and procedures that otherwise apply to elections under § 1.430(f)-1(f) with respect to the prefunding and funding standard carryover balances.

(C) *Requirement to recertify AFTAP.* If the plan's enrolled actuary has already certified the adjusted funding target attainment percentage for the plan year, a plan sponsor is treated as making the contribution described in paragraph (f)(2)(iii)(B), (f)(2)(iv)(B), or (f)(2)(v) of this section for the plan year only after the plan's enrolled actuary

certifies an updated adjusted funding target attainment percentage for the plan year that takes into account the increased liability for the unpredictable contingent event benefits, the plan amendments, or restored accruals, and the associated section 436 contribution, under the rules of paragraph (h)(4)(v) of this section. See also paragraph (g)(4)(i) of this section for a requirement to modify the presumed adjusted funding target attainment percentage to take the liability for the unpredictable contingent event benefits or plan amendments, and the associated section 436 contribution, into account (if the contribution described in paragraph (f)(2)(iii)(B), (f)(2)(iv)(B), or (f)(2)(v) of this section is made before the plan's enrolled actuary certifies the adjusted funding target attainment percentage for the plan year).

(iii) *Contribution for unpredictable contingent event benefits.* In the case of a contribution to avoid or terminate the application of the limitation on benefits attributable to an unpredictable contingent event under section 436(b)—

(A) In the event that the adjusted funding target attainment percentage for the plan year determined without taking into account the liability attributable to the unpredictable contingent event benefits is less than 60 percent, the amount of the contribution under section 436(b)(2) is equal to the amount of the increase in the funding target of the plan for the plan year if the benefits attributable to the unpredictable contingent event were included in the determination of the funding target.

(B) In the event that the adjusted funding target attainment percentage for the plan year determined without taking into account the liability attributable to the unpredictable contingent event benefits is 60 percent or more, the amount of the contribution under section 436(b)(2) is the amount that would be sufficient to result in an adjusted funding target attainment percentage for the plan year of 60 percent if the contribution (and any prior section 436 contributions made for the plan year) were included as part of the plan assets and the funding target were to take into account the adjustments described in paragraph (g)(2)(iii)(A),

(g)(3)(ii)(A), or (g)(5)(i)(B) of this section, whichever applies.

(iv) *Contribution for plan amendments increasing liability for benefits.* In the case of a contribution to avoid or terminate the application of the limitation on benefits attributable to a plan amendment under section 436(c)—

(A) In the event that the adjusted funding target attainment percentage for the plan year determined without taking into account the liability attributable to the plan amendment is less than 80 percent, the amount of the contribution under section 436(c)(2) is equal to the amount of the increase in the funding target of the plan for the plan year if the liabilities attributable to the amendment were included in the determination of the funding target.

(B) In the event that the adjusted funding target attainment percentage for the plan year determined without taking into account the liability attributable to the plan amendment is 80 percent or more, the amount of the contribution under section 436(c)(2) is the amount that would be sufficient to result in an adjusted funding target attainment percentage for the plan year of 80 percent if the contribution (and any prior section 436 contributions made for the plan year) were included as part of the plan assets and the funding target were to take into account the adjustments described in paragraph (g)(2)(iii)(A), (g)(3)(ii)(A), or (g)(5)(i)(B) of this section, whichever applies.

(v) *Contribution required for continued benefit accruals.* In the case of a contribution to avoid or terminate the application of the limitation on accruals under section 436(e), the amount of the contribution under section 436(e)(2) is equal to the amount sufficient to result in an adjusted funding target attainment percentage for the plan year of 60 percent if the contribution (and any prior section 436 contributions made for the plan year) were included as part of the plan assets and the funding target were to take into account the adjustments described in paragraph (g)(2)(iii)(A) or (g)(5)(i)(B) of this section, whichever applies.

(3) *Security to increase adjusted funding target attainment percentage—(i) In general.* For purposes of avoiding benefit limitations under section 436, a

plan sponsor may provide security in the form described in paragraph (f)(3)(ii) of this section. In such a case, the adjusted funding target attainment percentage for the plan year is determined by treating as an asset of the plan any security provided by a plan sponsor by the valuation date for the plan year in a form meeting the requirements of paragraph (f)(3)(ii) of this section. However, this security is not taken into account as a plan asset for any other purpose, including section 430.

(ii) *Form of security.* The forms of security permitted under paragraph (f)(3)(i) of this section are limited to—

(A) A bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of ERISA; or

(B) Cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or an insurance company.

(iii) *Enforcement.* Any form of security provided under paragraph (f)(3)(i) of this section must provide—

(A) That it will be paid to the plan upon the earliest of—

(1) The plan termination date as defined in section 4048 of ERISA;

(2) If there is a failure to make a payment of the minimum required contribution for any plan year beginning after the security is provided, the due date for the payment under section 430(j)(1) or 430(j)(3); or

(3) If the plan's adjusted funding target attainment percentage is less than 60 percent (without regard to any security provided under this paragraph (f)(3)) for a consecutive period of 7 plan years, the valuation date for the last plan year in the 7-year period; and

(B) That the plan administrator must notify the surety, bank, or insurance company that issued or holds the security of any event described in paragraph (f)(3)(iii)(A) of this section within 10 days of its occurrence.

(iv) *Release of security.* The form of security is permitted to provide that it will be released (and any amounts thereunder will be refunded to the plan sponsor together with any interest accrued thereon) as provided in the agreement governing the security, but such release is not permitted until the

plan's enrolled actuary has certified that the plan's adjusted funding target attainment percentage for a plan year is at least 90 percent (without regard to any security provided under this paragraph (f)(3)) or until replacement security has been provided in accordance with paragraph (f)(3)(vi) of this section.

(v) *Contribution of security to plan.* Any security provided under this paragraph (f)(3) that is subsequently turned over to the plan (whether pursuant to the enforcement mechanism of paragraph (f)(3)(iii) of this section or after its release under paragraph (f)(3)(iv) of this section) is treated as a contribution by the plan sponsor taken into account under section 430 when contributed and, if turned over pursuant to paragraph (f)(3)(iii) of this section, is not a contribution under paragraph (f)(2) of this section.

(vi) *Replacement security.* If security has been provided to a plan pursuant to this paragraph (f)(3), the plan sponsor may provide new security to the plan and subsequently or simultaneously have the original security released, but only if—

(A) The new security is in a form that satisfies the requirements of paragraph (f)(3)(ii) of this section;

(B) The amount of the new security is no less than the amount of the original security, determined at the time the original security is released; and

(C) The period described in paragraph (f)(3)(iii)(A)(3) of this section with respect to the new security is the same as the period that applied under that paragraph to the original security.

(4) *Examples.* The following examples illustrate the rules of this paragraph (f):

*Example 1.* (i) Plan Z is a non-collectively bargained defined benefit plan with a plan year that is the calendar year and a valuation date of January 1. Plan Z's sponsor is not in bankruptcy, and Plan Z did not purchase any annuities in 2009 or 2010. As of January 1, 2011, Plan Z does not have a funding standard carryover balance or a prefunding balance, and is not in at-risk status. As of that date, Plan Z has plan assets (and adjusted plan assets) of \$2,000,000 and a funding target (and an adjusted funding target) of \$2,550,000. On March 1, 2011, the enrolled actuary for the plan certifies that the AFTAP as of January 1, 2011, is 78.43%. The effective interest rate for Plan Z for the 2011 plan year is 5.5%.

(ii) On May 1, 2011, the plan sponsor amends Plan Z to increase benefits. The enrolled actuary for the plan determines that the present value, as of January 1, 2011, of the increase in the funding target due to the amendment is \$400,000. Because the AFTAP prior to the plan amendment is less than 80%, Plan Z is subject to the restriction on plan amendments in paragraph (c) of this section, and the amendment cannot take effect unless the employer utilizes one of the methods described in paragraph (f) of this section to avoid benefit limitations.

(iii) In order for the amendment to be permitted to take effect, the plan sponsor makes a contribution described in paragraph (f)(2) of this section. Because the AFTAP prior to the amendment was less than 80%, the provisions of paragraph (f)(2)(iv)(A) of this section apply. The amount of the contribution as of January 1, 2011, needed to avoid the restriction on plan amendments under paragraph (c) of this section is equal to the amount of the increase in funding target attributable to the amendment, or \$400,000. Under the provisions of paragraph (f)(2)(iv)(A) of this section, this contribution is required even though, if the contribution were included as part of the plan assets and the liabilities attributable to the plan amendment were included in the funding target, the AFTAP would be 81.36% (that is, adjusted plan assets of \$2,000,000 plus the contribution of \$400,000 as of January 1, 2011; divided by the adjusted funding target of \$2,550,000 increased to reflect the additional \$400,000 in the funding target attributable to the plan amendment).

(iv) However, because the contribution is not paid until May 1, 2011, the necessary contribution amount must be adjusted to reflect interest from the valuation date to the date of the contribution, at Plan Z's effective interest rate for the 2011 plan year. The amount of the required contribution after adjustment is \$407,203, determined as \$400,000 increased for 4 months of compound interest at an effective annual interest rate of 5.5%.

(v) A contribution of \$407,203 is made on May 1, 2011, and is designated as a contribution under paragraph (f)(2) of this section with respect to the May 1, 2011, plan amendment. Accordingly, the contribution is not applied toward minimum funding requirements under section 430, and is not eligible for inclusion in the prefunding balance under § 1.430(f)-1(b)(1). Since this contribution meets the requirements of paragraph (f)(2) of this section, the plan amendment takes effect in accordance with its terms.

*Example 2.* (i) The facts are the same as in *Example 1*, except that the plan is in at-risk status under section 430(i). The funding target determined under section 430(i) is \$2,600,000, and the funding target determined without regard to section 430(i) is \$2,550,000.



(ii) On May 1, 2011, the plan sponsor amends Plan Z to increase benefits. The plan's enrolled actuary determines that the present value as of January 1, 2011 of the increase in the funding target due to the amendment (taking into account the at-risk status of the plan) is \$440,000. Because the AFTAP prior to the plan amendment is 78.43% (determined taking into account the at-risk status of Plan Z), Plan Z is subject to the restriction on plan amendments in paragraph (c) of this section, and the amendment cannot take effect unless the employer utilizes one of the methods described in this paragraph (f) to avoid benefit limitations.

(iii) In order for this amendment to be permitted to take effect, the plan sponsor makes a contribution described in paragraph (f)(2) of this section. Because the AFTAP prior to the amendment was less than 80%, the provisions of paragraph (f)(2)(iv)(A) of this section apply. The amount of the contribution as of January 1, 2011, needed to avoid the restriction on plan amendments under paragraph (c) of this section is equal to the amount of the increase in funding target attributable to the amendment, or \$440,000. Under the provisions of paragraph (f)(2)(iv)(A) of this section, this contribution is required even though, if the contribution were included as part of the plan assets and the liability attributable to the plan amendment were included in the funding target, the AFTAP would exceed 80%.

(iv) However, because the contribution is not paid until May 1, 2011, the necessary contribution amount must be adjusted to reflect interest from the valuation date to the date of the contribution, at Plan Z's effective interest rate for the 2011 plan year. The amount of the required contribution after adjustment is \$447,923, determined as \$440,000 increased for 4 months of compound interest at an effective annual interest rate of 5.5%.

(v) A contribution of \$447,923 is made on May 1, 2011, and is designated as a contribution under paragraph (f)(2) of this section with respect to the May 1, 2011, plan amendment. Accordingly, the contribution is not applied toward minimum funding requirements under section 430, and is not eligible for inclusion in the prefunding balance under §1.430(f)-1(b)(1). Since this contribution meets the requirements of paragraph (f)(2) of this section, the plan amendment takes effect in accordance with its terms.

*Example 3.* (i) The facts are the same as in *Example 1*, except that the enrolled actuary for the plan does not issue the certification of the 2011 AFTAP until September 1, 2011. Prior to October 1, 2010, the enrolled actuary had certified the 2010 AFTAP to be 82%. Other than this amendment, no other amendment or unpredictable contingent event has occurred that requires a recertification. As of May 1, 2011, the plan's effective interest rate for the 2011 plan year has not

yet been determined. The highest of the three segment rates applicable to the 2011 plan year under section 430(h)(2)(C) is 6%.

(ii) Because the enrolled actuary has not certified the actual AFTAP as of January 1, 2011, and the amendment is scheduled to take effect after April 1, 2011, the rules of paragraph (h)(2)(iii) of this section apply. Accordingly, the AFTAP for 2011 (prior to reflecting the effect of the amendment) is presumed to be 10 percentage points lower than the 2010 AFTAP, or 72%. Because this presumed AFTAP is less than 80%, the restriction on plan amendments in paragraph (c) of this section applies, and the plan amendment cannot take effect.

(iii) In order to allow the plan amendment to take effect, the plan sponsor decides to make a contribution under paragraph (f)(2) of this section on May 1, 2011. Because the presumed AFTAP was less than 80% prior to reflecting the plan amendment, the rules of paragraph (f)(2)(iv)(A) of this section apply, and the amount of the contribution under section 436(c)(2) is the amount of the increase in the funding target for the year if the plan amendment were included in the determination of the funding target. Accordingly, an additional contribution of \$400,000 is required as of January 1, 2011, to avoid the restriction on plan amendments under paragraph (c) of this section.

(iv) However, since the contribution is not made until May 1, 2011, the amount of the required contribution must be adjusted to reflect interest from the valuation date to the date of the contribution. Since the effective interest rate has not yet been determined, the interest adjustment is based on the highest of the three segment rates applicable for the 2011 plan year under section 430(h)(2)(C), or 6%. The amount of the required contribution after adjustment is \$407,845, determined as \$400,000 increased for 4 months of compound interest at the highest segment interest rate for 2011, or 6%.

(v) A contribution of \$407,845 is made on May 1, 2011, and is designated as a contribution under paragraph (f)(2) of this section with respect to the May 1, 2011, plan amendment. Accordingly, the contribution is not applied toward minimum funding requirements under section 430, and is not eligible for inclusion in the prefunding balance under §1.430(f)-1(b)(1). Since this contribution meets the requirements of paragraph (f)(2) of this section, the plan amendment takes effect in accordance with its terms.

(vi) After the plan's effective interest rate for 2011 has been determined to be 5.5%, the amount of excess interest previously contributed is recharacterized as an employer contribution taken into account under section 430 for 2011 (because that rate for the year is less than 6%).

(g) *Rules of operation for periods prior to and after certification*—(1) *In general.* Section 436(h) and paragraph (h) of this section set forth a series of presumptions that apply before the enrolled actuary for a plan issues a certification of the plan's adjusted funding target attainment percentage for the plan year. This paragraph (g) sets forth rules for the application of limitations under sections 436(b), 436(c), 436(d), and 436(e) prior to and during the period those presumptions apply to the plan, and describes the interaction of those presumptions with plan operations after the plan's enrolled actuary has issued a certification of the plan's adjusted funding target attainment percentage for the plan year. Paragraph (g)(2) of this section sets forth rules that apply to periods during which a presumption under section 436(h) and paragraph (h) of this section applies. Paragraph (g)(3) of this section sets forth rules that apply to periods during which no presumptions under section 436(h) and paragraph (h) of this section apply but which are prior to the enrolled actuary's certification of the plan's adjusted funding target attainment percentage for the plan year. Paragraph (g)(4) of this section sets forth rules for modifying the plan's presumed adjusted funding target attainment percentage in certain situations. Paragraph (g)(5) of this section sets forth rules that apply after the enrolled actuary's certification of the plan's adjusted funding target attainment percentage for a plan year. Paragraph (g)(6) of this section sets forth examples illustrating the rules in this paragraph (g).

(2) *Periods prior to certification during which a presumption applies*—(i) *Plan must follow presumptions.* A plan must provide that, for any period during which a presumption under section 436(h) and paragraph (h)(1), (2), or (3) of this section applies to the plan, the limitations applicable under section 436 and paragraphs (b), (c), (d), and (e) of this section are applied to the plan as if the adjusted funding target attainment percentage for the year were the presumed adjusted funding target attainment percentage determined under the rules of section 436(h) and paragraph (h)(1), (2), or (3) of this sec-

tion, as applicable, updated to take into account certain unpredictable contingent event benefits and plan amendments in accordance with section 436 and the rules of this paragraph (g).

(ii) *Determination of amount of reduction in balances*—(A) *In general.* During the period described in this paragraph (g)(2), the rules of paragraph (a)(5) of this section (relating to the deemed election to reduce the funding standard carryover balance and the prefunding balance) must be applied based on the presumed adjusted funding target attainment percentage. This paragraph (g)(2)(ii) provides rules for the determination of the reduction that applies as of the first day of the plan year, and, in certain circumstances, that applies later in the plan year. Paragraph (g)(2)(iii) of this section provides additional rules that apply with respect to unpredictable contingent event benefits or plan amendments, which rules must be applied prior to the application of paragraph (g)(2)(iv) of this section relating to section 436 contributions. The reapplication of the rules under this paragraph (g)(2) regarding the deemed election in paragraph (a)(5) of this section may require an additional reduction in the prefunding and funding standard carryover balances if the amount of the reduction in those balances that is necessary to reach the applicable threshold to avoid the application of a section 436 limitation exceeds the amount that was initially reduced. Prior reductions of the prefunding and funding standard carryover balances continue to apply.

(B) *Reduction in balances at the first day of plan year*—(1) *Plans with a certified AFTAP for the prior plan year.* If section 436(h)(1) and paragraph (h)(1) of this section apply to determine the presumed adjusted funding target attainment percentage as of the first day of the current plan year based on the plan's enrolled actuary certification of the adjusted funding target attainment percentage for the prior plan year made during that prior plan year, then, in order to determine the amount of the reduction (if any) in the funding standard carryover balance and prefunding balance under this paragraph (g)(2)(ii), a presumed adjusted

funding target must be established as of the first day of the plan year, and that amount is then compared to the interim value of adjusted plan assets as of that date. For this purpose, the interim value of adjusted plan assets is equal to the value of adjusted plan assets (within the meaning of paragraph (j)(1)(ii) of this section) as of the first day of the plan year, determined without regard to future contributions and future elections with respect to the plan's prefunding and funding standard carryover balances under section 430(f) (for example, elections to add to the prefunding balance for the prior plan year, elections to use the prefunding and funding standard carryover balances to offset the minimum required contribution for a year, and elections (including deemed elections under paragraph (a)(5) of this section) to reduce the prefunding and funding standard carryover balances for the current plan year), and the presumed adjusted funding target is equal to the interim value of adjusted plan assets for the plan year divided by the presumed adjusted funding target attainment percentage. As provided in §1.430(f)-1(e)(1), the rules of §1.430(f)-1(d)(1)(ii) apply for purposes of determining the amount of the prefunding balance or the funding standard carryover balance that is available for reduction.

(2) *Plans with presumed AFTAP deemed under 60 percent.* If paragraph (g)(2)(ii)(B)(I) of this section does not apply to the plan for a plan year and the last day of the plan year is on or after the first day of the 10th month of the plan year, such that the presumed adjusted funding target attainment percentage for the prior plan year is conclusively presumed to be less than 60 percent under section 436(h)(2) and paragraph (h)(3) of this section, then no reduction in the funding standard carryover balance and prefunding balance is required under this paragraph (g)(2)(ii)(B). However, see paragraph (g)(2)(iv)(A) of this section for rules for determining the amount of a section 436 contribution that would permit unpredictable contingent event benefits to be paid in such a case.

(3) *Treatment of short plan years.* If paragraph (g)(2)(ii)(B)(I) of this section does not apply to the plan for a plan

year but the last day of the plan year is before the first day of the 10th month of the plan year, such that section 436(h)(2) and paragraph (h)(3) of this section did not apply for that plan year, then paragraph (g)(2)(ii)(B)(I) of this section must be applied as of the first day of the next plan year based on the presumed adjusted funding target attainment percentage as of that last day of the prior short plan year.

(C) *Change in presumed AFTAP later in the plan year.* If the presumed adjusted funding target attainment percentage for the plan year changes during the year, the rules regarding the deemed election to reduce the prefunding and funding standard carryover balances described in paragraph (a)(5) of this section must be reapplied based on the new presumed adjusted funding target attainment percentage. This will typically occur on the first day of the 4th month of a plan year, but could happen at a different date if the enrolled actuary certifies the adjusted funding target attainment percentage for the prior plan year during the current plan year. In order to determine the amount of any reduction in the prefunding and funding standard carryover balances that would apply in such a situation, a new presumed adjusted funding target must be established, which is then compared to the updated interim value of adjusted plan assets. For this purpose, the updated interim value of adjusted plan assets for the plan year is determined as the interim value of adjusted plan assets as of the first day of the plan year updated to take into account contributions for the prior plan year and section 430(f) elections with respect to the plan's prefunding and funding standard carryover balances made before the date of the change in the presumed adjusted funding target attainment percentage, and the new presumed adjusted funding target is equal to the updated interim value of adjusted plan assets divided by the new presumed adjusted funding target attainment percentage.

(D) *Plans funded below the threshold.* If, after application of paragraph (g)(2)(ii)(B) and (C) of this section, the

presumed adjusted funding target attainment percentage under this paragraph (g)(2)(ii) is less than the 60 percent threshold under section 436(e), then no benefit accruals are permitted under the plan unless the plan sponsor makes a section 436 contribution as provided in paragraph (g)(2)(iv)(A) of this section. See paragraph (g)(5)(ii) of this section for rules that apply on and after the date the enrolled actuary for the plan issues a certification of the adjusted funding target attainment percentage of the plan for the current plan year.

(iii) *Calculation of inclusive presumed AFTAP for application to unpredictable contingent event benefits and plan amendments*—(A) *Requirement to calculate inclusive presumed AFTAP.* For purposes of applying the limitations under paragraphs (b) and (c) of this section during the period described in this paragraph (g)(2), an inclusive presumed adjusted funding target attainment percentage must be calculated. The inclusive presumed adjusted funding target attainment percentage is the ratio (expressed as a percentage) of the interim value of adjusted plan assets (updated to take into account contributions for the prior plan year, any prior section 436 contributions made for the plan year to the extent not previously taken into account in the interim value of adjusted plan assets for the plan year, and section 430(f) elections with respect to the plan's prefunding and funding standard carryover balances made before the date of the unpredictable contingent event or the date the plan amendment would take effect) to the inclusive presumed adjusted funding target. The inclusive presumed adjusted funding target is calculated as the presumed adjusted funding target determined under paragraph (g)(2)(ii)(B) or (C) of this section, increased to take into account—

(1) The unpredictable contingent event benefits or plan amendment;

(2) Any unpredictable contingent event benefits that are permitted to be paid as a result of any unpredictable contingent event that occurred, or plan amendment that has taken effect, in the prior plan year to the extent not taken into account in the prior plan

year adjusted funding target attainment percentage; and

(3) Any other unpredictable contingent event benefits that are permitted to be paid as a result of any unpredictable contingent event that occurred, or plan amendment that has taken effect, in the current plan year to the extent not previously taken into account in the presumed adjusted funding target for the plan year.

(B) *Mandatory reduction for collectively bargained plans.* During the period described in this paragraph (g)(2), the rules of paragraph (a)(5)(ii) of this section (relating to the deemed election to reduce the funding standard carryover balance and the prefunding balance) must be applied by treating the inclusive presumed adjusted funding target attainment percentage determined under this paragraph (g)(2)(iii) as if it were the adjusted funding target attainment percentage.

(C) *Optional reduction for plans that are not collectively bargained plans.* A plan sponsor of a plan that is not a collectively bargained plan (and, thus, is not required to reduce the funding standard carryover balance and the prefunding balance under the rules of paragraph (a)(5)(ii) of this section) is permitted to elect to reduce those balances in order to increase the updated interim value of adjusted plan assets that is used to determine the inclusive presumed adjusted funding target attainment percentage under this paragraph (g)(2)(iii).

(D) *Plans funded below the threshold.* If, after application of paragraph (g)(2)(iii)(B) and (C) of this section, the inclusive presumed adjusted funding target attainment percentage determined under this paragraph (g)(2)(iii) is less than the applicable threshold under section 436(b) or 436(c), then the plan is not permitted to provide any benefits attributable to the unpredictable contingent event, nor is the plan amendment permitted to take effect, unless the plan sponsor makes a section 436 contribution as provided in paragraph (g)(2)(iv) of this section. See paragraph (g)(5)(ii) of this section for rules that apply on and after the date the enrolled actuary for the plan issues a certification of the adjusted funding

target attainment percentage of the plan for the current plan year.

(E) *Plans funded at or above the threshold.* If, after application of paragraph (g)(2)(iii)(B) or (C) of this section, the inclusive presumed adjusted funding target attainment percentage is greater than or equal to the applicable threshold under section 436(b) or 436(c), then the plan is not permitted to limit the payment of unpredictable contingent event benefits described in paragraph (b) of this section, nor is the plan permitted to restrict a plan amendment increasing benefit liabilities described in paragraph (c) of this section from taking effect, based on an expectation that the limitations under paragraph (b) or (c) of this section will apply following the enrolled actuary's certification of the adjusted funding target attainment percentage for the plan year.

(iv) *Section 436 contributions—(A) Plans with presumed AFTAP below 60 percent—(1) Unpredictable contingent event benefits.* If the presumed adjusted funding target attainment percentage for a plan is less than 60 percent, then unpredictable contingent event benefits are permitted to be paid as a result of an unpredictable contingent event occurring during the period described in this paragraph (g)(2) if the plan sponsor makes the section 436 contribution described in paragraph (f)(2)(iii)(A) of this section.

(2) *Plan amendments.* If the presumed adjusted funding target attainment percentage for a plan is less than 60 percent, then no plan amendment increasing plan liabilities is permitted to take effect during the period described in this paragraph (g)(2). See paragraph (e)(1) of this section.

(3) *Benefit accruals.* If the presumed adjusted funding target attainment percentage for a plan year of less than 60 percent is determined based on the plan's enrolled actuary certification of the adjusted funding target attainment percentage for the prior plan year made during that prior plan year (as opposed to being presumed to be less than 60 percent under the rules of section 436(h)(2) and paragraph (h)(3) of this section because the actuary has not certified the adjusted funding target attainment percentage for the prior

plan year before the first day of the 10th month of the prior plan year), then benefits are permitted to accrue if the plan sponsor makes a section 436 contribution in the amount necessary to bring the ratio of the updated interim value of adjusted plan assets to the presumed adjusted funding target up to 60 percent, as described in paragraph (f)(2)(v) of this section.

(B) *Plan amendments for plans with presumed AFTAP below 80 percent.* If the presumed adjusted funding target attainment percentage for a plan is less than 80 percent, but is not less than 60 percent, then a plan amendment increasing plan liabilities is permitted to take effect during the period described in this paragraph (g)(2) if the plan sponsor makes a section 436 contribution described in paragraph (f)(2)(iv)(A) of this section.

(C) *Contributions required to reach threshold.* If a plan is described in paragraph (g)(2)(iii)(D) of this section and neither paragraph (g)(2)(iv)(A) nor (B) of this section apply to the plan, then unpredictable contingent event benefits are permitted to be paid or the plan amendment is permitted to become effective during the period this paragraph (g)(2) applies to the plan only if the plan sponsor makes a section 436 contribution in the amount necessary to bring the ratio of the updated interim value of adjusted plan assets to the inclusive presumed adjusted funding target up to the applicable threshold under section 436(b) or (c), as described in paragraph (f)(2)(iii)(B) or (f)(2)(iv)(B) of this section. This paragraph (g)(2)(iv)(C) applies, for example, if an unpredictable contingent event occurs in the case of a plan with a presumed adjusted funding target attainment percentage of more than 60 percent where taking into account the unpredictable contingent event benefit in the inclusive presumed adjusted funding target would cause the ratio of the interim value of adjusted plan assets to the inclusive presumed adjusted funding target to be less than 60 percent.

(v) *Bankruptcy of plan sponsor.* Pursuant to section 436(d)(2), during any period in which the plan sponsor of a plan is a debtor in a case under title 11, United States Code, or any similar

Federal or State law (as described in paragraph (d)(2) of this section), no prohibited payment within the meaning of paragraph (j)(6) of this section may be paid if the plan's enrolled actuary has not yet certified the plan's adjusted funding target attainment percentage for the plan year to be at least 100 percent. Thus, the presumption rules of paragraph (h) of this section do not apply for purposes of section 436(d)(2) and this paragraph (g)(2)(v).

(3) *Periods prior to certification during which no presumption applies*—(i) *Prohibited payments and benefit accruals*. If no presumptions under section 436(h) apply to a plan during a period and the plan's enrolled actuary has not yet issued the certification of the plan's actual adjusted funding target attainment percentage for the plan year, the plan is not permitted to limit prohibited payments under paragraph (d) of this section or the accrual of benefits under paragraph (e) of this section based on an expectation that those paragraphs will apply to the plan once an actuarial certification is issued. However, see paragraph (g)(2)(v) of this section for a restriction on prohibited payments during any period in which the plan sponsor of a plan is a debtor in a case under title 11, United States Code, or any similar Federal or State law.

(ii) *Unpredictable contingent event benefits and plan amendments increasing benefit liability*—(A) *In general*. If no presumptions under section 436(h) apply to a plan during a period and the plan's enrolled actuary has not yet issued a certification of the plan's adjusted funding target attainment percentage for the plan year, the limitations on unpredictable contingent event benefits under paragraph (b) of this section and plan amendments increasing benefit liabilities under paragraph (c) of this section must be applied during that period by following the rules of paragraphs (g)(2)(iii) of this section, based on the inclusive presumed adjusted funding target determined using the prior plan year adjusted funding target attainment percentage. Thus, whether unpredictable contingent event benefits are permitted to be paid or a plan amendment is permitted to take effect during a

plan year is determined by calculating the ratio of the interim value of adjusted plan assets to the inclusive presumed adjusted funding target, where the inclusive presumed adjusted funding target is determined by dividing the interim value of adjusted plan assets by the prior plan year adjusted funding target attainment percentage and then adding the adjustments described in paragraphs (g)(2)(iii)(A)(1), (2) and (3) of this section. If, after application of paragraphs (g)(2)(iii)(B) and (C) of this section, that ratio is less than the applicable threshold under section 436(b) or 436(c), then the plan is not permitted to provide any benefits attributable to the unpredictable contingent event, nor is the plan amendment permitted to take effect, unless the plan sponsor makes the contribution described in paragraph (g)(2)(iv)(C) of this section.

(B) *Recharacterization of contributions made to avoid benefit limitations*. In any case where, pursuant to paragraph (g)(3)(ii)(A) of this section, the plan sponsor makes section 436 contributions to avoid the application of the applicable benefit limitation, to the extent those contributions would not be needed to permit the payment of the unpredictable contingent event benefits or for the plan amendment to go into effect based on a subsequent certification of the adjusted funding target attainment percentage for the current plan year that takes into account the increase in the liability attributable to the unpredictable contingent event benefits or plan amendment, the excess section 436 contributions are recharacterized as employer contributions taken into account under section 430 for the current plan year.

(4) *Modification of the presumed AFTAP*—(i) *Section 436 contributions*. If, in accordance with the rules of paragraph (g)(2)(iv) of this section, unpredictable contingent event benefits are permitted to be paid, or a plan amendment takes effect, during the plan year because the plan sponsor makes a contribution described in paragraph (f)(2)(iii)(B) or (f)(2)(iv)(B) of this section, then the presumed adjusted funding target must be adjusted to reflect

any increase in the funding target attributable to the unpredictable contingent event benefits or the plan amendment and the interim value of plan assets must be increased by the present value of the contribution. Similarly, if benefit accruals are permitted to resume in a plan year because the plan sponsor makes the contribution described in paragraph (f)(2)(v) of this section, then the presumed adjusted funding target must be adjusted to reflect any increase in the funding target attributable to the benefit accruals for the prior plan year and the interim value of adjusted plan assets must be increased by the present value of the contribution. The adjustment to the presumed adjusted funding target is made as of the date of the contribution, and that date is a section 436 measurement date.

(ii) *Modification of the presumed AFTAP for reduction in balances.* If a plan's funding standard carryover balance or prefunding balance is reduced under the rules of paragraph (g)(2) or (g)(3) of this section, then the presumed adjusted funding target attainment percentage for the plan year is increased to reflect the higher interim value of adjusted plan assets resulting from the reduction in the funding standard carryover balance or prefunding balance. The date of the event that causes the reduction is a section 436 measurement date.

(5) *Periods after certification of AFTAP—(i) Plan must follow certified AFTAP—(A) In general.* The rules of paragraphs (g)(2) and (g)(3) of this section no longer apply for a plan year on and after the date the enrolled actuary for the plan issues a certification of the adjusted funding target attainment percentage of the plan for the current plan year, provided that the certification is issued before the first day of the 10th month of the plan year. For example, the plan must provide that the limitations on prohibited payments apply for distributions with annuity starting dates on and after the date of that certification using the certified adjusted funding target attainment percentage of the plan for the plan year. Similarly, the plan must provide that any prohibition on accruals under paragraph (e) of this section as a result

of the enrolled actuary's certification that the adjusted funding target attainment percentage of the plan for the plan year is less than 60 percent is effective as of the date of the certification and that any prohibition on accruals ceases to be effective on the date the enrolled actuary issues a certification that the adjusted funding target attainment percentage of the plan for the plan year is at least 60 percent.

(B) *Unpredictable contingent events and plan amendments.* In the case of a plan that has been issued a certification of the plan's adjusted funding target attainment percentage for a plan year by the plan's enrolled actuary, the plan sponsor must comply with the requirements of paragraphs (b) and (c) of this section for an unpredictable contingent event that occurs or a plan amendment that takes effect on or after the date of the enrolled actuary's certification. Thus, the plan administrator must determine if the adjusted funding target attainment percentage would be at or above the applicable threshold if it were modified to take into account—

(1) The unpredictable contingent event or plan amendment;

(2) Any other unpredictable contingent event benefits that were permitted to be paid as a result of any unpredictable contingent event that occurred, and any other plan amendment that took effect, earlier during the plan year to the extent not taken into account in the certified adjusted funding target attainment percentage for the plan year; and

(3) Any earlier section 436 contributions made for the plan year to the extent those contributions were not taken into account in the certified adjusted funding target attainment percentage.

(C) *Application of rule for deemed election to reduce funding balances.* After the adjusted funding target attainment percentage for a plan year is certified by the plan's enrolled actuary, the deemed election to reduce the prefunding and funding standard carryover balances under paragraph (a)(5) of this section must be reapplied based on the actual funding target for the year

(provided the certification is issued before the first day of the 10th month of the plan year). The reapplication of the rules under this paragraph (g)(5) regarding the deemed election in paragraph (a)(5) of this section may require an additional reduction in the prefunding and funding standard carryover balances if the amount of the reduction in the prefunding and funding standard carryover balances that is necessary to reach the applicable threshold to avoid the application of a section 436 limitation exceeds the amount that was initially reduced. Prior reductions of the prefunding and funding standard carryover balances continue to apply.

(ii) *Applicability to prior periods—(A) In general.* Except as otherwise provided in this paragraph (g)(5)(ii), the enrolled actuary's certification of the adjusted funding target attainment percentage for the plan for the plan year does not affect prior periods. For example, the certification does not affect the application of the limitation under paragraph (d) of this section for distributions with annuity starting dates before the certification or the application of the limitation under paragraph (e) of this section prior to the date of that certification. See paragraph (a)(4) of this section for rules relating to the period of time after benefits cease to be limited. Except as otherwise provided in this paragraph (g)(5)(ii), the enrolled actuary's certification of the adjusted funding target attainment percentage for the plan for the plan year does not affect the application of the limitation under paragraph (b) or (c) of this section to unpredictable contingent event benefits, or a plan amendment that increases the liability for benefits, where the unpredictable contingent event occurs or the amendment takes effect during the periods to which paragraphs (g)(2) and (g)(3) of this section apply.

(B) *Special rule for unpredictable contingent event benefits.* If a plan does not pay benefits attributable to an unpredictable contingent event because of the application of paragraph (g)(2)(iii)(D) or (g)(3)(ii)(A) of this section, then the plan must pay the benefits attributable to that event that were not previously paid if such bene-

fits would be permitted under the rules of section 436 based on a certified adjusted funding target attainment percentage for the plan year that takes into account the increase in the funding target that would be attributable to those unpredictable contingent event benefits.

(C) *Special rule for plan amendments that increase liability.* If a plan amendment does not take effect because of the application of paragraph (g)(2)(iii)(D) or (g)(3)(ii)(A) of this section, the plan amendment must go into effect if it would be permitted under the rules of section 436 based on a certified actual adjusted funding target attainment percentage for the plan year that takes into account the increase in the funding target attributable to the plan amendment, unless the plan amendment provides otherwise.

(D) *Ordering rule for multiple unpredictable contingent events or plan amendments.* [Reserved]

(6) *Examples.* The following examples illustrate the rules of this paragraph (g). Unless otherwise indicated, these examples are based on the following facts: each plan has a plan year that is the calendar year and a valuation date of January 1; section 436 applies to the plan beginning in 2008; the plan has no funding standard carryover balance; the plan sponsor is not in bankruptcy; no annuity purchases have been made from the plan; and the plan offers a lump sum form of payment. No plan is in at-risk status for the years discussed in the examples. The examples read as follows:

*Example 1.* (i) The plan's certified AFTAP as of January 1, 2010, is 75%. As of January 1, 2011, Plan A has assets of \$3,300,000 and a prefunding balance of \$300,000. Beginning on January 1, 2011, Plan A's AFTAP for 2011 is presumed to be 75%, under the rules of paragraph (h) of this section and based on the certified AFTAP for 2010.

(ii) Based on Plan A's presumed AFTAP of 75%, Plan A would continue to be subject to the restriction on prohibited payments in paragraph (d)(3) of this section as of January 1, 2011. However, under the provisions of paragraph (a)(5) of this section, if the prefunding balance is large enough, Plan A's sponsor is deemed to elect to reduce the prefunding balance to the extent needed to avoid this restriction.



(iii) The amount needed to avoid the restriction in paragraph (d)(3) of this section is determined by comparing the presumed adjusted funding target for Plan A with the interim value of adjusted plan assets as of the valuation date. The interim value of adjusted plan assets for Plan A is \$3,000,000 (that is, the asset value of \$3,300,000 reduced by the prefunding balance of \$300,000). The presumed adjusted funding target for Plan A is the interim value of the adjusted plan assets divided by the presumed AFTAP, or \$4,000,000 (that is, \$3,000,000 divided by 75%).

(iv) In order to avoid the restriction on prohibited payments in paragraph (d)(3) of this section, Plan A's presumed AFTAP must be increased to 80%. This requires an increase in Plan A's adjusted plan assets of \$200,000 (that is, 80% of the presumed adjusted funding target of \$4,000,000, minus the interim value of the adjusted plan assets of \$3,000,000). Plan A's prefunding balance as of January 1, 2011, is reduced by \$200,000 under the deemed election provisions of paragraph (a)(5) of this section. Accordingly, Plan A's prefunding balance is \$100,000 (that is, \$300,000 minus \$200,000) and the interim value of adjusted plan assets is increased to \$3,200,000 (that is, \$3,300,000 minus the reduced prefunding balance of \$100,000). Pursuant to paragraph (g)(4)(ii) of this section, the presumed adjusted funding target attainment percentage for Plan A is redetermined as 80% and Plan A must pay the full amount of the accelerated benefit distributions elected by participants with an annuity starting date of January 1, 2011, or later.

*Example 2.* (i) The facts are the same as in *Example 1*. As of April 1, 2011, the enrolled actuary for Plan A has not certified the 2011 AFTAP. Therefore, beginning April 1, 2011, Plan A's AFTAP is presumed to be reduced by 10 percentage points to 70%, in accordance with paragraph (h)(2) of this section. Under the provisions of paragraph (g)(2)(ii)(B) of this section, the deemed election to reduce the prefunding and funding standard carryover balances described in paragraph (a)(5) of this section must be re-applied based on the new presumed AFTAP.

(ii) In accordance with paragraph (g)(2)(ii)(C) of this section, a new presumed adjusted funding target must be determined based on the new presumed AFTAP and must be compared to an updated interim value of adjusted plan assets. The new presumed adjusted funding target is \$3,200,000 divided by the new presumed AFTAP of 70%, or \$4,571,429.

(iii) In order to avoid the restriction on prohibited payments in paragraph (d)(3) of this section, Plan A's presumed AFTAP must be increased to 80%. This requires an additional increase in Plan A's adjusted plan assets of \$457,143 (that is, 80% of the new presumed adjusted funding target of \$4,571,429, minus the updated interim value of the ad-

justed plan assets of \$3,200,000 reflecting the deemed reduction in Plan A's prefunding balance).

(iv) Plan A's remaining prefunding balance as of January 1, 2011, is only \$100,000, which is not enough to avoid the restriction on prohibited payments under paragraph (d)(3) of this section. Accordingly, unless Plan A's sponsor utilizes one of the methods described in paragraph (f) of this section to avoid the restriction, Plan A is subject to the restriction on prohibited payments in paragraph (d)(3) of this section and cannot pay accelerated benefit distributions elected by participants with an annuity starting date of April 1, 2011, or later.

(v) Plan A's prefunding balance remains at \$100,000 because, under paragraph (a)(5)(iii) of this section, the deemed reduction rules do not apply if the prefunding balance is not large enough to increase the adjusted value of plan assets enough to avoid the restriction. However, the earlier deemed reduction of \$200,000 continues to apply because all elections (including deemed elections) to reduce a plan's funding standard carryover balance or prefunding balance are irrevocable and must be unconditional in accordance with paragraph (g)(2)(ii)(A) of this section.

*Example 3.* (i) The facts are the same as in *Example 1*. On July 1, 2011, the enrolled actuary for Plan A calculates the actual adjusted funding target as \$3,700,000 as of January 1, 2011. Therefore, the 2011 AFTAP would have been 81.08% without reducing the prefunding balance (that is, plan assets of \$3,300,000 minus the prefunding balance of \$300,000, divided by the adjusted funding target of \$3,700,000), and Plan A would not have been subject to the restrictions under paragraph (d)(3) of this section.

(ii) However, paragraph (g)(5)(i)(C) of this section requires that any prior reductions in the prefunding or funding standard carryover balances continue to apply, and so Plan A's prefunding balance remains at the reduced amount of \$100,000 as of January 1, 2011. The enrolled actuary certifies that the 2011 AFTAP is 86.49% (that is, plan assets of \$3,300,000 reduced by the prefunding balance of \$100,000, divided by the adjusted funding target of \$3,700,000).

*Example 4.* (i) Plan B is a collectively bargained plan with assets of \$2,500,000 and a prefunding balance of \$150,000 as of January 1, 2011. On August 14, 2010, the enrolled actuary for Plan B certified the AFTAP for 2010 to be 83%. No unpredictable contingent events giving rise to unpredictable contingent event benefits occurred during 2010 and no plan amendments took effect in 2010 that were not taken into account in the certified AFTAP.

(ii) On January 10, 2011, Plan B's sponsor amends the plan to increase benefits effective on February 1, 2011. The amendment would increase Plan B's funding target by

\$350,000. Under the rules of paragraph (g)(3) of this section, the determination of whether the amendment is permitted to take effect is based on a comparison of the inclusive presumed adjusted funding target with the updated interim value of adjusted plan assets.

(iii) Plan B's interim value of adjusted plan assets as of the valuation date is \$2,350,000 (that is, \$2,500,000 minus the prefunding balance of \$150,000). Prior to reflecting the amendment, Plan B's presumed adjusted funding target as of January 1, 2011, is \$2,831,325, which is equal to the interim value of adjusted plan assets as of the valuation date of \$2,350,000, divided by the presumed AFTAP of 83%. Increasing Plan B's presumed adjusted funding target by \$350,000 to reflect the amendment results in an inclusive presumed adjusted funding target of \$3,181,325 and would result in a presumed AFTAP of 73.87% (that is, the interim value of adjusted plan assets as of the valuation date of \$2,350,000 divided by the inclusive presumed adjusted funding target of \$3,181,325).

(iv) Because Plan B's presumed AFTAP was over 80% prior to taking the amendment into account but would be less than 80% if the amendment were taken into account, section 436(c) and paragraph (c) of this section prohibit the plan amendment from taking effect unless the adjusted plan assets are increased so that the inclusive presumed AFTAP would be increased to 80%. This would require an additional amount of \$195,060 (that is, 80% of the inclusive presumed adjusted funding target of \$3,181,325 less the interim value of adjusted plan assets of \$2,350,000).

(v) Plan B's prefunding balance of \$150,000 is not large enough for Plan B to avoid the restriction on plan amendments, and therefore the deemed election to reduce the prefunding balance under paragraph (a)(5) of this section does not apply, and the amendment cannot take effect unless the plan sponsor makes a contribution described in paragraph (f)(2) of this section.

*Example 5.* (i) The facts are the same as in *Example 4*, except that Plan B's sponsor decides to make a contribution on February 1, 2011, to avoid the benefit limitation as provided in paragraph (f)(2) of this section. As of February 1, 2011, Plan B's effective interest rate for the 2011 plan year has not yet been determined. Pursuant to paragraph (f)(2)(i)(A)(2) of this section, Plan B's effective interest rate for 2011 is treated as 6.25%, which is the largest of the three segment interest rates applicable to the 2011 plan year, as provided in paragraph (f)(2)(i)(A)(2) of this section.

(ii) The amount of the contribution as of January 1, 2011, needed to avoid the restriction on plan amendments under paragraph (c) of this section is \$195,060. However, because the contribution is not paid until February 1, 2011, the necessary contribution

amount must be adjusted to reflect interest that would otherwise have accrued between the valuation date and the date of the contribution, at Plan B's effective interest rate for the 2011 plan year. The amount of the required contribution after adjustment is \$196,048, determined as \$195,060 increased for one month of compound interest at an effective annual interest rate of 6.25%.

(iii) In accordance with paragraph (g)(4)(i) of this section, the inclusive presumed AFTAP as of February 1, 2011, is 80 percent.

*Example 6.* (i) The facts are the same as in *Example 5*. As of April 1, 2011, the enrolled actuary for the plan has not certified the 2011 AFTAP. Beginning April 1, 2011, Plan A's presumed AFTAP is equal to be 70%, 10 percentage points lower than the inclusive presumed AFTAP as of February 1, 2011, in accordance with paragraphs (g)(2)(iii)(A) and (h)(2) of this section. On July 1, 2011, the enrolled actuary for the plan calculates the actual adjusted funding target, prior to taking the plan amendment into account, as \$2,700,000, and determines the actual effective interest rate for 2011 to be 5.25%. On this basis, the actual AFTAP for 2011 (prior to taking the amendment into account) as 87.04% (that is, adjusted assets of \$2,350,000 divided by the adjusted funding target of \$2,700,000). Reflecting the \$350,000 increase in funding target due to the plan amendment would increase the adjusted funding target to \$3,050,000 and would decrease Plan B's AFTAP to 77.05%.

(ii) Based on the calculated adjusted funding target, the amount that was necessary to avoid the benefit restriction under paragraph (c) of this section was \$90,000 (that is, 80% of the adjusted funding target reflecting the plan amendment (or \$3,050,000), minus the adjusted value of plan assets of \$2,350,000). This amount must be adjusted for interest between the valuation date and the date the contribution was made using the effective interest rate for Plan B. Therefore, the amount required on the payment date of February 1, 2011, was \$90,385 (that is, \$90,000 adjusted for compound interest for one month at Plan B's effective interest rate of 5.25% per year).

(iii) Under paragraph (g)(3)(ii)(B) of this section, the contribution made on February 1, 2011, is recharacterized as an employer contribution under section 430 to the extent that it exceeded the amount necessary to avoid application of the restriction on plan amendments under paragraph (c) of this section. Therefore, \$105,663 (that is, the \$196,048 actual contribution paid on February 1, 2011, minus the \$90,385 required contribution based on the actual AFTAP) is recharacterized as an employer contribution under section 430 for the 2011 plan year. As such, it may be applied toward the minimum required contribution for 2011, or the plan sponsor can elect to credit the contribution to Plan B's

prefunding balance to the extent that the contributions for the 2011 plan year exceed the minimum required contribution.

(iv) This recharacterization applied only because the 436 contribution was made during a period prior to the certification of Plan B's actual AFTAP for 2011 and during which no presumption applied (that is, when section 436 is applied based on the 2010 AFTAP, which was high enough that no restrictions applied for 2010). If the contribution had been made during a time when the presumptions applied (for instance, after April 1, 2011, when the presumed AFTAP was under 80%) then the only portion of the 436 contribution that would be recharacterized as an employer contribution under section 430 would be the portion of the interest adjustment attributable to the difference between the highest segment rate (6.25%) and the plan's actual effective interest rate (5.25%), in accordance with paragraph (f)(2)(i)(A)(2) of this section.

(v) After reflecting the plan amendment and the present value of the portion of the section 436 contribution that is not recharacterized as an employer contribution under section 430, the adjusted assets as of January 1, 2011, for purposes of section 436 are \$2,440,000 (\$2,350,000 plus \$90,000) and the inclusive adjusted funding target is \$3,050,000. Accordingly, the enrolled actuary certifies the inclusive AFTAP for 2011 as 80% (\$2,440,000 ÷ \$3,050,000). Note that assets for section 430 purposes are not increased to reflect the section 436 contribution as of January 1, 2011.

*Example 7.* (i) The facts are the same as in *Example 6*, except that on July 1, 2011, the enrolled actuary for Plan B calculates the actual adjusted funding target (before reflecting the plan amendment) as \$3,000,000 and certifies the actual AFTAP as 78.33% prior to reflecting the plan amendment (that is, adjusted plan assets of \$2,350,000 divided by the actual adjusted funding target of \$3,000,000). Based on the provisions of paragraph (c) of this section, because the AFTAP prior to reflecting the amendment is less than 80%, the contribution required to avoid the restriction on plan amendments would have been the amount equal to the increase in funding target due to the plan amendment, or \$350,000.

(ii) However, according to paragraph (g)(5)(ii)(A) of this section, the enrolled actuary's certification of the 2011 AFTAP does not affect the application of the limitation under paragraph (c) of this section to the amendment, because the amendment to Plan B took effect prior to the date of the certification. Therefore, it is not necessary for Plan B's sponsor to contribute an additional amount in order for the plan amendment to remain in effect regardless of the extent to which the certified AFTAP for the plan year is less than the presumed inclusive AFTAP.

(h) *Presumed underfunding for purposes of benefit limitations—(1) Presumption of continued underfunding—(i) In general.* This paragraph (h)(1) applies to a plan for a plan year if a limitation under paragraph (b), (c), (d), or (e) of this section applied to the plan on the last day of the preceding plan year. If this paragraph (h)(1) applies to a plan, the first day of the plan year is a section 436 measurement date and the presumed adjusted funding target attainment percentage for the plan is the percentage under paragraph (h)(1)(ii) or (iii) of this section, whichever applies to the plan, beginning on that first day of the plan year and ending on the date specified in paragraph (h)(1)(iv) of this section.

(ii) *Rule where preceding year certification issued during preceding year—(A) General rule.* In any case in which the plan's enrolled actuary has issued a certification under paragraph (h)(4) of this section of the adjusted funding target attainment percentage for the plan year preceding the current plan year before the first day of the current plan year, the presumed adjusted funding target attainment percentage of the plan for the current plan year is equal to the prior plan year adjusted funding target attainment percentage until it is changed under paragraph (h)(1)(iv) of this section.

(B) *Special rule for late certifications.* If the certification of the adjusted funding target attainment percentage for the prior plan year occurred after the first day of the 10th month of that prior plan year, the plan is treated as if no such certification was made, unless the certification took into account the effect of any unpredictable contingent event benefits that are permitted to be paid based on unpredictable contingent events that occurred, and any plan amendments that became effective, during the prior plan year but before the certification (and any associated section 436 contributions).

(iii) *No certification for preceding year issued during preceding year—(A) Deemed percentage continues.* In any case in which the plan's enrolled actuary has not issued a certification under paragraph (h)(4) of this section of the adjusted funding target attainment percentage of the plan for the plan year

preceding the current plan year during that prior plan year, the presumed adjusted funding target attainment percentage of the plan for the current plan year is equal to the presumed adjusted funding target attainment percentage that applied on the last day of the preceding plan year until the presumed adjusted funding target attainment percentage is changed under paragraph (h)(1)(iii)(B) or (h)(1)(iv) of this section. Thus, if the prior plan year was a 12-month plan year (so that the last day of the plan year was after the first day of the 10th month of the plan year and the rules of section 436(h)(2) and paragraph (h)(3) of this section applied to the plan for that plan year), then the presumed adjusted funding target attainment percentage for the current plan year is presumed to be less than 60 percent. By contrast, if the prior plan year was less than 9 months, the presumed adjusted funding target attainment percentage for the current plan year is the presumed adjusted funding target attainment percentage at the last day of the preceding plan year.

(B) *Enrolled actuary's certification in following year.* In any case in which the plan's enrolled actuary has issued the certification under paragraph (h)(4) of this section of the adjusted funding target attainment percentage of the plan for the plan year preceding the current plan year on or after the first day of the current plan year, the date of that prior plan year certification is a new section 436 measurement date for the current plan year. In such a case, the presumed adjusted funding target attainment percentage for the current plan year is equal to the prior plan year adjusted funding target attainment percentage (reduced by 10 percentage points if paragraph (h)(2)(iv) of this section applies to the plan) until it is changed under paragraph (h)(1)(iv) of this section. The rules of paragraph (h)(1)(ii)(B) of this section apply for purposes of determining whether the enrolled actuary has issued a certification of the adjusted funding target attainment percentage for the prior plan year during the current plan year.

(iv) *Duration of use of presumed adjusted funding target attainment percentage.* If this paragraph (h)(1) applies to a plan for a plan year, the presumed ad-

justed funding target attainment percentage determined under this paragraph (h)(1) applies until the earliest of—

(A) The first day of the 4th month of the plan year if paragraph (h)(2) of this section applies;

(B) The first day of the 10th month of the plan year if paragraph (h)(3) of this section applies;

(C) The date of a change in the presumed adjusted funding target attainment percentage under paragraph (g)(4) of this section; or

(D) The date the enrolled actuary issues a certification under paragraph (h)(4) of this section of the adjusted funding target attainment percentage for the plan year.

(2) *Presumption of underfunding beginning on first day of 4th month for certain underfunded plans—(i) In general.* This paragraph (h)(2) applies to a plan for a plan year if—

(A) The enrolled actuary for the plan has not issued a certification of the adjusted funding target attainment percentage for the plan year before the first day of the 4th month of the plan year; and

(B) The plan's adjusted funding target attainment percentage for the preceding plan year was either—

(1) At least 60 percent but less than 70 percent; or

(2) At least 80 percent but less than 90 percent.

(ii) *Special rule for first plan year a plan is subject to section 436.* This paragraph (h)(2) also applies to a plan for the first effective plan year if—

(A) The enrolled actuary for the plan has not issued a certification of the adjusted funding target attainment percentage for the plan year before the first day of the 4th month of the plan year; and

(B) The prior plan year adjusted funding target attainment percentage is at least 70 percent but less than 80 percent.

(iii) *Presumed adjusted funding target attainment percentage.* If this paragraph (h)(2) applies to a plan for a plan year and the date of the enrolled actuary's certification of the adjusted funding target attainment percentage under paragraph (h)(4) of this section for the prior plan year (taking into account

the special rules for late certifications under paragraph (h)(1)(ii)(B) of this section) occurred before the first day of the 4th month of the current plan year, then, commencing on the first day of the 4th month of the current plan year—

(A) The presumed adjusted funding target attainment percentage of the plan for the plan year is reduced by 10 percentage points; and

(B) The first day of the 4th month of the plan year is a section 436 measurement date.

(iv) *Certification for prior plan year.* If this paragraph (h)(2) applies to a plan and the date of the enrolled actuary's certification of the adjusted funding target attainment percentage under paragraph (h)(4) of this section for the prior plan year (taking into account the rules for late certifications under paragraph (h)(1)(ii)(B) of this section) occurs on or after the first day of the 4th month of the current plan year, then, commencing on the date of that prior plan year certification—

(A) The presumed adjusted funding target attainment percentage of the plan for the current plan year is equal to 10 percentage points less than the prior plan year adjusted funding target attainment percentage; and

(B) The date of the prior plan year certification is a section 436 measurement date.

(v) *Duration of use of presumed adjusted funding target attainment percentage.* If this paragraph (h)(2) applies to a plan for a plan year, the presumed adjusted funding target attainment percentage determined under this paragraph (h)(2) applies until the earliest of—

(A) The first day of the 10th month of the plan year if paragraph (h)(3) of this section applies;

(B) The date of a change in the presumed adjusted funding target attainment percentage under paragraph (g)(4) of this section; or

(C) The date the enrolled actuary issues a certification under paragraph (h)(4) of this section of the adjusted funding target attainment percentage for the plan year.

(3) *Presumption of underfunding beginning on first day of 10th month.* In any case in which no certification of the

specific adjusted funding target attainment percentage for the current plan year under paragraph (h)(4) of this section is made with respect to the plan before the first day of the 10th month of the plan year, then, commencing on the first day of the 10th month of the current plan year—

(i) The presumed adjusted funding target attainment percentage of the plan for the plan year is presumed to be less than 60 percent; and

(ii) The first day of the 10th month of the plan year is a section 436 measurement date.

(4) *Certification of AFTAP—(i) Rules generally applicable to certifications—(A) In general.* The enrolled actuary's certification referred to in this section must be made in writing, must be signed and dated to show the date of the signature, must be provided to the plan administrator, and, except as otherwise provided in paragraph (h)(4)(ii) of this section, must certify the plan's adjusted funding target attainment percentage for the plan year. Except in the case of a range certification described in paragraph (h)(4)(ii) of this section, the certification must set forth the value of plan assets, the prefunding balance, the funding standard carryover balance, the value of the funding target used in the determination, the aggregate amount of annuity purchases included in the adjusted value of plan assets and the adjusted funding target, the unpredictable contingent event benefits permitted to be paid for unpredictable contingent events that occurred during the current plan year that were taken into account for the current plan year (including any associated section 436 contributions), the plan amendments that took effect in the current plan year that were taken into account for the current plan year (including any associated section 436 contributions), any benefit accruals that were restored for the plan year (including any section 436 contributions), and any other relevant factors. The actuarial assumptions and funding methods used in the calculation for the certification must be the actuarial assumptions and funding methods used for the plan for purposes of determining the minimum required

contributions under section 430 for the plan year.

(B) *Determination of plan assets.* For purposes of making any determination of the adjusted funding target attainment percentage under this section, the determination is not permitted to include in plan assets contributions that have not been made to the plan by the certification date. Thus, the enrolled actuary's certification of the adjusted funding target attainment percentage for a plan year cannot take into account contributions that are expected to be made after the certification date. Notwithstanding the foregoing, for plan years beginning before January 1, 2009, the enrolled actuary's certification of the adjusted funding target attainment percentage is permitted to take into account employer contributions for the prior plan year that are reasonably expected to be made for that prior plan year but have not been contributed by the date of the enrolled actuary's certification. See paragraphs (h)(4)(iii) and (v) of this section for rules relating to changes in the certified percentage.

(ii) *Special rules for certification within range—(A) In general.* Under this paragraph (h)(4)(ii), the plan's enrolled actuary is permitted to certify during a plan year that the plan's adjusted funding target attainment percentage for that plan year either is less than 60 percent, is 60 percent or higher (but is less than 80 percent), is 80 percent or higher, or is 100 percent or higher. If the enrolled actuary has issued such a range certification for a plan year and the enrolled actuary subsequently issues a certification of the specific adjusted funding target attainment percentage for the plan before the end of that plan year, then the certification of the specific adjusted funding target attainment percentage is treated as a change in the applicable percentage to which paragraph (h)(4)(iii) of this section applies.

(B) *Effect of range certification before certification of specific percentage.* If a plan's enrolled actuary issues a range certification pursuant to this paragraph (h)(4)(ii), then, for purposes of this section (including application of the limitations of sections 436(b) and (c), contributions described in sections

436(b)(2), 436(c)(2), and 436(e)(2), and the mandatory reduction of the prefunding and funding standard carryover balances under paragraph (a)(5) of this section), the plan is treated as having a certified percentage at the smallest value within the applicable range until a certification of the plan's specific adjusted funding target attainment percentage for the plan year has been issued under paragraph (h)(4)(i) of this section. However, if the plan's enrolled actuary has issued a range certification for the plan year but does not issue a certification of the specific adjusted funding target attainment percentage for the plan by the last day of that plan year, the adjusted funding target attainment percentage for the plan is retroactively deemed to be less than 60 percent as of the first day of the 10th month of the plan year.

(C) *Effect of range certification on and after certification of specific percentage.* Once the certification of the specific adjusted funding target attainment percentage is issued by the plan's enrolled actuary, the certified percentage applies for all purposes of this section on and after the date of that certification. If the plan sponsor made section 436 contributions to avoid application of a benefit limitation during the period a range certification was in effect, those section 436 contributions are recharacterized as employer contributions under section 430 to the extent the contributions exceed the amount necessary to avoid application of a limitation based on the specific adjusted funding target attainment percentage as certified by the plan's enrolled actuary on or before the last day of the plan year.

(iii) *Change of certified percentage—(A) Application of new percentage.* If the enrolled actuary for the plan provides a certification of the adjusted funding target attainment percentage of the plan for the plan year under this paragraph (h)(4) (including a range certification) and that certified percentage is superseded by a subsequent determination of the adjusted funding target attainment percentage for that plan year, then, except to the extent provided in paragraph (h)(4)(iv)(B) of this section, that later percentage must be applied for the portion of the plan year

beginning on the date of the earlier certification. The subsequent determination could be the correction of a prior incorrect certification or it could be an update of a prior correct certification to take into account subsequent facts under the rules of paragraph (h)(4)(v) of this section. The implications of such a change depend on whether the change is a material change or an immaterial change. See paragraph (h)(4)(iv) of this section.

(B) *Material change.* A change in a plan's certified adjusted funding target attainment percentage constitutes a material change for a plan year if plan operations with respect to benefits that are addressed by section 436, taking into account any actual contributions and elections under section 430(f) made by the plan sponsor based on the prior certified percentage, would have been different based on the subsequent determination of the plan's adjusted funding target attainment percentage for the plan year. A change in a plan's adjusted funding target attainment percentage for a plan year can be a material change even if the only impact of the change occurs in the following plan year under the rules for determining the presumed adjusted funding target attainment percentage in that following year.

(C) *Immaterial change.* In general, an immaterial change is any change in an adjusted funding target attainment percentage for a plan year that is not a material change. In addition, subject to the requirement to recertify the adjusted funding target attainment percentage in paragraph (h)(4)(v)(B) of this section, a change in adjusted funding target attainment percentage is deemed to be an immaterial change if it merely reflects a change in the funding target for the plan year or the value of the adjusted plan assets after the date of the enrolled actuary's certification resulting from—

(1) Additional contributions for the preceding year that are made by the plan sponsor;

(2) The plan sponsor's election to reduce the prefunding balance or funding standard carryover balance;

(3) The plan sponsor's election to apply the prefunding balance or funding standard carryover balance to off-

set the prior plan year's minimum required contribution;

(4) A change in funding method or actuarial assumptions, where such change required actual approval of the Commissioner (rather than deemed approval);

(5) Unpredictable contingent event benefits which are permitted to be paid because the employer makes the section 436 contribution described in paragraph (f)(2)(iii)(A) of this section;

(6) Unpredictable contingent event benefits which are permitted to be paid because the plan's enrolled actuary determines that the increase in the funding target attributable to the occurrence of the unpredictable contingent event would not cause the plan's adjusted funding target attainment percentage to fall below 60 percent;

(7) A plan amendment which takes effect because the employer makes the section 436 contribution described in paragraph (f)(2)(iv)(A) of this section, the liability for which was not taken into account in the certification of the adjusted funding target attainment percentage; or

(8) A plan amendment which takes effect because the plan's enrolled actuary determines that the increase in the funding target attributable to the plan amendment would not cause the plan's adjusted funding target attainment percentage to fall below 80 percent, the liability for which was not taken into account in the certification of the adjusted funding target attainment percentage.

(iv) *Effect of change in percentage—(A) Material change.* In the case of a material change, if the plan's prior operations were in accordance with the prior certification of the adjusted funding target attainment percentage for the plan year (rather than the actual adjusted funding target attainment percentage for the plan year), then the plan will not have satisfied the requirements of section 401(a)(29) and section 436. Even if the plan's prior operations were in accordance with the subsequent certification of the adjusted funding target attainment percentage, the plan will not have satisfied the qualification requirements of section 401(a) because the plan will not have been operated in accordance with its

terms during the period of time the prior certification applied. In addition, in the case of a material change, the rules requiring application of a presumed adjusted funding target attainment percentage under paragraphs (h)(1) through (h)(3) of this section continue to apply from and after the date of the prior certification until the date of the subsequent certification.

(B) *Immaterial change.* An immaterial change in the adjusted funding target attainment percentage applies prospectively only and does not change the inapplicability of the presumptions under paragraphs (h)(1), (2), and (3) of this section prior to the date of the later certification.

(v) *Rules relating to updated certification*—(A) *In general.* This paragraph (h)(4)(v) sets forth rules relating to updates of an actuary's certification of the plan's adjusted funding target attainment percentage for a plan year. Paragraphs (h)(4)(v)(B) and (D) of this section require that an updated adjusted funding target attainment percentage be certified in certain situations. Even if the updated adjusted funding target attainment percentage is not required to be certified, plan administrators may request that the actuary prepare an updated certification of the adjusted funding target attainment percentage, as described in paragraphs (h)(4)(v)(C) and (E) of this section. Any updated adjusted funding target attainment percentage determined under this paragraph (h)(4)(v) will apply beginning as of the date of the event that gave rise to the need for the update which is a section 436 measurement date. Thus, pursuant to this paragraph (h)(4)(v), the updated funding target attainment percentage applies thereafter for all purposes of section 436, including application with respect to unpredictable contingent events occurring on or after the measurement date (but not for unpredictable contingent events that occurred before such measurement date or for benefits with annuity starting dates before that measurement date). The updated adjusted funding target attainment percentage will continue to apply for the remainder of the plan year and will be used for the presumed adjusted funding target attainment percentage

for the next plan year, unless there is a later updated certification of adjusted funding target attainment percentage for the plan year.

(B) *Requirement to recertify AFTAP if plan sponsor contributes to threshold.* If, during the plan year, unpredictable contingent event benefits are permitted to be paid, a plan amendment takes effect, or benefits are permitted to accrue because the plan sponsor makes a contribution described in paragraph (f)(2)(iii)(B), (f)(2)(iv)(B), or (f)(2)(v) of this section, then, in accordance with paragraph (f)(2)(ii)(C) of this section, the plan's enrolled actuary must issue an updated certification of the adjusted funding target attainment percentage that takes into account such contribution as well as the liability for unpredictable contingent event benefits that are permitted to be paid, plan amendments that take effect during the plan year, and restored benefits.

(C) *Optional recertification of AFTAP after other unpredictable contingent event or plan amendment.* Except as provided in paragraph (h)(4)(v)(D) of this section, if, during a plan year, unpredictable contingent event benefits are permitted to be paid, or a plan amendment takes effect, because either the plan sponsor makes a contribution described in paragraph (f)(2)(iii)(A) or (f)(2)(iv)(A) of this section, or the plan's enrolled actuary determines that the increase in the funding target attributable to the occurrence of the unpredictable contingent event or the plan amendment would not cause the plan's adjusted funding target attainment percentage to fall below the applicable 60 percent or 80 percent threshold (taking into account the occurrence of all previous unpredictable contingent event benefits and plan amendments to the extent not already reflected in the certified adjusted funding target attainment percentage for the plan year (or update)), then the plan administrator may request that the plan actuary issue an updated certification of the adjusted funding target attainment percentage that takes into account the unpredictable contingent event benefits or plan amendments and any associated section 436 contribution.



(D) *Requirement to recertify AFTAP after deemed immaterial change.* If a change in the adjusted funding target attainment percentage as a result of one of the items listed in paragraph (h)(4)(iii)(C) of this section would be a material change, then the change is treated as an immaterial change only if the plan's enrolled actuary recertifies the adjusted funding target attainment percentage for the plan year as soon as practicable after the event that gives rise to the change.

(E) *Optional recertification after other immaterial change.* If a change in the adjusted funding target attainment percentage is immaterial, then the plan administrator may request that the plan actuary issue an updated certification of the adjusted funding target attainment percentage that takes into account the unpredictable contingent event benefits or plan amendments and any associated section 436 contribution.

(5) *Examples of rules of paragraphs (h)(1), (h)(2), and (h)(3) of this section.* The following examples illustrate the rules of paragraphs (h)(1), (h)(2), and (h)(3) of this section. Unless otherwise indicated, the examples in this section are based on the information in this paragraph (h)(5). Each plan is a non-collectively bargained defined benefit plan with a plan year that is the calendar year and a valuation date of January 1. The plan year is subject to section 436 in 2008. The plan does not have a funding standard carryover balance or a prefunding balance as of any of the dates mentioned, and the plan sponsor does not elect to utilize any of the methods in paragraph (f) of this section to avoid applicable benefit restrictions. No range certification under paragraph (h)(4) of this section has been issued. The plan sponsor is not in bankruptcy. The examples read as follows:

*Example 1.* (i) On July 15, 2010, the adjusted funding target attainment percentage ("AFTAP") for Plan T for 2010 is certified to be 65%. Based on this AFTAP, Plan T is subject to the restriction on prohibited payments in paragraph (d)(3) of this section for the remainder of 2010.

(ii) Beginning January 1, 2011, Plan T's AFTAP for 2011 is presumed to be equal to the AFTAP for 2010, or 65%, under the provisions of paragraph (h)(1)(ii) of this section. Accordingly, the restriction on prohibited

payments in paragraph (d)(3) of this section continues to apply.

(iii) On March 1, 2011, the enrolled actuary for the plan certifies that the actual AFTAP for 2011 is 80%. Therefore, beginning March 1, 2011, Plan T is no longer subject to the restriction under paragraph (d)(3) of this section, and so Plan T resumes paying the full amount of any prohibited payments elected by participants with an annuity starting date of March 1, 2011, or later.

*Example 2.* (i) The facts are the same as in *Example 1*, except that the enrolled actuary for the plan does not certify the AFTAP for 2011 until June 1, 2011, when it is certified to be 66%.

(ii) Beginning January 1, 2011, Plan T's AFTAP for 2011 is presumed to be equal to the AFTAP for 2010, or 65%, under the provisions of paragraph (h)(1)(ii) of this section. Accordingly, the restriction on prohibited payments in paragraph (d)(3) of this section continues to apply.

(iii) Pursuant to paragraph (h)(2)(iv) of this section, beginning April 1, 2011, the AFTAP for 2011 is presumed to be 55% (10 percentage points less than the AFTAP for 2010). Plan T is subject to the restriction on prohibited payments under paragraph (d)(1) of this section for annuity starting dates on or after April 1, 2011. In addition, Plan T is subject to the restriction on unpredictable contingent event benefits under paragraph (b) of this section for unpredictable contingent events occurring on or after April 1, 2011 and benefits are required to be frozen on and after April 1, 2011 under paragraph (e) of this section.

(iv) Once the enrolled actuary for the plan certifies that the AFTAP for 2011 for Plan T is 66%, Plan T is no longer subject to the restriction under paragraph (d)(1) of this section, but it is subject to the restriction under paragraph (d)(3) of this section. Plan T must resume paying prohibited payments, as restricted under paragraph (d)(3) of this section, for participants who elect benefits in accelerated forms of payment and who have an annuity starting date of June 1, 2011, or later. In addition, Plan T must provide benefits for any unpredictable contingent event occurring on or after January 1, 2011, to the extent permitted under paragraph (b) of this section. Similarly, Plan T is no longer subject to the restriction on benefit accruals under paragraph (e) of this section, and benefit accruals resume under Plan T beginning June 1, 2011, unless Plan T provides otherwise.

*Example 3.* (i) The facts are the same as in *Example 1*, except that the enrolled actuary for the plan does not certify the 2011 AFTAP until November 15, 2011. Beginning October 1, 2011, Plan T is conclusively presumed to have an AFTAP of less than 60%, in accordance with the provisions of paragraph (h)(3) of this section. Accordingly, Plan T is subject

to the restrictions in paragraphs (b), (d)(1), and (e) of this section commencing on October 1, 2011.

(ii) On November 15, 2011, the enrolled actuary for the plan certifies that the AFTAP for 2011 is 72%. However, because the certification occurred after September 30, 2011, the certification does not constitute a new section 436 measurement date, and Plan T continues to be subject to the restrictions on unpredictable contingent event benefits, prohibited payments, and benefit accruals under paragraphs (b), (d)(1), and (e) of this section.

(iii) Beginning January 1, 2012, the 2012 AFTAP for Plan T is presumed to be equal to the 2011 AFTAP of 72%. Because the presumed 2012 AFTAP is between 70% and 80% and, therefore, paragraph (h)(2) of this section (which provides for a 10 percentage point reduction in a plan's AFTAP in certain cases) will not apply, the presumed AFTAP will remain at 72% until the plan's enrolled actuary certifies the AFTAP for 2012 or until paragraph (h)(3) of this section applies on the first day of the 10th month of the plan year. Because the presumed AFTAP is 72%, Plan T is no longer subject to the restrictions on prohibited payments under paragraph (d)(1) of this section, and Plan T must provide benefits for any unpredictable contingent event occurring on or after January 1, 2012, to the extent permitted under paragraph (b) of this section and must resume paying prohibited payments, as restricted under paragraph (d)(3) of this section, that are elected by participants with annuity starting dates on or after January 1, 2012. Similarly, Plan T is no longer subject to the restriction on benefit accruals under paragraph (e) of this section, and benefit accruals resume under Plan T beginning January 1, 2012, unless Plan T provides otherwise.

*Example 4.* (i) The facts are the same as in *Example 3*, except that the enrolled actuary for the plan does not issue a certification of the AFTAP for 2011 for Plan T until February 1, 2012.

(ii) Beginning on January 1, 2012, the presumptions in paragraph (h)(1)(iii) of this section apply for the 2012 plan year. Because the enrolled actuary for the plan has not certified the AFTAP for 2011, the presumed AFTAP as of October 1, 2011, continues to apply for the period beginning January 1, 2012. Therefore, the AFTAP as of January 1, 2012, is presumed to be less than 60%, and Plan T continues to be subject to the restrictions on unpredictable contingent event benefits under paragraph (b) of this section, prohibited payments under paragraph (d)(1) of this section, and benefit accruals under paragraph (e) of this section.

(iii) On February 1, 2012, the enrolled actuary for the plan certifies that the AFTAP for 2011 for Plan T is 65%. Because the enrolled actuary for the plan has not issued a certification of the AFTAP for 2012, the provisions

of paragraph (h)(1)(iii)(B) of this section apply. Accordingly, the certification date for the 2011 AFTAP (February 1, 2012) is a section 436 measurement date and 65% is the presumed AFTAP for 2012 beginning on that date.

(iv) Because the presumed AFTAP is over 60% but less than 80%, the full restriction on prohibited payments under paragraph (d)(1) of this section no longer applies; however, the partial restriction on prohibited payments under paragraph (d)(3) of this section applies beginning on February 1, 2012. Therefore, Plan T must pay a portion of the prohibited payments elected by participants with annuity starting dates on or after February 1, 2012. Furthermore, based on the presumed AFTAP of 65%, the restriction on unpredictable contingent event benefits under paragraph (b) of this section ceases to apply for events occurring on or after February 1, 2012, to the extent permitted under paragraph (b) of this section and the restriction on benefit accruals under paragraph (e) of this section no longer applies so that, unless Plan T provides otherwise, benefit accruals will resume as of February 1, 2012.

*Example 5.* (i) The facts are the same as in *Example 3*, except that the enrolled actuary for the plan does not issue a certification of the actual AFTAP for Plan T as of January 1, 2011, until May 1, 2012.

(ii) Beginning on January 1, 2012, the presumptions in paragraph (h)(1)(iii) of this section apply for the 2012 plan year. Because the enrolled actuary for the plan has not certified the actual AFTAP as of January 1, 2011, the presumed AFTAP as of October 1, 2011, continues to apply for the period beginning January 1, 2012. Therefore, the AFTAP as of January 1, 2012, is presumed to be less than 60%, and Plan T continues to be subject to the restrictions on unpredictable contingent event benefits under paragraph (b) of this section, on prohibited payments under paragraph (d)(1) of this section, and on benefit accruals under paragraph (e) of this section.

(iii) Since the enrolled actuary for the plan has not issued a certification of the actual AFTAP as of January 1, 2011, the rules of paragraph (h)(1)(iii) of this section apply beginning April 1, 2012, and the AFTAP is presumed to remain less than 60%. Plan T continues to be subject to the restrictions on unpredictable contingent event benefits under paragraph (b) of this section, on prohibited payments under paragraph (d)(1) of this section, and on benefit accruals under paragraph (e) of this section.

(iv) On May 1, 2012, the enrolled actuary for the plan certifies that the actual AFTAP for 2011 for Plan T is 65%. Because the enrolled actuary for the plan has not issued a certification of the actual AFTAP as of January 1, 2012, the provisions of paragraph (h)(2)(iv) of this section apply. Accordingly,

on May 1, 2012, the 2012 AFTAP is presumed to be 10 percentage points less than the 2011 AFTAP, or 55%, so that the restrictions under paragraphs (b), (d), and (e) of this section continue to apply.

*Example 6.* (i) The enrolled actuary for Plan V certifies the plan's AFTAP for 2010 to be 69%. Based on this AFTAP, Plan V is subject to the restriction in paragraph (d)(3) of this section, and can only pay a portion (generally 50%) of the prohibited payments otherwise due to plan participants who commence benefits while the restriction is in effect. The enrolled actuary for the plan does not issue a certification of the AFTAP for 2011 until June 1, 2011.

(ii) Beginning January 1, 2011, Plan V's 2011 AFTAP is presumed to be equal to the 2010 AFTAP, or 69%, under the provisions of paragraph (h)(1)(ii) of this section. Accordingly, the restriction on prohibited payments in paragraph (d)(3) of this section continues to apply from January 1, 2011, through March 31, 2011, and Plan T may only pay a portion of the prohibited payments otherwise due to participants who commence benefit payments during this period.

(iii) Beginning April 1, 2011, the provisions of paragraph (h)(2)(ii) of this section apply. Under those provisions, the AFTAP beginning April 1, 2011, is presumed to be 10 percentage points lower than the presumed 2011 AFTAP, or 59%. Because Plan V's presumed AFTAP for 2011 is less than 60%, the restrictions on unpredictable contingent event benefits under paragraph (b) of this section, on the payment of accelerated benefit distributions under paragraph (d)(1) of this section, and on benefit accruals under paragraph (e) of this section apply. Accordingly, Plan V cannot pay any unpredictable contingent event benefits for events occurring on or after April 1, 2011, or prohibited payments to participants with an annuity starting date on or after April 1, 2011, and benefit accruals cease as of April 1, 2011.

(iv) On June 1, 2011, Plan V's enrolled actuary certifies that the plan's AFTAP for 2011 is 71%. Therefore, the restrictions on unpredictable contingent event benefits, prohibited payments, and benefit accruals in paragraphs (b), (d)(1), and (e) of this section no longer apply, but the partial restriction on benefit payments in paragraph (d)(3) of this section does apply. Accordingly, Plan V begins paying unpredictable contingent event benefits for events occurring on or after January 1, 2011, to the extent permitted under paragraph (b) of this section and a portion of the prohibited payments elected by participants with an annuity starting date on or after June 1, 2011. Benefit accruals previously restricted under paragraph (e) of this section resume effective June 1, 2011, unless Plan V provides otherwise.

(v) Participants who were not able to elect an accelerated form of payment during the

period from April 1, 2011, through May 31, 2011, would be able to elect a new annuity starting date with a partial distribution of accelerated benefits effective June 1, 2011, if Plan V contained a preexisting provision permitting such an election after the restriction in paragraph (d)(1) of this section no longer applies. This is permitted because, under paragraph (a)(4)(ii)(B) of this section, a preexisting provision of this type is not considered a plan amendment and is therefore not subject to the plan amendment restriction in paragraph (c) of this section even though Plan V's AFTAP for 2011 is less than 80%.

(vi) Benefit accruals for the period beginning April 1, 2011, through May 31, 2011, would be automatically restored if Plan V contained a preexisting provision to retroactively restore benefit accruals restricted under paragraph (e) of this section after the restriction no longer applies. This is permitted because under paragraph (a)(4)(ii)(B) of this section, a preexisting provision of this type is not considered to be a plan amendment and is therefore not subject to the plan amendment restriction in paragraph (c) of this section even though Plan V's AFTAP for 2011 is less than 80%, because the period of the restriction did not exceed 12 months.

(6) *Examples of rules of paragraph (h)(4) of this section.* The following examples illustrate the rules of paragraph (h)(4) of this section:

*Example 1.* (i) Plan Y is a non-collectively bargained defined benefit plan with a plan year that is the calendar year and a valuation date of January 1. Plan Y does not have a funding standard carryover balance or a prefunding balance. Plan Y's sponsor is not in bankruptcy. In June of 2010, the actual AFTAP for 2010 for Plan Y is certified as 65%. On the last day of the 2010 plan year, Plan Y is subject to the restrictions in paragraph (d)(3) of this section.

(ii) The enrolled actuary for the plan issues a range certification on March 21, 2011, certifying that the AFTAP for 2011 is at least 60% and less than 80%. Because the certification was issued before the first day of the 4th month of the plan year, the 10 percentage point reduction in the presumed AFTAP under paragraph (h)(2) of this section does not apply. In addition, because the enrolled actuary for the plan has certified that the AFTAP is within this range, Plan Y is not subject to the full restriction on accelerated benefit payments in paragraph (d)(1) of this section or the restriction on benefit accruals under paragraph (e) of this section.

(iii) On August 1, 2011, the enrolled actuary for the plan certifies that the actual AFTAP as of January 1, 2011, is 75.86%. This AFTAP falls within the previously certified range.

Thus, the change is immaterial under paragraph (h)(4)(iii) of this section and the new certification does not change the applicability or inapplicability of the restrictions in this section.

*Example 2.* (i) The facts are the same as in *Example 1*, except that the plan sponsor makes an additional contribution for the 2010 plan year on September 1, 2011, that is not added to the prefunding balance. Reflecting this contribution, the enrolled actuary for the plan issues a revised certification stating that the AFTAP for 2011 is 81%, and Plan Y is no longer subject to the restriction on accelerated benefit payments under paragraph (d)(3) of this section on that date.

(ii) Although the revised certification changes the applicability of the restriction under paragraph (d)(3) of this section, the change is not a material change under paragraph (h)(4)(iii)(C)(I) of this section because the AFTAP changed only because of additional contributions for the preceding year made by the plan sponsor after the date of the enrolled actuary's initial certification.

(i) [Reserved]

(j) *Definitions.* For purposes of this section—

(1) *Adjusted funding target attainment percentage*—(i) *In general.* Except as otherwise provided in this paragraph (j)(1), the *adjusted funding target attainment percentage* for a plan year is the fraction (expressed as a percentage)—

(A) The numerator of which is the adjusted plan assets for the plan year described in paragraph (j)(1)(ii) of this section; and

(B) The denominator of which is the adjusted funding target for the plan year described in paragraph (j)(1)(iii) of this section.

(ii) *Adjusted plan assets*—(A) *General rule.* The adjusted plan assets for a plan year is generally determined by—

(1) Subtracting the plan's funding standard carryover balance and prefunding balance as of the valuation date from the value of plan assets for the plan year under section 430(g) (but treating the resulting value as zero if it is below zero); and

(2) Increasing the resulting value by the aggregate amount of purchases of annuities for participants and beneficiaries (other than participants who, at the time of the purchase, were highly compensated employees as defined in section 414(q), which definition includes highly compensated former employees under § 1.414(q)-1T, Q&A-4) which were made by the plan during

the preceding 2 plan years, to the extent not included in plan assets for purposes of section 430.

(B) *Special rule for plans that are fully funded without regard to subtraction of funding balances from plan assets.* If for a plan year the value of plan assets determined without subtracting the funding standard carryover balance and the prefunding balance is not less than 100 percent of the plan's funding target determined under section 430 without regard to section 430(i), then the adjusted value of plan assets used in the calculation of the adjusted funding target attainment percentage for the plan year is determined without subtracting the plan's funding standard carryover balance and prefunding balance from the value of plan assets for the plan year.

(C) *Special rule for plans with section 436 contributions.* If an employer makes a contribution described in paragraph (f)(2) of this section after the valuation date in order to avoid or terminate limitations under section 436, then the present value of that contribution (determined using the effective interest rate under section 430(h)(2)(A) for the plan year) is permitted to be added to the plan assets as of the valuation date for purposes of determining or redetermining the adjusted funding target attainment percentage for a plan year, but only if the liability for the benefits, amendment, or accruals that would have been limited (but for the contribution) is included in determining the adjusted funding target for the plan year.

(D) *Transition rule.* Paragraph (j)(1)(ii)(B) of this section is 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

(E) *Limitation on transition rule.* Paragraph (j)(1)(ii)(D) of this section does not apply with respect to the current plan year unless, for each plan year beginning after December 31, 2007, and before the current plan year, the value of

plan assets determined without subtracting the funding standard carry-over balance and the prefunding balance is not less than the product of—

(1) The applicable percentage determined under paragraph (j)(1)(ii)(D) of this section for that plan year; and

(2) The funding target (determined without regard to the at-risk rules of section 430(i)) for that plan year.

(iii) *Adjusted funding target*—(A) *In general.* Except as otherwise provided in this paragraph (j)(1)(iii), the adjusted funding target equals the funding target for the plan year, determined in accordance with the rules set forth in § 1.430(d)-1, but without regard to the at-risk rules under section 430(i), increased by the aggregate amount of purchases of annuities that were added to assets for purposes of determining the plan's adjusted plan assets under paragraph (j)(1)(ii)(A)(2) of this section. The definition of adjusted funding target for a plan maintained by a commercial airline for which the plan sponsor has made the election described in section 402(a)(1) of Pension Protection Act of 2006 (PPA '06), Public Law 109-280 (120 Stat. 780), is the same as if it did not make such an election.

(B) *Adjusted funding target after updated certification.* After the plan's enrolled actuary prepares an updated certification of the adjusted funding target attainment percentage under paragraph (h)(4)(v) of this section, the adjusted funding target will also be updated to reflect unpredictable contingent event benefits and plan amendments not already taken into account.

(iv) *Plans with zero adjusted funding target.* If the adjusted funding target for the plan year is zero, then the adjusted funding target attainment percentage for the plan year is 100 percent.

(v) *Plans with end of year valuation dates.* [Reserved]

(vi) *Special rule for plans that are the result of a merger.* [Reserved]

(vii) *Special rule for plans that are involved in a spinoff.* [Reserved]

(2) *Annuity starting date*—(i) *General rule.* The term *annuity starting date* means, as applicable—

(A) The first day of the first period for which an amount is payable as an annuity as described in section 417(f)(2)(A)(i);

(B) In the case of a benefit not payable in the form of an annuity, the annuity starting date is the annuity starting date for the qualified joint and survivor annuity that is payable under the plan at the same time as the benefit that is not payable as an annuity;

(C) In the case of an amount payable under a retroactive annuity starting date, the benefit commencement date (instead of the date determined under paragraphs (j)(2)(i)(A) and (B) of this section);

(D) The date of the purchase of an irrevocable commitment from an insurer to pay benefits under the plan; and

(E) The date of any transfer to another plan described in paragraph (j)(6)(i)(C) of this section.

(ii) *Special rule for beneficiaries.* If a participant commences benefits at an annuity starting date (as defined in paragraph (j)(2)(1) of this section) and, after the death of the participant, payments continue to a beneficiary, the annuity starting date for the payments to the participant constitutes the annuity starting date for payments to the beneficiary, except that a new annuity starting date occurs (determined by applying paragraph (j)(2)(i)(A), (B), and (C) of this section to the payments to the beneficiary) if the amounts payable to all beneficiaries of the participant in the aggregate at any future date can exceed the monthly amount that would have been paid to the participant had he or she not died.

(3) *First effective plan year.* The *first effective plan year* for a plan is the first plan year to which section 436 applies to the plan under paragraph (k)(1) or (k)(2) of this section.

(4) *Funding target.* In general, the *funding target* means the funding target under § 1.430(d)-1, without regard to the at-risk rules under section 430(i) and § 1.430(i)-1. However, solely for purposes of sections 436(b)(2)(A) and (c)(2)(A), the funding target means the funding target under § 1.430(i)-1 if the plan is in at-risk status for the plan year.

(5) *Prior plan year adjusted funding target attainment percentage*—(i) *In general.* Except as otherwise provided in this paragraph (j)(5), the *prior plan year adjusted funding target attainment percentage* is the adjusted funding target attainment percentage determined

under paragraph (j)(1) of this section for the immediately preceding plan year.

(ii) *Special rules*—(A) *Special rule for new plans*. In the case of a plan established during the plan year that was not the result of a merger or spinoff, the adjusted funding target attainment percentage is equal to 100 percent for plan years before the plan was established. Except as otherwise provided in paragraph (j)(5)(ii)(B) of this section, a plan that has a predecessor plan in accordance with § 1.415(f)-1(c) is not a plan established during the plan year under this paragraph (j)(5)(ii)(A). Instead, if the plan has a predecessor plan, the adjusted funding target attainment percentage for the prior plan year is the adjusted funding target attainment percentage for the prior plan year for the predecessor plan (and that predecessor plan's adjusted funding target attainment percentage is treated as equal to 100 percent on any date on which it is terminated, other than in a distress termination).

(B) *Special rules for plans that are the result of a merger*. [Reserved]

(C) *Special rules for plans that are involved in a spinoff*. [Reserved]

(iii) *Special rules for 2007 plan year*—(A) *General determination of 2007 adjusted funding target attainment percentage*. In the case of the first plan year beginning in 2008, except as otherwise provided in this paragraph (j)(5), the adjusted funding target attainment percentage for the immediately preceding plan year (the 2007 plan year) is determined as the fraction (expressed as a percentage)—

(1) The numerator of which is the value of plan assets determined under paragraph (j)(5)(iii)(B) of this section increased by the aggregate amount of purchases of annuities for participants and beneficiaries (other than participants who, at the time of the purchase, were highly compensated employees as defined in section 414(q), which definition includes highly compensated former employees under § 1.414(q)-1T, Q&A-4 which were made by the plan during the preceding 2 plan years, to the extent not included in plan assets under section 412(c)(2) (as in effect prior to amendment by PPA '06); and

(2) The denominator of which is the plan's current liability determined pursuant to section 412(1)(7) (as in effect prior to amendment by PPA '06) on the valuation date for the 2007 plan year increased by the aggregate amount of purchases of annuities that were added to the plan assets under the rules of paragraph (j)(5)(iii)(A)(1) of this section.

(B) *General determination of value of plan assets*—(1) *In general*. The value of plan assets for purposes of this paragraph (j)(5)(iii) is determined under section 412(c)(2) as in effect for the 2007 plan year, except that the value of plan assets prior to subtracting the plan's funding standard account credit balance described in paragraph (j)(5)(iii)(B)(2) of this section must be adjusted so that the value of plan assets is neither less than 90 percent of the fair market value of plan assets nor greater than 110 percent of the fair market value of plan assets on the valuation date for that plan year.

(2) *Subtraction of credit balance*. If a plan has a funding standard account credit balance as of the valuation date for the 2007 plan year, that balance is subtracted from the value of plan assets described in paragraph (j)(5)(iii)(B)(1) of this section as of that valuation date. However, the subtraction does not apply if the value of plan assets prior to adjustment under paragraph (j)(5)(iii)(B)(1) of this section is greater than or equal to 90 percent of the plan's current liability as of the valuation date for the 2007 plan year.

(3) *Effect of funding standard carryover balance reduction for 2007 plan year*. Notwithstanding paragraph (j)(5)(iii)(B)(2) of this section, if, for the first plan year beginning in 2008, the employer has made an election to reduce some or all of the funding standard carryover balance as of the first day of that year in accordance with § 1.430(f)-1(e), then the present value (determined as of the valuation date for the 2007 plan year using the valuation interest rate for that plan year) of the amount so reduced is not treated as part of the funding standard account credit balance when that balance is subtracted from the asset value under paragraph (j)(5)(iii)(B)(2) of this section.

(C) *Plan with end-of-year valuation date.* With respect to the first plan year beginning in 2008, if the plan had a valuation date under section 412 that was the last day of the plan year for each of the plan years beginning in 2006 and 2007, the adjusted funding target attainment percentage for the 2007 plan year may be determined as the fraction (expressed as a percentage)—

(1) The numerator of which is the value of plan assets determined under paragraph (j)(5)(iii)(D) of this section increased by the aggregate amount of purchases of annuities for participants and beneficiaries (other than participants who, at the time of the purchase, were highly compensated employees as defined in section 414(q), which definition includes highly compensated former employees under § 1.414(q)-1T, Q&A-4 which were made by the plan during the preceding 2 plan years, to the extent not included in plan assets under section 412(c)(2) (as in effect prior to amendment by PPA '06); and

(2) The denominator of which is the plan's current liability determined pursuant to section 412(1)(7) (as in effect prior to amendment by PPA '06) on the valuation date for the second plan year that begins before 2008 (the 2006 plan year), including the increase in current liability for the 2006 plan year, increased by the aggregate amount of purchases of annuities that were added to the plan assets under the rules of paragraph (j)(5)(iii)(C)(1) of this section.

(D) *Special asset determinations for 2006 adjusted funding target attainment percentage—(1) General rule.* If the adjusted funding target attainment percentage for the 2007 plan year is determined under the rules of paragraph (j)(5)(iii)(C) of this section, then the value of plan assets is determined as the value of plan assets under section 412(c)(2) as in effect for the 2006 plan year, adjusted as provided in this paragraph (j)(5)(iii)(D).

(2) *Inclusion of contributions for 2006.* Contributions made for the 2006 plan year are taken into account in determining the value of plan assets, regardless of whether those contributions are made during the plan year or after the end of the plan year and within the period specified under section 412(c)(10)

(as in effect prior to amendment by PPA '06).

(3) *Restriction to 90-110 percent corridor.* The value of plan assets taking into account the amount of contributions made for the 2006 plan year is increased or decreased, as necessary, so that it is neither less than 90 percent of the fair market value of plan assets nor greater than 110 percent of the fair market value of plan assets on the valuation date for the 2006 plan year (taking into account assets attributable to contributions for the 2006 plan year).

(4) *Subtraction of credit balance.* The plan's funding standard account credit balance as of the end of the 2006 plan year is generally subtracted from the value of plan assets determined after application of paragraph (j)(5)(iii)(D)(3) of this section. However, this subtraction does not apply if the value of plan assets is greater than or equal to 90 percent of the plan's current liability determined under section 412(1)(7) (as in effect prior to amendment by PPA '06) on the valuation date for the 2006 plan year.

(E) *Special rules for mergers and spin-offs.* Rules similar to the rules of paragraph (j)(5)(ii) of this section apply for purposes of determining the adjusted funding target attainment percentage for the 2007 plan year in the case of a newly established plan, a plan that is the result of a merger of two plans, or a plan that is involved in a spinoff.

(6) *Prohibited payment—(i) General rule.* The term *prohibited payment* means—

(A) Any payment for a month that is in excess of the monthly amount paid under a straight 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 occurs during any period that a limitation under paragraph (d) of this section is in effect;

(B) Any payment for the purchase of an irrevocable commitment from an insurer to pay benefits;

(C) Any transfer of assets and liabilities to another plan maintained by the same employer (or by any member of the employer's controlled group) that is made in order to avoid or terminate

the application of section 436 benefit limitations; and

(D) Any other amount that is identified as a prohibited payment by the Commissioner in revenue rulings and procedures, notices, and other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) relating to objectives and standards for publishing regulations, revenue rulings and revenue procedures in the Internal Revenue Bulletin).

(ii) *Special rule for beneficiaries.* In the case of a beneficiary that is not an individual, the amount that is a prohibited payment is determined by substituting for the amount in paragraph (j)(1)(i)(A) of this section the monthly amount payable in installments over 240 months that is actuarially equivalent to the benefit payable to the beneficiary.

(7) *Section 436 contributions.* Section 436 contributions are the contributions described in paragraph (f)(2) of this section that are made in order to avoid the application of section 436 limitations under a plan for a plan year.

(8) *Section 436 measurement date.* A section 436 measurement date is the date that is used to determine when the limitations of sections 436(d) and 436(e) apply or cease to apply, and is also used for calculations with respect to applying the limitations of paragraphs (b) and (c) of this section. See paragraphs (h)(1)(i), (h)(2)(iii)(B), (h)(2)(iv)(B), and (h)(3)(i) of this section regarding section 436 measurement dates that result from application of the presumptions under paragraph (h) of this section.

(9) *Unpredictable contingent event.* An unpredictable contingent event benefit means any benefit or increase in benefits to the extent the benefit or increase would not be payable but for the occurrence of an unpredictable contingent event. For this purpose, an unpredictable contingent event means a plant shutdown (whether full or partial) or similar event, or an event (including the absence of an event) other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability. For example, if a plan provides for an unreduced early retirement benefit upon the occurrence

of an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, then that unreduced early retirement benefit is an unpredictable contingent event benefit to the extent of any portion of the benefit that would not be payable but for the occurrence of the event, even if the remainder of the benefit is payable without regard to the occurrence of the event. Similarly, if a plan includes a benefit payable upon the presence (including the absence) of circumstances specified in the plan (other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability), but not upon a severance from employment that does not include those circumstances, that benefit is an unpredictable contingent event benefit.

(10) *Examples.* The following examples illustrate the rules of this paragraph (j):

*Example 1.* (i) Plan S is a non-collectively bargained defined benefit plan with a plan year that is the calendar year and a valuation date of January 1. The first effective plan year is 2008. Plan S is not in at-risk status for 2008.

(ii) As of January 1, 2008, Plan S has a value of plan assets (equal to the market value of assets) of \$2,100,000 and a funding standard carryover balance of \$200,000. During 2006, assets from Plan S were used to purchase a total of \$100,000 in annuities for employees other than highly compensated employees. No annuities were purchased during 2007. On May 1, 2008, the enrolled actuary for the plan determines that the funding target as of January 1, 2008, is \$2,500,000.

(iii) The adjusted value of assets for Plan S as of January 1, 2008, is \$2,000,000 (that is, plan assets of \$2,100,000, plus annuity purchases of \$100,000, and minus the funding standard carryover balance of \$200,000). The adjusted funding target is \$2,600,000 (that is, the funding target of \$2,500,000, increased by the annuity purchases of \$100,000).

(iv) Based on the above adjusted plan assets and adjusted funding target, the adjusted funding target attainment percentage (AFTAP) as of January 1, 2008, would be 76.92%. Since the AFTAP is less than 80% but is at least 60%, Plan S is subject to the restrictions in paragraph (d)(3) of this section.

*Example 2.* (i) The facts are the same as in *Example 1*, except that it is reasonable to expect that the plan sponsor will make a contribution of \$80,000 to Plan S for the 2007 plan



year by September 15, 2008. This amount is in excess of the minimum required contribution for 2007. The plan sponsor elects to reduce the funding standard carryover balance by \$80,000.

(ii) Because it is reasonable to expect that the \$80,000 will be contributed by the plan sponsor, that amount is taken into account when the enrolled actuary certifies the 2008 AFTAP under the special rule in paragraph (h)(4)(i)(B) of this section for plan years beginning before 2009. Accordingly, the enrolled actuary for the plan certifies the 2008 AFTAP as 80% (that is, adjusted plan assets of \$2,080,000, reflecting the \$80,000 in contributions receivable, divided by the adjusted funding target of \$2,600,000).

(iii) The ability to take contributions into account before they are actually paid to the plan is available only for plan years beginning before 2009. Furthermore, if the employer does not actually make the contribution and the difference between the incorrect certification and the corrected AFTAP constitutes a material change, the plan will have violated section 401(a)(29) or will not have been operated in accordance with its terms.

*Example 3.* (i) Plan R is a defined benefit plan with a plan year that is the calendar year and a valuation date of January 1. Section 436 applies to Plan R for 2008. The valuation interest rate for the 2007 plan year for Plan R is 7%. The fair market value of assets of Plan R as of January 1, 2007, is \$1,000,000. The actuarial value of assets of Plan R as of January 1, 2007, is \$1,200,000. The current liability of Plan R as of January 1, 2007, is \$1,500,000. The funding standard account credit balance as of January 1, 2007, is \$80,000. The funding standard carryover balance of Plan R is \$50,000 as of the beginning of the 2008 plan year. The sponsor of Plan R, Sponsor T, elects in 2008 to reduce the funding standard carryover balance in accordance with § 1.430(f)-1 by \$45,000. No annuities were purchased using plan assets during 2005 or 2006.

(ii) Pursuant to paragraph (j)(5)(iii)(B)(1) of this section, the asset value used to determine the AFTAP for the 2007 plan year is limited to 110% of the fair market value of assets on January 1, 2007, or \$1,100,000 (110% of \$1,000,000).

(iii) Pursuant to paragraph (j)(5)(iii)(B)(2) of this section, the funding standard account credit balance as of January 1, 2007, is subtracted from the asset value used to determine the AFTAP for the 2007 plan year. However, pursuant to paragraph (j)(5)(iii)(B)(3) of this section, the present value of the amount by which Sponsor T elected to reduce the funding standard carryover balance in 2008 is not subtracted.

(iv) The present value, determined at an interest rate of 7%, of the \$45,000 reduction in the funding standard carryover balance

elected by Sponsor T in 2008 is \$42,056. Thus, \$42,056 is not subtracted from the 2007 plan year asset value. Accordingly, the funding standard account credit balance that is subtracted from the 2007 plan year asset value is \$37,944 (that is, \$80,000 less \$42,056).

(v) Thus, the asset value that is used to determine the FTAP for the 2007 plan year is \$1,100,000 less \$37,944, or \$1,062,056. Accordingly, for purposes of this section, the FTAP for the 2007 plan year for Plan R is 70.8% (that is, \$1,062,056 divided by \$1,500,000).

*Example 4.* (i) Plan T is a non-collectively bargained defined benefit plan that was established prior to 2007. Plan T has a plan year that is the calendar year and a valuation date of January 1. The first effective plan year is 2008; the plan met the conditions of paragraph (j)(1)(ii)(E) of this section for 2008. As of January 1, 2009, Plan T has a value of plan assets (equal to the market value of assets) of \$3,000,000, a funding standard carryover balance of \$150,000, and a prefunding balance of \$50,000. During 2007 and 2008, assets from Plan T were used to purchase a total of \$400,000 in annuities for employees other than highly compensated employees. The funding target for Plan T (without regard to the at-risk rules of section 430(i)) is \$3,200,000 as of January 1, 2009.

(ii) The plan's funding status is calculated in accordance with paragraph (j)(1)(ii)(B) of this section to determine whether the special rule for fully-funded plans applies to Plan T. Accordingly, the value of plan assets determined without subtracting the funding standard carryover balance and the prefunding balance is 93.75% of the plan's funding target (\$3,000,000 + \$3,200,000). The applicable transitional percentage in paragraph (j)(1)(ii)(D) of this section is 94% for 2009. Because the percentage calculated above is less than 94%, the transition rule does not apply to Plan T.

(iii) Accordingly, the January 1, 2009, AFTAP for Plan T is calculated without reflecting the special rule in paragraph (j)(1)(ii)(B) of this section. The AFTAP as of January 1, 2009, is calculated by dividing the adjusted assets by the adjusted funding target. For this purpose, the value of assets is increased by the annuities purchased for nonhighly compensated employees during 2007 and 2008, and decreased by the funding standard carryover balance and the prefunding balance as of January 1, 2009, resulting in an adjusted asset value of \$3,200,000 (that is, \$3,000,000 + \$400,000 - \$150,000 - \$50,000). The funding target is increased by the annuities purchased for nonhighly compensated employees during 2007 and 2008, resulting in an adjusted funding target of \$3,600,000 (that is, \$3,200,000 + \$400,000). The AFTAP for Plan T for 2009 is therefore \$3,200,000 ÷ \$3,600,000, or 88.89%.

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(k) *Effective/applicability dates*—(1) *Statutory effective date.* Section 436 generally applies to plan years beginning on or after January 1, 2008. The applicability of section 436 for purposes of determining the minimum required contribution is delayed for certain plans in accordance with sections 104 through 106 of PPA '06.

(2) *Collectively bargained plan exception*—(i) *In general.* In the case of a collectively bargained plan that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before January 1, 2008, section 436 does not apply to plan years beginning before the earlier of—

- (A) January 1, 2010; or
- (B) The later of—

(1) The date on which the last such collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after August 17, 2006); or

(2) The first day of the first plan year to which section 436 would (but for this paragraph (k)(2)) apply.

(ii) *Treatment of certain plan amendments.* For purposes of this paragraph

(k)(2), 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 section 436 is not treated as a termination of the collective bargaining agreement.

(iii) *Treatment of plans with both collectively bargained and non-collectively bargained employees.* In the case of a plan with respect to which a collective bargaining agreement applies to some, but not all, of the plan participants, the plan is considered a collectively bargained plan for purposes of this paragraph (k)(2) if it is considered a collectively bargained plan under the rules of paragraph (a)(5)(ii)(B) of this section.

(3) *Effective date/applicability date of regulations.* This section applies to plan years beginning on or after January 1, 2010. For plan years beginning before January 1, 2010, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 436.

[T.D. 9467, 74 FR 53061, Oct. 15, 2009]

**§§ 1.437–1.440 [Reserved]**