DESCRIPTION OF THE BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO PENSIONS

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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of the Budget Reconciliation Legislative Recommendations Relating to Pensions on February 10, 2021. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Budget Reconciliation Legislative Recommendations Relating to Pensions* (JCX-4-21), February 8, 2021. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended (herein "Code"), unless otherwise stated.

BUDGET RECONCILIATION LEGISLATIVE RECOMMENDATIONS RELATING TO PENSIONS

SUBTITLE H—PENSIONS

A. Temporary Delay of Designation of Multiemployer Plans as in Endangered, Critical or Critical and Declining Status

Present Law

Multiemployer plans

A multiemployer plan is a plan to which more than one unrelated employer contributes, that is established pursuant to one or more collective bargaining agreements, and which meets such other requirements as specified by the Secretary of Labor.[2] Multiemployer plans are governed by a board of trustees consisting of an equal number of employer and employee representatives, referred to as the plan sponsor. In general, the level of contributions to a multiemployer plan is specified in the applicable collective bargaining agreements, and the level of plan benefits is established by the plan sponsor.

Like other private defined benefit plans,[3] multiemployer defined benefit plans are subject to minimum funding requirements under the Code and the Employee Retirement Income Security Act of 1974 ("ERISA").[4] An excise tax may be imposed on the employers maintaining the plan if the funding requirements are not met.[5] However, the excise tax does not apply for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status (as defined below).[6]

General funding requirements for multiemployer plans

Employer contributions to a defined benefit plan are generally subject to minimum funding requirements, the details of which depend on whether the plan is a single employer plan or a multiemployer plan. Unless a funding waiver is obtained, an employer may be subject to a two-tier excise tax if the funding requirements are not met.

In general, the annual deduction limit on employer contributions to a multiemployer defined benefit plan for a year is the excess of (1) 140 percent of the plan's current liability (the

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[2] Sec. 414(f) and ERISA section 2(37).

[3] Sec. 414(j).

[4] Secs. 412 and 431, and ERISA secs. 302 and 304. Additional rules apply to multiemployer plans that are insolvent under section 418E and ERISA section 4245. Certain changes were made to the funding requirements for multiemployer plans by the Pension Protection Act of 2006 ("PPA"), Pub. L. No. 109-280 and by the Multiemployer Pension Reform Act of 2014 ("MPRA"), Pub. L. No. 113-235, Division O.

[5] Sec. 4971.

[6] Sec. 4971(g)(1).

present value of all benefits earned under the plan), over (2) the value of plan assets. However, the deduction limit is never less than the amount of contributions required under the funding rules. If contributions exceed the amount deductible, the employers that contribute to the multiemployer plan are generally subject to an excise tax.

General funding requirements apply to all multiemployer plans. Additional funding requirements apply to plans in endangered or critical status, as defined below. An employer that withdraws from a multiemployer plan is generally liable to the plan for a portion of the plan's unfunded vested benefits, referred to as withdrawal liability. Various provisions limit the amount of an employer's withdrawal liability.

Under the general funding requirements, a multiemployer defined benefit plan maintains a funding standard account, to which charges (such as for benefit accruals and negative plan experience) and credits (such as for positive plan experience and contributions) are made. The minimum required contribution for a plan year is the amount, if any, needed to balance accumulated credits and accumulated charges to the funding standard account. If required contributions are not made, causing the funding standard account to have a negative balance, an accumulated funding deficiency results.

A multiemployer plan is required to use an acceptable actuarial cost method (referred to as the plan's funding method) to determine the elements included in its funding standard account for a year, including normal cost and supplemental cost. Normal cost generally represents the cost of future benefits allocated to the year under the plan's funding method. The supplemental cost for a plan year is the cost of future benefits that would not be met by future normal costs, future employee contributions, or plan assets. Supplemental costs may be attributable to past service liability or to worse than expected plan experience. Supplemental costs are amortized (that is, recognized for funding purposes) over a specified number of years (generally 15 years) by annual charges to the funding standard account over that period. Factors that result in a supplemental loss can alternatively result in a gain that is recognized by annual credits to the funding standard account over a 15-year amortization period (in addition to a credit for contributions made for the plan year).

Actuarial assumptions used under the multiemployer plan funding rules must be reasonable. The interest rate (which represents the expected return on plan assets over time) and mortality assumptions used in funding computations are subject to these general standards; the funding rules do not specify the interest rate or mortality tables that need to be used. For funding purposes, the actuarial value of plan assets may be used, rather than fair market value, subject to certain conditions.

Additional requirements relating to plans in endangered or critical status

In general

Additional funding-related requirements apply to a multiemployer defined benefit pension plan that is in endangered or critical status. In connection with the endangered and critical rules, not later than the 90th day of each plan year, the actuary for any multiemployer plan must certify to the Secretary and to the plan sponsor whether or not the plan is in endangered or critical status for the plan year. In the case of a plan which is in a funding improvement period or rehabilitation period, the actuary must also certify whether or not the plan is making its scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan. If a plan is certified as being in endangered or critical status, notice of endangered or critical status must be provided within 30 days after the date of certification to plan participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation (PBGC), and the Secretary of Labor. Additional notice requirements apply in the case of a plan certified as being in critical status.

Failure of the plan's actuary to certify the status of the plan is treated as a failure to file the annual report (thus, an ERISA penalty of up to $1,100 per day applies).

Various requirements apply to a plan in endangered or critical status, including adoption of and compliance with (1) a funding improvement plan in the case of a multiemployer plan in endangered status, and (2) a rehabilitation plan in the case of a multiemployer plan in critical status. In addition, restrictions on certain plan amendments, benefit increases, and reductions in employer contributions apply during certain periods.

A multiemployer plan is generally in endangered status if the plan is not in critical status and, as of the beginning of the plan year, (1) the plan's funded percentage for the plan year is less than 80 percent, or (2) the plan has an accumulated funding deficiency for the plan year or is projected to have an accumulated funding deficiency in any of the six succeeding plan years (taking into account amortization extensions).[7] A plan's funded percentage is the percentage determined by dividing the value of plan assets by the accrued liability of the plan. A plan that meets the requirements of both (1) and (2) is treated as in seriously endangered status.

A multiemployer plan is in critical status for a plan year if, as of the beginning of the plan year, it meets any of the following definitions:

- The funded percentage of the plan is less than 65 percent and the sum of (1) the market value of plan assets, plus (2) the present value of reasonably anticipated employer and employee contributions for the current plan year and each of the six succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the six succeeding plan years (plus administrative expenses);
- The plan has an accumulated funding deficiency for the current plan year, not taking into account any amortization period extensions, or (2) the plan is projected to have an accumulated funding deficiency for any of the three succeeding plan years (four succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any amortization period extensions;
- The plan's normal cost for the current plan year, plus interest for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last day of the

[7] Sec. 432(b)(1) and ERISA sec. 305(b)(1).

preceding year, exceeds the present value of the reasonably anticipated employer contributions for the current plan year, (2) the present value of vested (that is, nonforfeitable) benefits of inactive participants is greater than the present value of vested benefits of active participants, and (3) the plan has an accumulated funding deficiency for the current plan year, or is projected to have an accumulated funding deficiency for any of the four succeeding plan years (not taking into account amortization period extensions); or

- The sum of (1) the fair market value of plan assets, plus (2) the present value of the reasonably anticipated employer contributions for the current plan year and each of the four succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the four succeeding plan years (plus administrative expenses).[8]

The first plan year for which the plan is in critical status is referred to as the "initial critical year," and governs the timing of certain requirements and periods.

In making the determinations and projections applicable in determining and certifying endangered or critical status (or neither), the plan actuary must follow certain statutory standards. The actuary's projections generally must be based on reasonable actuarial estimates, assumptions, and methods that offer the actuary's best estimate of anticipated experience under the plan.[9] In addition, the plan actuary must make projections for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of the year. The projected present value of liabilities as of the beginning of the year must be based on the most recent actuarial statement required with respect to the most recently filed annual report or the actuarial valuation for the preceding plan year. Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, must be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

In the case of a multiemployer plan in critical status, additional required contributions (referred to as employer surcharges) apply until the adoption of a collective bargaining agreement that is consistent with the rehabilitation plan. In addition, employers are relieved of liability for minimum required contributions under the otherwise applicable funding rules (and the related excise tax), provided that a rehabilitation plan is adopted and followed.[10] Moreover,

[8] Sec. 432(b)(2) and ERISA sec. 305(b)(2).

[9] Under section 432(j)(8) and ERISA section 305(j)(8), for purposes of the endangered and critical rules, various actuarial computations are based upon the unit credit funding method, regardless of whether it is the funding method used in applying the general funding requirements to the plan.

[10] Sec. 4971(g)(1)(A).

subject to notice requirements, some benefits that would otherwise be protected from elimination or reduction may be eliminated or reduced in accordance with the rehabilitation plan.[11]

In the case of a failure to meet the requirements applicable to a multiemployer plan in endangered or critical status, the plan actuary, plan sponsor, or employers required to contribute to the plan may be subject to an excise tax under the Code or a civil penalty under ERISA.[12]

Description of Proposal

Under the proposal, the sponsor of a multiemployer defined benefit pension plan may elect for an applicable plan year to treat the plan's status for purposes of the additional funding rules applicable to multiemployer plans in endangered or critical status[13] the same as the plan's status for the preceding plan year. The applicable plan year is either the first plan year beginning during the period beginning on March 1, 2020 and ending on February 28, 2021, or the next succeeding plan year, as designated by the plan sponsor. Thus, for example, a calendar year plan that is not in critical or endangered status for 2020 may elect to retain its non-critical and non-endangered status for 2021, and a calendar year plan that was in either critical or endangered status for 2020 may elect to retain such status for 2021.

An election under the proposal may only be revoked with the consent of the Secretary of the Treasury and special notice provisions apply with respect to the election and the notification of participants, the bargaining parties, the PBGC, and the Secretary of Labor.

In the case of a plan that elects to retain its endangered or critical status, the plan is not required to update its funding improvement or rehabilitation plan and schedules (as applicable) until the plan year that follows the applicable plan year. If an election is made by a plan under the proposal and, without regard to the election, the plan is certified by the plan's actuary for the applicable plan year to be in critical status, the plan is treated as a plan in critical status for purposes of the special rules that relieve contributing employers from liability for minimum required contributions (that would apply under the otherwise applicable minimum funding rules) and the excise tax that applies in the case of a failure to make such contributions.

Effective Date

The proposal is effective on the date of enactment.

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[11] The rules for multiemployer plans in critical status include the elimination or reduction of "adjustable benefits," which include some benefits that would otherwise be protected from elimination or reduction under the anti-cutback rules under section 411(d)(6) and ERISA section 204(g).

[12] Sec. 4971(g) and ERISA sec. 502(c)(8). In addition, certain failures are treated as a failure to file an annual report with respect to the multiemployer plan, subject to a civil penalty under ERISA.

[13] For purposes of sec. 432 and sec. 305 of ERISA.

B. Temporary Extension of the Funding Improvement and Rehabilitation Periods for Multiemployer Pension Plans in Critical and Endangered Status for 2020 or 2021

Present Law

General funding requirements for multiemployer plans

General funding requirements apply to all multiemployer plans. For background relating to such requirements, see Present Law under section A. above.

Funding improvement and rehabilitation plans and periods

Under section 432, additional funding rules apply to a multiemployer defined benefit pension plan that is in endangered or critical status. These rules require the adoption of and compliance with (1) a funding improvement plan in the case of a multiemployer plan in endangered status, and (2) a rehabilitation plan in the case of a multiemployer plan in critical status.

The funding improvement period is the 10-year period beginning on the first day of the first plan year beginning after the earlier of (1) the second anniversary of the date of adoption of the funding improvement plan, or (2) the expiration of collective bargaining agreements that were in effect on the due date for the actuarial certification of endangered status for the initial determination year and covering, as of such date, at least 75 percent of the plan's active participants. The period ends if the plan is no longer in endangered status or if the plan enters critical status. Generally, in the case of a "seriously endangered plan," the funding improvement period is 15 years, rather than 10 years. The rehabilitation period is the 10-year period beginning on the first day of the first plan year following the earlier of (1) the second anniversary of the date of adoption of the rehabilitation plan or (2) the expiration of collective bargaining agreements that were in effect on the due date for the actuarial certification of critical status for the initial critical year and covering at least 75 percent of the active participants in the plan as of such due date. The rehabilitation period ends if the plan emerges from critical status.

Description of Proposal

Under the proposal, a plan sponsor of a multiemployer defined benefit pension plan that is in endangered or critical status for a plan year beginning in 2020 or 2021 may elect to extend the plan's otherwise applicable funding improvement or rehabilitation period by five years, from 10 to 15 years. If a multiemployer defined benefit pension plan is in seriously endangered status for a plan year beginning in 2020 or 2021, the plan sponsor may elect to extend the plan's otherwise applicable funding improvement period by five years from 15 to 20 years.

The election is to be made at such time, and in such manner and form, as the Secretary of the Treasury, or the Secretary's delegate, may prescribe in consultation with the Secretary of Labor.

Effective Date

The proposal is effective for plan years beginning after December 31, 2019.

C. Adjustments to Funding Standard Account Rules

Present Law

Defined benefit pension plans generally are subject to minimum funding rules under the Code that require the sponsoring employer to periodically make contributions to fund plan benefits. Similar rules apply to plans under ERISA.

The minimum funding rules for single employer and multiemployer plans are different.[14] A single employer plan is a plan that is not a multiemployer plan. A multiemployer plan is generally a plan to which more than one employer is required to contribute and which is maintained pursuant to a collective bargaining agreement.[15]

Funding standard account

A multiemployer defined benefit pension plan is required to maintain a special account called a "funding standard account" to which charges and credits (such as credits for plan contributions) are made for each plan year. If, as of the close of the plan year, charges to the funding standard account exceed credits to the account, the plan has an "accumulated funding deficiency" equal to the amount of such excess charges. For example, if the balance of charges to the funding standard account of a plan for a year would be $200,000 without any contributions, then a minimum contribution equal to that amount is required to meet the minimum funding standard for the year to prevent an accumulated funding deficiency. If credits to the funding standard account exceeds charges, a "credit balance" results. The amount of the credit balance, increased with interest, can be used to reduce future required contributions.

Amortization periods

A plan is required to use an acceptable actuarial cost method to determine the elements included in its funding standard account for a year. Generally, an acceptable actuarial cost method breaks up the cost of benefits under the plan into annual charges consisting of two elements for each plan year. These elements are referred to as the: (1) normal cost and (2) amortization of supplemental cost. The normal cost for a plan for a plan year generally represents the cost of future benefits allocated to the plan year under the funding method used by the plan for current employees. The supplemental cost for a plan year is the cost of future benefits that would not be met by future normal costs, future employee contributions, or plan assets, such as a net experience loss. Supplemental costs are amortized (i.e., recognized for funding purposes) over a specified number of years, depending on the source. The amortization

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[14] The Pension Protection Act of 2006, Pub. L. No. 109-280, modified the minimum funding rules for multiemployer defined benefit pension plans. These modifications are generally effective for plan years beginning after 2007.

[15] Sec. 414(f) and sec. 3(37) of ERISA.

period applicable to a multiemployer plan for most credits and charges is 15 years.[16] Past service liability under the plan is amortized over 15 years;[17] past service liability due to plan amendments is amortized over 15 years; and experience gains and losses resulting from a change in actuarial assumptions are amortized over 15 years. Experience gains and losses and waived funding deficiencies are also amortized over 15 years.

The Secretary, upon receipt of an application, is required to grant an extension of the amortization period for up to five years with respect to any unfunded past service liability, investment loss, or experience loss.[18] There must be included with the application a certification by the plan's actuary that: (1) absent the extension, the plan would have an accumulated funding deficiency in the current plan year and any of the nine succeeding plan years; (2) the plan sponsor has adopted a plan to improve the plan's funding status; (3) taking into account the extension, the plan is projected to have sufficient assets to timely pay its expected benefit liabilities and other anticipated expenditures; and (4) required notice has been provided. The Secretary may also grant an additional extension of such amortization periods for an additional five years, using the same standards for determining whether such an extension may be granted as under the pre-Pension Protection Act of 2006 ("PPA 2006")[19] minimum funding rules.[20]

Actuarial assumptions

In applying the funding rules, all costs, liabilities, interest rates, and other factors are required to be determined on the basis of actuarial assumptions and methods, each of which must be reasonable (taking into account the experience of the plan and reasonable expectations), or which, in the aggregate, result in a total plan contribution equivalent to a contribution that would be obtained if each assumption and method were reasonable. In addition, the assumptions are required to offer the actuary's best estimate of anticipated experience under the plan.

Valuation of plan assets

In determining the charges and credits to be made to the plan's funding standard account for a multiemployer plan, the value of plan assets may be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is

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[16] Sec. 431(b)(2) and sec. 304(b)(2) of ERISA. Prior to the effective date of PPA, the amortization period was 30 years for past service liability, past service liability due to plan amendments, and losses and gains resulting from a change in actuarial assumptions.

[17] In the case of a plan in existence on January 1, 1974, past service liability under the plan on the first day on which the plan was first subject to ERISA was amortized over 40 years. In the case of a plan which was not in existence on January 1, 1974, past service liability under the plan on the first day on which the plan was first subject to ERISA was amortized over 30 years. Past service liability due to plan amendments was amortized over 30 years.

[18] Sec. 431(d)(1) and sec. 304(d)(1) of ERISA.

[19] Pub. L. No. 109-280.

[20] Sec. 431(d)(2) and sec. 304(d)(2) of ERISA.

permitted under regulations prescribed by the Secretary.[21] Thus, the actuarial value of a plan's assets under a reasonable actuarial valuation method may be used instead of fair market value. A reasonable actuarial valuation method generally may include a smoothing methodology that takes into account reasonable expected investment returns and average values of the plan assets, so long as the smoothing or averaging period does not exceed the five most recent plan years, including the current plan year. In addition, in order to be reasonable, any actuarial valuation method used by the plan is required to result in a value of plan assets that is not less than 80 percent of the current fair market value of the assets and not more than 120 percent of the current fair market value.[22] In determining plan funding under an acceptable actuarial cost method, a plan's actuary generally makes certain assumptions regarding the future experience of a plan.

The actuarial valuation method is considered to be part of the plan's funding method. The same method must be used each plan year. If the valuation method is changed, the change is only permitted to take effect if approved by the Secretary of the Treasury.[23]

Additional funding rules for plans in endangered or critical status

Under section 432,[24] additional funding rules apply to a multiemployer defined benefit pension plan that is in endangered or critical status. These rules require the adoption of and compliance with: (1) a funding improvement plan in the case of a multiemployer plan in endangered status; and (2) a rehabilitation plan in the case of a multiemployer plan in critical status. In the case of a plan in critical status, additional required contributions and benefit reductions apply and employers are relieved of liability for minimum required contributions under the otherwise applicable funding rules, provided that a rehabilitation plan is adopted and followed.

Failure to comply with minimum funding rules

In the event of a failure to comply with the minimum funding rules, the Code imposes a two-level excise tax on the plan sponsor.[25] The initial tax is five percent of the plan's accumulated funding deficiency for multiemployer plans. An additional tax is imposed if the failure is not corrected before the date that a notice of deficiency with respect to the initial five percent tax is mailed to the employer by the IRS or the date of assessment of the initial tax. The additional tax is equal to 100 percent of the unpaid contribution or the accumulated funding deficiency, whichever is applicable. Before issuing a notice of deficiency with respect to the

[21] Sec. 431(c)(2) and sec. 304(c)(2) of ERISA.

[22] Treas. Reg. sec. 1.412(c)(2)-1(b). Rev. Proc. 2000-40, 2000-2 CB 357, generally indicates that only an averaging period that does not exceed five years will be approved by the IRS. The revenue procedure also indicates that for a funding valuation method to be approved, the asset value determined under the method must be adjusted to be no greater than 120 percent and no less than 80 percent of the fair market value.

[23] Sec. 412(d)(1) and sec. 302(d)(1) of ERISA.

[24] Parallel rules apply under ERISA.

[25] Sec. 4971. Special rules apply under section 4971 for multiemployer plans in endangered or critical status.

excise tax, the Secretary must notify the Secretary of Labor and provide the Secretary of Labor with a reasonable opportunity to require the employer responsible for contributing to, or under, the plan to correct the deficiency or comment on the imposition of the tax.

Description of Proposal

Special funding relief rules

A plan sponsor of a multiemployer plan that meets a solvency test (described below) is permitted to use either one or both of two special funding relief rules which apply generally for the first two plan years ending after February 29, 2020. The special relief is not available to a plan to which special financial assistance is granted.[26]

Amortization of net investment losses

The first special funding relief rule allows the plan sponsor to treat the portion of its experience loss attributable to the net investment losses (if any), as well as any other losses related to the virus SARS-CoV-2 or coronavirus disease 2019 ("COVID-19")(including experience losses related to reductions in contributions, reductions in employment, and deviations from anticipated retirement rates, as determined by the plan sponsor), incurred in either or both of the first two plan years ending after February 29, 2020, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period beginning with the plan year in which such portion is first recognized in the actuarial value of assets and ending with the last plan year in the 30-plan-year period beginning with the plan year in which the net investment loss was incurred. If this treatment is used for a plan year, the plan sponsor is not eligible for an extension of this amortization period for this separate item, and if an extension was granted before electing this treatment of net investment losses, such extension must not result in such amortization period exceeding 30 years.

A plan sponsor is required to determine its net investment losses in the manner described by the Secretary, on the basis of the difference between actual and expected returns (including any difference attributable to any criminally fraudulent investment arrangement). The determination as to whether an arrangement is a criminally fraudulent investment arrangement is made under rules substantially similar to the rules prescribed by the Secretary for purposes of section 165.

Expanded smoothing period and asset valuation corridor

Under the other special funding relief rule, a multiemployer plan may change its asset valuation method in a manner which spreads the difference between the expected returns and actual returns for either or both of the first two plan years ending after February 29, 2020 over a period of not more than 10 years. However, as under present law, spreading the difference between expected and actual returns under a plan's asset valuation method is only permitted if it

[26] Pursuant to section 4262 of ERISA, as added by Part D of this proposal.

does not result in a value of plan assets, when compared to the current fair market value of the plan assets, to be at any time outside an asset valuation corridor.

Under this special funding relief rule, the asset valuation corridor is expanded so that, for either or both of the first two plan years beginning after February 29, 2020, the plan's asset value must be adjusted under the valuation method being used so the value of plan assets is not less than 80 percent of the current fair market value of the assets and not more than 130 percent of the current fair market value (rather than 120 percent). This expanded valuation corridor is available whether or not the plan sponsor increases the period for spreading the difference between expected and actual returns under its asset valuation method.

If a plan sponsor uses either or both of the options (extending the spreading period and the expanded asset valuation corridor) under this special relief rule for one or both of these plan years, the Secretary shall not treat the asset valuation method of the plan as unreasonable solely because of such change and the change will be deemed to be approved by the Secretary.

Amortization of reduction in unfunded accrued liability

To the extent a plan sponsor uses both of the two special funding relief rules for any plan year, the plan is required to treat any resulting reduction in the plan's unfunded accrued liability as a separate experience amortization base. This separate experience amortization base is amortized in annual installments (until fully amortized) over a period of 30 plan years (rather than the otherwise applicable amortization period).

Solvency test

The solvency test is satisfied only if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under the special funding relief rule elected.

Benefit restriction

If a plan sponsor of a multiemployer plan uses one, or both, of the special funding relief rules under this provision, then, in addition to any other applicable restrictions on benefit increases, the following limit also applies. A plan amendment increasing benefits may not go into effect during either of the two plan years immediately following any plan year to which such election first applies unless one of the following conditions is satisfied: either (1) the plan actuary certifies that such increase is paid for out of additional contributions not allocated to the plan immediately before the election was made, and the plan's funded percentage and projected credit balances for such two plan years are reasonably expected to be generally at the same levels as such percentage and balances would have been if the benefit increase had not been adopted, or (2) the amendment is required to maintain the plan's status as a qualified retirement plan under the applicable provisions of the Code or to comply with other applicable law.

Reporting

A plan sponsor of a multiemployer plan that uses one or both of these special funding relief rules must give notice to participants and beneficiaries of its use of the relief and must inform the PBGC of its use of the relief in such form and manner as the Director of the PBGC may prescribe.

Effective Date

The proposal takes effect as of the first day of the first plan year ending on or after February 29, 2020. However, if a plan sponsor uses either (or both) of the special funding relief provisions and such use affects the plan's funding standard account for the first plan year beginning after February 29, 2020, the use of the rule is disregarded for purposes of applying the provisions for additional funding rules for multiemployer plans in endangered or critical status to such plan year. The restriction on plan amendments increasing benefits is effective on the date of enactment of this proposal.

D. Special Financial Assistance Program for Financially Troubled Multiemployer Plans

Present Law

Multiemployer plans

A multiemployer plan is a plan to which more than one unrelated employer contributes, that is established pursuant to one or more collective bargaining agreements, and which meets such other requirements as specified by the Secretary of Labor.[27] Multiemployer plans are governed by a board of trustees consisting of an equal number of employer and employee representatives, referred to as the plan sponsor. In general, the level of contributions to a multiemployer plan is specified in the applicable collective bargaining agreements, and the level of plan benefits is established by the plan sponsor.

Like other private defined benefit plans,[28] multiemployer defined benefit plans are subject to minimum funding requirements under the Code and the Employee Retirement Income Security Act of 1974 ("ERISA").[29] An excise tax may be imposed on the employers maintaining the plan if the funding requirements are not met.[30] However, the excise tax does not apply for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status (as defined below).[31]

General funding requirements for multiemployer plans

Employer contributions to a defined benefit plan are generally subject to minimum funding requirements, the details of which depend on whether the plan is a single employer plan or a multiemployer plan. Unless a funding waiver is obtained, an employer may be subject to a two-tier excise tax if the funding requirements are not met.

In general, the annual deduction limit on employer contributions to a multiemployer defined benefit plan for a year is the excess of (1) 140 percent of the plan's current liability (the present value of all benefits earned under the plan), over (2) the value of plan assets. However, the deduction limit is never less than the amount of contributions required under the funding

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[27] Sec. 414(f) and ERISA section 2(37).

[28] Sec. 414(j).

[29] Secs. 412 and 431, and ERISA secs. 302 and 304. Additional rules apply to multiemployer plans that are insolvent under section 418E and ERISA section 4245. Certain changes were made to the funding requirements for multiemployer plans by the Pension Protection Act of 2006 ("PPA"), Pub. L. No. 109-280 and by the Multiemployer Pension Reform Act of 2014 ("MPRA"), Pub. L. No. 113-235, Division O.

[30] Sec. 4971.

[31] Sec. 4971(g)(1).

rules. If contributions exceed the amount deductible, the employers that contribute to the multiemployer plan are generally subject to an excise tax.

General funding requirements apply to all multiemployer plans. Additional funding requirements apply to plans in endangered or critical status, as defined below. An employer that withdraws from a multiemployer plan is generally liable to the plan for a portion of the plan's unfunded vested benefits, referred to as withdrawal liability. Various provisions limit the amount of an employer's withdrawal liability.

Under the general funding requirements, a multiemployer defined benefit plan maintains a funding standard account, to which charges (such as for benefit accruals and negative plan experience) and credits (such as for positive plan experience and contributions) are made. The minimum required contribution for a plan year is the amount, if any, needed to balance accumulated credits and accumulated charges to the funding standard account. If required contributions are not made, causing the funding standard account to have a negative balance, an accumulated funding deficiency results.

A multiemployer plan is required to use an acceptable actuarial cost method (referred to as the plan's funding method) to determine the elements included in its funding standard account for a year, including normal cost and supplemental cost. Normal cost generally represents the cost of future benefits allocated to the year under the plan's funding method. The supplemental cost for a plan year is the cost of future benefits that would not be met by future normal costs, future employee contributions, or plan assets. Supplemental costs may be attributable to past service liability or to worse than expected plan experience. Supplemental costs are amortized (that is, recognized for funding purposes) over a specified number of years (generally 15 years) by annual charges to the funding standard account over that period. Factors that result in a supplemental loss can alternatively result in a gain that is recognized by annual credits to the funding standard account over a 15-year amortization period (in addition to a credit for contributions made for the plan year).

Actuarial assumptions used under the multiemployer plan funding rules must be reasonable. The interest rate (which represents the expected return on plan assets over time) and mortality assumptions used in funding computations are subject to these general standards; the funding rules do not specify the interest rate or mortality tables that need to be used. For funding purposes, the actuarial value of plan assets may be used, rather than fair market value, subject to certain conditions.

Additional requirements relating to plans in endangered or critical status

In general

Additional funding-related requirements apply to a multiemployer defined benefit pension plan that is in endangered or critical status. In connection with the endangered and critical rules, not later than the 90th day of each plan year, the actuary for any multiemployer plan must certify to the Secretary and to the plan sponsor whether or not the plan is in endangered or critical status for the plan year. In the case of a plan which is in a funding improvement period or rehabilitation period, the actuary must also certify whether or not the plan is making its scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan. If a plan is certified as being in endangered or critical status, notice of endangered or critical status must be provided within 30 days after the date of certification to plan participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation (PBGC), and the Secretary of Labor. Additional notice requirements apply in the case of a plan certified as being in critical status.

Failure of the plan's actuary to certify the status of the plan is treated as a failure to file the annual report (thus, an ERISA penalty of up to $1,100 per day applies).

Various requirements apply to a plan in endangered or critical status, including adoption of and compliance with (1) a funding improvement plan in the case of a multiemployer plan in endangered status, and (2) a rehabilitation plan in the case of a multiemployer plan in critical status. In addition, restrictions on certain plan amendments, benefit increases, and reductions in employer contributions apply during certain periods.

A multiemployer plan is generally in endangered status if the plan is not in critical status and, as of the beginning of the plan year, (1) the plan's funded percentage for the plan year is less than 80 percent, or (2) the plan has an accumulated funding deficiency for the plan year or is projected to have an accumulated funding deficiency in any of the six succeeding plan years (taking into account amortization extensions).[32] A plan's funded percentage is the percentage determined by dividing the value of plan assets by the accrued liability of the plan. A plan that meets the requirements of both (1) and (2) is treated as in seriously endangered status.

A multiemployer plan is in critical status for a plan year if, as of the beginning of the plan year, it meets any of the following definitions:

- The funded percentage of the plan is less than 65 percent and the sum of (1) the market value of plan assets, plus (2) the present value of reasonably anticipated employer and employee contributions for the current plan year and each of the six succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the six succeeding plan years (plus administrative expenses);
- The plan has an accumulated funding deficiency for the current plan year, not taking into account any amortization period extensions, or (2) the plan is projected to have an accumulated funding deficiency for any of the three succeeding plan years (four succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any amortization period extensions;
- The plan's normal cost for the current plan year, plus interest for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last day of the preceding year, exceeds the present value of the reasonably anticipated employer contributions for the current plan year, (2) the present value of vested (that is,

[32] Sec. 432(b)(1) and ERISA sec. 305(b)(1).

nonforfeitable) benefits of inactive participants is greater than the present value of vested benefits of active participants, and (3) the plan has an accumulated funding deficiency for the current plan year, or is projected to have an accumulated funding deficiency for any of the four succeeding plan years (not taking into account amortization period extensions); or

- The sum of (1) the market value of plan assets, plus (2) the present value of the reasonably anticipated employer contributions for the current plan year and each of the four succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the four succeeding plan years (plus administrative expenses).[33]

The first plan year for which the plan is in critical status is referred to as the "initial critical year," and governs the timing of certain requirements and periods.

In making the determinations and projections applicable in determining and certifying endangered or critical status (or neither), the plan actuary must follow certain statutory standards. The actuary's projections generally must be based on reasonable actuarial estimates, assumptions, and methods that offer the actuary's best estimate of anticipated experience under the plan.[34] In addition, the plan actuary must make projections for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of the year. The projected present value of liabilities as of the beginning of the year must be based on the most recent actuarial statement required with respect to the most recently filed annual report or the actuarial valuation for the preceding plan year. Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, must be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

In the case of a multiemployer plan in critical status, additional required contributions (referred to as employer surcharges) apply until the adoption of a collective bargaining agreement that is consistent with the rehabilitation plan. In addition, employers are relieved of liability for minimum required contributions under the otherwise applicable funding rules (and the related excise tax), provided that a rehabilitation plan is adopted and followed.[35] Moreover,

[33] Sec. 432(b)(2) and ERISA sec. 305(b)(2).

[34] Under section 432(j)(8) and ERISA section 305(j)(8), for purposes of the endangered and critical rules, various actuarial computations are based upon the unit credit funding method, regardless of whether it is the funding method used in applying the general funding requirements to the plan.

[35] Sec. 4971(g)(1)(A).

subject to notice requirements, some benefits that would otherwise be protected from elimination or reduction may be eliminated or reduced in accordance with the rehabilitation plan.[36]

In the case of a failure to meet the requirements applicable to a multiemployer plan in endangered or critical status, the plan actuary, plan sponsor, or employers required to contribute to the plan may be subject to an excise tax under the Code or a civil penalty under ERISA.[37]

Anti-cutback exceptions for multiemployer plans

Under the anti-cutback rules, generally applicable to defined benefit plans, a plan amendment generally may not reduce accrued benefits or reduce or eliminate an optional form of benefit, early retirement benefit, or retirement-type subsidy with respect to accrued benefits. Amendments are generally permitted only to reduce future rates of accrual, eliminate optional forms of benefit, or eliminate or reduce early retirement benefits or retirement-type subsidies only with respect to future accruals; and, in those cases, notice must be provided.

In the case of a multiemployer defined benefit plan that is in critical status[38] or critical and declining status,[39] or is insolvent,[40] subject to notice and other procedural requirements, certain plan benefits that would otherwise be protected under the anti-cutback rules are required or permitted to be reduced or eliminated.

In the case of a multiemployer plan in critical status, payments in excess of a single life annuity (plus any social security supplement, if applicable) may not be made to a participant or beneficiary who begins receiving benefits after notice that the plan is in critical status is provided and payments may not be made for the purchase of an irrevocable commitment from an insurer to pay benefits. In addition, the plan sponsor may reduce certain benefits ("adjustable benefits") that the plan sponsor deems appropriate, but not for a participant or beneficiary who began to receive benefits before receiving notice that the plan is in critical status. Adjustable benefits generally include disability benefits not in pay status, early retirement benefits or retirement-type subsidies, and most benefit payment options, but not the amount of an accrued benefit payable at normal retirement age.

In general, a multiemployer plan is insolvent when its available resources in a plan year are not sufficient to pay the plan benefits for that plan year. In that case, benefits must be reduced to the level that can be covered by the plan's assets, but not below the level of benefits

[36] The rules for multiemployer plans in critical status include the elimination or reduction of "adjustable benefits," which include some benefits that would otherwise be protected from elimination or reduction under the anti-cutback rules under section 411(d)(6) and ERISA section 204(g).

[37] Sec. 4971(g) and ERISA sec. 502(c)(8). In addition, certain failures are treated as a failure to file an annual report with respect to the multiemployer plan, subject to a civil penalty under ERISA.

[38] Sec. 432(b)(2) and sec. 305(b)(2) of ERISA.

[39] Sec. 432(b)(6) and sec. 305(b)(6) of ERISA.

[40] Sec. 418E of ERISA and sec. 4245 of ERISA.

that are eligible for guarantee under the PBGC's multiemployer plan program. If plan assets are insufficient to pay benefits at the guarantee level, the PBGC provides financial assistance to the plan in the form of loans.

<u>Suspension of benefits in multiemployer plans that are in critical and declining status</u>

A multiemployer plan is in critical and declining status[41] if the plan (1) is in critical status and (2) is projected to become insolvent[42] during the current plan year or any of the 14 succeeding plan years (19 succeeding plan years if either the ratio of inactive plan participants to active plan participants is more than two to one or the plan's funded percentage is less than 80 percent). In that case, subject to certain conditions, limitations, and procedural requirements, including the appointment of a retiree representative in some cases and approval by the Secretary of the Treasury, previously earned benefits may be reduced (referred to as benefit suspensions), including benefits of some participants and beneficiaries in pay status.

Benefit suspensions are permitted only if the plan actuary certifies that, taking the benefit suspensions into account, the plan is projected to avoid insolvency, and the plan sponsor determines that, despite all reasonable measures to avoid insolvency, the plan is projected to become insolvent unless benefits are suspended.

The plan sponsor generally determines the amount of the benefit suspensions and how the suspensions apply to plan participants and beneficiaries. However, benefits cannot be reduced below 110 percent of the monthly PBGC guarantee level; disability benefits cannot be suspended; benefit reductions for a participant or beneficiary between the ages of 75 and 80 are limited; benefit reductions are not permitted for a participant or beneficiary age 80 or over; and benefit suspensions in the aggregate must be at the level reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency.

<u>Partition</u>

On application by the plan sponsor of an eligible multiemployer plan for a partition of the plan, the PBGC may order a partition of the plan. Not later than 30 days after submitting an application to the PBGC for partition of a plan, the plan sponsor must notify the participants and beneficiaries of the application, in the form and manner prescribed by PBGC regulations.

For purposes of the provision, a multiemployer plan is an eligible multiemployer plan if--

- the plan is in critical and declining status (as described above),
- the PBGC determines, after consultation with the Participant and Plan Sponsor Advocate,[43] that the plan sponsor has taken (or is taking concurrently with an application for partition) all reasonable measures to avoid insolvency, including

[41] Sec. 432(b)(6) and sec. 305(b)(6) of ERISA.

[42] As defined in sec. 418E and sec. 4245 of ERISA.

[43] Established under section 4004 of ERISA.

maximum benefit suspensions permitted in the case of a critical and declining plan, if applicable,

- the PBGC reasonably expects that a partition of the plan will reduce the PBGC's expected long-term loss with respect to the plan and is necessary for the plan to remain solvent,
- the PBGC certifies to Congress that the PBGC's ability to meet existing financial assistance obligations to other plans (including any liabilities associated with multiemployer plans that are insolvent or that are projected to become insolvent within 10 years) will not be impaired by the partition, and
- the cost to the PBGC arising from the proposed partition is paid exclusively from the fund for basic benefits guaranteed for multiemployer plans.[44]

The PBGC must make a determination regarding a partition application not later than 270 days after the application is filed (or, if later, the date the application is completed) in accordance with PBGC regulations. Not later than 14 days after a partition order, the PBGC must provide notice thereof to the House Committees on Education and the Workforce and on Ways and Means and the Senate Committees on Finance and on Health, Education, Labor, and Pensions, as well as to any affected participants or beneficiaries.

The plan sponsor and the plan administrator of the eligible multiemployer plan (the "original" plan) before the partition are the plan sponsor and plan administrator of the plan created by the partition order (the "new" plan). For purposes of determining benefits eligible for guarantee by the PBGC, the new plan is a successor plan with respect to the original plan.

The PBGC's partition order is to provide for a transfer to the new plan the minimum amount of the original plan's liabilities necessary for the original plan to remain solvent. The provision does not provide for the transfer to the new plan of any assets of the original plan.

It is expected that the liabilities transferred to the new plan will be liabilities attributable to benefits of specific participants and beneficiaries (or a specific group or groups of participants and beneficiaries) as requested by the plan sponsor of the original plan and approved by the PBGC, up to the PBGC guarantee level applicable to each participant or beneficiary. Thus, benefits for such participants and beneficiaries up to the guarantee level will be paid by the new plan. For each month after the effective date of the partition that such a participant or beneficiary is in pay status, the original plan will pay a monthly benefit to the participant or beneficiary in the amount by which (1) the monthly benefit that would be paid to the participant or beneficiary under the terms of the original plan if the partition had not occurred (taking into account any benefit suspensions and any plan amendments after the effective date of the partition) exceeds (2) the amount of the participant's or beneficiary's benefit up to the PBGC guarantee level.

[44] Thus, other Federal funds, including funds from the PBGC single employer plan program, may not be used for this purpose.

During the 10-year period following the effective date of the partition, the original plan must pay the PBGC premiums due for each year with respect to participants whose benefits were transferred to the new plan. The original plan must pay an additional amount to the PBGC if it provides a benefit improvement (as defined under the rules for plans in critical and declining status, described above) that takes effect after the effective date of the partition. Specifically, for each year during the 10-year period following the effective date of the partition, the original plan must pay the PBGC an annual amount equal to the lesser of (1) the total value of the increase in benefit payments for the year that is attributable to the benefit improvement, or (2) the total benefit payments from the new plan for the year. This payment must be made to the PBGC at the time of, and in addition to, any other PBGC premium due from the original plan.

If an employer withdraws from the original plan within 10 years after the date of the partition order, the employer's withdrawal liability will be determined by reference to both the original plan and the new plan. If the withdrawal occurs more than 10 years after the date of the partition order, withdrawal liability will be determined only by reference to the original plan and not with respect to the new plan

Withdrawal liability

An employer that withdraws from a multiemployer plan in a complete or partial withdrawal is generally liable to the plan in the amount determined to be the employer's withdrawal liability.[45] In general, a "complete withdrawal" means the employer has permanently ceased operations under the plan or has permanently ceased to have an obligation to contribute. A "partial withdrawal" generally occurs on the last day of a plan year if, for such plan year, there is a 70-percent contribution decline or there is a partial cessation of the employer's contribution obligation.

When an employer withdraws from a multiemployer plan, the plan sponsor is required to determine the amount of the employer's withdrawal liability, notify the employer of the amount of the withdrawal liability, and collect the amount of the withdrawal liability from the employer. In order to determine an employer's withdrawal liability, a portion of the plan's unfunded vested benefits is first allocated to the employer, generally in proportion to the employer's share of plan contributions for a previous period.[46] The amount of unfunded vested benefits allocable to the employer is then subject to various reductions and adjustments. An employer's withdrawal liability is generally payable, with interest, in level annual installments. However, the amount of the annual installments is limited, based on the amount of the employer's previous contributions to the plan, and the period over which installments are paid is limited to 20 years. An employer's withdrawal liability is the amount determined after application of these limits. In addition, the plan sponsor and the employer may agree to settle an employer's withdrawal liability obligation for a different amount.

[45] ERISA secs. 4201-4225.

[46] Under 29 C.F.R. sec. 4211.2, for this purpose, unfunded vested benefits are the amount by which the value of vested benefits under the plan exceeds the value of plan assets.

If a multiemployer plan is in critical status, payments in excess of a single life annuity (plus any social security supplement, if applicable) may not be made and reductions in adjustable benefits are permitted. If a plan is in critical and declining status, benefit suspensions are permitted, including with respect to participants and beneficiaries in pay status. The elimination of any prohibited forms of distribution and reductions in adjustable benefits are disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability. In addition, suspensions of benefits made under a multiemployer plan in critical and declining status are disregarded in determining the plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability unless the withdrawal occurs more than 10 years after the effective date of the benefit suspension.

Multiemployer Plan Program of the Pension Benefit Guaranty Corporation

The PBGC, a corporation within DOL, provides an insurance program for benefits under most defined benefit plans maintained by private employers. The PBGC is administered by a director. Its board of directors consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce.

The PBGC is financed through the payment of premiums by covered defined benefit plans, assets from terminated single employer defined benefit plans trusteed by the PBGC, and investment income on PBGC assets. The PBGC insures pension benefits under separate programs for single employer and multiemployer defined benefit plans.

In the case of a multiemployer plan, flat-rate premiums apply at a rate of $31 per participant for 2021. The PBGC provides financial assistance to insolvent multiemployer plans in the amount needed to pay benefits at the guarantee limit, which is the sum of 100 percent of the first $11 of monthly benefits plus 75 percent of the next $33 of monthly benefits multiplied by the participant's years of service.

Termination of a multiemployer defined benefit pension plan can occur as a result of (1) the adoption of a plan amendment providing that participants receive no credit under the plan for any purpose for service with any employer after a date specified in the amendment (referred to as "freezing accruals"), (2) the adoption of a plan amendment causing the plan to become a defined contribution plan, or (3) the withdrawal of every employer from the plan or the cessation of the obligation of all employers to contribute to the plan (referred to as "mass withdrawal").[47]

If a terminated multiemployer plan becomes insolvent and plan assets are not sufficient to pay benefits at the level guaranteed by the PBGC, the PBGC will provide financial assistance as needed to pay benefits at the guarantee level, as described above.[48] If a multiemployer plan that

[47] ERISA sec. 4041A. Unlike the termination of a single employer plan (and except in the case of multiemployer plan terminations occurring before 1981), termination of a multiemployer plan does not of itself result in the end of the operation of the plan or in the PBGC's taking over the plan. Instead, the plan sponsor continues to administer the plan.

[48] ERISA secs. 4261 and 4281.

has not terminated becomes insolvent, similar rules apply, including the provision by the PBGC of financial assistance in an amount needed to provide benefits at the guarantee level.

Description of Proposal

Special financial assistance

The PBGC will provide financial assistance to an eligible multiemployer plan upon the application of the plan sponsor in accordance with the following requirements. A plan receiving such financial assistance will not be subject to repayment obligations.

Eligible multiemployer plan

A multiemployer defined benefit pension plan is eligible to apply for special financial assistance if:

- The plan is in critical and declining status[49] in any plan year beginning in 2020 through 2022;

- A suspension of benefits has been approved with respect to the plan as of the date of enactment;[50]

- In any plan year beginning in 2020 through 2022, the plan is certified by the plan actuary to be in critical status,[51] has a modified funded percentage of less than 40 percent,[52] and has a ratio of active to inactive participants which is less than two to three; or

- The plan became insolvent[53] after December 16, 2014, has remained insolvent, and has not been terminated as of the date of enactment of this proposal;[54]

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[49] Within the meaning of section 305(b)(6) of ERISA.

[50] Sec. 432(e)(9) and sec. 305(e)(9) of ERISA.

[51] Within the meaning of section 305(b)(2) of ERISA.

[52] As noted above, for determining critical status for purposes of section 432 and section 305 of ERISA, assets and liabilities are generally both determined at their actuarial value for purposes of calculating the funded percentage, but for purposes of determining which plans are eligible multiemployer plans, the modified funded percentage means the percentage equal to a fraction the numerator of which is the current value of plan assets as defined in ERISA section 3(26) (fair market value if available and otherwise the fair value as determined in good faith by a trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations of the Secretary, assuming an orderly liquidation at the time of such determination) and the denominator of which is current liabilities (as defined in section 431(c)(6)(D) and section 304(c)(6)(D) of ERISA).

[53] For purposes of section 418E.

[54] Pursuant to section 4041A of ERISA.

Application for special financial assistance

The proposal requires the PBGC to, within 120 days of the date of enactment, issue regulations or guidance setting forth the requirements for special financial assistance applications that:

- Limit the materials required to be submitted for a special financial assistance application to the minimum necessary to make a determination on the application;
- Specify the effective dates for transfers of special financial assistance following approval of an application, based on the effective date of the supporting actuarial analysis and the date on which the application is submitted; and
- Provide for an alternate application for special financial assistance which may be used by a plan that has been approved for a partition[55] before the date of enactment.

Temporary priority consideration of applications

The PBGC may also provide in regulations or guidance that during a period no longer than the first two years following the date of enactment, applications may not be filed by an eligible multiemployer plan unless

- The plan is insolvent, or is likely to become insolvent within five years of the date of enactment;
- The PBGC projects the plan to have a present value of financial assistance payments[56] that exceeds $1,000,000,000 if the special financial assistance is not ordered;
- The plan has implemented benefit suspensions[57] as of the date of enactment; or
- The PBGC determines it appropriate based on other similar circumstances.

Actuarial assumptions

For purposes of determining eligibility for special financial assistance, the proposal requires PBGC to accept assumptions incorporated in the eligible multiemployer plan's determination that it is in critical status or critical and declining status for certifications completed before January 1, 2021, unless such assumptions are clearly erroneous. For certifications of plan status completed after December 31, 2020, a plan determines whether it is in critical or critical and declining status for purposes of eligibility for special financial assistance by using the assumptions that the plan used in its most recently completed certification of plan

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[55] Sec. 4233 of ERISA.

[56] As defined in sec. 4261 of ERISA.

[57] As described in sec. 432(e)(9) and sec. 305(e)(9) of ERISA.

status before January 1, 2021, unless such assumptions (excluding the plan's interest rate) are unreasonable.

Assumptions used in determination of amount of financial assistance

In determining the amount of financial assistance, an eligible multiemployer plan in its application must use the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021, provided that such interest rate does not exceed the interest rate limit. The interest rate limit is the third segment rate[58] for the month in which the application for special financial assistance is filed by the eligible multiemployer plan ("specified rate") or the three preceding months, with such specified rate increased by 200 basis points. For other assumptions, the plan should use the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions are unreasonable.

If a plan determines that use of one or more prior assumptions is unreasonable, the plan may propose to change such assumptions in its application, provided that the plan discloses such changes in its application and describes the reasons why such assumptions are no longer reasonable. The PBGC shall accept such changed assumptions unless it determines the changes are unreasonable individually or in the aggregate. The plan may not propose a change to the interest rate that is otherwise required to be used (as described above) for eligibility or determining the financial assistance amount.

Deadline for submitting application

Any application by a plan for special financial assistance must be submitted no later than December 31, 2025, and any revised application must be submitted no later than December 31, 2026.

Determinations on applications

A plan's application for special financial assistance that is timely filed in accordance with the regulations or guidance issued by the PBGC is deemed to be approved unless the corporation notifies the plan within 120 days of the filing of the application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is ineligible. Such notice must specify the reasons the plan is ineligible for special financial assistance, any proposed change or assumption is unreasonable, or information is needed to complete the application. If a plan is denied special financial assistance, the plan may submit a revised application. Any revised application for special financial assistance submitted by a plan is to be deemed approved unless the PBGC notifies the plan within 120 days of the filing of the revised application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is ineligible for such assistance.

[58] Sec. 303(h)(2)(C)(iii) of ERISA disregarding modifications made under clause (iv) of such section.

Amount and manner of payment of special financial assistance

Special financial assistance issued by the PBGC to an eligible multiemployer plan is effective on a date determined by the PBGC but no later than 1 year after a plan's special financial assistance application is approved, or deemed approved, by the PBGC. The special financial assistance must be paid by the PBGC to an eligible multiemployer plan as a single lump sum payment as soon as practicable upon approval of the application by the PBGC. The PBGC may not make any special financial assistance payments to an eligible multiemployer plan after September 30, 2030.

The special financial assistance to be transferred to the eligible multiemployer plan is the amount necessary as demonstrated by the plan sponsor in its application. Such amount is the amount needed by the eligible multiemployer plan to be able to pay all benefits due during the period beginning on the date of payment of the special financial assistance and ending on the last day of the plan year ending in 2051,[59] with no reduction in a participant's or beneficiary's accrued benefit as of the date of enactment of this proposal, except to the extent of benefit adjustments[60] adopted prior to the plan's application for special financial assistance, and taking into account the reinstatement of benefit suspensions (required as described below). The amount of special financial assistance is not capped by the PBGC multiemployer plan benefit guarantee.[61]

Reinstatement of suspended benefits

An eligible multiemployer plan that receives special financial assistance must reinstate any benefits that were suspended[62] effective as of the first month in which the effective date for the special financial assistance occurs, for participants and beneficiaries as of such month. The eligible multiemployer plan will provide payments to any participant or beneficiary in pay status as of the effective date of the special financial assistance, payable, as determined by the eligible multiemployer plan, either (1) as a lump sum within three months of the effective date of the special financial assistance; or (2) in equal monthly installments over a period of five years, commencing within three months of the effective date, with no adjustment for interest.

Restrictions on use of special financial assistance by eligible multiemployer plans

Special financial assistance received by an eligible multiemployer plan may be used by such plan to make benefit payments and pay plan expenses. Special financial assistance and any earnings must be segregated from other plan assets and are to be invested by plans in investment-grade bonds or other investments, as permitted by PBGC.

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[59] The funding projections will be performed on a deterministic basis.

[60] Made in accordance with section 305(e)(8) of ERISA.

[61] Sec. 4022A of ERISA.

[62] Sec. 305(e)(9) or sec. 4245(a) of ERISA.

PBGC may impose, by regulation, reasonable conditions on an eligible multiemployer plan that receives special financial assistance relating to increases in future accrual rates and any retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates, diversion of contributions to, and allocation of expenses to, other benefit plans, and withdrawal liability.

PBGC may not impose conditions on an eligible multiemployer plan as a condition of, or following the receipt of, special financial assistance, relating to:

- Any prospective reduction in plan benefits, including adjustable benefits;[63]
- Plan governance, including selection of, removal of, and terms of contracts with, trustees, actuaries, investment managers, and other service providers; or
- Any funding rules relating to the plan receiving special financial assistance.

Withdrawal liability

An employer's withdrawal liability is calculated without taking into account special financial assistance received under this proposal until the plan year beginning 15 calendar years after the effective date of the special financial assistance.

Required disclosure

An eligible multiemployer plan receiving special financial assistance must provide each employer that has an obligation to contribute to the plan, and each labor organization representing participants employed by such employer, with an estimate of the employer's share of the plan's unfunded vested benefits as of the end of each plan year ending after the date of enactment of the proposal (as determined after taking into account special financial assistance received). This disclosure must include a statement that, due to the special financial assistance, the plan will have sufficient resources to pay 100 percent of the plan's benefit obligations until the last day of the plan year ending in 2051.

Other conditions on plans receiving special financial assistance

An eligible multiemployer plan receiving financial assistance:

- That subsequently becomes insolvent,[64] will become subject to the current rules and guarantee for insolvent plans;
- Is not eligible to apply for a new suspension of benefits; and
- Is deemed to be in critical status until the last plan year ending in 2051.

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[63] Sec. 305(e)(8) of ERISA.

[64] As described in sec. 418E and sec. 4245 of ERISA.

Appropriations

The proposal establishes an eighth fund for special financial assistance to multiemployer plans and to pay for PBGC's necessary administrative and operating expenses relating to such special financial assistance.

Amounts are appropriated from the General Fund of the Treasury to the eighth fund as are necessary to meet the costs of providing special financial assistance to eligible multiemployer plans and the necessary administrative and operating expenses of PBGC. The proposal requires such amounts to be credited to the eighth fund from time to time as the Secretary of the Treasury, in conjunction with the Director of the PBGC, determines appropriate but in no case may such transfers occur after September 30, 2030.

PBGC Premiums

An eligible multiemployer plan receiving special financial assistance will continue to pay all premiums due for the plan for participants and beneficiaries in the plan.

Premium rate increase

In the case of a multiemployer plan, for plan years beginning after December 31, 2030, the flat rate PBGC premium will increase to $52 for each individual who is a participant in such plan during the applicable year.

The premium will be adjusted for inflation for each plan year beginning in a calendar year after 2031. If the amount of the adjustment is not a multiple of $1, the amount will be rounded to the nearest multiple of $1.

Effective Date

The proposal shall be effective on the date of enactment.

E. Extended Amortization for Single Employer Plans

Present Law

Minimum funding rules

A defined benefit plan maintained by a single employer is subject to minimum funding rules that generally require the sponsoring employer to make a certain level of contribution for each plan year to fund plan benefits.[65] The minimum funding rules for single employer defined benefit plans were substantially revised by the Pension Protection Act of 2006 ("PPA").[66]

Minimum required contributions

In general

The minimum required contribution for a plan year for a single employer defined benefit plan generally depends on a comparison of the value of the plan's assets, reduced by any prefunding balance or funding standard carryover balance ("net value of plan assets"),[67] with the plan's funding target and target normal cost. The plan's funding target for a plan year is the present value of all benefits accrued or earned as of the beginning of the plan year. A plan's target normal cost for a plan year is generally the present value of benefits expected to accrue or to be earned during the plan year. In the case of a plan funded below a certain level, referred to as an "at-risk" plan, specified assumptions must be used in determining the plan's funding target and target normal cost.[68]

[65] Secs. 412 and 430; secs. 302-303 of the Employee Retirement Income Security Act of 1974 ("ERISA"). For purposes of whether a plan is maintained by a single employer, certain related entities, such as the members of a controlled group, are treated as a single employer. Different funding rules apply to multiemployer and certain multiple-employer defined benefit plans, which are types of plans maintained by two or more unrelated employers. A number of exceptions to the minimum funding rules apply. For example, governmental plans (within the meaning of section 414(d)) and church plans (within the meaning of section 414(e)) are generally not subject to the minimum funding rules. Under section 4971, an excise tax applies if the minimum funding requirements are not satisfied.

[66] Pub. L. No. 109-280. The PPA minimum funding rules for single employer plans are generally effective for plan years beginning after December 31, 2007. Subsequent changes were made by the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), Pub. L. No. 110-458; the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 ("PRA 2010"), Pub. L. No. 111-192; and the Moving Ahead for Progress in the 21st Century Act, the Highway and Transportation Funding Act of 2014, and the Bipartisan Budget Act of 2015, discussed further herein.

[67] The value of plan assets is generally reduced by any prefunding balance or funding standard carryover balance in determining minimum required contributions. A prefunding balance results from plan contributions that exceed the minimum required contributions. A funding standard carryover balance results from a positive balance in the funding standard account that applied under the funding requirements in effect before PPA. Subject to certain conditions, a prefunding balance or funding standard carryover balance may be credited against the minimum required contribution for a year, reducing the amount that must be contributed.

[68] For an at-risk plan, the specified assumptions generally are as follows: All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the next 10 plan years must be assumed to retire at the earliest retirement date under the plan but not before the end

If the net value of plan assets is less than the plan's funding target, so that the plan has a funding shortfall (discussed further below), the minimum required contribution is the sum of the plan's target normal cost and the shortfall amortization charge for the plan year (determined as described below).[69] If the net value of plan assets is equal to or exceeds the plan's funding target, the minimum required contribution is the plan's target normal cost, reduced by the amount, if any, by which the net value of plan assets exceeds the plan's funding target.

Shortfall amortization charge

The shortfall amortization charge for a plan year is the sum of the annual shortfall amortization installments attributable to the shortfall bases for that plan year and the six previous plan years. Generally, if a plan has a funding shortfall for the plan year, a shortfall amortization base must be established for the plan year.[70] A plan's funding shortfall is the amount by which the plan's funding target exceeds the net value of plan assets. The shortfall amortization base for a plan year is: (1) the plan's funding shortfall, minus (2) the present value, determined using the segment interest rates (discussed below), of the aggregate total of the shortfall amortization installments that have been determined for the plan year and any succeeding plan year with respect to any shortfall amortization bases for the six previous plan years. The shortfall amortization base is amortized in level annual installments ("shortfall amortization installments")

of the plan year for which the "at-risk funding target" and "at-risk normal cost" are being determined. Also, all employees must be assumed to elect the retirement benefit available under the plan at the assumed retirement age (determined as above) that would result in the highest present value of benefits. The at-risk funding target is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year using the actuarial assumptions set forth in the Code and regulations for single employer plans, with the addition of a loading factor which arises when the plan has been in at-risk status for at least two of the four preceding plan years. This loading factor is equal to the sum of (1) $700 multiplied by the number of participants in the plan and (2) four percent of the funding target (determined without regard to the definition of at-risk funding target). The at-risk normal cost for a plan year generally represents the excess of the sum of (1) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year using the at-risk assumptions described above plus (2) the amount of plan related expenses expected to be paid from plan assets during the plan year, over (3) the amount of mandatory employee contributions expected to be made during the plan year. In addition, where the plan has been in at-risk status for at least two of the four preceding plan years, a loading factor is added, which is equal to four percent of the target normal cost (the excess of the sum of (1) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year plus (2) the amount of plan-related expenses expected to be aid from plan assets during the plan year, over (3) the amount of mandatory employee contributions expected to be made during the plan year) with respect to the plan for the plan year.

[69] If the plan has obtained a waiver of the minimum required contribution (a funding waiver) within the past five years, the minimum required contribution also includes the related waiver amortization charge, that is, the annual installment needed to amortize the waived amount in level installments over the five years following the year of the waiver.

[70] If the value of plan assets, reduced only by any prefunding balance if the employer elects to apply the prefunding balance against the required contribution for the plan year, is at least equal to the plan's funding target, no shortfall amortization base is established for the year.

over a seven-year period beginning with the current plan year and using the segment interest rates (discussed below).[71]

The shortfall amortization base for a plan year may be positive or negative, depending on whether the present value of remaining installments with respect to amortization bases for previous years is more or less than the plan's funding shortfall. If the shortfall amortization base is positive (that is, the funding shortfall exceeds the present value of the remaining installments), the related shortfall amortization installments are positive. If the shortfall amortization base is negative, the related shortfall amortization installments are negative. The positive and negative shortfall amortization installments for a particular plan year are netted when adding them up in determining the shortfall amortization charge for the plan year, but the resulting shortfall amortization charge cannot be less than zero (that is, negative amortization installments may not offset normal cost).

If the net value of plan assets for a plan year is at least equal to the plan's funding target for the year, so the plan has no funding shortfall, any shortfall amortization bases and related shortfall amortization installments are eliminated.[72] As indicated above, if the net value of plan assets exceeds the plan's funding target, the excess is applied against target normal cost in determining the minimum required contribution.

Interest rate used to determine target normal cost and funding target

The minimum funding rules for single employer plans also specify the interest rates that must be used in determining the present value of benefits for purposes of a plan's target normal cost and funding target. Present value is generally determined using three interest rates ("segment" rates), each of which applies to benefit payments expected to be made from the plan during a certain period.[73]

The first segment rate applies to benefits reasonably determined to be payable during the five-year period beginning on the plan's annual valuation date;[74] the second segment rate applies to benefits reasonably determined to be payable during the 15-year period following the initial five-year period; and the third segment rate applies to benefits reasonably determined to be payable after the end of the 15-year period. Under the funding rules as enacted in PPA ("PPA"

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[71] Under PRA 2010, employers were permitted to elect to use one of two alternative extended amortization schedules for up to two "eligible" plan years during the period 2008-2011. The use of an extended amortization schedule has the effect of reducing the amount of the shortfall amortization installments attributable to the shortfall amortization base for the eligible plan year. However, the shortfall amortization installments attributable to an eligible plan year may be increased by an additional amount, an "installment acceleration amount," in the case of employee compensation exceeding $1 million, extraordinary dividends, or stock redemptions within a certain period of the eligible plan year.

[72] Any amortization base relating to a funding waiver for a previous year is also eliminated.

[73] Sec. 430(h)(2) and ERISA sec. 303(h)(2).

[74] Subject to an exception for small plans with no more than 100 participants, the annual valuation date for a plan must be the first day of the plan year.

rules), each segment rate is a single interest rate determined monthly by the Secretary of the Treasury, on the basis of a corporate bond yield curve, taking into account only the portion of the yield curve based on corporate bonds maturing during the particular segment rate period. The corporate bond yield curve used for this purpose reflects the average, for the 24-month period ending with the preceding month, of yields on investment grade corporate bonds with varying maturities and that are in the top three quality levels available.[75] The Internal Revenue Service ("IRS") publishes the segment rates each month.

Under the Moving Ahead for Progress in the 21st Century Act ("MAP–21"), the Highway and Transportation Funding Act of 2014 ("2014 Highway Act"), and the Bipartisan Budget Act of 2015 ("2015 Bipartisan Budget Act"),[76] for plan years beginning after December 31, 2011, a segment rate determined under the PPA rules is adjusted if it falls outside a specified percentage range of the average segment rates for a preceding period. In particular, if a segment rate determined under the PPA rules is less than the applicable minimum percentage in the specified range, the segment rate is adjusted upward to match the minimum percentage. If a segment rate determined under the PPA rules is more than the applicable maximum percentage in the specified range, the segment rate is adjusted downward to match the maximum percentage. For this purpose, an average segment rate is the average of the segment rates determined under the PPA rules for the 25-year period ending September 30 of the calendar year preceding the calendar year in which the plan year begins. The Secretary is to determine average segment rates on an annual basis and may prescribe equivalent rates for any years in the 25-year period for which segment rates determined under the PPA rules are not available. The Secretary is directed to publish the average segment rates each month.

The specified percentage range (that is, the range from the applicable minimum percentage to the applicable maximum percentage) for a plan year is determined by reference to the calendar year in which the plan year begins as follows:

- 90 percent to 110 percent for 2012 through 2020,
- 85 percent to 115 percent for 2021,
- 80 percent to 120 percent for 2022,
- 75 percent to 125 percent for 2023, and
- 70 percent to 130 percent for 2024 or later.

[75] Solely for purposes of determining minimum required contributions, in lieu of the segment rates, an employer may elect to use interest rates on a yield curve based on the yields on investment grade corporate bonds for the month preceding the month in which the plan year begins (that is, without regard to the 24-month averaging described above) ("monthly yield curve"). If an election to use a monthly yield curve is made, it cannot be revoked without IRS approval.

[76] Pub. L. Nos. 112-141, 113-159 and 114-74.

Annual funding notice

The plan administrator of a single employer defined benefit plan must provide an annual funding notice to each participant and beneficiary, each labor organization representing participants or beneficiaries, and the Pension Benefit Guaranty Corporation ("PBGC").[77] In addition to the information required to be provided in all funding notices, in the case of a single employer defined benefit plan, the notice must include (1) the plan's funding target attainment percentage for the plan year to which the notice relates and the two preceding plan years, (2) the value of the plan's assets and benefit liabilities (that is, the present value of benefits owed under the plan) for the plan year and the two preceding years, determined in the same manner as under the funding rules, and (3) the value of the plan's assets and benefit liabilities as of the last day of the plan year to which the notice relates, determined using the fair market value of plan assets (rather value determined under the funding rules) and, in computing benefit liabilities, the interest rates used in computing variable-rate PBGC premiums.[78]

Additional information must be included in a single employer plan's annual funding notice in the case of an applicable plan year. For this purpose, an applicable plan year is any plan year beginning after December 31, 2011, and before January 1, 2023, for which (1) the plan's funding target, determined using segment rates as adjusted to reflect average segment rates ("adjusted" segment rates), is less than 95 percent of the funding target determined without regard to adjusted segment rates, (2) the plan has a funding shortfall, determined without regard to adjusted segment rates, greater than $500,000, and (3) the plan had 50 or more participants on any day during the preceding plan year. Specifically, the notice must include (1) a statement that MAP-21, the 2014 Highway Act, and the 2015 Bipartisan Budget Act modified the method for determining the interest rates used to determine the actuarial value of benefits earned under the plan, providing for a 25-year average of interest rates to be taken into account in addition to a two-year average, (2) a statement that, as a result of MAP-21, the 2014 Highway Act, and the 2015 Bipartisan Budget Act, the plan sponsor may contribute less money to the plan when interest rates are at historical lows, and (3) a table showing, for the applicable plan year and each of the two preceding plan years, the plan's funding target attainment percentage, funding shortfall, and the employer's minimum required contribution, each determined both using adjusted segment rates and without regard to adjusted segment rates.

Description of Proposal

Under the proposal, with respect to plan years beginning after December 31, 2019, (or, at the election of the plan sponsor, after December 31, 2018) the shortfall amortization bases for all plan years preceding the first plan year beginning after December 31, 2019 (or after December

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[77] ERISA sec. 101(f). Annual funding notice requirements, with some differences, apply also to multiemployer and multiple-employer plans.

[78] In applying the funding rules, the value of plan assets may be determined on the basis of average fair market values over a period of up to 24 months. PBGC variable-rate premiums are based on a plan's unfunded vested benefit liabilities, computed using the first, second and third segment rates as determined under the PPA rules (without the adjustments applicable for funding purposes), but based on a monthly corporate bond yield curve, rather than a yield curve reflecting average yields for a 24-month period.

31, 2018, whichever is elected), and all shortfall amortization installments determined with respect to such bases, are reduced to zero. In addition, the shortfall amortization installments of the plan for plan years beginning after December 31, 2019 (or, if elected, after December 31, 2018) are determined over a 15-year period, rather than a 7-year period.

Effective Date

The proposal is effective for plan years beginning after December 31, 2018.

F. Extension of Pension Funding Stabilization Percentages for Single Employer Plans

Present Law

Minimum funding rules

A defined benefit plan maintained by a single employer is subject to minimum funding rules that generally require the sponsoring employer to make a certain level of contribution for each plan year to fund plan benefits.[79] For background relating to these rules, see Present Law under section E. above.

Description of Proposal

The proposal revises the specified percentage ranges (that is, the range from the applicable minimum percentage to the applicable maximum percentage of average segment rates) for determining whether a segment rate must be adjusted upward or downward. Under the proposal, the specified percentage range for a plan year is determined by reference to the calendar year in which the plan year begins as follows:

- 90 percent to 110 percent for 2012 through 2019,
- 95 percent to 105 percent for 2020 through 2025,
- 90 percent to 110 percent for 2026,
- 85 percent to 115 percent for 2027,
- 80 percent to 120 percent for 2028,
- 75 percent to 125 percent for 2029, and
- 70 percent to 130 percent for 2030 or later.

The proposal further provides that if the average of the first, second or third segment rate for any 25-year period is less than five percent, such average shall be deemed to be five percent.

In addition, for purposes of the additional information that must be provided in a funding notice for an applicable plan year, an applicable plan year includes any plan year that begins after December 31, 2011, and before January 1, 2029, and that otherwise meets the definition of applicable plan year.

[79] Secs. 412 and 430; secs. 302-303 of the Employee Retirement Income Security Act of 1974 ("ERISA"). For purposes of whether a plan is maintained by a single employer, certain related entities, such as the members of a controlled group, are treated as a single employer. Different funding rules apply to multiemployer and certain multiple-employer defined benefit plans, which are types of plans maintained by two or more unrelated employers. A number of exceptions to the minimum funding rules apply. For example, governmental plans (within the meaning of section 414(d)) and church plans (within the meaning of section 414(e)) are generally not subject to the minimum funding rules. Under section 4971, an excise tax applies if the minimum funding requirements are not satisfied.

Effective Date

The proposal applies to plan years beginning after December 31, 2019.

G. Modification of Special Rules for Minimum Funding Standards for Community Newspaper Plans

Present Law

Minimum funding rules

A defined benefit plan maintained by a single employer is subject to minimum funding rules that generally require the sponsoring employer to make a certain level of contribution for each plan year to fund plan benefits.[80] For background relating to these rules, see Present Law under section E. above.

Special rules for community newspaper plans

Special rules apply to community newspaper plans.[81] An employer maintaining a community newspaper plan (as defined below) under which no participant has had the participant's accrued benefit increased (whether because of service or compensation) after December 31, 2017, may elect to apply certain alternative funding rules to the plan and any other plan sponsored by any member of the controlled group.[82] An election to apply the alternative funding rules must be made at such time and in such manner as prescribed by the Secretary of the Treasury, and once made with respect to a plan year, applies to all subsequent years unless revoked with the consent of the Secretary of the Treasury.[83]

Under the alternative funding rules, an interest rate of eight percent is used to determine a plan's funding target and target normal cost, rather than the first, second, and third segment rates. However, if new benefits are accrued or earned under a plan for a plan year in which the election is in effect, the present value of such benefits must be determined on the basis of the U.S. Treasury obligation yield curve for the day that is the valuation date of such plan for such plan year. In addition, if the value of plan assets is less than the plan's funding target, such that the plan has a funding shortfall, the shortfall is required to be funded by contributions, with interest,

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[80] Secs. 412 and 430; secs. 302-303 of the Employee Retirement Income Security Act of 1974 ("ERISA"). For purposes of whether a plan is maintained by a single employer, certain related entities, such as the members of a controlled group, are treated as a single employer. Different funding rules apply to multiemployer and certain multiple-employer defined benefit plans, which are types of plans maintained by two or more unrelated employers. A number of exceptions to the minimum funding rules apply. For example, governmental plans (within the meaning of section 414(d)) and church plans (within the meaning of section 414(e)) are generally not subject to the minimum funding rules. Under section 4971, an excise tax applies if the minimum funding requirements are not satisfied.

[81] Sec. 430(m).

[82] For this purpose, the controlled group means all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 as of the date of enactment of the Setting Every Community Up for Retirement Enhancement Act of 2019, Pub. L. No. 116-94, Div. O.

[83] The IRS has provided guidance on such elections in Notice 2020-60, 2020-36 I.R.B. 514, August 31, 2020.

over 30 years, rather than over seven years. The shortfall amortization bases determined[84] for all plan years preceding the first plan year to which the election applies (and all related shortfall amortization installments) are reduced to zero. Further, the assumptions applicable to an "at-risk" plan do not apply.

For purposes of these rules, a "community newspaper plan" is a plan[85] that is maintained by an employer that, as of December 31, 2017:

- publishes and distributes daily, either electronically or in printed form, one or more community newspapers (as defined below) in a single State;[86]
- is not a company the stock of which is publicly traded on a stock exchange or in an over-the-counter market, and is not controlled, directly or indirectly, by such a company;
- is controlled, directly or indirectly (a) by one or more persons residing primarily in the State in which the community newspaper is published; (b) for at least 30 years by individuals who are members of the same family; (c) by a trust created or organized in the State in which the community newspaper is published, the sole trustees of which are persons described in (a) or (b); (d) by an entity described in section 501(c)(3) and exempt from tax under section 501(a) that is organized and operated in the State in which the community newspaper is published, and the primary purpose of which is to benefit communities in the State; or (e) by a combination of persons described in (a), (c), or (d); and
- does not control, directly or indirectly, any newspaper in any other State.

A "community newspaper" means a newspaper that primarily serves a metropolitan statistical area, as determined by the Office of Management and Budget, with a population of not less than 100,000. A person (the "first" person) is treated as controlled by another person if the other person possesses, directly or indirectly, the power to direct or cause the direction and management of the first person (including the power to elect a majority of the members of the board of directors of the first person) through the ownership of voting securities.

Description of Proposal

The proposal modifies the eligibility rules that apply to the special rules for minimum funding standards for community newspaper plans. Under the proposal, an eligible newspaper plan sponsor of a plan under which no participant has had the participant's accrued benefit increased (whether because of service or compensation) after April 2, 2019, may elect to apply the alternative funding rules to the plan. An eligible newspaper plan sponsor is defined in the

[84] Under section 430(c)(3).

[85] The plan must also be a plan to which section 430(m) applies.

[86] Under ERISA, a community newspaper plan includes one that publishes and distributes daily, either electronically or in printed form, either a community newspaper or one or more community newspapers in the same State. Sec. 303(m)(4)(A)(i).

proposal as the plan sponsor of any community newspaper plan or any other plan sponsored, as of April 2, 2019, by a member of the same controlled group of a plan sponsor of a community newspaper plan if such member is in the trade or business of publishing one or more newspapers.

The proposal revises the definition of community newspaper plan to mean any plan maintained as of December 31, 2018 by an employer that:

- maintains the plan on behalf of participants and beneficiaries with respect to employment in the trade or business of publishing one or more newspapers which were published by the employer at any time during the 11-year period ending on the date of the enactment of this proposal;

- either (a) is not a company the stock of which is publicly traded (on a stock exchange or in an over-the-counter market), and is not controlled, directly or indirectly, by such a company, or (b) is controlled, directly or indirectly, during the entire 30-year period ending on the date of the enactment of this proposal by individuals who are members of the same family, and does not publish or distribute a daily newspaper that is carrier-distributed in printed form in more than five States; and

- is controlled, directly or indirectly (a) by one or more persons residing primarily in a State in which the community newspaper has been published on newsprint or carrier-distributed; (b) during the entire 30-year period ending on the date of the enactment of this proposal by individuals who are members of the same family; (c) by one or more trusts, the sole trustees of which are persons described in (a) or (b); or (d) by a combination of persons described in (a), (b), or (c).

The proposal removes the definition of "community newspaper" from the eligibility rules, but defines "newspaper" as not including any newspaper to which any of the following apply: (a) the newspaper is not in general circulation; (b) the newspaper is published (on newsprint or electronically) less frequently than three times per week; (c) the newspaper has not ever been regularly published on newsprint; and (d) the newspaper does not have a bona fide list of paid subscribers.

<u>Effective Date</u>

The proposal applies to plan years ending after December 31, 2017.

H. Cost of Living Adjustment Freeze

Present Law

The Code imposes limits relating to contributions and benefits under qualified plans. Under a defined contribution plan, annual additions to the plan with respect to each plan participant are limited to the lesser of (1) 100 percent of compensation or (2) $40,000.[87] The $40,000 amount is adjusted annually for cost-of-living increases in $1,000 increments.[88] For 2021, this amount is $58,000.

Under a defined benefit plan, the maximum annual benefit payable at retirement is generally the lesser of (1) $160,000,[89] or (2) 100 percent of the participant's high-three-year average compensation. The $160,000 dollar amount is adjusted annually for cost-of-living increases in $5,000 increments,[90] and is $230,000 for 2021. In the case of a participant who separated from service, the amount taken into account under clause (2) is also adjusted annually for cost-of-living increases.[91]

In addition, the annual compensation of each participant that may be taken into account for purposes of determining contributions and benefits under a plan, applying the deduction rules, and for nondiscrimination testing purposes is limited to $200,000, indexed for cost-of-living adjustments in $10,000 increments.[92] For 2021, the limit on annual compensation that may be taken into account is $290,000.

Description of Proposal

Under the proposal, the $40,000 amount applicable to the contribution limit for defined contribution plans and the $160,000 amount applicable to the maximum benefit under a defined benefit plan (as well as the amount taken into account in determining the defined benefit plan limitation in the case of participant who separated from service) are not adjusted for cost-of-living increases for calendar years after 2030. Similarly, the limit on annual compensation of a participant that may be taken into account under a plan is not adjusted for cost-of-living

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[87] Sec. 415(c). Annual additions are the sum of employer contributions, employee contributions, and forfeitures with respect to an individual under all defined contribution plans of the same employer. Sec. 415(c)(2); sec. 415(f).

[88] Secs. 415(d)(1)(C) and 415(d)(4)(B).

[89] Sec. 415(b)(1).

[90] Secs. 415(d)(1)(A) and 415(d)(4)(A).

[91] Sec. 415(d)(1)(B). For a participant who has separated from service before January 1, 2021, the limitation under a defined benefit plan is computed by multiplying the participant's compensation limitation, as adjusted through 2020, by 1.0122. Notice 2020-79, 2020-46 I.R.B. 1014, November 9, 2020.

[92] Sec. 401(a)(17).

increases for calendar years after 2030. Rather, the cost-of-living adjustments that apply to each of these amounts for calendar year 2030 apply for calendar years after 2030.

The modifications to the rules applicable to cost-of-living adjustments under this proposal do not apply to a plan maintained pursuant to one or more collective bargaining agreements.

Effective Date

The proposal is effective on the date of enactment.