

Subtitle B

Part 3

Funding

1081. Coverage

(a) Plans excepted from applicability of this part

This part shall apply to any employee pension benefit plan described in section 1003 (a) of this title, (and not exempted under section 1003 (b) of this title), other than—

- (1) an employee welfare benefit plan;
- (2) an insurance contract plan described in subsection (b) of this section;
- (3) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;
- (4)
 - (A) a plan which is established and maintained by a society, order, or association described in section 501 (c)(8) or (9) of title 26, if no part of the contributions to or under such plan are made by employers of participants in such plan; or
 - (B) a trust described in section 501 (c)(18) of title 26;
- (5) a plan which has not at any time after September 2, 1974, provided for employer contributions;
- (6) an agreement providing payments to a retired partner or deceased partner or a deceased partner's successor in interest as described in section 736 of title 26;
- (7) an individual retirement account or annuity as described in section 408 (a) of title 26, or a retirement bond described in section 409 of title 26 (as effective for obligations issued before January 1, 1984);
- (8) an individual account plan (other than a money purchase plan) and a defined benefit plan to the extent it is treated as an individual account plan (other than a money purchase plan) under section 1002 (35)(B) of this title;
- (9) an excess benefit plan; or
- (10) any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this chapter.

(b) "Insurance contract plan" defined

For the purposes of paragraph (2) of subsection (a) of this section a plan is an "insurance contract plan" if—

- (1) the plan is funded exclusively by the purchase of individual insurance contracts,
- (2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the

plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase became effective),

(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

(4) premiums payable for the plan year, and all prior plan years under such contracts have been paid before lapse or there is reinstatement of the policy,

(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(6) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary of the Treasury to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection.

(c) Applicability of this part to terminated multiemployer plans

This part applies, with respect to a terminated multiemployer plan to which section 1321 of this title applies, until the last day of the plan year in which the plan terminates, within the meaning of section 1341a (a)(2) of this title.

(d) Financial assistance from Pension Benefit Guaranty Corporation

Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section in such manner as determined by the Secretary of the Treasury.

1082. Minimum funding standards

(a) Avoidance of accumulated funding deficiency

(1) Every employee pension benefit plan subject to this part shall satisfy the minimum funding standard (or the alternative minimum funding standard under section 1085 of this title) for any plan year to which this part applies. A plan to which this part applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year the plan does not have an accumulated funding deficiency.

(2) For the purposes of this part, the term "accumulated funding deficiency" means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this part applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years.

(3) In any plan year in which a multiemployer plan is in reorganization, the accumulated funding deficiency of the plan shall be determined under section 1423 of this title.

(b) Funding standard account

(1) Each plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 40 plan years,

(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 30 plan years,

(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years,

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 5 plan years (15 plan years in the case of a multiemployer plan), and

(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 10 plan years (30 plan years in the case of a multiemployer plan),

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 1083 (c) of this title) for each prior plan year in equal annual installments (until fully amortized) over a period of 5 plan years (15 plan years in the case of a multiemployer plan),

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D), and

(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of subsection (c)(7)(A)(i)(I) of this section.

(3) For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years,

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 5 plan years (15 plan years in the case of a multiemployer plan), and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 10 plan years (30 plan years in the case of a multiemployer plan),

(C) the amount of the waived funding deficiency (within the meaning of section 1083 (c) of this title) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(5) Interest.—

(A) In general.— The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(B) Required change of interest rate.— For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under subsection (d) of this section for any plan year—

(i) In general.— If any rate of interest used under the plan to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

(ii) Permissible range.— For purposes of this subparagraph—

(I) In general.— Except as provided in subclause (II) or (III), the term “permissible range” means a rate of interest which is not more than 10 percent above, and not more than 10 percent below, the the ^[1] weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

(II) Special rule for years 2004 and 2005.— In the case of plan years beginning after December 31, 2003, and before January 1, 2006, the term “permissible range” means a rate of interest which is not above, and not more than 10 percent below, the weighted average of the rates of interest on amounts invested conservatively in long-term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year. Such rates shall be determined by the Secretary of the Treasury on the basis of 2 or more indices that are selected periodically by the Secretary of the Treasury and that

are in the top 3 quality levels available. The Secretary of the Treasury shall make the permissible range, and the indices and methodology used to determine the average rate, publicly available.

(III) Secretarial authority.— If the Secretary finds that the lowest rate of interest permissible under subclause (I) or (II) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

(iii) Assumptions.— Notwithstanding subsection (c)(3)(A)(i) of this section, the interest rate used under the plan shall be—

(I) determined without taking into account the experience of the plan and reasonable expectations, but

(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

(6) In the case of a plan which, immediately before September 26, 1980, was a multiemployer plan (within the meaning of section 1002 (37) of this title as in effect immediately before such date)—

(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose;

(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose;

(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

(D) any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits which—

(i) was adopted before such date, and

(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the increase arises.

(7) For purposes of this part—

(A) Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of subchapter III of this chapter shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

(B) If a plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

(i) shall be eliminated by an offsetting credit or charge (as the case may be), but
(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 418B (a) of title 26 as of the end of the last plan year that the plan was in reorganization.

(C) Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 1402 of this title or to a fund exempt under section 501 (c)(22) of title 26 pursuant to section 1403 of this title shall reduce the amount of contributions considered received by the plan for the plan year.

(D) Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of subchapter III of this chapter and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

(E) For purposes of the full funding limitation under subsection (c)(7) of this section, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411 (d)(3) of title 26).

(F) Election for deferral of charge for portion of net experience loss.—

(i) In general.— With respect to the net experience loss of an eligible multiemployer plan for the first plan year beginning after December 31, 2001, the plan sponsor may elect to defer up to 80 percent of the amount otherwise required to be charged under paragraph (2)(B)(iv) for any plan year beginning after June 30, 2003, and before July 1, 2005, to any plan year selected by the plan from either of the 2 immediately succeeding plan years.

(ii) Interest.— For the plan year to which a charge is deferred pursuant to an election under clause (i), the funding standard account shall be charged with interest on the deferred charge for the period of deferral at the rate determined under section 1084 (a) of this title for multiemployer plans.

(iii) Restrictions on benefit increases.— No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted during any period for which a charge is deferred pursuant to an election under clause (i), unless—

(I) the plan's enrolled actuary certifies (in such form and manner prescribed by the Secretary of the Treasury) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or

(II) the amendment is required by a collective bargaining agreement which is in effect on April 10, 2004.

If a plan is amended during any such plan year in violation of the preceding sentence, any election under this paragraph shall not apply to any such plan year ending on or after the date on which such amendment is adopted.

(iv) Eligible multiemployer plan.— For purposes of this subparagraph, the term “eligible multiemployer plan” means a multiemployer plan—

(I) which had a net investment loss for the first plan year beginning after December 31, 2001, of at least 10 percent of the average fair market value of the plan assets during the plan year, and

(II) with respect to which the plan’s enrolled actuary certifies (not taking into account the application of this subparagraph), on the basis of the actuarial ^[2] assumptions used for the last plan year ending before April 10, 2004, that the plan is projected to have an accumulated funding deficiency (within the meaning of subsection (a)(2) of this section) for any plan year beginning after June 30, 2003, and before July 1, 2006.

For purposes of subclause (I), a plan’s net investment loss shall be determined on the basis of the actual loss and not under any actuarial method used under subsection (c)(2) of this section.

(v) Exception to treatment of eligible multiemployer plan.— In no event shall a plan be treated as an eligible multiemployer plan under clause (iv) if—

(I) for any taxable year beginning during the 10-year period preceding the first plan year for which an election is made under clause (i), any employer required to contribute to the plan failed to timely pay any excise tax imposed under section 4971 of title 26 with respect to the plan,

(II) for any plan year beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), the average contribution required to be made by all employers to the plan does not exceed 10 cents per hour or no employer is required to make contributions to the plan, or

(III) with respect to any of the plan years beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), a waiver was granted under section 1083 of this title or section 412 (d) of title 26 with respect to the plan or an extension of an amortization period was granted under section 1084 of this title or section 412 (e) of title 26 with respect to the plan.

(vi) Notice.— If a plan sponsor makes an election under this subparagraph or section 412 (b)(7)(F) of title 26 for any plan year, the plan administrator shall provide, within 30 days of filing the election for such year, written notice of the election to participants and beneficiaries, to each labor organization representing such participants or beneficiaries, to each employer that has an obligation to contribute under the plan, and to the Pension Benefit Guaranty Corporation. Such notice shall include with respect to any election the amount of any charge to be deferred and the period of the deferral. Such notice shall also include the maximum guaranteed monthly benefits which the Pension Benefit Guaranty Corporation would pay if the plan terminated while underfunded.

(vii) Election.— An election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury may prescribe.

(c) Methods

(1) For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2)

(A) For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

(B) For purposes of this part, the value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary of the Treasury. In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary of the Treasury may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5) of this section.

(3) For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

(A) in the case of—

(i) a plan other than a multiemployer plan, each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, or

(ii) a multiemployer plan, which, in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) For purposes of this section, if—

(A) a change in benefits under the Social Security Act [42 U.S.C. 301 et seq.] or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term "wages" under section 3121 of title 26, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401 (a)(5) of title 26,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5)

(A) In general.— If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary of the Treasury. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary of the Treasury.

(B) Approval required for certain changes in assumptions by certain single-employer plans subject to additional funding requirement.—

(i) In general.— No actuarial assumption (other than the assumptions described in subsection (d)(7)(C) of this section) used to determine the current liability for a plan to which this subparagraph applies may be changed without the approval of the Secretary of the Treasury.

(ii) Plans to which subparagraph applies.— This subparagraph shall apply to a plan only if—

(I) the plan is a defined benefit plan (other than a multiemployer plan) to which subchapter III of this chapter applies;

(II) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 1306 (a)(3)(E)(iii) of this title) of such plan and all other plans maintained by the contributing sponsors (as defined in section 1301 (a)(13) of this title) and members of such sponsors' controlled groups (as defined in section 1301 (a)(14) of this title) which are covered by subchapter III of this chapter (disregarding plans with no unfunded vested benefits) exceed \$50,000,000; and

(III) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the unfunded current liability of the plan for the current plan year that exceeds \$50,000,000, or that exceeds \$5,000,000 and that is 5 percent or more of the current liability of the plan before such change.

(6) If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under section 1085 of this title) in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in paragraphs (2), (B), (C), and (D) and (3)(B) of subsection (b) of this section which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

(7) Full-funding limitation.—

(A) In general.— For purposes of paragraph (6), the term “full-funding limitation” means the excess (if any) of—

(i) the lesser of

(I) in the case of plan years beginning before January 1, 2004, the applicable percentage of current liability (including the expected increase in current liability due to benefits accruing during the plan year), or

(II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(ii) the lesser of—

(I) the fair market value of the plan's assets, or

(II) the value of such assets determined under paragraph (2).

(B) Current liability.— For purposes of subparagraph (D) and subclause (I) of subparagraph (A)(i), the term “current liability” has the meaning given such term

by subsection (d)(7) of this section (without regard to subparagraphs (C) and (D) thereof) and using the rate of interest used under subsection (b)(5)(B) of this section.

(C) Special rule for paragraph (6)(b).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof.

(D) Regulatory authority.— The Secretary of the Treasury may by regulations provide—

(i) for adjustments to the percentage contained in subparagraph (A)(i) to take into account the respective ages or lengths of service of the participants, and

(ii) alternative methods based on factors other than current liability for the determination of the amount taken into account under subparagraph (A)(i).

(E) Minimum amount.—

(i) In general.— In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

(II) the value of the plan's assets determined under paragraph (2).

(ii) Current liability; assets.— For purposes of clause (i)—

(I) the term “current liability” has the meaning given such term by subsection (d)(7) of this section (without regard to subparagraph (D) thereof), and

(II) assets shall not be reduced by any credit balance in the funding standard account.

(F) Applicable percentage.— For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table: In the case of any plan year beginning in calendar year—
percentage is— 2002 165 2003 170.

(8) For purposes of this part, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than 21/2 months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment or, within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless he determines that such amendment is necessary because of a substantial business hardship (as determined under section 1083 (b) of this title) and that waiver under section 1083 (a) of this title is unavailable or inadequate.

(9)

(A) For purposes of this part, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

(B)

(i) Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (7)(B)).

(iii) Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

(10) For purposes of this section—

(A) In the case of a defined benefit plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

(i) beginning on the day after the last day of such plan year, and

(ii) ending on the date which is 8½ months after the close of the plan year, shall be deemed to have been made on such last day.

(B) In the case of a plan not described in subparagraph (A), any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury.

(11) Liability for contributions.—

(A) In general.— Except as provided in subparagraph (B), the amount of any contribution required by this section and any required installments under subsection (e) of this section shall be paid by the employer responsible for contributing to or under the plan the amount described in subsection (b)(3)(A) of this section.

(B) Joint and several liability where employer member of controlled group.—

(i) In general.— In the case of a plan other than a multiemployer plan, if the employer referred to in subparagraph (A) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contribution or required installment.

(ii) Controlled group.— For purposes of clause (i), the term “controlled group” means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of title 26.

(12) Anticipation of benefit increases effective in the future.— In determining projected benefits, the funding method of a collectively bargained plan described in section 413 (a) of title 26 (other than a multiemployer plan) shall anticipate benefit increases scheduled to take effect during the term of the collective bargaining agreement applicable to the plan.

(d) Additional funding requirements for plans which are not multiemployer plans

(1) In general

In the case of a defined benefit plan (other than a multiemployer plan) to which this subsection applies under paragraph (9) for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

(A) the excess (if any) of—

(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

(ii) the sum of the charges for such plan year under subsection (b)(2) of this section, reduced by the sum of the credits for such plan year under subparagraph (B) of subsection (b)(3) of this section, plus

(B) the unpredictable contingent event amount (if any) for such plan year.

Such increase shall not exceed the amount which, after taking into account charges (other than the additional charge under this subsection) and credits under subsection (b) of this section, is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.

(2) Deficit reduction contribution

For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

(A) the unfunded old liability amount,

(B) the unfunded new liability amount,

(C) the expected increase in current liability due to benefits accruing during the plan year, and

(D) the aggregate of the unfunded mortality increase amounts.

(3) Unfunded old liability amount

For purposes of this subsection—

(A) In general

The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 18 plan years (beginning with the 1st plan year beginning after December 31, 1988).

(B) Unfunded old liability

The term “unfunded old liability” means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

(C) Special rules for benefit increases under existing collective bargaining agreements

(i) In general In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 29, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 18 plan years beginning with—

(I) the plan year in which the benefit increase with respect to such liability occurs, or

(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

(ii) Unfunded existing benefit increase liabilities For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

(I) by taking into account only liabilities attributable to such benefit increase, and

(II) by reducing (but not below zero) the amount determined under paragraph

(8)(A)(ii) by the current liability determined without regard to such benefit increase.

(iii) Extensions, modifications, etc. not taken into account For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 28, 1987, shall not be taken into account.

(D) Special rule for required changes in actuarial assumptions

(i) In general The unfunded old liability amount with respect to any plan for any plan year shall be increased by the amount necessary to amortize the amount of additional unfunded old liability under the plan in equal annual installments over a period of 12 plan years (beginning with the first plan year beginning after December 31, 1994).

(ii) Additional unfunded old liability For purposes of clause (i), the term “additional unfunded old liability” means the amount (if any) by which—

(I) the current liability of the plan as of the beginning of the first plan year beginning after December 31, 1994, valued using the assumptions required by paragraph (7)(C) as in effect for plan years beginning after December 31, 1994, exceeds

(II) the current liability of the plan as of the beginning of such first plan year, valued using the same assumptions used under subclause (I) (other than the assumptions required by paragraph (7)(C)), using the prior interest rate, and using such mortality assumptions as were used to determine current liability for the first plan year beginning after December 31, 1992.

(iii) Prior interest rate For purposes of clause (ii), the term “prior interest rate” means the rate of interest that is the same percentage of the weighted average under subsection (b)(5)(B)(ii)(I) of this section for the first plan year beginning after December 31, 1994, as the rate of interest used by the plan to determine current liability for the first plan year beginning after December 31, 1992, is of the weighted average under subsection (b)(5)(B)(ii)(I) of this section for such first plan year beginning after December 31, 1992.

(E) Optional rule for additional unfunded old liability

(i) In general If an employer makes an election under clause (ii), the additional unfunded old liability for purposes of subparagraph (D) shall be the amount (if any) by which—

(I) the unfunded current liability of the plan as of the beginning of the first plan year beginning after December 31, 1994, valued using the assumptions required by paragraph (7)(C) as in effect for plan years beginning after December 31, 1994, exceeds

(II) the unamortized portion of the unfunded old liability under the plan as of the beginning of the first plan year beginning after December 31, 1994.

(ii) Election

(I) An employer may irrevocably elect to apply the provisions of this subparagraph as of the beginning of the first plan year beginning after December 31, 1994.

(II) If an election is made under this clause, the increase under paragraph (1) for any plan year beginning after December 31, 1994, and before January 1, 2002, to which this subsection applies (without regard to this subclause) shall not be less than the increase that would be required under paragraph (1) if the provisions of this subchapter as in effect for the last plan year beginning before January 1, 1995, had remained in effect.

(4) Unfunded new liability amount

For purposes of this subsection—

(A) In general

The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

(B) Unfunded new liability

The term “unfunded new liability” means the unfunded current liability of the plan for the plan year determined without regard to—

(i) the unamortized portion of the unfunded old liability, the unamortized portion of the additional unfunded old liability, the unamortized portion of each unfunded mortality increase, and the unamortized portion of the unfunded existing benefit increase liability, and

(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

(C) Applicable percentage

The term “applicable percentage” means, with respect to any plan year, 30 percent, reduced by the product of—

(i) .40 multiplied by

(ii) the number of percentage points (if any) by which the funded current liability percentage exceeds 60 percent.

(5) Unpredictable contingent event amount

(A) In general

The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greatest of—

(i) the applicable percentage of the product of—

(I) 100 percent, reduced (but not below zero) by the funded current liability percentage for the plan year, multiplied by

(II) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits,

(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 plan years (beginning with the plan year in which such event occurs), or

(iii) the additional amount that would be determined under paragraph (4)(A) if the unpredictable contingent event benefit liabilities were included in unfunded new liability notwithstanding paragraph (4)(B)(ii).

(B) Applicable percentage In the case of plan years beginning in: percentage is: 1989 and 1990 5 1991 10 1992 15 1993 20 1994 30 1995 40 1996 50 1997 60 1998 70 1999 80 2000 90 2001 and thereafter 100.

(C) Paragraph not to apply to existing benefits

This paragraph shall not apply to unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before the first plan year beginning after December 31, 1988.

(D) Special rule for first year of amortization

Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary of the Treasury to reflect the application of this subparagraph.

(E) Limitation

The present value of the amounts described in subparagraph (A) with respect to any one event shall not exceed the unpredictable contingent event benefit liabilities attributable to that event.

(6) Special rules for small plans

(A) Plans with 100 or fewer participants

This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

(B) Plans with more than 100 but not more than 150 participants

In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

(i) such increase determined without regard to this subparagraph, multiplied by

(ii) 2 percent for the highest number of participants in excess of 100 on any such day.

(C) Aggregation of plans

For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

(7) Current liability

For purposes of this subsection—

(A) In general

The term “current liability” means all liabilities to participants and their beneficiaries under the plan.

(B) Treatment of unpredictable contingent event benefits

(i) In general For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

(ii) Unpredictable contingent event benefit The term “unpredictable contingent event benefit” means any benefit contingent on an event other than—

(I) age, service, compensation, death, or disability, or

(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury).

(C) Interest rate and mortality assumptions used

Effective for plan years beginning after December 31, 1994—

(i) Interest rate

(I) In general The rate of interest used to determine current liability under this subsection shall be the rate of interest used under subsection (b)(5) of this section, except that the highest rate in the permissible range under subparagraph (B)(ii) thereof shall not exceed the specified percentage under subclause (II) of the weighted average referred to in such subparagraph.

(II) Specified percentage For purposes of subclause (I), the specified percentage shall be determined as follows:

In the case of plan years beginning The specified in calendar year: percentage is: 1995 109 1996 108 1997 107 1998 106 1999 and thereafter 105.

(III) Special rule for 2002 and 2003 For a plan year beginning in 2002 or 2003, notwithstanding subclause (I), in the case that the rate of interest used under subsection (b)(5) of this section exceeds the highest rate permitted under subclause (I), the rate of interest used to determine current liability under this subsection may exceed the rate of interest otherwise permitted under subclause (I); except that such rate of interest shall not exceed 120 percent of the weighted average referred to in subsection (b)(5)(B)(ii) of this section.

(IV) Special rule for 2004 and 2005 For plan years beginning in 2004 or 2005, notwithstanding subclause (I), the rate of interest used to determine current liability under this subsection shall be the rate of interest under subsection (b)(5) of this section.

(ii) Mortality tables

(I) Commissioners’ standard table In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this subsection shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners’ standard table (described in section 807 (d)(5)(A) of title 26) used to determine reserves for group annuity contracts issued on January 1, 1993.

(II) Secretarial authority The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to

be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary of the Treasury shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(III) Periodic review The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subsection and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(iii) Separate mortality tables for the disabled Notwithstanding clause (ii)—

(I) In general In the case of plan years beginning after December 31, 1995, the Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (ii)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(II) Special rule for disabilities occurring after 1994 In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act [42 U.S.C. 401 et seq.] and the regulations thereunder.

(III) Plan years beginning in 1995 In the case of any plan year beginning in 1995, a plan may use its own mortality assumptions for individuals who are entitled to benefits under the plan on account of disability.

(D) Certain service disregarded

(i) In general In the case of a participant to whom this subparagraph applies, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

(ii) Applicable percentage For purposes of this subparagraph, the applicable percentage shall be determined as follows:

If the years of The applicable participation are: percentage is: 1 20 2 40
3 60 4 80 5 or more 100.

(iii) Participants to whom subparagraph applies This subparagraph shall apply to any participant who, at the time of becoming a participant—

(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member,

(II) who first becomes a participant under the plan in a plan year beginning after December 31, 1987, and

(III) has years of service greater than the minimum years of service necessary for eligibility to participate in the plan.

(iv) Election An employer may elect not to have this subparagraph apply. Such an election, once made, may be revoked only with the consent of the Secretary of the Treasury.

(8) Other definitions

For purposes of this subsection—

(A) Unfunded current liability

The term “unfunded current liability” means, with respect to any plan year, the excess (if any) of—

(i) the current liability under the plan, over

(ii) value of the plan’s assets determined under subsection (c)(2) of this section.

(B) Funded current liability percentage

The term “funded current liability percentage” means, with respect to any plan year, the percentage which—

(i) the amount determined under subparagraph (A)(ii), is of

(ii) the current liability under the plan.

(C) Controlled group

The term “controlled group” means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of title 26.

(D) Adjustments to prevent omissions and duplications

The Secretary of the Treasury shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, the current payment amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits.

(E) Deduction for credit balances

For purposes of this subsection, the amount determined under subparagraph (A)(ii) shall be reduced by any credit balance in the funding standard account. The Secretary of the Treasury may provide for such reduction for purposes of any other provision which references this subsection.

(9) Applicability of subsection

(A) In general

Except as provided in paragraph (6)(A), this subsection shall apply to a plan for any plan year if its funded current liability percentage for such year is less than 90 percent.

(B) Exception for certain plans at least 80 percent funded

Subparagraph (A) shall not apply to a plan for a plan year if—

(i) the funded current liability percentage for the plan year is at least 80 percent, and

(ii) such percentage for each of the 2 immediately preceding plan years (or each of the 2d and 3d immediately preceding plan years) is at least 90 percent.

(C) Funded current liability percentage

For purposes of subparagraphs (A) and (B), the term “funded current liability percentage” has the meaning given such term by paragraph (8)(B), except that such percentage shall be determined for any plan year—

(i) without regard to paragraph (8)(E), and

(ii) by using the rate of interest which is the highest rate allowable for the plan year under paragraph (7)(C).

(D) Transition rules

For purposes of this paragraph:

(i) Funded percentage for years before 1995 The funded current liability percentage for any plan year beginning before January 1, 1995, shall be treated as not less than 90 percent only if for such plan year the plan met one of the following requirements (as in effect for such year):

(I) The full-funding limitation under subsection (c)(7) of this section for the plan was zero.

(II) The plan had no additional funding requirement under this subsection (or would have had no such requirement if its funded current liability percentage had been determined under subparagraph (C)).

(III) The plan's additional funding requirement under this subsection did not exceed the lesser of 0.5 percent of current liability or \$5,000,000.

(ii) Special rule for 1995 and 1996 For purposes of determining whether subparagraph (B) applies to any plan year beginning in 1995 or 1996, a plan shall be treated as meeting the requirements of subparagraph (B)(ii) if the plan met the requirements of clause (i) of this subparagraph for any two of the plan years beginning in 1992, 1993, and 1994 (whether or not consecutive).

(10) Unfunded mortality increase amount

(A) In general

The unfunded mortality increase amount with respect to each unfunded mortality increase is the amount necessary to amortize such increase in equal annual installments over a period of 10 plan years (beginning with the first plan year for which a plan uses any new mortality table issued under paragraph (7)(C)(ii)(II) or (III)).

(B) Unfunded mortality increase

For purposes of subparagraph (A), the term "unfunded mortality increase" means an amount equal to the excess of—

(i) the current liability of the plan for the first plan year for which a plan uses any new mortality table issued under paragraph (7)(C)(ii)(II) or (III), over

(ii) the current liability of the plan for such plan year which would have been determined if the mortality table in effect for the preceding plan year had been used.

(11) Phase-in of increases in funding required by Retirement Protection Act of 1994

(A) In general

For any applicable plan year, at the election of the employer, the increase under paragraph (1) shall not exceed the greater of—

(i) the increase that would be required under paragraph (1) if the provisions of this subchapter as in effect for plan years beginning before January 1, 1995, had remained in effect, or

(ii) the amount which, after taking into account charges (other than the additional charge under this subsection) and credits under subsection (b) of this section, is necessary to increase the funded current liability percentage (taking into account

the expected increase in current liability due to benefits accruing during the plan year) for the applicable plan year to a percentage equal to the sum of the initial funded current liability percentage of the plan plus the applicable number of percentage points for such applicable plan year.

(B) Applicable number of percentage points

(i) Initial funded current liability percentage of 75 percent or less Except as provided in clause (ii), for plans with an initial funded current liability percentage of 75 percent or less, the applicable number of percentage points for the applicable plan year is:

In the case The applicable of applicable number of plan years percentage beginning in: points is: 1995 3 1996 6 1997 9 1998 12 1999 15 2000 19 2001 24.

(ii) Other cases In the case of a plan to which this clause applies, the applicable number of percentage points for any such applicable plan year is the sum of—

(I) 2 percentage points;

(II) the applicable number of percentage points (if any) under this clause for the preceding applicable plan year;

(III) the product of .10 multiplied by the excess (if any) of (a) 85 percentage points over (b) the sum of the initial funded current liability percentage and the number determined under subclause (II);

(IV) for applicable plan years beginning in 2000, 1 percentage point; and

(V) for applicable plan years beginning in 2001, 2 percentage points.

(iii) Plans to which clause (ii) applies

(I) In general Clause (ii) shall apply to a plan for an applicable plan year if the initial funded current liability percentage of such plan is more than 75 percent.

(II) Plans initially under clause (i) In the case of a plan which (but for this subclause) has an initial funded current liability percentage of 75 percent or less, clause (ii) (and not clause (i)) shall apply to such plan with respect to applicable plan years beginning after the first applicable plan year for which the sum of the initial funded current liability percentage and the applicable number of percentage points (determined under clause (i)) exceeds 75 percent. For purposes of applying clause (ii) to such a plan, the initial funded current liability percentage of such plan shall be treated as being the sum referred to in the preceding sentence.

(C) Definitions

For purposes of this paragraph—

(i) The term “applicable plan year” means a plan year beginning after December 31, 1994, and before January 1, 2002.

(ii) The term “initial funded current liability percentage” means the funded current liability percentage as of the first day of the first plan year beginning after December 31, 1994.

(12) Election for certain plans

(A) In general

In the case of a defined benefit plan established and maintained by an applicable employer, if this subsection did not apply to the plan for the plan year beginning in 2000 (determined without regard to paragraph (6)), then, at the election of the

employer, the increased amount under paragraph (1) for any applicable plan year shall be the greater of—

- (i) 20 percent of the increased amount under paragraph (1) determined without regard to this paragraph, or
- (ii) the increased amount which would be determined under paragraph (1) if the deficit reduction contribution under paragraph (2) for the applicable plan year were determined without regard to subparagraphs (A), (B), and (D) of paragraph (2).

(B) Restrictions on benefit increases

No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted during any applicable plan year, unless—

- (i) the plan's enrolled actuary certifies (in such form and manner prescribed by the Secretary of the Treasury) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or
- (ii) the amendment is required by a collective bargaining agreement which is in effect on April 10, 2004.

If a plan is amended during any applicable plan year in violation of the preceding sentence, any election under this paragraph shall not apply to any applicable plan year ending on or after the date on which such amendment is adopted.

(C) Applicable employer

For purposes of this paragraph, the term "applicable employer" means an employer which is—

- (i) a commercial passenger airline,
- (ii) primarily engaged in the production or manufacture of a steel mill product or the processing of iron ore pellets, or
- (iii) an organization described in section 501 (c)(5) of title 26 and which established the plan to which this paragraph applies on June 30, 1955.

(D) Applicable plan year

For purposes of this paragraph—

- (i) In general The term "applicable plan year" means any plan year beginning after December 27, 2003, and before December 28, 2005, for which the employer elects the application of this paragraph.
- (ii) Limitation on number of years which may be elected An election may not be made under this paragraph with respect to more than 2 plan years.

(E) Notice requirements for plans electing alternative deficit reduction contributions

(i) In general If an employer elects an alternative deficit reduction contribution under this paragraph and section 412 (l)(12) of title 26 for any year, the employer shall provide, within 30 days of filing the election for such year, written notice of the election to participants and beneficiaries and to the Pension Benefit Guaranty Corporation.

(ii) Notice to participants and beneficiaries The notice under clause (i) to participants and beneficiaries shall include with respect to any election—

(I) the due date of the alternative deficit reduction contribution and the amount by which such contribution was reduced from the amount which would have been owed if the election were not made, and

(II) a description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation and an explanation of the limitations on the guarantee and the circumstances under which such limitations apply, including the maximum guaranteed monthly benefits which the Pension Benefit Guaranty Corporation would pay if the plan terminated while underfunded.

(iii) Notice to PBGC The notice under clause (i) to the Pension Benefit Guaranty Corporation shall include—

(I) the information described in clause (ii)(I),

(II) the number of years it will take to restore the plan to full funding if the employer only makes the required contributions, and

(III) information as to how the amount by which the plan is underfunded compares with the capitalization of the employer making the election.

(F) Election

An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury may prescribe.

(e) Quarterly contributions required

(1) In general

If a defined benefit plan (other than a multiemployer plan) which has a funded current liability percentage (as defined in subsection (d)(8) of this section) for the preceding plan year of less than 100 percent fails to pay the full amount of a required installment for the plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) of this section with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of such plan year), or

(B) the rate of interest used under the plan in determining costs (including adjustments under subsection (b)(5)(B) of this section).

(2) Amount of underpayment, period of underpayment

For purposes of paragraph (1)—

(A) Amount

The amount of the underpayment shall be the excess of—

(i) the required installment, over

(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

(B) Period of underpayment

The period for which any interest is charged under this subsection with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan (determined without regard to subsection (c)(10) of this section).

(C) Order of crediting contributions

For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(3) Number of required installments; due dates

For purposes of this subsection—

(A) Payable in 4 installments

There shall be 4 required installments for each plan year.

(B) Time for payment of installments

In the case of the following

required installments: The due date is:

1st April 15

2nd July 15

3rd October 15

4th January 15 of the following year.

(4) Amount of required installment

For purposes of this subsection—

(A) In general

The amount of any required installment shall be the applicable percentage of the required annual payment.

(B) Required annual payment

For purposes of subparagraph (A), the term “required annual payment” means the lesser of—

(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year under section 412 of title 26 (without regard to any waiver under subsection (d) thereof), or

(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

(C) Applicable percentage

For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

For plan years beginning in: The applicable percentage is: 1989 6.25 1990 12.5 1991 18.75 1992 and thereafter 25.

(D) Special rules for unpredictable contingent event benefits

In the case of a plan to which subsection (d) of this section applies for any calendar year and which has any unpredictable contingent event benefit liabilities—

(i) Liabilities not taken into account Such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B).

(ii) Increase in installments Each required installment shall be increased by the greatest of—

(I) the unfunded percentage of the amount of benefits described in subsection (d)(5)(A)(i) of this section paid during the 3-month period preceding the month in which the due date for such installment occurs,

(II) 25 percent of the amount determined under subsection (d)(5)(A)(ii) of this section for the plan year, or

(III) 25 percent of the amount determined under subsection (d)(5)(A)(iii) of this section for the plan year.

(iii) Unfunded percentage For purposes of clause (ii)(I), the term “unfunded percentage” means the percentage determined under subsection (d)(5)(A)(i)(I) of this section for the plan year.

(iv) Limitation on increase In no event shall the increases under clause (ii) exceed the amount necessary to increase the funded current liability percentage (within the meaning of subsection (d)(8)(B) of this section) for the plan year to 100 percent.

(5) Liquidity requirement

(A) In general

A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

(B) Plans to which paragraph applies

This paragraph shall apply to a defined benefit plan (other than a multiemployer plan or a plan described in subsection (d)(6)(A) of this section) which—

(i) is required to pay installments under this subsection for a plan year, and

(ii) has a liquidity shortfall for any quarter during such plan year.

(C) Period of underpayment

For purposes of paragraph (1), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

(D) Limitation on increase

If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.

(E) Definitions

For purposes of this paragraph—

(i) Liquidity shortfall The term “liquidity shortfall” means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of the base amount with respect to such quarter over the value (as of such last day) of the plan’s liquid assets.

(ii) Base amount

(I) In general The term “base amount” means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

(II) Special rule If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary of the Treasury that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) Disbursements from the plan The term “disbursements from the plan” means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

(iv) Adjusted disbursements The term “adjusted disbursements” means disbursements from the plan reduced by the product of—

(I) the plan’s funded current liability percentage (as defined in subsection (d)(8) of this section) for the plan year, and

(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall provide in regulations.

(v) Liquid assets The term “liquid assets” means cash, marketable securities and such other assets as specified by the Secretary of the Treasury in regulations.

(vi) Quarter The term “quarter” means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

(F) Regulations

The Secretary of the Treasury may prescribe such regulations as are necessary to carry out this paragraph.

(6) Fiscal years and short years

(A) Fiscal years

In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.

(B) Short plan year

This section shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury.

(7) Special rule for 2002

In any case in which the interest rate used to determine current liability is determined under subsection (d)(7)(C)(i)(III) of this section, for purposes of applying paragraphs (1) and (4)(B)(ii) for plan years beginning in 2002, the current liability for the preceding plan year shall be redetermined using 120 percent as the specified percentage determined under subsection (d)(7)(C)(i)(II) of this section.

(f) Imposition of lien where failure to make required contributions

(1) In general

In the case of a plan covered under section 1321 of this title, if—

(A) any person fails to make a required installment under subsection (e) of this section or any other payment required under this section before the due date for such installment or other payment, and

(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds \$1,000,000, then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

(2) Plans to which subsection applies

This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funded current liability percentage (within the meaning of subsection (d)(8)(B) of this section) of such plan is less than 100 percent.

(3) Amount of lien

For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

(A) for plan years beginning after 1987, and

(B) for which payment has not been made before the due date.

(4) Notice of failure; lien

(A) Notice of failure

A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required installment or other payment.

(B) Period of lien

The lien imposed by paragraph (1) shall arise on the due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

(C) Certain rules to apply

Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 1368 of this title shall apply with respect to a lien imposed by subsection (a) of this section and the amount with respect to such lien.

(5) Enforcement

Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

(6) Definitions

For purposes of this subsection—

(A) Due date; required installment

The terms “due date” and “required installment” have the meanings given such terms by subsection (e) of this section, except that in the case of a payment other

than a required installment, the due date shall be the date such payment is required to be made under this section.

(B) Controlled group

The term “controlled group” means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of title 26.

(g) Qualified transfers to health benefit accounts

For purposes of this section, in the case of a qualified transfer (as defined in section 420 of title 26)—

(1) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of subsection (c)(7) of this section, be treated as assets in the plan as of the valuation date for such year, and

(2) the plan shall be treated as having a net experience loss under subsection (b)(2)(B)(iv) of this section in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the plan under section 420 (c)(1)(B) of title 26) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such subsection shall be applied to such amount by substituting “10 plan years” for “5 plan years”.

(h) Cross reference

For alternative amortization method for certain multiemployer plans see section 1013(d) of this Act.

1083. Variance from minimum funding standard

(a) Waiver of requirements in event of business hardship

If an employer, or in the case of a multi-employer plan, 10 percent or more of the number of employers contributing to or under the plan are unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary of the Treasury may waive the requirements of section 1082 (a) of this title for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under section 1082 (b)(2)(C) of this title. The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years. The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) of this section for any plan year shall be—

(1) in the case of a plan other than a multiemployer plan, the greater of

(A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of such plan year), or

(B) the rate of interest used under the plan in determining costs (including adjustments under section 1082 (b)(5)(B) of this title), and

(2) in the case of a multiemployer plan, the rate determined under section 6621 (b) of title 26.

(b) Matters considered in determining business hardship

For purposes of this part, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether—

- (1) the employer is operating at an economic loss,
- (2) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,
- (3) the sales and profits of the industry concerned are depressed or declining, and
- (4) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(c) “Waived funding deficiency” defined

For purposes of this part, the term “waived funding deficiency” means the portion of the minimum funding standard (determined without regard to subsection (b)(3)(C) of section 1082 of this title) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

(d) Special rules

(1) Application must be submitted before date 21/2 months after close of year
In the case of a plan other than a multiemployer plan, no waiver may be granted under this section with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year.

(2) Special rule if employer is member of controlled group

(A) In general

In the case of a plan other than a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of subsection (a) of this section shall be treated as met only if such requirements are met—

- (i) with respect to such employer, and
- (ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary of the Treasury determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this subsection.

(B) Controlled group

For purposes of subparagraph (A), the term “controlled group” means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of title 26.

(e) Notice of filing of application for waiver

(1) The Secretary of the Treasury shall, before granting a waiver under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each employee organization representing employees covered by the affected plan, and each affected party (as defined in section 1301 (a)(21) of this

title) other than the Pension Benefit Guaranty Corporation. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under subchapter III of this chapter and for benefit liabilities.

(2) The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

(f) Cross reference

For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1986, see section 412 (d) of title 26.

1084. Extension of amortization periods

(a) Determinations by Secretary in granting extension

The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B) of section 1082 of this title) of any plan may be extended by the Secretary for a period of time (not in excess of 10 years) if he determines that such extension would carry out the purposes of this chapter and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

(1) result in—

(A) a substantial risk to the voluntary continuation of the plan, or

(B) a substantial curtailment of pension benefit levels or employee compensation, and

(2) be adverse to the interests of plan participants in the aggregate.

In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of

(A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of such plan year), or

(B) the rate of interest used under the plan in determining costs. In the case of a multiemployer plan, such rate shall be the rate determined under section 6621 (b) of title 26.

(b) Amendment of plan

(1) No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under section 1083 (a) of this title or an extension of time under subsection (a) of this section is in effect with respect to the plan, or if a plan amendment described in section 1082 (c)(8) of this title has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(2) Paragraph (1) shall not apply to any plan amendment which—

(A) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

(B) only repeals an amendment described in section 1082 (c)(8) of this title, or

(C) is required as a condition of qualification under part I of subchapter D, of chapter 1, of title 26.

(c) Notice of filing of application for extension

(1) The Secretary of the Treasury shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each employee organization representing employees covered by the affected plan.

(2) The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

1085. Alternative minimum funding standard

(a) Maintenance of account

A plan which uses a funding method that requires contributions in all years not less than those required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this section.

(b) Operation of account

For a plan year the alternative minimum funding standard accounts shall be—

(1) charged with the sum of—

(A) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,

(B) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

(C) an amount equal to the excess, if any, of credits to the alternative minimum funding standard account for all prior plan years over charges to such account for all such years, and

(2) credited with the amount considered contributed by the employer to or under the plan (within the meaning of section 1082 (c)(10) of this title) for the plan year.

(c) Interest

The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under section 1082

(b)(5) of this title with respect to the funding standard account.

1085a. Security for waivers of minimum funding standard and extensions of amortization period

(a) Security may be required

(1) In general

Except as provided in subsection (c) of this section, the Secretary of the Treasury may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 1301 (a)(15) of this title) to provide

security to such plan as a condition for granting or modifying a waiver under section 1083 of this title or an extension under section 1084 of this title.

(2) Special rules

Any security provided under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation or, at the direction of the Corporation, by a contributing sponsor (within the meaning of section 1301 (a)(13) of this title) or a member of such sponsor's controlled group (within the meaning of section 1301 (a)(14) of this title).

(b) Consultation with the Pension Benefit Guaranty Corporation

Except as provided in subsection (c) of this section, the Secretary of the Treasury shall, before granting or modifying a waiver under section 1083 of this title or an extension under section 1084 of this title with respect to a plan described in subsection (a)(1) of this section—

(1) provide the Pension Benefit Guaranty Corporation with—

(A) notice of the completed application for any waiver, extension, or modification, and

(B) an opportunity to comment on such application within 30 days after receipt of such notice, and

(2) consider—

(A) any comments of the Corporation under paragraph (1)(B), and

(B) any views of any employee organization representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

Information provided to the corporation under this subsection shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103 (p) of title 26.

(c) Exception for certain waivers and extensions

(1) In general

The preceding provisions of this section shall not apply to any plan with respect to which the sum of—

(A) the outstanding balance of the accumulated funding deficiencies (within the meaning of section 1082 (a)(2) of this title and section 412 (a) of title 26) of the plan,

(B) the outstanding balance of the amount of waived funding deficiencies of the plan waived under section 1083 of this title or section 412 (d) of title 26, and

(C) the outstanding balance of the amount of decreases in the minimum funding standard allowed under section 1084 of this title or section 412 (e) of title 26, is less than \$1,000,000.

(2) Accumulated funding deficiencies

For purposes of paragraph (1)(A), accumulated funding deficiencies shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under section 1083 of this title or section 412 (d) of title 26 and for extensions of the amortization period under section 1084 of this title or section 412 (e) of title 26 which are pending with respect to such plan were denied.

1085b. Security required upon adoption of plan amendment resulting in significant underfunding

(a) In general

If—

(1) a defined benefit plan (other than a multiemployer plan) to which the requirements of section 1082 of this title apply adopts an amendment an effect of which is to increase current liability under the plan for a plan year, and

(2) the funded current liability percentage of the plan for the plan year in which the amendment takes effect is less than 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, the contributing sponsor (or any member of the controlled group of the contributing sponsor) shall provide security to the plan.

(b) Form of security

The security required under subsection (a) of this section shall consist of—

(1) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 1112 of this title,

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

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

(c) Amount of security

The security shall be in an amount equal to the excess of—

(1) the lesser of—

(A) the amount of additional plan assets which would be necessary to increase the funded current liability percentage under the plan to 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, or

(B) the amount of the increase in current liability under the plan attributable to the plan amendment and any other plan amendments adopted after December 22, 1987, and before such plan amendment, over

(2) \$10,000,000.

(d) Release of security

The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at the end of the first plan year which ends after the provision of the security and for which the funded current liability percentage under the plan is not less than 60 percent. The Secretary of the Treasury may prescribe regulations for partial releases of the security by reason of increases in the funded current liability percentage.

(e) Notice

A contributing sponsor which is required to provide security under subsection (a) of this section shall notify the Pension Benefit Guaranty Corporation within 30 days after the amendment requiring such security takes effect. Such notice shall contain such information as the Corporation may require.

(f) Definitions

For purposes of this section, the terms “current liability”, “funded current liability percentage”, and “unfunded current liability” shall have the meanings given such terms by section 1082 (d) of this title, except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year.

1086. Effective dates

- (a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after September 2, 1974.
- (b) Except as otherwise provided in subsections (c) and (d) of this section, in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.
- (c)
 - (1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee representatives and one or more employers, this part shall apply only with respect to plan years beginning after the earlier of the date specified in subparagraph (A) or (B) of section 1061 (c)(1) of this title.
 - (2) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b) of this section.
- (d) In the case of a plan the administrator of which elects under section 1017(d) of this Act to have the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit to apply to a plan year and to all subsequent plan years, this part shall apply to plan years beginning on the earlier of the first plan year to which such election applies or the first plan year determined under subsections (a), (b), and (c) of this section.
- (e) In the case of a plan maintained by a labor organization which is exempt from tax under section 501 (c)(5) of title 26 exclusively for the benefit of its employees and their beneficiaries, this part shall be applied by substituting for the term “December 31, 1975” in subsection (b) of this section, the earlier of—
 - (1) the date on which the second convention of such labor organization held after September 2, 1974, ends or
 - (2) December 31, 1980,but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subsection (c) of this section be substituted.
- (f) The preceding provisions of this section shall not apply with respect to amendments made to this part in provisions enacted after September 2, 1974.