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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9723]

RIN 1545-BM73

Suspension of Benefits under the Multiemployer Pension Reform Act of 2014

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to multiemployer pension plans that are projected to have insufficient funds, at some point in the future, to pay the full benefits to which individuals will be entitled under the plans (referred to as plans in “critical and declining status”). The Multiemployer Pension Reform Act of 2014 (“MPRA”) amended the Internal Revenue Code to incorporate suspension of benefits provisions that permit these multiemployer plans to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. MPRA requires the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, to approve or deny applications by these plans to reduce benefits. As required by MPRA, these temporary regulations, together with proposed regulations being published at the same time, provide guidance implementing these statutory provisions. These temporary regulations affect active, retired, and

deferred vested participants and beneficiaries of multiemployer plans that are in critical and declining status as well as employers contributing to, and sponsors and administrators of, those plans. The text of these temporary regulations also serves, in part, as the text of the proposed regulations (REG-102648-15) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Date: For date of applicability, see §1.432(e)(9)-1T(j).

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury MPRA guidance information line at (202) 622-1559 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-2260.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated

burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referenced notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Overview

Section 432(e)(9)¹ of the Internal Revenue Code (Code) permits the plan sponsor of a multiemployer plan that is projected to have insufficient funds, at some point in the future, to pay the full benefits to which individuals will be entitled under the plan (referred to as a plan in “critical and declining status”) to reduce the pension benefits payable to participants and beneficiaries under the plan if certain conditions are satisfied (referred to as a “suspension of benefits”). MPRA requires the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor (generally referred to in this preamble as the Treasury Department, PBGC, and Labor Department, respectively), to issue appropriate guidance to implement the provisions of section 432(e)(9). This document contains temporary regulations under section 432(e)(9) that, together with proposed regulations that are

¹ Section 432(e)(9) was added to the Internal Revenue Code by the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780 (2006)) (PPA '06) and amended by the Multiemployer Pension Reform Act of 2014, Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235 (128 Stat. 2130 (2014)) (MPRA).

being published elsewhere in this issue of the **Federal Register** and a revenue procedure being published in the Internal Revenue Bulletin, Rev. Proc. 2015-34, implement section 432(e)(9) as required by the statute. The Treasury Department consulted with the PBGC and the Labor Department on these temporary regulations.

The temporary regulations in this document, which are applicable immediately, provide sufficient guidance to enable a plan sponsor that wishes to apply for approval of a suspension of benefits to prepare and submit such an application, and to enable the Department of the Treasury to begin the processing of such an application. The temporary regulations provide general guidance regarding section 432(e)(9), including guidance regarding the meaning of the term “suspension of benefits,” the general conditions for a suspension of benefits, and the implementation of a suspension after a participant vote. The notice of proposed rulemaking, published elsewhere in this issue of the **Federal Register**, includes the proposed regulations and requests comments on the provisions of the proposed regulations as well as these temporary regulations. The provisions of the temporary regulations and proposed regulations are expected to be integrated and issued as a single set of final regulations with any changes that are made following consideration of the comments.

The proposed regulations, which are not applicable immediately, contain additional provisions with respect to which the Department of the Treasury intends to consider public comments before finalizing a decision to approve an application for suspension of benefits. The proposed regulations also provide additional guidance regarding section 432(e)(9), including guidance relating to the standards that will be

applied in reviewing an application for suspension of benefits and the statutory limitations on a suspension of benefits.

The regulations implementing the statutory suspension of benefits provisions have been divided, as described, into temporary regulations and proposed regulations in order to balance the interest in considering public comments on rules before they apply with the evident statutory intent, reflected in MPRA, to implement the statutory provisions without undue delay. Although the Department of the Treasury is issuing proposed and temporary regulations under section 432(e)(9), it is expected that no application proposing a benefit suspension will be approved prior to the issuance of final regulations. If a plan sponsor chooses to submit an application for approval of a proposed benefit suspension in accordance with the proposed and temporary regulations before the issuance of final regulations, then the plan sponsor may need to revise the proposed suspension (and potentially the related notices to plan participants) or supplement the application to take into account any differences in the requirements relating to suspensions of benefits that might be included in the final regulations.

Rev. Proc. 2015-34 prescribes the specifics of the application process for approval of a proposed benefit suspension. The revenue procedure also provides a model notice that a plan sponsor proposing a benefit suspension may use to satisfy the statutory notice requirement.

Statutory Background

Code section 412 contains minimum funding rules that generally apply to pension plans. Code section 431, added by section 211 of PPA '06, sets forth the funding rules that apply specifically to multiemployer defined benefit plans. Code section 432, added

by section 212 of PPA '06, sets forth additional rules that apply to certain multiemployer plans in endangered or critical status, and permits plans in critical status to be amended to reduce certain otherwise protected benefits (referred to as adjustable benefits).

Section 202 of PPA '06 amended section 305 of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829 (1974)), as amended (ERISA), to prescribe parallel rules. PPA '06 provided that Code section 432 and ERISA section 305 would sunset for plan years beginning after December 31, 2014. However, section 101 of MPRA made them permanent, with certain modifications.

Section 201 of MPRA amended Code section 432 to add a new status, called critical and declining status, for multiemployer defined benefit plans. Section 432(b)(6) provides that a plan in critical status is treated as being in critical and declining status if the plan satisfies the criteria for critical status and in addition is projected to become insolvent within the meaning of section 418E during the current plan year or any of the 14 succeeding plan years (or 19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds two to one or if the funded percentage of the plan is less than 80 percent). Section 201 of MPRA also amended Code section 432(e)(9) to prescribe benefit suspension rules for plans in critical and declining status.²

MPRA was enacted on December 16, 2014. Section 201(b)(7) of MPRA provides that, not later than 180 days after the date of enactment, the Treasury Department, in consultation with the PBGC and the Labor Department, is required to publish appropriate guidance to implement section 432(e)(9). Section 201(c) of MPRA

² Section 201 of MPRA makes parallel amendments to section 305 of ERISA and the Department of the Treasury has interpretive jurisdiction over the subject matter of these provisions under ERISA as well as the Code. See also section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713).

provides that the amendments made by section 201 will take effect on the date of enactment.

On February 18, 2015, the Department of the Treasury issued a Request for Information on Suspensions of Benefits under the Multiemployer Pension Reform Act of 2014 in the **Federal Register** (80 FR 8578). The Request for Information included questions focusing on certain matters to be addressed in guidance implementing section 432(e)(9) and indicated that multiemployer plans should not submit applications for suspensions of benefits prior to a date specified in such future guidance. These temporary regulations, and the proposed regulations published elsewhere in this issue of the **Federal Register**, reflect consideration of comments received in response to the Request for Information.

Definition of suspension of benefits and general rules under section 432(e)(9)(A) and 432(e)(9)(B)(i) through (iv)

Section 201 of MPRA prescribes benefit suspension rules for multiemployer defined benefit plans in critical and declining status. Section 432(e)(9)(A) provides that notwithstanding section 411(d)(6) and subject to section 432(e)(9)(B) through (I), the plan sponsor of a plan in critical and declining status may, by plan amendment, suspend benefits that the sponsor deems appropriate.

The statute defines suspension of benefits as the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits. Any suspension will remain in effect until the earlier of when the plan sponsor provides benefit improvements in accordance with section 432(e)(9)(E) or when the

suspension expires by its own terms. Thus, if a suspension does not expire by its own terms, it continues indefinitely.

Under the statute, a plan will not be liable for any benefit payments not made as a result of a suspension of benefits. All references to suspensions of benefits, increases in benefits, or resumptions of suspended benefits with respect to participants will also apply with respect to benefits of beneficiaries or alternative payees³ of participants. See section 432(e)(9)(B)(iv).

Retiree representative

In the case of a plan with 10,000 or more participants, section 432(e)(9)(B)(v) requires the plan sponsor to select a plan participant in pay status to act as a retiree representative. The retiree representative is required to advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process. The plan must provide for the retiree representative's reasonable expenses, including reasonable legal and actuarial support, commensurate with the plan's size and funded status.

Conditions for suspensions

Section 432(e)(9)(C) sets forth conditions that must be satisfied before a plan sponsor of a plan in critical and declining status for a plan year may suspend benefits. Under one of the conditions, the plan actuary must certify, taking into account the proposed suspension of benefits (and, if applicable, a proposed partition of the plan under section 4233 of ERISA (partition)), that the plan is projected to avoid insolvency

³ The Department of the Treasury and the IRS understand this provision to refer to alternate payees.

within the meaning of section 418E, assuming the suspension of benefits continues until it expires by its own terms or if no such expiration date is set, indefinitely.

Another condition requires a plan sponsor to determine, in a written record to be maintained throughout the period of the benefit suspension, that although all reasonable measures to avoid insolvency have been taken (and continue to be taken during the period of the benefit suspension), the plan is still projected to become insolvent unless benefits are suspended. In making this determination, the plan sponsor may take into account factors including a specified list of 10 statutory factors.⁴ See section 432(e)(9)(C)(ii).

Limitations on suspensions

Section 432(e)(9)(D) contains limitations on the benefits that may be suspended, some of which apply to plan participants and beneficiaries on an individual basis and some of which apply on an aggregate basis. Under the statute, an individual's monthly benefit may not be reduced below 110 percent of the monthly benefit that is guaranteed by the PBGC under section 4022A of ERISA on the date of the suspension. In addition, no benefits based on disability (as defined under the plan) may be suspended.

In the case of a participant or beneficiary who has attained age 75 as of the effective date of a suspension, section 432(e)(9)(D)(ii) provides that the suspension may not exceed the applicable percentage of the individual's maximum suspendable

⁴ These 10 factors are current and past contribution levels; levels of benefit accruals (including prior reductions in the rate of benefit accruals); prior adjustable benefit reductions and suspensions of benefits; the impact on plan solvency of the subsidies and ancillary benefits available to active participants; compensation levels of active participants relative to employees in the participants' industry generally; competitive and other economic factors facing contributing employers; the impact of benefit and contribution levels on retaining active participants and bargaining groups under the plan; the impact of past and anticipated contribution increases under the plan on employer attrition and retention levels; and measures undertaken by the plan sponsor to retain or attract contributing employers.

benefit (the age-based limitation). The maximum suspendable benefit is the maximum amount of an individual's benefit that would be suspended without regard to the age-based limitation. The applicable percentage is a percentage that is calculated by dividing (i) the number of months during the period that begins with the month after the month in which the suspension is effective and ends with the month in which that participant or beneficiary attains the age of 80 by (ii) 60 months.

Section 432(e)(9)(D) also requires the aggregate benefit suspensions (considered, if applicable, in connection with a partition) to be reasonably estimated to achieve, but not materially exceed, the level that is needed to avoid insolvency.

Under the statute, any suspension of benefits must be equitably distributed across the participant and beneficiary population, taking into account factors that may include one or more of a list of 11 statutory factors.⁵ Finally, with regard to a suspension of benefits that is made in combination with a partition, section 432(e)(9)(D)(v) provides that the suspension may not occur before the effective date of the partition.

Benefit improvements

Section 432(e)(9)(E) sets forth rules relating to benefit improvements made while a suspension of benefits is in effect. Under this provision, a benefit improvement is defined as a resumption of suspended benefits, an increase in benefits, an increase in

⁵ These 11 factors are age and life expectancy; length of time in pay status; amount of benefit; type of benefit; extent of a subsidized benefit; extent of post-retirement benefit increases; history of benefit increases and reductions; years to retirement for active employees; any discrepancies between active and retiree benefits; extent to which participants are reasonably likely to withdraw support for the plan, resulting in accelerated employer withdrawal; and the extent to which the benefits are attributed to service with an employer that failed to pay its withdrawal liability.

the rate at which benefits accrue, or an increase in the rate at which benefits become nonforfeitable under the plan.

The statute also provides that, while a suspension of benefits is in effect, a plan sponsor generally has discretion to provide benefit improvements. However, a sponsor may not increase plan liabilities by reason of any benefit improvement for any participant or beneficiary who is not in pay status (in other words, those who are not yet receiving benefits, such as active employees or deferred vested employees) unless (1) this benefit improvement is accompanied by an equitable distribution of benefit improvements for those who have begun to receive benefits (typically, retirees), and (2) the plan actuary certifies that, after taking those benefit improvements into account, the plan is projected to avoid insolvency indefinitely.⁶ Whether an individual is in pay status for this purpose is generally based on whether the individual's benefits began before the first day of the plan year for which the benefit improvement took effect.

Notice of proposed suspension

A plan sponsor may not suspend benefits unless notice is provided in accordance with section 432(e)(9)(F). Under this section, concurrently with an application to suspend benefits under section 432(e)(9)(G), the plan sponsor must give notice to plan participants and beneficiaries who may be contacted by reasonable efforts, each employer that has an obligation to contribute (within the meaning of section 4212(a) of ERISA) under the plan, and each employee organization that represents plan

⁶ Avoidance of insolvency is determined by reference to section 418E under which a plan is insolvent if it is unable to pay scheduled benefits for a year. Pursuant to section 432(e)(9)(E)(iv), this restriction does not apply to certain benefit improvements if the Treasury Department determines either that the benefit improvements are reasonable and provide for only de minimis increases in plan liabilities or that the benefit improvements are required as a condition of qualification or to comply with other applicable law.

participants employed by those employers for purposes of collective bargaining. The notice must contain sufficient information to enable individuals to understand the effect of any suspension of benefits, including an individualized estimate, on an annual or monthly basis, of the effect on each participant or beneficiary. The notice must also contain certain other specified information.⁷ Notice must be provided in a form and manner prescribed in agency guidance, written in a manner so as to be understood by the average plan participant, and provided in written, electronic, or other appropriate form to the extent it is reasonably accessible to those to whom notice must be furnished.

Any notice provided under section 432(e)(9)(F)(i) will satisfy the requirement for notice of a significant reduction in benefits described in section 4980F. See section 432(e)(9)(F)(iv).

Suspension applications

Section 432(e)(9)(G) describes the process for approval or rejection of a plan sponsor's application for a suspension of benefits. Under the statute, the Treasury Department, in consultation with the PBGC and the Labor Department, must approve an application upon finding that the plan is eligible for the suspensions and has satisfied the criteria of sections 432(e)(9)(C), (D), (E), and (F) (each described earlier). In evaluating whether a plan sponsor has met the criteria in section 432(e)(9)(C)(ii) (a plan

⁷ The specified information includes a description of the factors considered by the plan sponsor in designing the benefit suspension; a statement that the application for suspension of benefits will be available on the website of the Department of the Treasury and that comments on the application will be accepted; information on the rights and remedies of plan participants and beneficiaries; if applicable, a statement about the appointment of a retiree representative, the date of appointment of the retiree representative, identifying information about the retiree representative (including whether the representative is a plan trustee) and how to contact the representative; and information on how to contact the Department of the Treasury for more information and assistance where appropriate.

sponsor's determination that, although all reasonable measures have been taken, the plan will become insolvent if benefits are not suspended), the plan sponsor's consideration of factors under that clause must be reviewed. The statute also requires that the plan sponsor's determinations in an application for a suspension of benefits be accepted unless they are clearly erroneous.

Section 432(e)(9)(G) also requires an application for a suspension of benefits to be published on the website of the Department of the Treasury and requires the Treasury Department to publish a **Federal Register** notice within 30 days of receiving a suspension application, soliciting comments from contributing employers, employee organizations, and participants and beneficiaries of the plan for which a suspension application was made, as well as other interested parties.

Within 225 days after an application for a suspension of benefits is submitted, the statute requires the Treasury Department, in consultation with the PBGC and the Labor Department, to approve or deny the application. If the plan sponsor is not notified that it has failed to satisfy one or more applicable criteria within that 225-day period, the application is deemed approved. If the application is denied, a notice to the plan sponsor must detail the specific reasons for the rejection, including reference to the specific requirement not satisfied. Approval or denial of an application is treated as final agency action for purposes of 5 U.S.C. 704 (that is, the approval or denial is treated as final agency action for purposes of the Administrative Procedure Act, Public Law 79-404, 60 Stat. 237, as amended (APA)).

Participant vote on proposed benefit reduction

If a suspension application is approved, it then goes to a vote of plan participants and beneficiaries. See section 432(e)(9)(H). The vote will be administered by the Treasury Department, in consultation with the PBGC and the Labor Department, within 30 days after approval of the suspension application. The plan sponsor is required to provide a ballot for a vote (subject to approval by the Treasury Department, in consultation with the PBGC and the Labor Department). The statute specifies information that the ballot must include.⁸ If a majority of plan participants and beneficiaries do not vote to reject the suspension, the statute requires the Treasury Department to issue a final authorization to suspend benefits within seven days after the vote.

If a majority of plan participants and beneficiaries vote to reject the suspension, the statute requires the Treasury Department, in consultation with the PBGC and the Labor Department, to determine whether the plan is a systemically important plan. A systemically important plan is a plan for which the PBGC projects the present value of projected financial assistance payments to exceed \$1.0 billion, as indexed, if suspensions are not implemented.

If a majority of plan participants and beneficiaries vote to reject the suspension and the plan is not a systemically important plan, a final authorization to suspend benefits will not be issued. In such a case, the statute provides that the plan sponsor

⁸ This information includes a statement from the plan sponsor in support of the suspension; a statement in opposition to the suspension compiled from comments received in response to the **Federal Register** notice issued by Treasury within 30 days of receiving the suspension application; a statement that the suspension has been approved by the Secretary of the Treasury, in consultation with the PBGC and the Secretary of Labor; a statement that the plan sponsor has determined that the plan will become insolvent unless the suspension takes effect; a statement that insolvency of the plan could result in benefits lower than benefits paid under the suspension; and a statement that insolvency of the PBGC would result in benefits lower than benefits otherwise paid in the case of plan insolvency.

may submit a new application for approval of a suspension of benefits to the Treasury Department.

Within 30 days after a plan is determined to be a systemically important plan, the Participant and Plan Sponsor Advocate selected under ERISA may submit recommendations to the Treasury Department with respect to the suspension that was rejected by the vote or recommendations for any revisions to that suspension.

Notwithstanding the vote rejecting the suspension, the statute requires the Treasury Department, in consultation with the PBGC and the Labor Department, to permit the plan sponsor to implement either the proposed benefit suspension or a modification by the Treasury Department, in consultation with the PBGC and the Labor Department, of that suspension. The Treasury Department must complete this requirement within 90 days after the results of a vote rejecting a suspension for a systemically important plan are certified, and a modification of the suspension by the Treasury Department is only permitted if the plan is still projected to avoid insolvency under the modification.

If the Treasury Department is required to permit the suspension or a modified suspension to go into effect in the case of a systemically important plan with respect to which there has been a vote rejecting the suspension, the statute requires the Treasury Department to issue the final authorization to suspend at a time sufficient to allow the suspension to be implemented by the end of the 90-day period following certification of the results of that vote.

Judicial Review

Section 432(e)(9)(I)(i) allows a plan sponsor to challenge a denial of an application for suspension only after the application is denied. Under the statute, an

action challenging the approval of a suspension may be brought only following the issuance of a final authorization to suspend. The statute also provides that a court will review an action challenging approval of a suspension of benefits in accordance with 5 U.S.C. 706 (that is, the standard of review applicable for purposes of the APA) and will not grant a temporary injunction with respect to a suspension unless it finds a clear and convincing likelihood that the plaintiff will prevail on the merits. Under section 432(e)(9)(l)(iii), participants and beneficiaries affected by a suspension “shall not have a cause of action under this title.” An action challenging either the approval of a suspension of benefits or the denial of an application for a suspension of benefits may not be brought more than one year after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of the cause of action. See section 432(e)(9)(l)(iv).

Explanation of Provisions

I. Overview

These temporary regulations provide guidance on certain requirements under section 432(e)(9) regarding suspension of benefits for multiemployer defined benefit plans in critical and declining status. The temporary regulations do not address certain other requirements that are addressed in the text of the proposed regulations (REG-102648-15) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**. The provisions of these temporary regulations are cross referenced in the proposed regulations so that comments on these provisions may be included with comments on the proposed regulations. In addition to the proposed and temporary regulations, the procedural

requirements for submitting an application to suspend benefits, as well as a model notice, are set forth in Rev. Proc. 2015-34.

II. General rules on suspension of benefits

These temporary regulations provide that, subject to section 432(e)(9)(B) through (I), the plan sponsor of a multiemployer plan that is in critical and declining status within the meaning of section 432(b)(6) for a plan year may, by plan amendment, implement a suspension of benefits that the plan sponsor deems appropriate. Such a suspension is permitted notwithstanding the generally applicable anti-cutback provisions of section 411(d)(6). The plan amendment implementing a suspension of benefits must be adopted in a plan year in which the plan is in critical and declining status.

Under the regulations, once a plan is amended to suspend benefits, a plan may pay or continue to pay a reduced level of benefits pursuant to a suspension only if the terms of the plan are consistent with the requirements of section 432(e)(9) and the regulations.

III. Definitions

The temporary regulations include definitions for the terms pay status and plan sponsor. A person is in pay status under a multiemployer plan if, as described in section 432(j)(6), at any time during the current plan year, the person is a participant, beneficiary, or alternate payee under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit).

The term plan sponsor means the association, committee, joint board of trustees, or other similar group of representatives of the parties that establishes or maintains the

multiemployer plan. However, in the case of a plan described in section 404(c), or a continuation of such a plan, the term plan sponsor means the association of employers that is the employer settlor of the plan.

IV. Definition of suspension of benefits and related rules

The temporary regulations provide that the term suspension of benefits means the temporary or permanent reduction, pursuant to the terms of the plan, of any current or future payment obligation of the plan with respect to any participant under the plan. A suspension of benefits can apply with respect to a participant of the plan regardless of whether the participant, beneficiary, or alternate payee has commenced receiving benefits before the effective date of the suspension of benefits. If a plan pays a reduced level of benefits pursuant to a suspension of benefits that complies with the requirements of section 432(e)(9), then the plan is not liable for any benefits not paid as a result of the suspension.

A suspension of benefits may be of indefinite duration or may expire as of a certain date. Under the regulations, if the suspension of benefits has an expiration date, that date must be specified in the plan amendment implementing the suspension.

The temporary regulations provide that a plan sponsor may amend the plan to eliminate some or all of a suspension of benefits, provided that the amendment satisfies the requirements that apply to benefit improvements in the proposed rules under section 432(e)(9)(E).

The temporary regulations clarify that, except as otherwise specified, all references to suspensions of benefits, increases in benefits, or resumptions of suspended benefits with respect to participants also apply with respect to benefits of

beneficiaries or alternate payees (as defined in section 414(p)(8)) of participants.

V. Retiree representative

A retiree representative must be selected for a plan with 10,000 or more participants. The temporary regulations implement this condition by requiring that a retiree representative be selected if 10,000 or more participants were reported on the most recently filed Form 5500, "Annual Return/Report of Employee Benefit Plan."⁹ The plan sponsor must select the retiree representative at least 60 days before the plan sponsor submits an application to suspend benefits. The retiree representative must be a plan participant who is in pay status and may or may not be a plan trustee.

The role of the retiree representative is to advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process. However, in the discretion of the plan sponsor, the retiree representative may continue in this role throughout the period of the benefit suspension. This would enable the retiree representative to monitor compliance with the ongoing requirements during the period of the suspension, such as the requirement that the plan sponsor make annual determinations that all reasonable measures to avoid insolvency have been taken and that a suspension is necessary to avoid insolvency as well as to monitor compliance with the rules relating to benefit improvements. The regulations refer to section 432(e)(9)(B)(v)(III) for rules relating to the fiduciary status of a retiree representative, but do not provide additional guidance with respect to this provision.

The plan must pay reasonable expenses incurred by the retiree representative,

⁹ On the Form 5500 for the 2014 plan year, this is the total number of participants as of the end of the plan year that is reported on Part II, Line 6f.

including reasonable legal and actuarial support, commensurate with the plan's size and funded status. Upon request, the plan sponsor must promptly provide the retiree representative with relevant information, such as plan documents and data, that is reasonably necessary to enable the retiree representative to perform the representative's role, described earlier under this paragraph V.

The temporary regulations permit a plan sponsor of a plan that has reported fewer than 10,000 participants to select a retiree representative in connection with an application for approval of a suspension of benefits in order to encourage such a plan sponsor to do so. If a retiree representative is selected for such a plan, the rules that apply to retiree representatives for plans with 10,000 or more participants (other than the rule concerning the size of the plan and the timing of the appointment) will apply.

VI. Conditions for suspensions

A plan sponsor of a plan in critical and declining status¹⁰ may suspend benefits only if the actuarial certification requirement in section 432(e)(9)(C)(i) and the plan-sponsor determinations requirements in section 432(e)(9)(C)(ii) are satisfied.

A. Actuarial certification

Under the temporary regulations, the actuarial certification requirement in section 432(e)(9)(C)(i) is satisfied if, taking into account the proposed suspension of benefits (and, if applicable, a proposed partition of the plan), the plan's actuary certifies that the plan is projected to avoid insolvency within the meaning of section 418E, assuming the suspension of benefits continues until it expires by its own terms or if no such expiration

¹⁰ In making the projections related to whether a plan is in critical and declining status, the plan actuary's projections are required to be based on reasonable actuarial assumptions. Rev. Proc. 2015-34 requires disclosure of a 10-year history of certain critical assumptions for this purpose as well as for purposes of the conditions for suspensions required by section 432(e)(9)(C).

date is set, indefinitely. The temporary regulations do not provide guidance on this topic. However, the proposed regulations provide rules for the comparable requirement that the suspension (in combination with a partition, if applicable) be reasonably estimated to avoid insolvency under section 432(e)(9)(D)(iv).

B. Plan-sponsor determinations

A plan may not suspend benefits unless the plan sponsor makes initial and annual determinations that the plan is projected to become insolvent unless benefits are suspended, although all reasonable measures to avoid insolvency have been taken and continue to be taken.

Under the temporary regulations, a plan satisfies the initial-plan-sponsor determinations requirement only if the plan sponsor determines that (1) all reasonable measures to avoid insolvency, within the meaning of section 418E, have been taken, and (2) the plan is projected to become insolvent within the meaning of section 418E unless the proposed suspension of benefits (or another suspension of benefits under section 432(e)(9)) is implemented for the plan.

In making its determination that all reasonable measures to avoid insolvency have been taken, the plan sponsor may take into account the non-exclusive list of factors set forth in section 432(e)(9)(C)(ii). In making the initial determination that the plan is projected to become insolvent without the proposed suspension of benefits (or another suspension under section 432(e)(9)), a plan sponsor may rely on the actuarial certification made pursuant to section 432(b)(3)(A)(i) that the plan is in critical and declining status for the plan year.

The rules relating to the annual-plan-sponsor determinations are included in the

proposed regulations.

VII. Limitations on suspensions

The proposed and temporary regulations reflect the individual and aggregate limitations on a suspension of benefits under section 432(e)(9)(D).¹¹ The temporary regulations provide that after applying the individual limitations, the overall size and distribution of the suspension is subject to the aggregate limitations.

The temporary regulations provide that the monthly benefit payable to a participant, beneficiary, or alternate payee may not be reduced below 110 percent of the monthly benefit that would be guaranteed by the PBGC under section 4022A of ERISA if the plan were to become insolvent as of the effective date of the suspension. The proposed regulations provide more detailed rules for applying this limitation.

The temporary regulations reflect the statutory prohibition in section 432(e)(9)(D)(iii) on applying a suspension of benefits to benefits based on disability (as defined under the plan). The proposed regulations include more detailed rules for applying this limitation.

The rules regarding the age-based limitation of section 432(e)(9)(D)(ii) and the aggregate limitations of section 432(e)(9)(D)(iv) and (vi) are set forth in the proposed regulations.

In any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan, the suspension of benefits may not take effect prior to the effective date of the partition. This requirement will not be satisfied if the

¹¹ The temporary regulations refer to section 432(e)(9)(D)(vii) for additional rules applicable to certain plans, but do not provide additional guidance with respect to this provision.

partition order under section 4233 of ERISA has not been provided to the Treasury Department by the last day of the 225-day review period described in section 432(e)(9)(G)(iii), after which deemed approval of the suspension would occur.

VIII. Benefit improvements

The rules regarding restrictions on benefit improvements are set forth in the proposed regulations.

IX. Notice of proposed suspension

The temporary regulations prescribe rules implementing the statutory notice requirements in section 432(e)(9)(F).

Specifically, the temporary regulations require the plan sponsor to provide notice of a proposed suspension to all plan participants, beneficiaries of deceased participants, and alternate payees (regardless of whether their benefits are proposed to be suspended) except those who cannot be contacted by reasonable efforts; each employer that has an obligation to contribute (within the meaning of section 4212(a) of ERISA) under the plan; and each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer. The temporary regulations provide two examples illustrating what efforts constitute reasonable efforts to contact individuals for purposes of this notice requirement. These examples indicate that it is not sufficient to merely send notices to the individuals' last known mailing addresses and illustrate additional steps that may be used to satisfy these requirements if the plan sponsor becomes aware that some individuals did not receive notice.

The temporary regulations require the notice to contain the following in order to

satisfy the requirement that the notice contain sufficient information to enable plan participants and beneficiaries to understand the effect of the suspension of benefits:

- An individualized estimate, on an annual or monthly basis, of the effect of the suspension on the participant or beneficiary. However, if it is not possible to provide an individualized estimate on an annual or monthly basis of the quantitative effect of the suspension on the participant or beneficiary, such as in the case of a suspension that affects the payment of any future cost-of-living adjustment, a narrative description of the effect of the suspension;
- A statement that the plan sponsor has determined that the plan will become insolvent unless the proposed suspension (and, if applicable, the proposed partition) takes effect, and the year in which insolvency is projected to occur without a suspension of benefits (and, if applicable, a proposed partition);
- A statement that insolvency of the plan could result in benefits lower than benefits paid under the proposed suspension and a description of the projected benefit payments upon insolvency;
- A description of the proposed suspension and its effect, including a description of the different categories or groups affected by the suspension, how those categories or groups are defined, and the formula that is used to calculate the amount of the proposed suspension for individuals in each category or group;
- A description of the effect of the proposed suspension on the plan's

projected insolvency;

- A description of whether the suspension will remain in effect indefinitely or will expire by its own terms; and
- A statement describing the right to vote on the suspension application.

The notice of proposed suspension may not include false or misleading information (or omit information so as to cause the information provided to be misleading). The notice is permitted to include information in addition to the required information that is listed under this paragraph IX., including information relating to an application for partition under section 4233 of ERISA, provided that it satisfies these requirements.

The notice of proposed suspension must be written in a manner that can be readily understood by the average plan participant. The temporary regulations provide that the Treasury Department will provide a model notice. The use of the model notice will satisfy the content requirement and the readability requirement with respect to the language provided in the model.

The temporary regulations provide that notice may be provided in writing or in electronic form to the extent that the electronic form is reasonably accessible to persons to whom the notice is required to be provided. Permissible electronic methods include those permitted under regulations of the Department of Labor at 29 CFR 2520.104b-1(c) and those described at §54.4980F-1, Q&A-13(c) of the Excise Tax Regulations.

Section 432(e)(9)(F) provides that the notice of proposed suspension must be given “concurrently” with the submission of an application to the Treasury Department, but does not specify a precise timeframe for satisfying this requirement. Interpreting

“concurrently” as meaning either simultaneously or on the same day was rejected because it would require the difficult synchronization of the plan sponsor’s electronic submission of its application and its giving of notice in written and/or in electronic form. Because the temporary regulations require a plan sponsor to submit its application electronically but authorize it to give notice in writing, interpreting the term “concurrently” to allow a plan sponsor to give written notice a few days earlier than the electronic submission of the application will allow for the receipt of such written notices on or about the time that a plan sponsor submits its application. The temporary regulations thus permit a plan sponsor to give notice no earlier than four business days before the submission of its application.

The temporary regulations also anticipate that a plan sponsor is permitted to give written notice no later than four business days after the submission of its application. This period of time will enable the Department of the Treasury to make a preliminary “completeness check” of the application during the first two business days, and the plan sponsor two business days thereafter to give the required notices.¹² This approach will help participants by minimizing the risk of confusion and plan expense. For example, if a plan sponsor submits an incomplete application, compiles the additional information, and then finds the individualized estimates that the plan sponsor already gave to be inaccurate (or simply takes too long to compile the additional information), the plan sponsor would have to re-send the notices, increasing the likelihood that the notice would not be understood by the average plan participant as a result of receiving two different notices, each with a different individualized estimate. Although the temporary

¹² The completeness check is described under paragraph X. in this preamble (“Approval or denial of an application for suspension of benefits”).

regulations allow plan sponsors to give participants notice when or before the application is submitted, sponsors are encouraged to delay giving notice until after the Department of the Treasury provides notification that the application is complete. If additional individuals who are entitled to notice are located after the time notice is required to be delivered, the plan sponsor must give those newly located individuals notice as soon as practicable after they are located.

The temporary regulations further provide that a notice of proposed suspension satisfies the requirement for notice of a significant reduction in benefits described in section 4980F that would otherwise be required as a result of that suspension of benefits. To the extent that other reductions accompany a suspension of benefits, such as a reduction in the future accrual rate described in section 4980F for active participants or a reduction in adjustable benefits under section 432(e)(8), notice that satisfies the requirements (including the applicable timing requirements) of section 4980F or section 432(e)(8), as applicable, must be provided.

X. Approval or denial of an application for suspension of benefits

The temporary regulations provide that the plan sponsor of a plan in critical and declining status for a plan year that seeks to suspend benefits must submit an application for approval of the proposed suspension of benefits to the Treasury Department. The Treasury Department will approve, in consultation with the PBGC and the Labor Department, a complete application upon finding that the plan is eligible for the suspension and has satisfied the criteria of section 432(e)(9)(C), (D), (E), and (F). An application must be submitted electronically.

After receiving a submission, the plan sponsor will be notified within two business

days whether the submission constitutes a complete application. If the submission is a complete application, the application will be treated as submitted on the date on which it was originally submitted to the Treasury Department. If a submission is incomplete, the notification will inform the plan sponsor of the information that is needed to complete the submission and give the plan sponsor a reasonable opportunity to submit a complete application. In such a case, the complete application will be treated as submitted on the date on which the additional information needed to complete the application is submitted to the Treasury Department.

Additional guidance that may be necessary or appropriate with respect to applications, including procedures for submitting applications and the information required to be included in a complete application, may be published in the form of revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin.

In the case of a plan sponsor that is not submitting an application for suspension in combination with an application to PBGC for a plan partition, the temporary regulations provide that the application for suspension generally will not be accepted unless the proposed effective date of the suspension is at least nine months after the date on which the application is submitted. This is to ensure adequate time to review the proposed suspension without a need to delay the effective date of the proposed suspension. A delayed effective date could require other changes to the design of the suspension. For example, if, as a result of a delayed effective date, the age-based limitation under section 432(e)(9)(D)(ii) applies to more participants than under the terms of the proposed suspension, then benefits of other participants may be subject to

greater reductions in order to satisfy the limitation in section 432(e)(9)(D)(iv) that the suspension, in the aggregate, must be reasonably estimated to achieve, but not materially exceed, the level necessary to avoid insolvency. However, in appropriate circumstances, an earlier effective date may be permitted. Appropriate circumstances could include an application for a proposed suspension that is a modification of a previous submission that was withdrawn or denied.

In the case of an application for suspension in combination with an application for partition, the impact of a delayed effective date for the suspension would be larger benefits for retirees rather than a redesign of the suspension. Accordingly, these temporary regulations do not apply the rule described in the preceding paragraph to such an application. See Part 4233 of the PBGC regulations for a coordinated application process that applies in the case of a plan sponsor that is submitting an application for suspension in combination with an application to PBGC for a plan partition under section 4233 of ERISA.

The temporary regulations provide that, no later than 30 days after receiving a complete application, the application will be published on the website of the Department of the Treasury, and the Treasury Department will publish a notice in the **Federal Register** soliciting comments from contributing employers, employee organizations, and participants and beneficiaries of the plan for which an application was made, and other interested parties. The notice soliciting comments will generally request that comments be submitted no later than 45 days after publication of that notice in the **Federal Register**, but the comment period may be shorter in appropriate circumstances. Appropriate circumstances could include an application for a proposed suspension that

is a modification of a previous submission that was withdrawn or denied. Comments received in response to this notice will be made publicly available.

Under the temporary regulations, a complete application will be deemed approved unless, within 225 days after the complete application is submitted, the Treasury Department notifies the plan sponsor that its application does not satisfy one or more of the requirements for approval. If the Treasury Department denies a plan sponsor's application, the notification of the denial will detail the specific reasons for the denial, including reference to the specific requirement or requirements not satisfied. If the Treasury Department approves a plan sponsor's application and believes that the plan is a systemically important plan, then the Treasury Department will notify the plan sponsor of that belief and that it will be required to provide individual participant data upon request. This data may be used in the event of a vote to reject the suspension in order to assist the Treasury Department in determining whether to permit a modification of the rejected suspension.

The temporary regulations provide that the Secretary of the Treasury may appoint a Special Master for purposes of section 432(e)(9). If a Special Master is appointed, the Special Master will be an employee of the Department of the Treasury, will coordinate the implementation of the regulations and the review of applications for the suspension of benefits and other appropriate documents, and will provide recommendations to the Secretary of the Treasury with respect to decisions required under these regulations.

Certain rules relating to the Treasury Department's review of an application under section 432(e)(9)(G) are included in the proposed regulations.

XI. Participant vote on proposed benefit reduction

The temporary regulations provide that if an application for suspension is approved by the Treasury Department, then the Treasury Department, in consultation with the PBGC and the Labor Department, will administer a vote of all plan participants and all beneficiaries of deceased participants (eligible voters). Any suspension of benefits will take effect only after the vote and after a final authorization to suspend benefits.

Under the temporary regulations, any ballot provided by the plan sponsor in connection with a vote on the suspension must be approved by the Treasury Department, in consultation with the PBGC and the Labor Department. The ballot must be written in a manner that can be readily understood by the average plan participant and may not include any false or misleading information. The information that is required to be included in the ballot is described in the proposed regulations.

The temporary regulations provide that unless a majority of all eligible voters vote to reject the suspension, it is permitted to go into effect. If a majority of all eligible voters vote to reject the suspension, the suspension is not permitted to go into effect, except that the suspension or a modified suspension will be permitted to go into effect if the plan is a systemically important plan as described later under this paragraph XI. A plan sponsor is permitted to submit a new suspension application to the Treasury Department for approval in any case in which a suspension is prohibited from taking effect as a result of a vote.

The temporary regulations set forth rules for systemically important plans. If a majority of all eligible voters vote to reject the suspension, the Treasury Department will

consult with the PBGC and the Labor Department to determine if the plan is a systemically important plan. The Treasury Department is required to make this determination no later than 14 days after the results of the vote are certified. No later than 30 days after a determination that the plan is a systemically important plan, the Participant and Plan Sponsor Advocate selected under section 4004 of ERISA may submit recommendations to the Treasury Department with respect to the suspension or any revisions to the suspension.

If a plan is a systemically important plan for which a majority of all eligible voters vote to reject the suspension, then the Treasury Department is required to either permit the implementation of the suspension that was rejected by the vote or permit the implementation of a modification of that suspension. Under any such modification, the plan must be projected to avoid insolvency in accordance with section 432(e)(9)(D)(iv). No later than 60 days after the results of a vote to reject a suspension are certified, the Treasury Department will notify the plan sponsor that the suspension or modified suspension is permitted to be implemented.

The temporary regulations define a systemically important plan as a plan with respect to which the PBGC projects that the present value of financial assistance payments will exceed \$1.0 billion if the suspension is not implemented. For calendar years beginning after 2015, this dollar amount will be replaced by an amount equal to the product of the dollar amount and a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) for the preceding calendar year and the denominator of which is the contribution and benefit base for calendar year 2014. If that amount is not a multiple of \$1.0 million, it

will be rounded to the next lowest multiple of \$1.0 million.

The temporary regulations provide that, in any case in which a proposed suspension (or a modification of a proposed suspension) is permitted to go into effect, the Treasury Department, in consultation with the PBGC and the Labor Department, will issue a final authorization to suspend with respect to the suspension. If a suspension is permitted to go into effect following a vote, the final authorization will be issued no later than seven days after the vote. If a suspension is permitted to go into effect following a determination that the plan is a systemically important plan, the final authorization will be issued at a time sufficient to allow the implementation of the suspension prior to the end of the 90-day period beginning on the date the results of the vote rejecting the suspension are certified. Under the temporary regulations, no later than 60 days after the certification, the Treasury Department will notify the plan sponsor that the suspension that was rejected by the vote or a modified suspension is permitted to be implemented.

The temporary regulations provide that, in any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan under section 4233 of ERISA, the suspension of benefits is not permitted to take effect prior to the effective date of the partition.

Effective/Applicability Date

These regulations apply on and after **[INSERT DATE OF FILING (PUBLIC INSPECTION) IN THE FEDERAL REGISTER]** and expire on June 15, 2018.

Availability of IRS Documents

For copies of recently issued revenue procedures, revenue rulings, notices and other guidance published in the Internal Revenue Bulletin, please visit the IRS Web site at <http://www.irs.gov> or contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the Federal Register. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Contact Information

For general questions regarding these regulations, please contact the Department of the Treasury at (202) 622-1559 (not a toll-free number). For information regarding a specific application for a suspension of benefits, please contact the Department of the Treasury at (202) 622-1534 (not a toll-free number).

List of Subjects

26 CFR Part 1

Income taxes, reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.432(e)(9)-1T is added to read as follows:

§1.432(e)(9)-1T Benefit suspensions for multiemployer plans in critical and declining status (temporary).

(a) General rules on suspension of benefits--(1) General rule. Subject to section 432(e)(9)(B) through (I) and paragraphs (b) through (h) of this section, the plan sponsor of a multiemployer plan that is in critical and declining status (within the meaning of section 432(b)(6)) for a plan year may, by plan amendment adopted in the plan year, implement a suspension of benefits that the plan sponsor deems appropriate. Such a suspension is permitted notwithstanding the anti-cutback provisions of section 411(d)(6).

(2) Adoption of plan terms inconsistent with suspension requirements--(i) General rule. A plan may implement (or continue to implement) a reduction of benefits pursuant to a suspension of benefits only if the terms of the plan are consistent with the requirements of section 432(e)(9) and this section.

(ii) Changes in level of suspension. [Reserved]

(3) Organization of the regulation. This paragraph (a) contains definitions and general rules relating to a suspension of benefits by a multiemployer plan under section 432(e)(9). Paragraph (b) of this section defines a suspension of benefits and describes the length of a suspension, the treatment of beneficiaries and alternate payees under this section, and the requirement to select a retiree representative. Paragraph (c) of this section prescribes certain rules for the actuarial certification and plan-sponsor determinations that must be made in order for a plan to suspend benefits. Paragraph (d) of this section describes certain limitations on suspensions of benefits. Paragraph (e) of this section is reserved for rules on benefit improvements under section 432(e)(9)(E). Paragraph (f) of this section describes the requirement to provide notice in connection with an application to suspend benefits. Paragraph (g) of this section describes certain requirements with respect to the approval or denial of an application for a suspension of benefits. Paragraph (h) of this section contains certain rules relating to the vote on an approved suspension, systemically important plans, and the issuance of a final authorization to suspend benefits. Paragraph (j) of this section provides the effective/applicability date of this section. Paragraph (k) provides the expiration date.

(4) Definitions. The following definitions apply for purposes of this section--

(i) Pay status. A person is in pay status under a multiemployer plan if, as described in section 432(j)(6), at any time during the current plan year, the person is a participant, beneficiary, or alternate payee under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit).

(ii) Plan sponsor. The term plan sponsor means the association, committee, joint board of trustees, or other similar group of representatives of the parties that establishes or maintains the multiemployer plan. However, in the case of a plan described in section 404(c), or a continuation of such a plan, the term plan sponsor means the association of employers that is the employer settlor of the plan.

(iii) Effective date of suspension of benefits. [Reserved]

(b) Definition of suspension of benefits and related rules--(1) In general--(i) Definition. For purposes of this section, the term suspension of benefits means the temporary or permanent reduction, pursuant to the terms of the plan, of any current or future payment obligation of the plan with respect to any participant under the plan. A suspension of benefits may apply with respect to a participant of the plan regardless of whether the participant, beneficiary, or alternate payee commenced receiving benefits before the effective date of the suspension of benefits.

(ii) Plan not liable for suspended benefits. If a plan pays a reduced level of benefits pursuant to a suspension of benefits that complies with the requirements of section 432(e)(9) and this section, then the plan is not liable for any benefits not paid as a result of the suspension.

(2) Length of suspension--(i) In general. A suspension of benefits may be of indefinite duration or may expire as of a date that is specified in the plan amendment implementing the suspension.

(ii) Effect of a benefit improvement. A plan sponsor may amend the plan to eliminate some or all of a suspension of benefits, provided that the amendment satisfies the requirements that apply to a benefit improvement under section 432(e)(9)(E), in

accordance with the rules of paragraph (e) of this section.

(3) Treatment of beneficiaries and alternate payees. Except as otherwise specified in this section, all references to suspensions of benefits, increases in benefits, or resumptions of suspended benefits with respect to participants also apply with respect to benefits of beneficiaries or alternate payees (as defined in section 414(p)(8)) of participants.

(4) Retiree representative--(i) In general--(A) Requirement to select retiree representative. The plan sponsor of a plan that intends to submit an application for a suspension of benefits and that has reported a total of 10,000 or more participants as of the end of the plan year for the most recently filed Form 5500, "Annual Return/Report of Employee Benefit Plan," must select a retiree representative. The plan sponsor must select the retiree representative at least 60 days before the date the plan sponsor submits an application to suspend benefits. The retiree representative must be a plan participant who is in pay status. The retiree representative may or may not be a plan trustee.

(B) Role of retiree representative. The role of the retiree representative is to advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process. In the discretion of the plan sponsor, the retiree representative may continue in this role throughout the period of the benefit suspension.

(ii) Reasonable expenses from plan. The plan must pay reasonable expenses incurred by the retiree representative, including reasonable expenses for legal and actuarial support, commensurate with the plan's size and funded status.

(iii) Disclosure of information. Upon request, the plan sponsor must promptly provide the retiree representative with relevant information, such as plan documents and data, that is reasonably necessary to enable the retiree representative to perform the role described in paragraph (b)(4)(i)(B) of this section.

(iv) Special rules relating to fiduciary status. See section 432(e)(9)(B)(v)(III) for rules relating to the fiduciary status of a retiree representative.

(v) Retiree representative for other plans. The plan sponsor of a plan that has reported fewer than 10,000 participants as of the end of the plan year for the most recently filed Form 5500, "Annual Return/Report of Employee Benefit Plan" is permitted to select a retiree representative. The rules in this paragraph (b)(4) (other than the rules in the first two sentences of paragraph (b)(4)(i)(A) of this section concerning the size of the plan and the timing of the appointment of the retiree representative) apply to such a representative.

(c) Conditions for suspension--(1) In general--(i) Actuarial certification and initial-plan-sponsor determinations. The plan sponsor of a plan in critical and declining status for a plan year may suspend benefits only if the actuarial certification requirement in paragraph (c)(2) of this section and the initial-plan-sponsor determinations requirement in paragraph (c)(3) of this section are met.

(ii) Annual requirement to make plan-sponsor determinations. [Reserved]

(2) Actuarial certification. A plan satisfies the actuarial certification requirement of this paragraph (c)(2) if, taking into account the proposed suspension of benefits (and, if applicable, a proposed partition of the plan under section 4233 of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829 (1974))), as

amended (ERISA)), the plan's actuary certifies that the plan is projected to avoid insolvency within the meaning of section 418E, assuming the suspension of benefits continues until it expires by its own terms or if no such expiration date is set, indefinitely.

(3) Initial-plan-sponsor determinations--(i) General rule. A plan satisfies the initial-plan-sponsor determinations requirement of this paragraph (c)(3) only if the plan sponsor determines that--

(A) All reasonable measures to avoid insolvency, within the meaning of section 418E, have been taken; and

(B) The plan is projected to become insolvent within the meaning of section 418E unless the proposed suspension of benefits (or another suspension of benefits under section 432(e)(9)) is implemented for the plan.

(ii) Factors. In making its determination that all reasonable measures to avoid insolvency, within the meaning of section 418E, have been taken, the plan sponsor may take into account the following non-exclusive list of factors--

(A) Current and past contribution levels;

(B) Levels of benefit accruals (including any prior reductions in the rate of benefit accruals);

(C) Prior reductions (if any) of adjustable benefits;

(D) Prior suspensions (if any) of benefits under this section;

(E) The impact on plan solvency of the subsidies and ancillary benefits available to active participants;

(F) Compensation levels of active participants relative to employees in the participants' industry generally;

(G) Competitive and other economic factors facing contributing employers;

(H) The impact of benefit and contribution levels on retaining active participants and bargaining groups under the plan;

(I) The impact of past and anticipated contribution increases under the plan on employer attrition and retention levels; and

(J) Measures undertaken by the plan sponsor to retain or attract contributing employers.

(iii) Reliance on certification of critical and declining status. For purposes of the insolvency projection under paragraph (c)(3)(i)(B) of this section, a plan sponsor may rely on the actuarial certification made pursuant to section 432(b)(3)(A)(i) that the plan is in critical and declining status for the plan year in making the determination that the plan is projected to become insolvent unless benefits are suspended.

(4) Annual-plan-sponsor determinations. [Reserved]

(5) Failure to make annual-plan-sponsor determinations. [Reserved]

(d) Limitations on suspension--(1) In general. Any suspension of benefits with respect to a participant made by a plan sponsor pursuant to this section is subject to the individual limitations of sections 432(e)(9)(D)(i) through (iii), in accordance with the rules of paragraphs (d)(2) through (d)(4) of this section. After applying the individual limitations in sections 432(e)(9)(D)(i) through (iii), in accordance with the rules of paragraphs (d)(2) through (d)(4) of this section, the overall size and distribution of the suspension is subject to the aggregate limitations of sections 432(e)(9)(D)(iv) and (vi) in accordance with the rules of paragraphs (d)(5) and (d)(6) of this section. See section 432(e)(9)(D)(vii) for additional rules applicable to certain plans.

(2) Guarantee-based limitation--(i) General rule. The monthly benefit with respect to any participant may not be reduced below 110 percent of the monthly benefit payable to a participant, beneficiary, or alternate payee that would be guaranteed by the Pension Benefit Guaranty Corporation (PBGC) under section 4022A of ERISA if the plan were to become insolvent as of the effective date of the suspension.

(ii) PBGC guarantee. [Reserved]

(iii) Calculation of accrual rate. [Reserved]

(iv) Special rules for non-vested participants. [Reserved]

(v) Examples. [Reserved]

(3) Age-based limitation. [Reserved]

(4) Disability-based limitation--(i) General rule. Benefits based on disability (as defined under the plan) may not be suspended.

(ii) Benefits based on disability. [Reserved]

(5) Limitation on aggregate size of suspension. [Reserved]

(6) Equitable distribution. [Reserved]

(7) Effective date of suspension made in combination with partition. In any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan, the suspension of benefits may not take effect prior to the effective date of the partition. This requirement will not be satisfied if the partition order under section 4233 of ERISA has not been provided to the Secretary of the Treasury by the last day of the 225-day period described in paragraph (g)(3)(i) of this section.

(e) Benefit improvements. [Reserved]

(f) Notice requirements--(1) In general. No suspension of benefits may be made

pursuant to this section unless notice of the proposed suspension has been given by the plan sponsor to--

(i) All participants, beneficiaries of deceased participants, and alternate payees under the plan (regardless of whether their benefits are proposed to be suspended), except those who cannot be contacted by reasonable efforts;

(ii) Each employer who has an obligation to contribute (within the meaning of section 4212(a) of ERISA) under the plan; and

(iii) Each employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer described in paragraph (f)(1)(ii) of this section.

(2) Content of notice--(i) In general. The notice described under paragraph (f)(1) of this section must contain--

(A) Sufficient information to enable a participant or beneficiary to understand the effect of any suspension of benefits, including an individualized estimate (on an annual or monthly basis) of the effect on that participant or beneficiary;

(B) A description of the factors considered by the plan sponsor in designing the benefit suspension;

(C) A statement that the application for approval of any suspension of benefits will be available on the website of the Department of the Treasury and that comments on the application will be accepted;

(D) Information as to the rights and remedies of plan participants and beneficiaries;

(E) If applicable, a statement describing the appointment of a retiree

representative, the date of appointment of the representative, the role and responsibilities of the retiree representative, identifying information about the retiree representative (including whether the representative is a plan trustee), and how to contact the retiree representative; and

(F) Information on how to contact the Department of the Treasury for further information and assistance where appropriate.

(ii) Description of suspension of benefits. The notice described under paragraph (f)(1) of this section will not satisfy the requirements of paragraph (f)(2)(i) of this section unless it includes the following--

(A) If it is not possible to provide an individualized estimate on an annual or monthly basis of the quantitative effect of the suspension on a participant or beneficiary, such as in the case of a suspension that affects the payment of any future cost-of-living adjustment, a narrative description of the effect of the suspension;

(B) A statement that the plan sponsor has determined that the plan will become insolvent unless the proposed suspension takes effect, and the year in which insolvency is projected to occur without a suspension of benefits;

(C) A statement that insolvency of the plan could result in benefits lower than benefits paid under the proposed suspension and a description of the projected benefit payments upon insolvency;

(D) A description of the proposed suspension and its effect, including a description of the different categories or groups affected by the suspension, how those categories or groups are defined, and the formula that is used to calculate the amount of the proposed suspension for individuals in each category or group;

(E) A description of the effect of the proposed suspension on the plan's projected insolvency;

(F) A description of whether the suspension will remain in effect indefinitely or will expire by its own terms; and

(G) A statement describing the right to vote on the suspension application.

(iii) Readability requirement. A notice given under paragraph (f)(1) of this section must be written in a manner that is readily understandable by the average plan participant.

(iv) Model notice. The Secretary of the Treasury will provide a model notice. The use of the model notice will satisfy the content and readability requirements of this paragraph (f)(2) with respect to the language provided in the model.

(3) Form and manner--(i) Timing--(A) In general. A notice under paragraph (f)(1) of this section must be given no earlier than four business days before the date on which an application is submitted and no later than two business days after the Secretary of the Treasury notifies the plan sponsor that it has submitted a complete application, as described in paragraph (g)(1)(ii) of this section.

(B) Timing for lost participants. If additional individuals who are entitled to notice are located after the time period in paragraph (f)(3)(i)(A) of this section has elapsed, then the plan sponsor must give notice to these individuals as soon as practicable thereafter.

(ii) Method of delivery of notice--(A) Written or electronic delivery. A notice given under paragraph (f)(1) of this section may be provided in writing. It may also be provided in electronic form to the extent that the form is reasonably accessible to

persons to whom the notice is required to be provided. Permissible electronic methods include those permitted under regulations of the Department of Labor at 29 CFR §2520.104b-1(c) and those described at §54.4980F-1, Q&A-13(c) of the Excise Tax Regulations.

(B) No alternative method of delivery. [Reserved]

(iii) Additional information in notice. A notice given under paragraph (f)(1) of this section is permitted to include information in addition to the information that is required under paragraph (f)(2) of this section, including, if applicable, information relating to an application for partition under section 4233 of ERISA (such as the model notice at Appendix A of 29 CFR Part 4233), provided that the requirements of paragraph (f)(3)(iv) of this section are satisfied.

(iv) No false or misleading information. A notice given under paragraph (f)(1) of this section may not include false or misleading information (or omit information in a manner that causes the information provided to be misleading).

(4) Other notice requirement. Any notice given under paragraph (f)(1) of this section satisfies the requirement for notice of a significant reduction in benefits described in section 4980F that would otherwise be required as a result of that suspension of benefits. To the extent that there are other reductions that accompany a suspension of benefits, such as a reduction in the future accrual rate described in section 4980F for active participants or a reduction in adjustable benefits under section 432(e)(8), notice that satisfies the requirements (including the applicable timing requirements) of section 4980F or section 432(e)(8), as applicable, must be provided.

(5) Examples. The following examples illustrate the requirement in paragraph

(f)(1)(i) of this section to give notice to all participants, beneficiaries of deceased participants, and alternate payees, except those who cannot be contacted by reasonable efforts.

Example 1. (i) Facts. A plan sponsor distributes notice of a proposed suspension of benefits to plan participants, beneficiaries of deceased participants, and alternate payees by mailing the notice to their last known mailing addresses, using the same information that it used to send the most recent annual funding notice. Of 5,000 such notices, 300 were returned as undeliverable. The plan sponsor takes no additional steps to contact the individuals for whom the notice was returned as undeliverable.

(ii) Conclusion. The plan sponsor did not make any effort beyond the initial mailing to locate the 300 individuals for whom the notice was returned as undeliverable. Therefore, the plan sponsor did not satisfy the requirement to provide notice to all participants, beneficiaries of deceased participants, and alternate payees under the plan (regardless of whether their benefits are proposed to be suspended), except those who cannot be contacted by reasonable efforts.

Example 2. (i) Facts. The facts are the same as Example 1, but the plan sponsor contacts the bargaining parties to locate the missing individuals for whom the notice was returned as undeliverable. The plan sponsor then uses an Internet search tool, a credit reporting agency, and a commercial locator service to search for individuals for whom it was not able to obtain updated information from bargaining parties. Through these efforts, the plan sponsor locates the updated addresses of 250 of the 300 individuals whom it previously failed to contact. The plan sponsor mails notices to those individuals within one week of locating them.

(ii) Conclusion. By using effective search methods to find the previously missing individuals and promptly mailing the notice of suspension to them, the plan sponsor has satisfied the requirement to provide notice to all participants, beneficiaries of deceased participants, and alternate payees under the plan (regardless of whether their benefits are proposed to be suspended), except those who cannot be contacted by reasonable efforts.

(g) Approval or denial of an application for suspension of benefits--(1)

Application--(i) In general. The plan sponsor of a plan in critical and declining status for a plan year that seeks to suspend benefits must submit an application for approval of the proposed suspension of benefits to the Secretary of the Treasury. The Secretary of the Treasury will approve, in consultation with the PBGC and the Secretary of Labor, a

complete application described in paragraph (g)(1)(ii) of this section upon finding that the plan is eligible for the suspension and has satisfied the criteria of section 432(e)(9)(C), (D), (E), and (F), in accordance with the rules of paragraphs (c), (d), (e), and (f) of this section.

(ii) Complete application. After receiving a submission, the plan sponsor will be notified within two business days whether the submission constitutes a complete application. A complete application will be treated as submitted on the date that it was originally submitted to the Secretary of the Treasury. If a submission is incomplete, the notification will inform the plan sponsor of the information that is needed to complete the submission and give the plan sponsor a reasonable opportunity to submit a complete application. In such a case, the complete application will be treated as submitted on the date on which the additional information needed to complete the application is submitted to the Secretary of the Treasury.

(iii) Submission of application. An application described in this paragraph (g)(1) must be submitted electronically.

(iv) Requirements for application. Additional guidance that may be necessary or appropriate with respect to applications described in this paragraph (g)(1), including procedures for submitting applications and the information required to be included in a complete application, may be published in the form of revenue procedures, notices, or other guidance in the Internal Revenue Bulletin.

(v) Requirement to provide adequate time to process application. An application for suspension that is not submitted in combination with an application to PBGC for a plan partition under section 4223 of ERISA generally will not be accepted unless the

proposed effective date of the suspension is at least nine months from the date on which the application is submitted. However, in appropriate circumstances, an earlier effective date may be permitted.

(vi) Plan sponsors that also apply for partition. See Part 4233 of the PBGC regulations for a coordinated application process that applies in the case of a plan sponsor that is submitting an application for suspension in combination with an application to PBGC for a plan partition under section 4233 of ERISA.

(2) Solicitation of comments--(i) In general. Not later than 30 days after receipt of a complete application described in paragraph (g)(1) of this section--

(A) The application for approval of the suspension of benefits will be published on the website of the Department of the Treasury; and

(B) The Secretary of the Treasury will publish a notice in the **Federal Register** soliciting comments from contributing employers, employee organizations, and participants and beneficiaries of the plan for which an application was made, and other interested parties.

(ii) Public comments. The notice described in paragraph (g)(2)(i)(B) of this section will generally request that comments be submitted no later than 45 days after publication of that notice in the **Federal Register**, but the comment period may be shorter in appropriate circumstances. Comments received in response to this notice will be made publicly available.

(3) Approval or denial--(i) Deemed approval. A complete application described in paragraph (g)(1)(ii) of this section will be deemed approved unless, within 225 days following the date that the complete application is submitted, the Secretary of the

Treasury notifies the plan sponsor that its application does not satisfy one or more of the requirements described in this paragraph (g).

(ii) Notice of denial. If the Secretary of the Treasury denies a plan sponsor's application, the notification of the denial will detail the specific reasons for the denial, including reference to the specific requirement not satisfied.

(iii) Special rules for systemically important plans. If the Secretary of the Treasury approves a plan sponsor's application and the Secretary believes that the plan is or may be a systemically important plan (as defined in paragraph (h)(5)(iv) of this section), the Secretary will notify the plan sponsor of that belief and that it will be required to provide individual participant data upon request. In such a case, this data would be used in the event of a vote to reject the suspension (as described in paragraph (h)(4) of this section) in order to assist the Secretary in determining whether to permit a modification of the rejected suspension.

(iv) Agreement to stay 225-day period. [Reserved]

(4) Consideration of certain factors. [Reserved]

(5) Standard for accepting plan sponsor determinations. [Reserved]

(6) Plan-sponsor certifications with respect to plan amendments. [Reserved]

(7) Special Master. The Secretary of the Treasury may appoint a Special Master for purposes of this section. If a Special Master is appointed, the Special Master will coordinate the implementation of this section and the review of applications for the suspension of benefits and other appropriate documents, and will provide recommendations to the Secretary of the Treasury with respect to decisions required under this section.

(h) Participant vote on proposed benefit reduction--(1) Requirement for vote--(i) In general. If an application for suspension is approved under paragraph (g) of this section, then the Secretary of the Treasury, in consultation with the PBGC and the Secretary of Labor, will administer a vote of all plan participants and beneficiaries of deceased participants (eligible voters), as described in section 432(e)(9)(H) and this paragraph (h). Any suspension of benefits will take effect only after the vote and after a final authorization to suspend benefits under paragraph (h)(6) of this section.

(ii) Communication by plan sponsor. [Reserved]

(2) Administration of vote. [Reserved]

(3) Ballots--(i) In general. [Reserved]

(ii) Additional rules--(A) Readability requirement. A ballot provided under section 432(e)(9)(H)(iii), in accordance with the rules of paragraph (h)(3)(i) of this section, must be written in a manner that is readily understandable by the average plan participant.

(B) No false or misleading information. A ballot provided under section 432(e)(9)(H)(iii), in accordance with the rules of paragraph (h)(3)(i) of this section, may not include false or misleading information (or omit information in a manner that causes the information provided to be misleading).

(iii) Ballot must be approved. Any ballot provided under section 432(e)(9)(H)(iii), in accordance with the rules of paragraph (h)(3)(i) of this section, must be approved by the Secretary of the Treasury, in consultation with the PBGC and the Secretary of Labor, before it is provided.

(4) Implementing suspension following vote--(i) In general. Unless a majority of all eligible voters vote to reject the suspension that was approved under paragraph (g)

of this section, the suspension will be permitted to go into effect. If a majority of all eligible voters vote to reject the suspension that was approved under paragraph (g) of this section, a suspension of benefits will not be permitted to go into effect except as provided under paragraph (h)(5)(iii) of this section relating to the implementation of a suspension for a systemically important plan (as defined in paragraph (h)(5)(iv) of this section).

(ii) Effect of not sending ballot. [Reserved]

(5) Systemically important plans--(i) In general. If a majority of all eligible voters vote to reject the suspension that was approved under paragraph (g) of this section, the Secretary of the Treasury will consult with the PBGC and the Secretary of Labor to determine if the plan is a systemically important plan. This determination will be made no later than 14 days after the results of the vote are certified.

(ii) Recommendations from Participant and Plan Sponsor Advocate. Not later than 30 days after a determination that the plan is a systemically important plan, the Participant and Plan Sponsor Advocate selected under section 4004 of ERISA may submit recommendations to the Secretary of the Treasury with respect to the suspension that was approved under paragraph (g) of this section or any revisions to the suspension.

(iii) Implementation of original or modified suspension by systemically important plans. If a plan is a systemically important plan for which a majority of all eligible voters vote to reject the suspension that was approved under paragraph (g) of this section, then the Secretary of the Treasury must determine whether to permit the implementation of the suspension that was approved under paragraph (g) of this section

or whether to permit the implementation of a modification of that suspension. Under any such modification, the plan must be projected to avoid insolvency in accordance with section 432(e)(9)(D)(iv). No later than 60 days after the results of a vote to reject a suspension are certified, the Secretary of the Treasury will notify the plan sponsor that the suspension or modified suspension is permitted to be implemented.

(iv) Systemically important plan defined--(A) In general. For purposes of this paragraph (h)(5), a systemically important plan is a plan with respect to which the PBGC projects that the present value of financial assistance payments will exceed \$1.0 billion if the suspension is not implemented.

(B) Indexing. For calendar years beginning after 2015, the dollar amount specified in paragraph (h)(5)(iv)(A) of this section will be replaced with an amount equal to the product of the dollar amount and a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) for the preceding calendar year and the denominator of which is the contribution and benefit base for calendar year 2014. If the amount otherwise determined under this paragraph (h)(5)(iv)(B) is not a multiple of \$1.0 million, the amount will be rounded to the next lowest multiple of \$1.0 million.

(6) Final authorization to suspend--(i) In general. In any case in which a suspension is permitted to go into effect following a vote pursuant to section 432(e)(9)(H)(ii) and paragraph (h)(4) of this section, the Secretary of the Treasury, in consultation with the PBGC and the Secretary of Labor, will issue a final authorization to suspend with respect to the suspension not later than seven days after the vote.

(ii) Systemically important plans. In any case in which a suspension is permitted to go into effect following a determination under paragraph (h)(5) of this section that the plan is a systemically important plan, the Secretary of the Treasury, in consultation with the PBGC and the Secretary of Labor, will issue a final authorization to suspend, at a time sufficient to allow the implementation of the suspension prior to the end of the 90-day period beginning on the date the results of the vote are certified.

(iii) Plan partitions. Notwithstanding any other provision of this section, in any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan, the suspension of benefits is not permitted to take effect prior to the effective date of the partition.

(i) [Reserved].

(j) Effective/applicability date. This section applies on and after [INSERT DATE OF FILING (PUBLIC INSPECTION) IN THE FEDERAL REGISTER].

(k) Expiration date. The applicability of this section expires on June 15, 2018.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

Par. 4. In §602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where
identified and described

Current OMB
control no.

* * * * *

1.432(e)(9)-1T.....1545-2260

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John Dalrymple

Deputy Commissioner for Services and Enforcement.

Approved: June 9, 2015

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).