



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-102648-15]

RIN 1545-BM66

Suspension of Benefits under the Multiemployer Pension Reform Act of 2014

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing.

SUMMARY: This document contains proposed 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 proposed regulations, together with temporary regulations being published at the same time, provide guidance

implementing these statutory provisions. These proposed regulations would 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.

DATES: Comments must be received by **[INSERT 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Outlines of topics to be discussed at the public hearing scheduled for September 10, 2015 must be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-102648-15), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington D.C. 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-102648-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C., or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-102648-15). The public hearing will be held in the Amphitheater of the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Ave., NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, the Department of the Treasury MPRA guidance information line at (202) 622-1559; concerning submission of comments or the hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

The collection of information in the paragraphs of these proposed regulations that cross-reference the temporary regulations that are being published elsewhere in this issue of the **Federal Register** is required for a multiemployer defined benefit plan in critical and declining status to satisfy the criteria for approval of an application for a suspension of benefits, including providing notice of the application to specified individuals (containing an individualized estimate of the size of the benefit suspension) and other interested parties. The collection is also required for a plan sponsor to obtain approval of the ballot for the vote on the suspension of benefits that follows approval of the application.

The collection of information in the paragraphs of these proposed regulations that do not cross-reference the temporary regulations is required for a multiemployer defined benefit plan in critical and declining status to maintain an annual written record of its determinations that all reasonable measures to avoid insolvency have been taken and that the plan is not projected to avoid insolvency without a suspension of benefits.

Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

For the paragraphs of the proposed regulations that cross-reference the temporary regulations:

Estimated total average annual reporting or recordkeeping burden: 13,888 hours.

Estimated average annual burden per recordkeeper: 496 hours.

Estimated number of recordkeepers: 28.

For the paragraphs of the proposed regulations that do not cross-reference the temporary regulations:

Estimated total average annual reporting or recordkeeping burden: 140 hours.

Estimated average annual burden per recordkeeper: 5 hours.

Estimated number of recordkeepers: 28.

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

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

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 (PBGC) 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 proposed regulations under section 432(e)(9) that, together with temporary regulations that are being published elsewhere in this issue of the **Federal Register** and a revenue

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 113-235 (128 Stat. 2130 (2014)) (MPRA).

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 proposed regulations.

The temporary regulations, 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. This notice of proposed rulemaking requests comments on the provisions of the temporary regulations, and 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 included in this document are not applicable immediately. The proposed regulations 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. For further background on the statutory provisions that these proposed regulations and the temporary regulations that are incorporated by cross-reference into these proposed regulations are designed to implement, see the preamble to the temporary regulations in the Rules and Regulations section of this issue of the **Federal Register**.

The regulations implementing the statutory suspension of benefits provisions have been divided, as described, into proposed regulations and temporary 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 Treasury Department has issued 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.

Conditions for suspensions

As a condition for suspension of benefits, the statute 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.² 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 the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829 (1974)), as amended (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, the statute provides that the suspension may not exceed the applicable percentage of the individual's maximum suspendable 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 determined by dividing (i) the number of months during the period that begins with the month after the month in which the

² 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.

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 plan partition under section 4233 of ERISA (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.³ See section 432(e)(9)(D)(vi). Finally, with regard to a suspension of benefits that is made in combination with a plan partition, 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 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

³ 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 employees and retirees; 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.

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.⁴ 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.

In order for benefit improvements to be equitably distributed, the projected value of the total liabilities attributable to benefit improvements for participants and beneficiaries who are not in pay status may not exceed the projected value of the liabilities attributable to benefit improvements for participants and beneficiaries who are in pay status. See section 432(e)(9)(E)(ii). The plan sponsor must equitably distribute any increase in total liabilities attributable to the benefit improvements among the participants and beneficiaries who are in pay status, taking into account the factors relevant to the equitable distribution of benefit suspensions among participants and beneficiaries (described in section 432(e)(9)(D)(vi)) and the extent to which their benefits were suspended.

The statute allows a plan sponsor to increase plan liabilities through a resumption of benefits for participants and beneficiaries in pay status without providing

⁴ 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.

any benefit improvements for those who are not yet in pay status, but only if it equitably distributes the value of resumed benefits among participants and beneficiaries in pay status, taking into account the factors relevant to the equitable distribution of benefit suspensions.

The restrictions on benefit improvements in section 432(e)(9)(E) apply in addition to any other applicable limitations on increases in benefits that apply to a plan, except with respect to resumptions of suspended benefits only for participants and beneficiaries in pay status (described in the preceding sentence).

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). In evaluating whether a plan sponsor has met the criteria in section 432(e)(9)(C)(ii) (a plan 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.

Participant vote on proposed benefit reduction

If a suspension application is approved, the proposed suspension 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.⁵ 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.

Explanation of Provisions

I. Overview

These proposed 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 proposed regulations cross-reference certain requirements that are addressed in the temporary regulations issued in the Rules and Regulations section of this issue of the **Federal Register**. 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 provided in Rev. Proc. 2015-34.

II. General rules on suspension of benefits

⁵ 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.

Under the temporary regulations, once a plan is amended to suspend benefits, a plan may pay or continue to pay a reduced level of benefits pursuant to the suspension only if the terms of the plan are consistent with the requirements of section 432(e)(9) and the regulations. The proposed regulations would provide that a plan's terms are consistent with the requirements of section 432(e)(9) even if they provide that, instead of a suspension of benefits occurring in full on a specified effective date, the amount of a suspension will phase in or otherwise change in a definite, pre-determined manner as of a specified future effective date or dates. However, the proposed regulations would provide that a plan's terms are inconsistent with the statutory requirements if they provide that the amount of a suspension will change contingent upon the occurrence of any other specified future event, condition, or development. For example, a plan is not permitted to provide that an additional or larger suspension of benefits is triggered if the plan's funded status deteriorates. Similarly, a plan is not permitted to provide that, contingent upon a specified future event, condition, or development, a suspension of benefits will be automatically reduced (except upon a failure to satisfy the annual requirement, described in the proposed regulations, that the plan sponsor determine that the plan is projected to become insolvent unless benefits are suspended).

In the case of an individual who has commenced benefits, the proposed regulations provide that the effective date of a suspension of benefits is the first date as of which a portion of the individual's benefits are not paid as a result of the suspension. In the case of an individual who has not yet commenced benefits, the effective date of a suspension of benefits is the first date as of which the participant's accrued benefit is

reduced as a result of the suspension. The effective date of a suspension may not precede the date on which a final authorization to suspend benefits is issued.

If a suspension of benefits provides for more than one reduction in benefits over time, such that benefits are scheduled to be reduced by an additional amount after benefits are first reduced pursuant to the suspension, then each date as of which benefits are reduced is treated as a separate effective date of the suspension, which would require, for example, that the age-based limitation be separately applied as of each effective date. However, if the effective date of the final scheduled reduction in benefits in a series of reductions pursuant to a suspension is less than three years after the effective date of the first reduction, the effective date of the first reduction will be treated as the effective date of all subsequent reductions pursuant to that suspension. For example, if a suspension provides that benefits will be reduced by a specified percentage effective January 1, 2017, by an additional percentage effective January 1, 2018, and by an additional percentage effective January 1, 2019, with no subsequent changes scheduled, it would meet the three-year condition to treat January 1, 2017 as the effective date for all three reductions. However, if the suspension provided for a further reduction effective January 1, 2020, the suspension would not be treated as satisfying the three-year condition and therefore would be treated under the proposed regulations as having four separate effective dates.

III. Conditions for suspensions

The regulations provide that 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. These determinations are based on the nonexclusive list of factors described in section 432(e)(9)(C)(ii).

Under the proposed regulations, a plan sponsor satisfies the annual-plan-sponsor determinations requirement for a plan year only if the plan sponsor determines, no later than the last day of the plan year, that (1) all reasonable measures to avoid insolvency have been taken, and (2) the plan is projected to become insolvent unless the suspension of benefits continues (or another suspension of benefits under section 432(e)(9) is implemented) for the plan. For this purpose, the projection of the plan's insolvency must be made using the standards that apply for purposes of determining whether a suspension is sufficient to avoid insolvency and not materially in excess of the level needed to avoid insolvency that are described in paragraph IV.B.1 of this preamble.

If there is favorable actuarial experience so that the plan could avoid insolvency even if the benefit suspension were reduced (but not eliminated), the plan sponsor may wish to adopt a benefit increase that partially restores suspended benefits in order to share that favorable experience with the participants. The statute contemplates this circumstance by providing in section 432(e)(9)(E) the requirements for such a partial restoration of suspended benefits and for other benefit improvements. Moreover, if favorable actuarial experience would allow the plan to avoid insolvency if the benefit suspension were eliminated entirely, the proposed regulations would require the plan sponsor to eliminate the suspension.

The proposed regulations provide that, in order to satisfy the annual-plan-sponsor determinations requirement, the plan sponsor must maintain a written record of

its annual determinations. The written record must be included in an update to the rehabilitation plan, whether or not there is otherwise an update for that year or, if the plan is no longer in critical status, in the documents under which the plan is maintained (so that it is available to plan participants and beneficiaries). The plan sponsor's consideration of factors required for its determination of whether all reasonable measures have been taken must be reflected in that determination.

If a plan sponsor fails to satisfy the annual-plan-sponsor determinations requirement for a plan year (including maintaining the written record), then the suspension of benefits expires as of the first day of the next plan year. For example, if in a plan year the plan sponsor is unable to determine that all reasonable measures to avoid insolvency have been taken, then the plan sponsor must take those additional reasonable measures before the end of the plan year in order to avoid the expiration of the suspension as of the first day of the next plan year.

IV. 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).⁶ The temporary regulations provide that after applying the individual limitations, the overall size and distribution of the suspension is subject to the aggregate limitations.

A. Individual limitations

1. Guarantee-based limitation

The temporary regulations provide that benefits may not be suspended below

⁶ The temporary regulations refer to section 432(e)(9)(D)(vii) for additional rules applicable to certain plans.

110 percent of the monthly benefit payable to a participant, beneficiaries, or alternate payee 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 that under section 4022A of ERISA, the monthly benefit of a participant or beneficiary that would be guaranteed by the PBGC with respect to a plan if the plan were to become insolvent as of the effective date of the suspension is generally based on section 4022A(c)(1) of ERISA. Under section 4022A(c)(1) of ERISA, that guaranteed amount is a dollar amount multiplied by the participant's years and months of credited service as of the date as of which the guarantee is determined. The dollar amount is 100 percent of the accrual rate up to \$11, plus 75 percent of the lesser of (1) \$33, or (2) the accrual rate, if any, in excess of \$11. The accrual rate is a participant's or beneficiary's monthly benefit (described in section 4022A(c)(2)(A) of ERISA) by the participant's years of credited service (described in section 4022A(c)(3) of ERISA) as of the effective date of the suspension.

The proposed regulations provide a number of examples of how the PBGC guarantee is calculated. These examples reflect the interpretation of section 4022A of ERISA provided by the PBGC.

In determining the participant's monthly benefit for purposes of the accrual rate, only nonforfeitable benefits (other than benefits that become nonforfeitable on account of plan termination) are taken into account, pursuant to section 4022A(a) of ERISA. The proposed regulations treat benefits that are forfeitable on the effective date of a suspension as nonforfeitable, provided that the participant is in covered employment on that date and would have a nonforfeitable right to those benefits upon completion of

vesting service following that date. For example, if an active participant had only three out of five years necessary for the participant's benefit to become 100 percent vested under a plan as of the effective date of a suspension, the participant's accrued benefit will be treated as 100 percent vested as of that date.

2. Disability-based limitation

The temporary regulations incorporate the statutory requirement that benefits based on disability may not be suspended. For this purpose, disability is defined in accordance with the definition of that term in the plan. The proposed regulations would provide rules for implementing this limitation.

The proposed regulations provide that benefits based on disability means the entire amount paid to a participant pursuant to the participant becoming disabled, regardless of whether a portion of that amount would have been paid if the participant had not become disabled. For example, assume that a participant with an accrued benefit of \$1,000 per month, payable at age 65, becomes entitled under the plan to an early retirement benefit at age 55 on account of a disability (as defined in the plan). Under the plan, the participant (absent disability) would be entitled to a reduced early retirement benefit of \$600 per month commencing at age 55, but the reduction for early retirement does not apply because the participant became entitled to a benefit on account of a disability. The participant's disability benefit payment of \$1,000 per month commencing at age 55 is a benefit based on disability, even though the participant would have received a portion of these benefits at retirement regardless of the disability.

The proposed regulations also provide that if a participant begins receiving an auxiliary or other temporary disability benefit and the sole reason the participant ceases

receiving that benefit is commencement of retirement benefits, the benefit based on disability after commencement of retirement benefits is the lesser of (1) the periodic payment the participant was receiving immediately before the participant's retirement benefits commenced, or (2) the total periodic payments to the participant under the plan.

For example, assume that a participant begins receiving a disability pension of \$1,000 per month payable at age 55. When the participant reaches age 65, the participant's disability pension is discontinued and the participant elects to commence payment of the participant's accrued benefit in the form of an actuarially equivalent joint and survivor annuity payable in the amount of \$850 per month. Before age 65, the participant's benefit based on disability is \$1,000 per month. After age 65, the participant's benefit based on disability is \$850 per month. (Alternatively, if the participant had elected to commence payment of the participant's accrued benefit in the form of a single life annuity payable in the amount of \$1,000 per month, the participant's benefit based on disability after age 65 would be \$1,000 per month.) A suspension of benefits is not permitted to apply to any portion of those benefits at any time.

3. Age-based limitation

The proposed regulations would provide that no suspension of benefits is permitted to apply to a participant, beneficiary, or alternate payee who has commenced receiving benefits as of the effective date of the suspension and has reached age 80 no later than the end of the month that includes the effective date of the suspension. For example, assume that a suspension of benefits has an effective date of December 1, 2017. If a retiree is 79 years old on December 1, 2017, and turns 80 on December 15,

2017, a suspension of benefits is not permitted to apply to the retiree's monthly benefit.

In addition, no more than the applicable percentage of the maximum suspendable benefit may be suspended for a participant, beneficiary, or alternate payee who has commenced receiving benefits as of the effective date of the suspension and has reached age 75 by the end of the month that includes the effective date of the suspension.

The maximum suspendable benefit is the portion of an individual's benefits that would be suspended without regard to the age-based limitation, after the application of the guarantee-based limitation and the disability-based limitation, described earlier in paragraphs IV.A.1 and IV.A.2 of this preamble.

The applicable percentage is the percentage obtained by dividing: (1) the number of months during the period beginning with the month after the month in which the suspension of benefits is effective and ending with the month during which the participant or beneficiary attains the age of 80, by (2) 60.

The proposed regulations explain how to apply the age-based limitation if benefits have not commenced to either a participant or beneficiary as of the effective date of the suspension. If the participant is alive on the effective date, the participant is treated as having commenced benefits on that date. If the participant is deceased on the effective date, the beneficiary is treated as having commenced benefits on that date.

The age-based limitation applies to a suspension of benefits in which an alternate payee has an interest, whether or not the alternate payee has commenced benefits as of the effective date of the suspension. If the alternate payee's right to the suspended benefits derives from a qualified domestic relations order within the meaning

of section 414(p)(1)(A) (QDRO) under which the alternate payee shares in each benefit payment but the participant retains the right to choose the time and form of payment with respect to the benefit to which the suspension applies (shared payment QDRO), the applicable percentage for the alternate payee is calculated by using the participant's age as of the effective date of the suspension. If the alternate payee's right to the suspended benefits derives from a QDRO under which the alternate payee has a separate right to receive a portion of the participant's retirement benefit to be paid at a time and in a form different from that chosen by the participant (separate interest QDRO), the applicable percentage for the alternate payee is calculated by substituting the alternate payee's age as of the effective date of the suspension for the participant's age.

If the age-based limitation applies to a participant on the effective date of the suspension, then the age-based limitation also applies to the beneficiary of the participant, based on the age of the participant on the effective date of the suspension.

B. Aggregate limitations

1. Avoidance of insolvency

The proposed regulations reflect the requirement in section 432(e)(9)(D)(iv) that any suspension of benefits, in the aggregate (considered, if applicable, in combination with a partition of the plan), must be at a level that is reasonably estimated to enable the plan to avoid insolvency and not materially exceed the level that is necessary to enable the plan to avoid insolvency.

A suspension of benefits (considered, if applicable, in combination with a partition of the plan) will satisfy the requirement that it is at a level that is reasonably estimated to

enable the plan to avoid insolvency if: (1) for each plan year throughout an extended period beginning on the first day of the plan year that includes the effective date of the suspension, the plan's solvency ratio is projected on a deterministic basis to be at least 1.0; (2) based on stochastic projections reflecting variance in investment return, the probability that the plan will avoid insolvency throughout the extended period is more than 50 percent; and (3) unless the plan's projected funded percentage (within the meaning of section 432(j)(2)) at the end of the extended period using a deterministic projection exceeds 100 percent, then the projection shows that at all times during the last five plan years of that period, there is no projected decrease in either the plan's solvency ratio or its available resources (as defined in section 418E(b)(3)). In the case of a plan that is not large enough to be required to select a retiree representative, the determination of whether a benefit suspension (considered, if applicable, in combination with a plan partition) will satisfy the requirement that it is at a level that is reasonably estimated to enable the plan to avoid insolvency is permitted to be made without regard to clause (2).

A plan's solvency ratio for a plan year means the ratio of the plan's available resources (as defined in section 418E(b)(3)) for the plan year to the scheduled benefit payments under the plan for the plan year. An extended period means a period of at least 30 plan years. However, in the case of a temporary suspension of benefits that is scheduled to cease as of a date that is more than 25 years after the effective date of the suspension, the extended period must be lengthened so that it ends no earlier than five plan years after the cessation of the suspension.

Under the proposed regulations, a suspension of benefits will satisfy the

requirement that the suspension be at a level that is reasonably estimated to not materially exceed the level necessary for the plan to avoid insolvency if an alternative, similar but smaller suspension of benefits, under which the dollar amount of the suspension for each participant and beneficiary were reduced by five percent, would not be sufficient to enable the plan to satisfy the requirement that the suspension be at a level that is reasonably estimated to enable the plan to avoid insolvency. In addition, if the PBGC issues an order partitioning the plan, then a suspension of benefits with respect to the plan will be deemed to satisfy this requirement. This test based on a five percent reduction of a suspension is roughly comparable to the common use in accounting standards of a five-percent threshold for materiality.

The proposed regulations would require the actuarial projections used for purposes of these requirements to reflect the assumption that the suspension of benefits continues indefinitely (or, if the suspension expires on a specified date by its own terms, until that date). The actuarial assumptions and methods used for the actuarial projections must be reasonable in accordance with the rules of section 431(c)(3). The actuary's selection of assumptions about future covered employment and contribution levels (including contribution base units and average contribution rate) is permitted to be based on information provided by the plan sponsor, which must act in good faith in providing the information. In addition, to the extent that the actuarial assumptions used for the projections differ from those used to certify whether the plan is in critical and declining status pursuant to section 432(b)(3)(B)(iv), a justification for that difference generally must be provided.

The cash flow projections must be based on the fair market value of assets as of

the end of the most recent calendar quarter, projected benefit payments that are consistent with the projected benefit payments under the most recent actuarial valuation, and appropriate adjustments to projected benefit payments to include benefits for new hires who are reflected in the projected contribution amounts. The projected cash flows relating to contributions, withdrawal liability payments, and benefit payments must also be adjusted to reflect significant events that occurred after the most recent actuarial valuation. Significant events include: (1) a plan merger or transfer; (2) the withdrawal or the addition of employers that changed projected cash flows relating to contributions, withdrawal liability payments, or benefit payments by more than five percent; (3) a plan amendment, a change in a collective bargaining agreement, or a change in a rehabilitation plan that changed projected cash flows relating to contributions, withdrawal liability, or benefit payments by more than five percent; or (4) any other event or trend that resulted in a material change in the projected cash flows.

The application for suspension must include a disclosure of the total contributions, total contribution base units and average contribution rate, withdrawal liability payments, and the rate of return on plan assets for each of the 10 plan years preceding the plan year in which the application is submitted. In addition, the application must include deterministic projections of the plan's solvency ratio over the extended period using two alternative assumptions that the plan's future rate of return was lower than the assumed rate of return by (1) one percentage point and (2) two percentage points.

The application must include deterministic projections of the plan's solvency ratio over the extended period using two alternative assumptions for the future contribution

base units. These alternatives are that the future contribution base units (1) continue under the same trend as the plan experienced over the past 10 years, and (2) continue under that 10-year trend reduced by one percentage point.

The application must include an illustration, prepared on a deterministic basis, of the projected value of plan assets, the accrued liability of the plan (calculated using the unit credit funding method), and the funded percentage for each year in the extended period.

2. Equitable distribution

The proposed regulations would require any suspension of benefits to be equitably distributed across the participant and beneficiary population. If a suspension of benefits applies differently to different categories or groups of participants and beneficiaries, then the suspension of benefits is equitably distributed across the participant and beneficiary population only if under the suspension: (1) within each such category or group, the individuals are treated consistently; (2) any difference in treatment among the different categories or groups is based on relevant factors reasonably selected by the plan sponsor; and (3) any such difference in treatment is based on a reasonable application of the relevant factors.

The proposed regulations contain examples illustrating the equitable distribution rules.

V. Benefit improvements

The proposed regulations set forth rules for the application of section 432(e)(9)(E), regarding benefit improvements. The proposed regulations provide that a plan satisfies the criteria in section 432(e)(9)(E) only if, during the period that any

suspension of benefits remains in effect, the plan sponsor does not implement any benefit improvement except as provided in the proposed regulations.

Section 432(e)(9)(E)(vi) and the proposed regulations define the term benefit improvement to mean, with respect to a plan, a resumption of suspended benefits, an increase in benefits, an increase in the rate at which benefits accrue, or an increase in the rate at which benefits become nonforfeitable under the plan. In the case of a suspension of benefits that expires as of a date that is specified in the original plan amendment providing for the suspension, the resumption of benefits solely from the expiration of that period is not treated as a benefit improvement.

A. Limitations on benefit improvements for those not in pay status

The proposed regulations provide that, during the period any suspension of benefits under a plan remains in effect, the plan sponsor may not increase the liabilities of the plan by reason of any benefit improvement for any participant or beneficiary who was not in pay status for any plan year before the plan year for which the benefit improvement takes effect, unless several conditions are satisfied.

One condition is that the present value of the total liabilities for a benefit improvement for participants and beneficiaries whose benefit commencement dates occurred before the first day of the plan year for which the benefit improvement takes effect is not less than the present value of the total liabilities for a benefit improvement for participants and beneficiaries who were not in pay status by that date. For this purpose, present value is the present value as of the first day of the plan year in which the benefit improvement is proposed to take effect, using actuarial assumptions in accordance with section 431.

The plan sponsor must also equitably distribute the benefit improvement among participants and beneficiaries whose benefit commencement dates occurred before the first day of the plan year in which the benefit improvement is proposed to take effect. The evaluation of whether a benefit improvement is equitably distributed must take into account the factors relevant to whether a suspension of benefits is equitably distributed, described in paragraph IV.B.2 of this preamble, and the extent to which the benefits of the participants and beneficiaries were suspended.

In addition, the plan actuary must certify that, after taking into account the benefit improvement, the plan is projected to avoid insolvency indefinitely. This certification must be made using the standards that apply for purposes of determining whether a suspension is sufficient to avoid insolvency that are described in paragraph IV.B.1 of this preamble.

These limitations do not apply to a resumption of suspended benefits or plan amendment that increases liabilities with respect to participants and beneficiaries not in pay status by the first day of the plan year in which the benefit improvement took effect that: (1) the Treasury Department, in consultation with the PBGC and the Labor Department, determines to be reasonable and which provides for only de minimis increases in plan liabilities, or (2) is required as a condition of qualification under section 401 or to comply with other applicable law, as determined by the Treasury Department.

B. Limitations on benefit improvements for those in pay status

Under the proposed regulations, the plan sponsor may increase liabilities of the plan by eliminating some or all of the suspension that applies solely to participants and beneficiaries in pay status at the time of the resumption, provided that the plan sponsor

equitably distributes the value of those resumed benefits among participants and beneficiaries in pay status, taking into account factors relevant to whether a suspension of benefits is equitably distributed. Such a resumption of benefits is not subject to the limitations on a benefit improvement under section 432(f) (relating to restrictions on benefit increases for plans in critical status).

C. Other limitations on benefit increases

The proposed regulations would provide that the limitations on benefit improvements generally apply in addition to other limitations on benefit increases that apply to a plan. Except for a resumption of suspended benefits described in paragraph V.B. of this preamble, the limitations on a benefit improvement are in addition to the limitations in section 432(f) and any other applicable limitations on increases in benefits imposed on a plan.

VI. Notice of proposed suspension

Section 432(e)(9)(F)(iii) states that notice must be provided in a form and manner prescribed in guidance and that notice may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided. The temporary regulations include rules implementing the statutory notice requirements in section 432(e)(9)(F). The proposed regulations would provide that notice must exclusively be provided in written or electronic form (that is, there is no other appropriate form).

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

A plan sponsor cannot implement a suspension of benefits unless, among other things, its application for a proposed suspension of benefits is approved. The

temporary regulations contain rules regarding the submission and review of an application, and related guidelines and procedures are set forth in Rev. Proc. 2015-34. The temporary regulations provide that a complete application will be deemed approved unless, within 225 days after a complete application is received, the Treasury Department notifies the plan sponsor that its application does not satisfy one or more of the requirements for approval. The proposed regulations would provide that, if necessary under the circumstances, the Treasury Department and the plan sponsor may mutually agree in writing to stay the 225-day period. Any such agreement would be expected to be used only in unusual circumstances.

As required by section 432(e)(9)(G)(iv), the proposed regulations provide that in evaluating whether the plan sponsor has satisfied the condition (in section 432(e)(9)(C)(ii)) that it determine that all reasonable measures to avoid insolvency within the meaning of section 418E have been taken, the Treasury Department, in consultation with the PBGC and the Labor Department, will review the plan sponsor's consideration of each of the factors enumerated in section 432(e)(9)(C)(ii) and each other factor it took into account in making that determination. The proposed regulations, like the statute, do not require the plan sponsor to take any particular measure or measures to avoid insolvency but do require, in the aggregate, that the plan sponsor take all reasonable measures to avoid insolvency. In accordance with section 432(e)(9)(G)(v), the proposed regulations provide that, in evaluating the plan sponsor's application, the Treasury Department will accept the plan sponsor's determinations under section 432(e)(9)(C)(ii) unless the Treasury Department concludes, in consultation with the PBGC and the Labor Department, that the determinations were

clearly erroneous. This statutory structure reflects the view that particular measures to avoid insolvency may be inappropriate for some plans and requires the Treasury Department to review the plan sponsor's consideration of the appropriateness of each of the statutory factors, but recognizes that the plan sponsor is generally in a better position than the Treasury Department to determine the most effective measures that a particular plan should take to avoid insolvency.

The proposed regulations provide that an application to suspend benefits will not be approved unless the plan sponsor certifies that, if it receives final authorization to suspend benefits (described in paragraph VIII. of this preamble), chooses to implement the suspension, and adopts a plan amendment to implement the suspension, it will timely amend the plan to provide that (1) the suspension of benefits will cease as of the first day of the first plan year following the first plan year in which the plan sponsor fails to make the annual determinations in section 432(e)(9)(C)(ii); and (2) any future benefit improvement must satisfy the section 432(e)(9)(E) rules for benefit improvements.

VIII. Participant vote on proposed benefit reduction

Section 432(e)(9)(H)(ii) provides that if an application for a suspension of benefits is approved, 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. Many of the rules relating to the vote are set forth in the temporary regulations. However, both the temporary and the proposed regulations reserve, for later issuance, provisions on the administration of the vote.

The proposed regulations would provide that if an application for suspension is approved, the plan sponsor must take reasonable steps to inform eligible voters about the proposed suspension and the vote. This includes all eligible voters who can be contacted by reasonable efforts pursuant to section 432(e)(9)(F). Anyone whom the plan sponsor has been able to locate through these means (or who has otherwise been located by the plan sponsor) must be sent a ballot.

The proposed regulations would require the plan sponsor to provide a ballot for the vote⁷ that includes the following:

- A description of the proposed suspension and its effect, including the effect of the suspension on each category or group of individuals affected by the suspension and the extent to which they are affected;
- A description of the factors considered by the plan sponsor in designing the benefit suspension, including but not limited to the factors in section 432(e)(9)(D)(vi);
- A description of whether the suspension will remain in effect indefinitely or will expire by its own terms (and, if it will expire by its own terms, when that will occur);
- A statement from the plan sponsor in support of the proposed suspension;
- A statement in opposition to the proposed suspension compiled from comments received pursuant to the solicitation of comments in the **Federal Register** notice with respect to the application;

⁷ The ballot is subject to approval by the Treasury Department, in consultation with the PBGC and the Labor Department. See section 432(e)(9)(H) and §1.432(e)(9)-1T(h).

- A statement that the proposed 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 proposed suspension takes effect (including the year in which insolvency is projected to occur without a suspension of benefits), and an accompanying statement that this determination is subject to uncertainty;
- 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 in the event of plan insolvency;
- A statement that insolvency of the PBGC would result in benefits lower than benefits otherwise paid in the case of plan insolvency;
- A statement that the plan's actuary has certified that the plan is projected to avoid insolvency, taking into account the proposed suspension of benefits (and, if applicable, a proposed partition plan), and an accompanying statement that the actuary's projection is subject to uncertainty;
- A statement that the suspension will go into effect unless a majority of eligible voters vote to reject the suspension and that, therefore, a failure to vote has the same effect on the outcome of the vote as a vote in favor of the suspension;
- A copy of the individualized estimate that was provided as part of the

earlier notice described in section 432(e)(9)(F) (or, if that individualized estimate is no longer accurate, a corrected version of that estimate);

and

- A description of the voting procedures, including the deadline for voting.

A proposed suspension is generally permitted to be implemented unless rejected by a majority vote of all eligible voters. In determining whether a majority of all eligible voters have voted to reject the suspension under section 432(e)(9)(H)(ii), the proposed regulations would treat any eligible voters to whom ballots have not been provided (because the individuals could not be located) as voting to reject the suspension at the same rate (in other words, in the same percentage) as those to whom ballots have been provided.

Proposed Effective Date

These regulations are proposed to be effective on and after the date of publication in the **Federal Register** of the Treasury decision adopting these rules as final regulations. Until regulations finalizing these proposed regulations are issued, taxpayers may not rely on the rules set forth in these proposed regulations.

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.

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In this case, the IRS and Treasury believe that the regulations likely would not have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605. This certification is based on the fact that the number of small entities affected by this rule is unlikely to be substantial because it is unlikely that a substantial number of small multiemployer plans in critical and declining status will suspend benefits under section 432(e)(9). Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the Treasury Department and the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules (including both the provisions set forth in this notice of proposed rulemaking and the provisions set forth in the cross-referenced temporary regulations).

Comments are specifically requested on the demonstration of avoidance of insolvency, including the rules related to the use of the extended period for this purpose. In addition, comments are requested on the rules relating to the demonstration that the suspension is not materially in excess of the level necessary to avoid insolvency.

All comments will be available for public inspection and copying at www.regulations.gov or upon request. **Please Note:** All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

A public hearing on these proposed regulations has been scheduled for September 10, 2015, beginning at 9:00 a.m. in the Amphitheater of the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Ave., NW., Washington, D.C.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, and an outline of topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. A period of up to 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

For information about the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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 in 26 CFR Part 1

Income taxes, reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be 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)-1 is added to read as follows:

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

(a) General rules on suspension of benefits--(1) General rule. [The text of the proposed amendments to §1.432(e)(9)-1(a)(1) is the same as §1.432(e)(9)-1T(a)(1) published elsewhere in this issue of the **Federal Register**.]

(2) Adoption of plan terms inconsistent with suspension requirements--(i) General rule. [The text of the proposed amendments to §1.432(e)(9)-1(a)(2)(i) is the same as §1.432(e)(9)-1T(a)(2)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) Changes in level of suspension. A plan's terms are consistent with the requirements of section 432(e)(9) even if the plan provides that, instead of a suspension of benefits occurring in full on a specified effective date, the amount of a suspension will phase in or otherwise change in a definite, pre-determined manner as of a specified future effective date or dates. However, a plan's terms are inconsistent with the requirements of section 432(e)(9) if they provide that the amount of a suspension will change contingent upon the occurrence of any other specified future event, condition, or development. For example, a plan is not permitted to provide that an additional or larger suspension of benefits is triggered if the plan's funded status deteriorates. Similarly, a plan is not permitted to provide that, contingent upon a specified future event, condition, or development, a suspension of benefits will be automatically reduced (except upon a failure to satisfy the annual requirement, described in paragraph (c)(4) of this section, that the plan sponsor make determinations that the plan is projected to avoid insolvency unless benefits are suspended).

(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 contains 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 limitations on suspensions of benefits. Paragraph (e) of this section describes limitations on benefit improvements that may be made while a suspension of

benefits is in effect. 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 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.

(4) Definitions. The following definitions apply for purposes of this section--(i) Pay status. [The text of the proposed amendments to §1.432(e)(9)-1(a)(4)(i) is the same as §1.432(e)(9)-1T(a)(4)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) Plan sponsor. [The text of the proposed amendments to §1.432(e)(9)-1(a)(4)(ii) is the same as §1.432(e)(9)-1T(a)(4)(ii) published elsewhere in this issue of the **Federal Register**.]

(iii) Effective date of suspension of benefits--(A) In general. In the case of an individual who has commenced benefits, the effective date of a suspension of benefits is the first date as of which a portion of the individual's benefits are not paid as a result of the suspension. In the case of an individual who has not yet commenced benefits, the effective date of a suspension of benefits is the first date as of which the individual's accrued benefit is reduced as a result of the suspension.

(B) Phased-in suspension. If a suspension of benefits provides for more than one reduction in benefits over time, such that benefits are scheduled to be reduced by an additional amount after benefits are first reduced pursuant to the suspension, then each date as of which benefits are reduced is treated as a separate effective date of the suspension. However, if the effective date of the final scheduled reduction in benefits in

a series of reductions pursuant to a suspension is less than three years later than the effective date of the first reduction, the effective date of the first reduction will be treated as the effective date of all subsequent reductions pursuant to that suspension.

(C) Effective date may not be retroactive. The effective date of a suspension may not precede the date on which a final authorization to suspend benefits is issued pursuant to paragraph (h)(6) of this section.

(b) Definition of suspension of benefits and related rules. [The text of the proposed amendments to §1.432(e)(9)-1(b) is the same as §1.432(e)(9)-1T(b) published elsewhere in this issue of the **Federal Register.**]

(c) Conditions for suspension--(1) In general--(i) Actuarial certification and initial-plan-sponsor determinations. [The text of the proposed amendments to §1.432(e)(9)-1(c)(1)(i) is the same as §1.432(e)(9)-1T(c)(1)(i) published elsewhere in this issue of the **Federal Register.**]

(ii) Annual requirement to make plan-sponsor determinations. As provided in paragraph (c)(5) of this section, the suspension will continue only if the plan sponsor continues to make the annual-plan-sponsor determinations described in paragraph (c)(4) of this section.

(2) Actuarial certification. [The text of the proposed amendments to §1.432(e)(9)-1(c)(2) is the same as §1.432(e)(9)-1T(c)(2) published elsewhere in this issue of the **Federal Register.**]

(3) Initial-plan-sponsor determinations. [The text of the proposed amendments to §1.432(e)(9)-1(c)(3) is the same as §1.432(e)(9)-1T(c)(3) published elsewhere in this issue of the **Federal Register.**]

(4) Annual-plan-sponsor determinations--(i) General rule. A plan satisfies the annual-plan-sponsor determinations requirement of this paragraph (c)(4) for a plan year only if the plan sponsor determines, no later than the last day of the plan year, that--

(A) All reasonable measures to avoid insolvency have been and continue to be taken; and

(B) The plan is not projected to avoid insolvency (determined using the standards described in paragraphs (d)(5)(ii), (iv), and (v) of this section, substituting the current plan year for the plan year that includes the effective date of the suspension) unless the suspension of benefits continues (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 have been and continue to be taken, the plan sponsor may take into account the non-exclusive list of factors in paragraph (c)(3)(ii) of this section.

(iii) Requirement to maintain written record. The plan sponsor must maintain a written record of the annual-plan-sponsor determinations made under this paragraph (c)(4). The written record must be included in an update to the rehabilitation plan, whether or not there is otherwise an update for that year (or, if the plan is no longer in critical status, must be included in the documents under which the plan is maintained). The written record of the determinations must describe the plan sponsor's consideration of factors, as described in paragraph (c)(4)(ii) of this section.

(5) Failure to make annual-plan-sponsor determinations. If a plan sponsor fails to satisfy the annual-plan-sponsor determinations requirement of paragraph (c)(4) of this section for a plan year (including maintaining the written record described in

paragraph (c)(4)(iii) of this section), then the suspension of benefits will cease to be in effect beginning as of the first day of the next plan year.

(d) Limitations on suspension--(1) In general. [The text of the proposed amendments to §1.432(e)(9)-1(d)(1) is the same as §1.432(e)(9)-1T(d)(1) published elsewhere in this issue of the **Federal Register**.]

(2) Guarantee-based limitation--(i) General rule. [The text of the proposed amendments to §1.432(e)(9)-1(d)(2)(i) is the same as §1.432(e)(9)-1T(d)(2)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) PBGC guarantee. Under section 4022A of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829 (1974)), as amended (ERISA), the monthly benefit of a participant or beneficiary that would be guaranteed by the Pension Benefit Guaranty Corporation (PBGC) with respect to a plan if the plan were to become insolvent as of the effective date of the suspension is generally based on section 4022A(c)(1) of ERISA. Under that section, the monthly benefit that would be guaranteed if the plan were to become insolvent as of the date as of which the guarantee is determined is the product of--

(A) 100 percent of the accrual rate up to \$11, plus 75 percent of the lesser of--

(1) \$33; or

(2) The accrual rate, if any, in excess of \$11; and

(B) The number of the participant's years and months of credited service as of that date.

(iii) Calculation of accrual rate. The accrual rate, as defined in section 4022A(c)(2) of ERISA, is calculated by dividing--

(A) The participant's or beneficiary's monthly benefit, described in section 4022A(c)(2)(A) of ERISA; by

(B) The participant's years of credited service, described in section 4022A(c)(3) of ERISA, as of the effective date of the suspension.

(iv) Special rule for non-vested participants. For purposes of this paragraph (d)(2), a participant's nonforfeitable benefits under section 4022A(a) of ERISA include benefits that are forfeitable as of the effective date of the suspension, provided that the participant would have a nonforfeitable right to those benefits if the participant continued to earn vesting service following that date.

(v) Examples. The following examples illustrate the limitation on a suspension of benefits in this paragraph (d)(2). Unless otherwise stated, the amount of guarantee payable by PBGC in these examples is based on section 4022A(c) of ERISA, and the rules under section 4022A(d) of ERISA (guarantee for benefits reduced under section 411(a)(3)(E)), section 4022A(e) of ERISA (benefits ineligible for guarantee), and section 4022A(h) of ERISA (guarantee for benefits accrued as of July 30, 1980) do not apply. In these examples, unless otherwise stated, the monthly benefits are nonforfeitable, are based on benefits that have been in effect for at least 60 months as of the effective date of the suspension, and are no greater than the monthly benefit that would be payable at normal retirement age in the form of a single life annuity.

Example 1. (i) Facts. A participant is receiving a benefit of \$1,500 per month. The participant has 30 years of credited service under the plan.

(ii) Calculation of accrual rate. The participant's accrual rate is \$50, calculated by dividing the participant's monthly benefit payment (\$1,500) by the participant's years of credited service (30).

(iii) Calculation of monthly PBGC-guaranteed benefit. The first \$11 of the accrual

rate is fully guaranteed, and the next \$33 of the accrual rate is 75% guaranteed ($\$33 \times .75 = \24.75). The participant's monthly guaranteed benefit per year of credited service is \$35.75 ($\$11 + \$24.75 = \35.75). The PBGC guarantee formula is then applied to produce the amount of guarantee payable by PBGC, which is \$1,072.50 ($\$35.75 \times 30 \text{ years} = \$1,072.50$).

(iv) Calculation of guarantee-based limitation. A suspension of benefits may not reduce the participant's benefits below the guarantee-based limitation, which is equal to 110% of the amount of guarantee payable by PBGC. That monthly amount is \$1,179.75 ($\$1,072.50 \times 1.1 = \$1,179.75$).

Example 2. (i) Facts. The facts are the same as in Example 1, except that the participant is deceased and the participant's beneficiary is receiving a monthly benefit of \$750 under a 50% joint and survivor annuity.

(ii) Calculation of accrual rate. The beneficiary's accrual rate is \$25, calculated by dividing the beneficiary's monthly benefit payment (\$750) by the participant's years of credited service (30).

(iii) Calculation of monthly PBGC-guaranteed benefit. The first \$11 of the accrual rate is fully guaranteed, and the next \$14 ($\$25 - \$11 = \14) of the accrual rate is 75% guaranteed ($\$14 \times .75 = \10.50). The beneficiary's monthly guaranteed benefit is \$21.50 per year of credited service ($\$11 + \$10.50 = \$21.50$). The PBGC guarantee formula is then applied to produce the amount of guarantee payable by PBGC, which is \$645 ($\$21.50 \times 30 \text{ years} = \645).

(iv) Calculation of guarantee-based limitation. A suspension of benefits may not reduce the beneficiary's benefits below the guarantee-based limitation, which is equal to 110% of the monthly amount of guarantee payable by PBGC. That monthly guarantee-based limitation amount is \$709.50 ($\$645 \times 1.1 = \709.50).

Example 3. (i) Facts. A participant would be eligible for a monthly benefit of \$1,000 payable as a single life annuity at normal retirement age, based on the participant's 25 years of credited service. The plan also permits a participant to receive a benefit on an unreduced basis as a single life annuity at early retirement age and permits participants to receive an early retirement benefit in the form of a Social Security level income option. Under the Social Security level income option, the participant receives a monthly benefit of \$1,600 prior to normal retirement age (which is the plan's assumed Social Security retirement age) and \$900 after normal retirement age.

(ii) Calculation of accrual rate. For purposes of calculating the accrual rate, the monthly benefit that is used to calculate the PBGC guarantee does not exceed the monthly benefit of \$1,000 that would be payable at normal retirement age. In calculating the accrual rate, the amount of guarantee payable by PBGC would be based on a monthly benefit of \$1,000 prior to normal retirement age and \$900 after normal

retirement age. Before normal retirement age, the participant's accrual rate is \$40, determined by dividing the participant's monthly benefit payment (\$1,000) by years of credited service (25). After normal retirement age, the participant's accrual rate is \$36, calculated by dividing the participant's monthly benefit payment (\$900) by the participant's years of credited service (25).

(iii) Calculation of monthly PBGC-guaranteed benefit. Before normal retirement age, the first \$11 of the accrual rate is fully guaranteed, and the next \$29 of the accrual rate is 75% guaranteed ($\$29 \times .75 = \21.75). The participant's monthly guaranteed benefit per year of credited service is \$32.75 ($\$11 + \$21.75 = \32.75). The PBGC guarantee formula is then applied to produce the amount of guarantee payable by PBGC, which is \$818.75 ($\$32.75 \times 25 \text{ years} = \818.75). After normal retirement age, the first \$11 of the accrual rate is fully guaranteed, and the next \$25 of the accrual rate is 75% guaranteed ($\$25 \times .75 = \18.75). The participant's monthly guaranteed benefit per year of credited service is \$29.75 ($\$11 + \$18.75 = \29.75). The PBGC guarantee formula is then applied to produce the amount of guarantee payable by PBGC, which is \$743.75 after normal retirement age ($\$29.75 \times 25 \text{ years} = \743.75).

(iv) Calculation of guarantee-based limitation. A suspension of benefits may not reduce the participant's benefits below the guarantee-based limitation, which is equal to 110% of the monthly amount of guarantee payable by PBGC. That monthly guarantee-based limitation amount is \$900.63 ($\$818.75 \times 1.1 = \900.63) before normal retirement age and \$818.13 ($\$743.75 \times 1.1 = \818.13) after normal retirement age.

Example 4. (i) Facts. A participant would be eligible for a monthly benefit of \$1,000 payable as a single life annuity at normal retirement age, based on the participant's 20 years of credited service. The plan provides an actuarial increase for delaying benefits until after normal retirement age. The participant delays commencement of benefits until after normal retirement age and the participant's monthly benefit is \$1,200 instead of \$1,000.

(ii) Calculation of accrual rate. For purposes of calculating the accrual rate, the monthly benefit that is used to calculate the PBGC guarantee does not exceed the monthly benefit of \$1,000 that would be payable at normal retirement age. Thus, in determining the accrual rate, the PBGC guarantee would be based on a monthly benefit of \$1,000, whether benefits are paid at or after normal retirement age. The participant's accrual rate is \$50, calculated by dividing the participant's monthly benefit payment (\$1,000) by the participant's years of credited service (20).

(iii) Calculation of monthly PBGC-guaranteed benefit. The first \$11 of the accrual rate is fully guaranteed, and the next \$33 of the accrual rate is 75% guaranteed ($\$33 \times .75 = \24.75). The participant's monthly guaranteed benefit per year of credited service is \$35.75 ($\$11 + \$24.75 = \35.75). The PBGC guarantee formula is then applied to produce the amount of guarantee payable by PBGC, which is \$715 ($\$35.75 \times 20 \text{ years} = \715).

(iv) Calculation of guarantee-based limitation. A suspension of benefits may not reduce the participant's benefits below the guarantee-based limitation, which is equal to 110% of the monthly amount of guarantee payable by PBGC. That monthly guarantee-based limitation amount is \$786.50 ($\$715 \times 1.1 = \786.50).

Example 5. (i) Facts. A plan provides that a participant who has completed at least five years of service will have a nonforfeitable right to 100% of an accrued benefit (and will not have a nonforfeitable right to any portion of the accrued benefit prior to completing five years of service). The plan implements a suspension of benefits on January 1, 2017. As of that date, a participant has three years of vesting service, and none of the participant's benefits are nonforfeitable under the terms of the plan.

(ii) Calculation of nonforfeitable benefits. For purposes of applying the guarantee-based limitation, the participant is considered to have a nonforfeitable right to 100% of the accrued benefit under the plan as of January 1, 2017.

(3) Age-based limitation--(i) No suspension for participants or beneficiaries who are age 80 and older. No suspension of benefits is permitted to apply to a participant, beneficiary, or alternate payee who--

(A) Has commenced benefits as of the effective date of the suspension; and

(B) Has attained 80 years of age no later than the end of the month that includes the effective date of the suspension.

(ii) Limited suspension for participants and beneficiaries between ages 75 and 80. No more than the applicable percentage of the maximum suspendable benefit may be suspended for a participant, beneficiary, or alternate payee who--

(A) Has commenced benefits as of the effective date of the suspension; and

(B) Has attained 75 years of age no later than the end of the month that includes the effective date of the suspension.

(iii) Maximum suspendable benefit--(A) In general. For purposes of this paragraph (d)(3), the maximum suspendable benefit with respect to a participant, beneficiary, or alternate payee is the portion of the individual's benefits that would

otherwise be suspended pursuant to this section (that is, the amount that would be suspended without regard to the limitation in this paragraph (d)(3)).

(B) Coordination of limitations. An individual's maximum suspendable benefit is calculated after the application of the guarantee-based limitation under paragraph (d)(2) of this section and the disability-based limitation under paragraph (d)(4) of this section.

(iv) Applicable percentage. For purposes of this paragraph (d)(3), the applicable percentage is the percentage obtained by dividing--

(A) The number of months during the period beginning with the month after the month in which the suspension of benefits is effective and ending with the month during which the participant or beneficiary attains the age of 80, by

(B) 60.

(v) Applicability of age-based limitation to benefits paid to beneficiaries. If the age-based limitation in this paragraph (d)(3) applies to a participant on the effective date of the suspension, then the age-based limitation also applies to the beneficiary of the participant, based on the age of the participant on the effective date of the suspension.

(vi) Rule for benefits that have not commenced at the time of the suspension. If benefits have not commenced to either a participant or beneficiary as of the effective date of the suspension, then in applying this paragraph (d)(3)--

(A) If the participant is alive on the effective date of the suspension, the participant is treated as having commenced benefits on that date; and

(B) If the participant is deceased on effective date of the suspension, the beneficiary is treated as having commenced benefits on that date.

(vii) Rules for alternate payees. The age-based limitation in this paragraph (d)(3)

applies to a suspension of benefits in which an alternate payee has an interest, whether or not the alternate payee has commenced benefits as of the effective date of the suspension. For purposes of this paragraph (d)(3), the applicable percentage for an alternate payee is calculated by--

(A) Using the participant's age as of the effective date of the suspension, if the alternate payee's right to the suspended benefits derives from a qualified domestic relations order within the meaning of section 414(p)(1)(A) (QDRO) under which the alternate payee shares in each benefit payment but the participant retains the right to choose the time and form of payment with respect to the benefit to which the suspension applies (shared payment QDRO); or

(B) Substituting the alternate payee's age as of the effective date of the suspension for the participant's age, if the alternate payee's right to the suspended benefits derives from a QDRO under which the alternate payee has a separate right to receive a portion of the participant's retirement benefit to be paid at a time and in a form different from that chosen by the participant (separate interest QDRO).

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

Example 1. (i) Facts. The plan sponsor of a plan in critical and declining status is implementing a suspension of benefits, effective December 1, 2017, that would reduce all benefit payments under the plan by 30%. On that date, a retiree is receiving a monthly benefit of \$1,500 (which is not a benefit based on disability) and has 28 years of credited service under the plan. If none of the limitations in section 432(e)(9)(D)(i), (ii), and (iii) were to apply, a 30% suspension would reduce the retiree's monthly benefit by \$450, to \$1,050. Under the guarantee-based limitation in section 432(e)(9)(D)(i), the retiree's monthly benefit could not be reduced by more than \$398.90, to \$1,101.10 (1.1 x (28 x (\$11 + (.75 x \$33))). The retiree is 77 years old on the effective date of the suspension, turns 78 on December 15, 2017, and turns 80 on December 15, 2019.

(ii) Maximum suspendable benefit. Because the retiree is not receiving a benefit

based on disability under section 432(e)(9)(D)(iii), the retiree's maximum suspendable benefit is \$398.90 (which is equal to the lesser of reduction that would apply pursuant to the 30% suspension (\$450) or the amount of reduction that would be permitted under the guarantee-based limitation (\$398.90)).

(iii) Applicable percentage. Because the retiree is between ages 75 and 80 on the effective date of the suspension, the reduction is not permitted to exceed the applicable percentage of the retiree's maximum suspendable benefit. The number of months during the period beginning with January 2018 (the month after the month that includes the effective date of the suspension) and ending with December 2019 (the month in which the retiree turns 80) is 24. The applicable percentage is equal to 40% (24 months divided by 60).

(iv) Age-based limitation. The retiree's maximum suspendable benefit is \$398.90 and the applicable percentage is 40%. Thus, under the age-based limitation, the retiree's benefit may not be reduced by more than \$159.56 ($\$398.90 \times .40 = \159.56). Because the retiree was receiving a monthly benefit of \$1,500, the suspension of benefits may not reduce the retiree's monthly benefit below \$1,340.44 ($\$1,500 - \$159.56 = \$1,340.44$).

Example 2. (i) Facts. The facts are the same as Example 1, except that the retiree is 79 years old on December 1, 2017, and turns 80 on December 15, 2017.

(ii) Age-based limitation. The suspension is not permitted to apply to the retiree because the retiree will turn 80 by the end of the month (December 2017) in which the suspension is effective.

Example 3. (i) Facts. The facts are the same as Example 1, but on the effective date of the suspension, the retiree is receiving a benefit in the form of a 50% joint and survivor annuity for himself and a contingent beneficiary who is age 71. The retiree dies in October 2018.

(ii) Application of age-based limitation to contingent beneficiary. Because the retiree had attained age 78 in the month that included the effective date of the suspension, the age-based limitation on the suspension of benefits for a 78-year-old individual applies to the retiree. The age-based limitation also applies to the contingent beneficiary, even though the contingent beneficiary had not commenced benefits under the plan as of the effective date of the suspension and had not attained age 75 by the end of the month containing the effective date of the suspension.

(iii) Maximum suspendable benefit. The contingent beneficiary's amount of guarantee payable by PBGC is based on the benefit the beneficiary would have received from the plan before the suspension (\$750). The beneficiary's accrual rate is \$26.7857 (calculated by dividing the monthly benefit payment (\$750) by years of credited service (28)) and the beneficiary's amount of guarantee payable by PBGC is \$639.50 ($28 \times (\$11 + (.75 \times \$15.7857))$). The beneficiary's maximum suspendable

benefit is \$46.55 (which is equal to the lesser of reduction that would apply pursuant to the 30% suspension (\$225) or the amount of reduction that would be permitted under the guarantee-based limitation (\$46.55, which is equal to $(\$750 - 1.1 \times 639.50)$).

(iv) Applicable percentage. The applicable percentage for the beneficiary is based on the retiree's age of 78 on the effective date of the suspension. Accordingly, the applicable percentage for the beneficiary is 40%.

(v) Age-based limitation. The beneficiary's maximum suspendable benefit is \$46.55 and the applicable percentage is 40%. Thus, under the age-based limitation, the beneficiary's benefit may not be reduced by more than \$18.62 ($\$46.55 \times .40 = \18.62). Therefore, as a result of the retiree's age-based limitation, the suspension of benefits may not reduce the beneficiary's monthly benefit below \$731.38 ($\$750 - \$18.62 = \731.38).

Example 4. (i) Facts. The facts are the same as Example 3, except that on the effective date of the suspension the retiree is age 71 and the retiree's contingent beneficiary is age 77.

(ii) Application of age-based limitation to contingent beneficiary. Because the retiree had not reached age 75 as of the effective date of the suspension, the age-based limitation on the suspension of benefits does not apply to the retiree. The age-based limitation also does not apply to the retiree's contingent beneficiary, even though the contingent beneficiary had attained age 77 as of the effective date of the suspension, because the contingent beneficiary had not yet commenced benefits on that date. The beneficiary's post-suspension benefit may not be less than minimum benefit payable pursuant to the guarantee-based limitation, which is \$703.45 ($\$639.50 \times 1.1 = \703.45).

Example 5. (i) Facts. The facts are the same as in Example 4, except that the retiree died in October 2017, prior to the December 1, 2017 effective date of the suspension of benefits. The retiree's beneficiary commenced benefits on November 1, 2017.

(ii) Application of age-based limitation to contingent beneficiary. Because the retiree's beneficiary had commenced benefits before the effective date of the suspension and had reached age 75 by the end of the month that includes the effective date of the suspension, the age-based limitation applies to the beneficiary based on the beneficiary's age on the effective date of the suspension.

(4) Disability-based limitation--(i) General rule [The text of the proposed amendments to §1.432(e)(9)-1(d)(4)(i) is the same as §1.432(e)(9)-1T(d)(4)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) Benefits based on disability--(A) In general. For purposes of this section, benefits based on disability means the entire amount paid to a participant pursuant to the participant becoming disabled, without regard to whether a portion of that amount would have been paid if the participant had not become disabled.

(B) Rule for auxiliary or other temporary disability benefits. If a participant begins receiving an auxiliary or other temporary disability benefit and the sole reason the participant ceases receiving that benefit is commencement of retirement benefits, the benefit based on disability after commencement of retirement benefits is the lesser of--

(1) The periodic payment the participant was receiving immediately before the participant's retirement benefits commenced; or

(2) The total periodic payments to the participant under the plan.

(C) Examples. The following examples illustrate the disability-based limitation on a suspension of benefits under this paragraph (d)(4):

Example 1. (i) Facts. A participant with a vested accrued benefit of \$1,000 per month, payable at age 65, becomes disabled at age 55. The plan applies a reduction to the monthly benefit for early commencement if the participant commences benefits before age 65. For a participant who commences receiving benefits at age 55, the actuarially adjusted early retirement benefit is 60% of the accrued benefit. However, the plan also provides that if a participant becomes entitled to an early retirement benefit on account of disability, as defined in the plan, the benefit is not reduced. On account of a disability, the participant commences an unreduced early retirement benefit of \$1,000 per month at age 55 (instead of the \$600 monthly benefit the participant would receive if the participant were not disabled). The participant continues to receive \$1,000 per month after reaching age 65.

(ii) Conclusion. The participant's disability benefit payment of \$1,000 per month commencing at age 55 is a benefit based on disability, even though the participant would have received a portion of these benefits at retirement regardless of the disability. Thus, both before and after attaining age 65, the participant's entire monthly payment amount (\$1,000) is a benefit based on disability. A suspension of benefits is not permitted to apply to any portion of the participant's benefit at any time.

Example 2. (i) Facts. The facts are the same as Example 1, except that the

terms of the plan provide that when a disabled participant reaches age 65, the disability pension is discontinued by reason of reaching age 65, and the retirement benefits commence. In this case, the amount of the participant's retirement benefits is the same as the amount that the participant was receiving immediately before commencing retirement benefits, or \$1,000.

(ii) Conclusion. Before age 65, the participant's disability benefit payment of \$1,000 per month commencing at age 55 is a benefit based on disability. After age 65, the periodic payment of \$1,000 per month that the participant was receiving immediately before commencing retirement benefits is a benefit based on disability. Thus, both before and after attaining age 65, the participant's entire monthly payment amount (\$1,000) is a benefit based on disability. A suspension of benefits is not permitted to apply to any portion of the participant's benefit at any time.

Example 3. (i) Facts. The facts are the same as Example 2, except that upon reaching age 65, the participant elects to commence payment of retirement benefits not in the form of a single life annuity payable in the amount of \$1,000 per month but instead in the form of an actuarially equivalent joint and survivor annuity payable in the amount of \$850 per month.

(ii) Conclusion. Before age 65, the participant's benefit based on disability is \$1,000 per month. After age 65, the participant's benefit based on disability is \$850 per month. Thus, a suspension of benefits is not permitted to apply to any portion of those benefits at any time.

Example 4. (i) Facts. A participant's disability pension is a specified amount unrelated to the participant's accrued benefit. The participant's disability benefit commencing at age 55 is \$750 per month. Upon reaching age 65, the participant's disability pension is discontinued by reason of reaching age 65 and the participant elects to receive an accrued benefit payable in the amount of \$1,000 per month.

(ii) Conclusion. Before age 65, the participant's benefit based on disability is \$750 per month. After age 65, the participant's benefit based on disability continues to be \$750 per month (even though the participant's payment is \$1,000 per month), because the benefit based on disability is the lesser of the periodic disability pension the participant was receiving immediately before retirement benefits commenced (\$750) and the periodic payment to the participant under the plan (\$1,000). Thus, a suspension of benefits is not permitted to reduce the participant's benefit based on disability (\$750 per month) at any time.

Example 5. (i) Facts. The facts are the same as Example 2, except that when the participant attains age 65, the participant's monthly benefit payment increases from \$1,000 to \$1,300 as a result of the plan providing additional accruals during the period of disability, as if the participant was not disabled.

(ii) Conclusion. As in Example 2, before age 65, the participant's benefit

payment of \$1,000 per month commencing at age 55 is a benefit based on disability. After age 65, the participant's benefit payment of \$1,300 per month is a benefit based on disability because the \$1,300 is payable based on additional accruals earned pursuant to the participant becoming disabled. Thus, both before and after attaining age 65, the participant's entire monthly payment amount is a benefit based on disability. A suspension of benefits is not permitted to apply to any portion of the participant's benefit at any time.

Example 6. (i) Facts. The facts are the same as Example 3 of paragraph (d)(2)(v) of this section, except that the Social Security level income option is only available to a participant who incurs a disability as defined in the plan.

(ii) Conclusion. Before normal retirement age, the participant's benefit payment of \$1,600 per month is a benefit based on disability. After normal retirement age, the participant's benefit based on disability is \$900, which is the lesser of the \$1,600 periodic payment that the participant was receiving immediately before the participant's normal retirement benefit commenced and the participant's \$900 normal retirement benefit. Thus, a suspension of benefits is not permitted to apply to any portion of those benefits (\$1,600 per month before and \$900 per month after normal retirement age) at any time.

Example 7. (i) Facts. A plan applies a reduction to the monthly benefit for early commencement if a participant commences benefits before age 65. The plan also provides that if a participant becomes disabled, as defined in the plan, the benefit that is paid before normal retirement age is not reduced for early retirement. Under the plan, when a disabled participant reaches age 65, the disability pension is discontinued by reason of reaching age 65 and the retirement benefits commence. A participant with a vested accrued benefit of \$1,000 per month, payable at age 65, becomes disabled at age 55. On account of the disability, the participant commences benefits at age 55 in the amount of \$1,000 per month (instead of the \$600 monthly benefit the participant could have received at that age if the participant were not disabled). The participant recovers from the disability at age 60, and the participant's disability benefits cease. At age 60, the participant immediately elects to begin an early retirement benefit of \$800.

(ii) Conclusion. The participant's disability benefit payment of \$1,000 per month commencing at age 55 is a benefit based on disability, even though the participant would have received a portion of these benefits at retirement regardless of the disability. Because the participant ceased receiving disability benefits on account of the participant no longer being disabled (and not solely on account of commencing retirement benefits), the participant's early retirement benefit of \$800 per month that began after the disability benefit ended is not a benefit based on disability.

(5) Limitation on aggregate size of suspension--(i) General rule. Any suspension of benefits (considered, if applicable, in combination with a partition of the plan under

section 4233 of ERISA (partition)) must be at a level that is reasonably estimated to--

(A) Enable the plan to avoid insolvency; and

(B) Not materially exceed the level that is necessary to enable the plan to avoid insolvency.

(ii) Suspension sufficient to avoid insolvency--(A) General rule. A suspension of benefits (considered, if applicable, in combination with a partition of the plan) will satisfy the requirement that it is at a level that is reasonably estimated to enable the plan to avoid insolvency if--

(1) For each plan year throughout an extended period (as described in paragraph (d)(5)(ii)(C) of this section) beginning on the first day of the plan year that includes the effective date of the suspension, the plan's solvency ratio is projected on a deterministic basis to be at least 1.0;

(2) Based on stochastic projections reflecting variance in investment return, the probability that the plan will avoid insolvency throughout the extended period is more than 50 percent; and

(3) Unless the plan's projected funded percentage (within the meaning of section 432(j)(2)) at the end of the extended period using a deterministic projection exceeds 100 percent, then the projection shows that at all times during the last five plan years of that period, there is no projected decrease in either the plan's solvency ratio or its available resources (as defined in section 418E(b)(3)).

(B) Solvency ratio. For purposes of this section, a plan's solvency ratio for a plan year means the ratio of--

(1) The plan's available resources (as defined in section 418E(b)(3)) for the plan

year; to

(2) The scheduled benefit payments under the plan for the plan year.

(C) Extended period. For purposes of this section, an extended period means a period of at least 30 plan years. However, in the case of a temporary suspension of benefits that is scheduled to cease as of a date that is more than 25 years after the effective date, the extended period must be lengthened so that it ends no earlier than five plan years after the cessation of the suspension.

(iii) Suspension not materially in excess of level necessary to avoid insolvency--

(A) General rule. A suspension of benefits will satisfy the requirement under paragraph (d)(5)(i)(B) of this section that the suspension be at a level that is reasonably estimated to not materially exceed the level necessary for the plan to avoid insolvency only if an alternative, similar but smaller suspension of benefits, under which the dollar amount of the suspension for each participant and beneficiary is reduced by five percent would not be sufficient to enable the plan to satisfy the requirement to avoid insolvency under paragraph (d)(5)(i)(A) of this section.

(B) Special rule for partitions. If the PBGC issues an order partitioning the plan, then a suspension of benefits with respect to the plan will be deemed to satisfy the requirement under paragraph (d)(5)(i)(B) of this section that the suspension be at a level that is reasonably estimated to not materially exceed the level necessary for the plan to avoid insolvency.

(iv) Actuarial basis for projections--(A) In general. This paragraph (d)(5)(iv) sets forth rules for the actuarial projections that are required under this paragraph (d)(5). The projections must reflect the assumption that the suspension of benefits continues

indefinitely (or, if the suspension expires on a specified date by its own terms, until that date).

(B) Reasonable actuarial assumptions and methods. The actuarial assumptions and methods used for the actuarial projections must be reasonable, in accordance with the rules of section 431(c)(3). The actuary's selection of assumptions about future covered employment and contribution levels (including contribution base units and average contribution rate) may be based on information provided by the plan sponsor, which must act in good faith in providing the information. In addition, to the extent that the actuarial assumptions used for the deterministic projection differ from those used to certify whether the plan is in critical and declining status pursuant to section 432(b)(3)(B)(iv), a justification for that difference must be provided. Similarly, to the extent that the actuarial assumptions used for the stochastic projection differ from those used for the deterministic projection (other than the rate of investment return), a justification for that difference must be provided.

(C) Initial value of plan assets and cash flow projections. Except as provided in paragraph (d)(5)(iv)(D) of this section, the cash flow projections must be based on--

- (1) The fair market value of assets as of end of the most recent calendar quarter;
- (2) Projected benefit payments that are consistent with the projected benefit payments under the most recent actuarial valuation; and
- (3) Appropriate adjustments to projected benefit payments to include benefits for new hires who are reflected in the projected contribution amounts.

(D) Requirement to reflect significant events. The projected cash flows relating to contributions, withdrawal liability payments, and benefit payments must also be

adjusted to reflect significant events that occurred after the most recent actuarial valuation. Significant events include--

(1) A plan merger or transfer;

(2) The withdrawal or the addition of employers that changed projected cash flows relating to contributions, withdrawal liability payments, or benefit payments by more than five percent;

(3) A plan amendment, a change in a collective bargaining agreement, or a change in a rehabilitation plan that changed projected cash flows relating to contributions, withdrawal liability payments, or benefit payments by more than five percent; or

(4) Any other event or trend that resulted in a material change in the projected cash flows.

(v) Simplified determination for smaller plans. In the case of a plan that is not large enough to be required to select a retiree representative under paragraph (b)(4) of this section, the determination of whether the benefit suspension (or a benefit suspension in combination with a partition of the plan) will satisfy the requirement that it is at a level that is reasonably estimated to enable the plan to avoid insolvency is permitted to be made without regard to paragraph (d)(5)(ii)(A)(2) of this section.

(vi) Additional disclosure--(A) Disclosure of past experience for critical assumptions. The application for suspension must include a disclosure of the total contributions, total contribution base units and average contribution rate, withdrawal liability payments, and the rate of return on plan assets for each of the 10 plan years preceding the plan year in which the application is submitted.

(B) Sensitivity of results to investment return assumptions. The application must include deterministic projections of the plan's solvency ratio over the extended period using two alternative assumptions for the plan's rate of return. These alternatives are that the plan's future rate of return will be lower than the assumed rate of return used under paragraph (d)(5)(iv)(B) of this section by--

- (1) One percentage point; and
- (2) Two percentage points.

(C) Sensitivity of results to industry level assumptions. The application must include deterministic projections of the plan's solvency ratio over the extended period using two alternative assumptions for the future contribution base units. These alternatives are that the future contribution base units--

- (1) Continue under the same trend as the plan experienced over the past 10 years; and
- (2) Continue under the trend identified in paragraph (d)(5)(vi)(C)(1) of this section reduced by one percentage point.

(D) Projection of funded percentage. The application must include an illustration, prepared on a deterministic basis, of the projected value of plan assets, the accrued liability of the plan (calculated using the unit credit funding method), and the funded percentage for each year in the extended period.

(6) Equitable distribution--(i) In general. Any suspension of benefits must be equitably distributed across the participant and beneficiary population, taking into account factors, with respect to participants and beneficiaries and their benefits, that may include one or more of the factors described in paragraph (d)(6)(ii) of this section.

If a suspension of benefits applies differently to different categories or groups of participants and beneficiaries, then the suspension of benefits is equitably distributed across the participant and beneficiary population only if under the suspension--

(A) Within each such category or group, the individuals are treated consistently;

(B) Any difference in treatment among the different categories or groups is based on relevant factors reasonably selected by the plan sponsor, such as the factors described in paragraph (d)(6)(ii) of this section; and

(C) Any such difference in treatment is based on a reasonable application of the relevant factors.

(ii) Factors that may be considered--(A) In general. In accordance with paragraph (d)(6)(i)(B) of this section, if there is any difference in the application of the suspension of benefits between one classification of participants and beneficiaries and another classification of participants and beneficiaries, that difference must be based reasonably on the statutory factors (described in paragraph (d)(6)(ii)(B) of this section) and any other factors reasonably selected by the plan sponsor. For example, it would be reasonable for a plan sponsor to conclude that the statutory factor described in paragraph (d)(6)(ii)(B)(3) of this section (amount of benefit) is a factor that should be taken into account as justifying a lesser benefit reduction for participants or beneficiaries whose benefits are closer to the level of the PBGC guarantee than for others. In addition, it would be reasonable for a plan sponsor to conclude that the presumed financial vulnerability of certain participants or beneficiaries who are reasonably deemed to be in greater need of protection than other participants or beneficiaries is a factor that should be taken into account as justifying a lesser benefit reduction (as a percentage or

otherwise) for those participants or beneficiaries than for others.

(B) Statutory factors. Factors that may be selected as a basis for differences in the application of a suspension of benefits include, when reasonable under the circumstances, the following statutory factors:

- (1) The age and life expectancy of the participant and/or beneficiary;
- (2) The length of time that benefits have been in pay status;
- (3) The amount of benefits;
- (4) The type of benefit, such as survivor benefit, normal retirement benefit, or early retirement benefit;
- (5) The extent to which a participant or beneficiary is receiving a subsidized benefit;
- (6) The extent to which a participant or beneficiary has received post-retirement benefit increases;
- (7) The history of benefit increases and reductions for participants and beneficiaries;
- (8) The number of years to retirement for active employees;
- (9) Any differences between active and retiree benefits;
- (10) The extent to which active participants are reasonably likely to withdraw support for the plan, accelerating employer withdrawals from the plan and increasing the risk of additional benefit reductions for participants in and out of pay status; and
- (11) The extent to which a participant's or beneficiary's benefits are attributable to service with an employer that failed to pay its full withdrawal liability.

(iii) Reasonable application of factors. A suspension of benefits will not satisfy the requirement to be equitably distributed if it is based on an unreasonable application of the factors referred to in paragraph (d)(6)(ii) of this section. For example, it would constitute an unreasonable application of the factor described in paragraph (d)(6)(ii)(B)(3) of this section (amount of benefit) if that factor were used to justify a larger suspension for participants with smaller benefits.

(iv) Examples. The following examples illustrate the rules on equitable distribution of a suspension of benefits in this paragraph (d)(6). As a simplifying assumption for purposes of these examples, it is assumed that the facts of each example describe all of the factors that are included in the application discussed in the example (provided, however, that, in the case of a plan described in section 432(e)(9)(D)(vii), the examples are not intended to illustrate the application of section 432(e)(9)(D)(vii) or its effect on the analysis or conclusions in the examples). Throughout these examples, the guarantee-based, age-based, and disability-based limitations of section 432(e)(9)(D)(i), (ii), and (iii) are referred to as the individual limitations on benefit suspensions.

Example 1. (i) Facts. A suspension of benefits provides that, subject to the individual limitations on benefit suspensions, benefits for all participants and beneficiaries are reduced by the same percentage, and explains the rationale for this reduction.

(ii) Conclusion. The suspension of benefits is equitably distributed across the participant and beneficiary populations.

Example 2. (i) Facts. A suspension of benefits provides that, subject to the age-based and disability-based limitations of section 432(e)(9)(D)(ii) and (iii), the portion of each participant's and beneficiary's benefit that exceeds the guarantee-based limitation of section 432(e)(9)(D)(i) is reduced by the same percentage, and explains the rationale for this reduction.

(ii) Conclusion. The suspension of benefits is equitably distributed across the participant and beneficiary populations. The result would be the same if, instead, the suspension of benefits applies only to benefits that exceed a multiple (in excess of 100%) of the guarantee-based limitation.

Example 3. (i) Facts. A plan was previously amended to provide an ad hoc 15% increase to the benefits of all participants and beneficiaries (including participants who, at the time, were no longer earning service under the plan, which therefore included retirees and deferred vested participants). The plan sponsor applies for a suspension of benefits. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, benefits for all participants and beneficiaries who were no longer earning service under the plan at the time of the ad hoc amendment are reduced by eliminating the amendment for those individuals. The suspension application explains why the benefit reduction is based on the statutory factors in paragraph (d)(6)(ii)(B)(6) of this section (the extent to which a participant or beneficiary has received post-retirement benefit increases), including application of the reduction to those who, at the time of the previous benefit increase, were either retired participants or deferred vested participants, and in paragraph (d)(6)(ii)(B)(7) of this section (the history of benefit increases and reductions), and why it is reasonable to apply the factors in this manner.

(ii) Conclusion. The suspension of benefits is equitably distributed across the participant and beneficiary populations. This is because the difference in treatment among the different groups of participants is based on whether a participant has received post-retirement benefit increases (in this case, whether a participant was earning service under the plan at the time of the benefit increase amendment), which under these facts is a relevant factor that may be reasonably selected by the plan sponsor, and the difference in treatment between the groups of participants (eliminating the amendment only for benefits with respect to participants who were no longer earning service at the time of the amendment) is based on a reasonable application of that factor.

Example 4. (i) Facts. A plan contains a provision that provides a “thirteenth check” in plan years for which the investment return is greater than 7% (which was the assumed rate of return under the plan’s actuarial valuation). The plan sponsor applies for a suspension of benefits. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, benefits for all participants and beneficiaries are reduced by eliminating the “thirteenth check” for all those individuals. The suspension application explains why the benefit reduction is based on the statutory factors in paragraph (d)(6)(ii)(B)(6) of this section (the extent to which a participant or beneficiary has received post-retirement benefit increases) and in paragraph (d)(6)(ii)(B)(7) of this section (the history of benefit increases and reductions), and why it is reasonable to apply the factors in this manner.

(ii) Conclusion. The suspension of benefits is equitably distributed across the participant and beneficiary populations.

Example 5. (i) Facts. A plan was previously amended to reduce future accruals from \$60 per year of service to \$50 per year of service. The plan sponsor applies for a suspension of benefits. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, the accrued benefits for all participants and beneficiaries are reduced to \$50 per year of service (and applies the plan's generally applicable adjustments for early retirement and form of benefit). The suspension application explains why the benefit reduction is based on the statutory factor in paragraph (d)(6)(ii)(B)(7) of this section (the history of benefit increases and reductions), and why it is reasonable to apply the factors in this manner.

(ii) Conclusion. The suspension of benefits is equitably distributed across the participant and beneficiary populations. This is because the difference in treatment among the different groups of participants is based on the history of benefit reductions and a discrepancy between active and retiree benefits, which under these facts are relevant factors that may be reasonably selected by the plan sponsor, and the difference in treatment between the groups of participants (reducing the \$60 benefit multiplier to \$50 per year of service for those participants who had accrued any benefits under the \$60 multiplier) is based on a reasonable application of those factors.

Example 6. (i) Facts. The facts are the same as in Example 5, except that no plan amendments have previously reduced future accruals or other benefits for active participants. Under the suspension of benefits, subject to the individual limitations on benefit suspensions, benefits for deferred vested participants, retirees and beneficiaries who have commenced benefits are reduced, but no reduction applies to active participants. The suspension of benefits is not accompanied by any reductions in future accruals or other benefits for active participants.

(ii) Conclusion. The suspension of benefits is not equitably distributed across the participant and beneficiary populations. This is because, under these facts, no relevant factor (such as a previous reduction in benefits applicable only to active participants) has been reasonably selected by the plan sponsor to justify the proposed difference in treatment among the categories.

Example 7. (i) Facts. The facts are the same as in Example 6, except that the suspension of benefits provides for a reduction that applies to both active and inactive participants. However, the reduction that applies to active participants is smaller than the reduction that applies to inactive participants because the plan sponsor concludes, as explained and supported in the application for suspension, that active participants are reasonably likely to withdraw support for the plan if any larger reduction is applied.

(ii) Conclusion. The suspension of benefits is equitably distributed across the participant and beneficiary populations. This is because the difference in treatment among the different groups of participants is based on the extent to which active participants are reasonably likely to withdraw support for the plan, which under these facts is a relevant factor that may reasonably be selected by the plan sponsor, and the difference in treatment between the two groups of participants (applying a greater

suspension to inactive than to active participants) is based on a reasonable application of that factor.

Example 8. (i) Facts. A suspension of benefits provides that, subject to the individual limitations on benefit suspensions, the benefits for participants and beneficiaries attributable to service with an employer that failed to pay its full withdrawal liability are reduced by 50%. The plan sponsor applies for a suspension of benefits. As explained in the suspension application, the present value of the benefit reduction with respect to the former employees of one such employer is significantly greater than the unpaid withdrawal liability for that employer. Benefits for participants and beneficiaries attributable to service with all other employers are reduced by 10%.

(ii) Conclusion. The suspension of benefits is not equitably distributed across the participant and beneficiary populations. This is because although the difference in treatment among the different groups of participants is based on a relevant factor that may reasonably be selected by the plan sponsor, the difference in treatment between the groups of participants is not based on a reasonable application of that factor.

Example 9. (i) Facts. A suspension of benefits provides that, subject to the individual limitations on benefit suspensions, the benefits for all participants and beneficiaries are reduced by the same percentage, except that the benefits for employees and former employees of a particular employer that is actively represented on the plan's Board of Trustees are reduced by a specified lesser percentage.

(ii) Conclusion. The suspension of benefits is not equitably distributed across the participant and beneficiary populations. This is because, under these facts, no relevant factor has been reasonably selected by the plan sponsor to justify the difference in treatment among the groups of employees.

Example 10. (i) Facts. The facts are the same as in Example 9, except that the particular employer whose employees and former employees are subject to the lesser benefit reduction is the union that also participates in the plan.

(ii) Conclusion. The suspension of benefits is not equitably distributed across the participant and beneficiary populations. This is because, under these facts, no relevant factor has been reasonably selected by the plan sponsor to justify the difference in treatment among the groups of employees.

Example 11. (i) Facts. A suspension of benefits provides that, subject to the individual limitations on benefit suspensions, the monthly benefit of all participants and beneficiaries is reduced to 110% of the monthly benefit that is guaranteed by the PBGC under section 4022A of ERISA. The plan sponsor applies for a suspension of benefits. As explained in the suspension application, this is because the plan sponsor is applying to the PBGC for a partition of the plan, which requires the plan sponsor to have implemented the maximum benefit suspensions under section 432(e)(9).

(ii) Conclusion. The suspension of benefits is equitably distributed across the participant and beneficiary populations.

Example 12. (i) Facts. The facts are the same as in Example 1, except that the suspension of benefits provides that the protection for benefits based on disability also includes payments to a beneficiary of a participant who had been receiving benefits based on disability at the time of death.

(ii) Conclusion. The suspension of benefits is equitably distributed across the participant and beneficiary populations because this suspension design is a reasonable application of the statutory factor in paragraph (d)(6)(ii)(B)(4) of this section (type of benefit).

(7) Effective date of suspension made in combination with partition. [The text of the proposed amendments to §1.432(e)(9)-1(d)(7) is the same as §1.432(e)(9)-1T(d)(7) published elsewhere in this issue of the Federal Register.]

(e) Benefit improvements--(1) Limitations on benefit improvements. This paragraph (e) sets forth rules for the application of section 432(e)(9)(E). A plan satisfies the criteria in section 432(e)(9)(E) only if, during the period that any suspension of benefits remains in effect, the plan sponsor does not implement any benefit improvement except as provided in this paragraph (e). Paragraph (e)(2) of this section describes limitations on a benefit improvement for participants and beneficiaries who are not yet in pay status. Paragraph (e)(3) of this section describes limitations on a benefit improvement for participants and beneficiaries who are in pay status. Paragraph (e)(4) of this section provides that the limitations in this paragraph (e) generally apply in addition to other limitations on benefit increases that apply to a plan. Paragraph (e)(5) of this section defines benefit improvement.

(2) Limitations on benefit improvements for those not in pay status--(i) Equitable distribution for those in pay status and solvency projection. During the period that any suspension of benefits under a plan remains in effect, the plan sponsor may not

increase the liabilities of the plan by reason of any benefit improvement for any participant or beneficiary who was not in pay status for any plan year before the plan year for which the benefit improvement takes effect, unless--

(A) The present value of the total liabilities for a benefit improvement for participants and beneficiaries whose benefit commencement dates were before the first day of the plan year for which the benefit improvement takes effect is not less than the present value of the total liabilities for a benefit improvement for participants and beneficiaries who were not in pay status by that date;

(B) The plan sponsor equitably distributes the benefit improvement among the participants and beneficiaries whose benefit commencement dates were before the first day of the plan year in which the benefit improvement is proposed to take effect; and

(C) The plan actuary certifies that after taking into account the benefit improvement, the plan is projected to avoid insolvency indefinitely.

(ii) Rules of application--(A) Present value determination. For purposes of paragraph (e)(2)(i)(A) of this section, the present value of the total liabilities for a benefit improvement is the present value as of the first day of the plan year in which the benefit improvement is proposed to take effect, using actuarial assumptions in accordance with section 431.

(B) Factors relevant to equitable distribution. The evaluation of whether a benefit improvement is equitably distributed for purposes of paragraph (e)(2)(i)(B) of this section must take into account the relevant factors described in paragraph (d)(6)(ii)(B) of this section and the extent to which the benefits of the participants and beneficiaries were suspended.

(C) Actuarial certification. The certification in paragraph (e)(2)(i)(C) of this section must be made using the standards described in paragraphs (d)(5)(ii), (iv), and (v) of this section, substituting the plan year that includes the effective date of the benefit improvement for the plan year that includes the effective date of the suspension.

(iii) Special rule for certain benefit increases. The limitations of this paragraph (e) do not apply to a resumption of suspended benefits or plan amendment that increases liabilities with respect to participants and beneficiaries not in pay status by the first day of the plan year in which the benefit improvement took effect that--

(A) The Secretary of the Treasury, in consultation with the PBGC and the Secretary of Labor, determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan; or

(B) Is required as a condition of qualification under section 401 or to comply with other applicable law, as determined by the Secretary of the Treasury.

(3) Limitation on resumption of suspended benefits only for those in pay status. The plan sponsor may increase liabilities of the plan by eliminating some or all of the suspension that applies solely to participants and beneficiaries in pay status at the time of the resumption, provided that the plan sponsor equitably distributes the value of those resumed benefits among participants and beneficiaries in pay status, taking into account the relevant factors described in paragraph (d)(6)(ii)(B) of this section. A resumption of benefits that is described in this paragraph (e)(3) is not subject to the limitations on a benefit improvement under section 432(f) (relating to restrictions on benefit increases for plans in critical status).

(4) Additional limitations. Except as provided in paragraph (e)(3) of this section,

the limitations on a benefit improvement under this paragraph (e) are in addition to the limitations in section 432(f) and any other applicable limitations on increases in benefits imposed on a plan.

(5) Definition of benefit improvement--(i) In general. For purposes of this paragraph (e), the term benefit improvement means, with respect to a plan, a resumption of suspended benefits, an increase in benefits, an increase in the rate at which benefits accrue, or an increase in the rate at which benefits become nonforfeitable under the plan.

(ii) Effect of expiration of suspension. In the case of a suspension of benefits that expires as of a date that is specified in the plan amendment implementing the suspension, the resumption of benefits solely from the expiration of that period is not treated as a benefit improvement.

(f) Notice requirements--(1) In general. [The text of the proposed amendments to §1.432(e)(9)-1(f)(1) is the same as §1.432(e)(9)-1T(f)(1) published elsewhere in this issue of the **Federal Register.**]

(2) Content of notice. [The text of the proposed amendments to §1.432(e)(9)-1(f)(2) is the same as §1.432(e)(9)-1T(f)(2) published elsewhere in this issue of the **Federal Register.**]

(3) Form and manner--(i) Timing. [The text of the proposed amendments to §1.432(e)(9)-1(f)(3)(i) is the same as §1.432(e)(9)-1T(f)(3)(i) published elsewhere in this issue of the **Federal Register.**]

(ii) Method of delivery of notice--(A) Written or electronic delivery. [The text of the proposed amendments to §1.432(e)(9)-1(f)(3)(ii)(A) is the same as §1.432(e)(9)-1T(f)(3)(ii)(A) published elsewhere in this issue of the **Federal Register.**]

(B) No alternative method of delivery. A notice under this paragraph (f) must be provided in written or electronic form.

(iii) Additional information in notice. [The text of the proposed amendments to §1.432(e)(9)-1(f)(3)(iii) is the same as §1.432(e)(9)-1T(f)(3)(iii) published elsewhere in this issue of the **Federal Register.**]

(iv) No false or misleading information. [The text of the proposed amendments to §1.432(e)(9)-1(f)(3)(iv) is the same as §1.432(e)(9)-1T(f)(3)(iv) published elsewhere in this issue of the **Federal Register.**]

(4) Other notice requirement. [The text of the proposed amendments to §1.432(e)(9)-1(f)(4) is the same as §1.432(e)(9)-1T(f)(4) published elsewhere in this issue of the **Federal Register.**]

(5) Examples. [The text of the proposed amendments to §1.432(e)(9)-1(f)(5) is the same as §1.432(e)(9)-1T(f)(5) published elsewhere in this issue of the **Federal Register.**]

(g) Approval or denial of an application for suspension of benefits--(1) Application. [The text of the proposed amendments to §1.432(e)(9)-1(g)(1) is the same as §1.432(e)(9)-1T(g)(1) published elsewhere in this issue of the **Federal Register.**]

(2) Solicitation of comments. [The text of the proposed amendments to §1.432(e)(9)-1(g)(2) is the same as §1.432(e)(9)-1T(g)(2) published elsewhere in this issue of the **Federal Register.**]

(3) Approval or denial--(i) Deemed approval. [The text of the proposed amendments to §1.432(e)(9)-1(g)(3)(i) is the same as §1.432(e)(9)-1T(g)(3)(i) published elsewhere in this issue of the **Federal Register.**]

(ii) Notice of denial. [The text of the proposed amendments to §1.432(e)(9)-1(g)(3)(ii) is the same as §1.432(e)(9)-1T(g)(3)(ii) published elsewhere in this issue of the **Federal Register.**]

(iii) Special rules for systemically important plans. [The text of the proposed amendments to §1.432(e)(9)-1(g)(3)(iii) is the same as §1.432(e)(9)-1T(g)(3)(iii) published elsewhere in this issue of the **Federal Register.**]

(iv) Agreement to stay 225-day period. The Secretary of the Treasury and the plan sponsor may mutually agree in writing to stay the 225-day period described in paragraph (g)(3)(i) of this section.

(4) Consideration of certain factors. In evaluating whether the plan sponsor has satisfied the requirement of paragraph (c)(3)(i)(A) of this section, the Secretary of the Treasury, in consultation with the PBGC and the Secretary of Labor, will review the plan sponsor's consideration of each of the factors under paragraph (c)(3)(ii) of this section (and any other factor that the plan sponsor considered).

(5) Standard for accepting plan sponsor determinations. In evaluating the plan sponsor's application, the Secretary of the Treasury will accept the plan sponsor's determinations in paragraph (c)(3) of this section unless the Secretary concludes, in consultation with the PBGC and the Secretary of Labor, that the determinations were clearly erroneous.

(6) Plan-sponsor certifications with respect to plan amendments. The plan

sponsor's application described in paragraph (g)(1) of this section will not be approved unless the plan sponsor certifies that if the plan sponsor receives final authorization to suspend as described in paragraph (h)(6) of this section with respect to the proposed benefit suspension (or, in the case of a systemically important plan, a proposed or modified benefit suspension), the plan sponsor chooses to implement the suspension, and the plan sponsor adopts the amendment described in paragraph (a)(1) of this section, then it will timely amend the plan to provide that--

(i) If the plan sponsor fails to make the annual determinations under section 432(e)(9)(C)(ii), then the suspension of benefits will cease as of the first day of the first plan year following the plan year in which the plan sponsor fails to make the annual-plan-sponsor determinations in paragraph (c)(4) of this section; and

(ii) Any future benefit improvement must satisfy the requirements of section 432(e)(9)(E).

(7) Special Master. [The text of the proposed amendments to §1.432(e)(9)-1(g)(7) is the same as §1.432(e)(9)-1T(g)(7) published elsewhere in this issue of the **Federal Register**.]

(h) Participant vote on proposed benefit reduction--(1) Requirement for vote--(i) In general. [The text of the proposed amendments to §1.432(e)(9)-1(h)(1)(i) is the same as §1.432(e)(9)-1T(h)(1)(i) published elsewhere in this issue of the **Federal Register**.]

(ii) Communication by plan sponsor. The plan sponsor must take reasonable steps to inform eligible voters about the proposed suspension and the vote. This includes all eligible voters who may be contacted by reasonable efforts in accordance with paragraph (f)(1) of this section. Anyone whom the plan sponsor has been able to

locate through these means (or who has otherwise been located by the plan sponsor) must be sent a ballot described in paragraph (h)(3) of this section.

(2) Administration of vote. [Reserved]

(3) Ballots--(i) In general. The plan sponsor must provide a ballot for the vote that includes the following--

(A) A description of the proposed suspension and its effect, including the effect of the suspension on each category or group of individuals affected by the suspension and the extent to which they are affected;

(B) A description of the factors considered by the plan sponsor in designing the benefit suspension, including but not limited to the factors in paragraph (d)(6)(ii) of this section;

(C) A description of whether the suspension will remain in effect indefinitely or will expire by its own terms (and, if it will expire by its own terms, when that will occur);

(D) A statement from the plan sponsor in support of the proposed suspension;

(E) A statement in opposition to the proposed suspension compiled from comments received pursuant to the solicitation of comments pursuant to paragraph (g)(2) of this section;

(F) A statement that the proposed suspension has been approved by the Secretary of the Treasury, in consultation with the PBGC and the Secretary of Labor;

(G) A statement that the plan sponsor has determined that the plan will become insolvent unless the proposed suspension takes effect (including the year in which insolvency is projected to occur without a suspension of benefits), and an accompanying statement that this determination is subject to uncertainty;

(H) 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 in the event of plan insolvency;

(I) A statement that insolvency of the PBGC would result in benefits lower than benefits otherwise paid in the case of plan insolvency;

(J) A statement that the plan's actuary has certified that the plan is projected to avoid insolvency, taking into account the proposed suspension of benefits (and, if applicable, a proposed partition plan), and an accompanying statement that the actuary's projection is subject to uncertainty;

(K) A statement that the suspension will go into effect unless a majority of all eligible voters vote to reject the suspension and that, therefore, a failure to vote has the same effect on the outcome of the vote as a vote in favor of the suspension;

(L) A copy of the individualized estimate that was provided as part of the earlier notice described in section 432(e)(9)(F) (or, if that individualized estimate is no longer accurate, a corrected version of that estimate); and

(M) A description of the voting procedures, including the deadline for voting.

(ii) Additional rules. [The text of the proposed amendments to §1.432(e)(9)-1(h)(3)(ii) is the same as §1.432(e)(9)-1T(h)(3)(ii) published elsewhere in this issue of the **Federal Register**.]

(iii) Ballot must be approved. [The text of the proposed amendments to §1.432(e)(9)-1(h)(3)(iii) is the same as §1.432(e)(9)-1T(h)(3)(iii) published elsewhere in this issue of the **Federal Register**.]

(4) Implementing suspension following vote--(i) In general. [The text of the proposed amendments to §1.432(e)(9)-1(h)(4)(i) is the same as §1.432(e)(9)-1T(h)(4)(i) published elsewhere in this issue of the **Federal Register.**]

(ii) Effect of not sending ballot. Any eligible voters to whom ballots have not been provided (because the individuals could not be located) will be treated as voting to reject the suspension at the same rate (in other words, in the same percentage) as those to whom ballots have been provided.

(5) Systemically important plans. [The text of the proposed amendments to §1.432(e)(9)-1(h)(5) is the same as §1.432(e)(9)-1T(h)(5) published elsewhere in this issue of the **Federal Register.**]

(6) Final authorization to suspend. [The text of the proposed amendments to §1.432(e)(9)-1(h)(6) is the same as §1.432(e)(9)-1T(h)(6) published elsewhere in this issue of the **Federal Register**.]

(i) [Reserved].

John Dalrymple

Deputy Commissioner for Services and Enforcement.

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