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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9767]

RIN 1545-BN24

Additional Limitation on Suspension of Benefits Applicable to Certain Pension Plans Under the Multiemployer Pension Reform Act of 2014

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: The Multiemployer Pension Reform Act of 2014 ("MPRA"), which was enacted by Congress as part of the Consolidated and Further Continuing Appropriations Act of 2015, relates to multiemployer defined benefit pension plans that are projected to have insufficient funds, within a specified timeframe, to pay the full plan benefits to which individuals will be entitled (referred to as plans in "critical and declining status"). Under MPRA, the sponsor of such a plan is permitted to reduce the pension benefits payable to plan participants and beneficiaries if certain conditions and limitations are satisfied (referred to in MPRA as a "suspension of benefits"). One specific limitation governs the application of a suspension of benefits under any plan that includes benefits directly attributable to a participant's service with any employer that has withdrawn from the plan in a complete withdrawal, paid its full withdrawal liability, and, pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries equal to any benefits for such participants and beneficiaries reduced as a result of the financial status of the plan. This document

contains final regulations that provide guidance relating to this specific limitation. These regulations affect active, retired, and deferred vested participants and beneficiaries under any such multiemployer plan in critical and declining status as well as employers contributing to, and sponsors and administrators of, those plans.

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

Applicability date: These regulations apply to suspensions for which the approval or denial is issued on or after April 26, 2016. In the case of a systemically important plan, the final regulations apply with respect to any modified suspension implemented on or after April 26, 2016.

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

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 432(e)(9) of the Internal Revenue Code (Code), as amended by section 201 of the Multiemployer Pension Reform Act of 2014, Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235 (128 Stat. 2130 (2014)) (MPRA).[1] As amended, section 432(e)(9) permits plan sponsors of certain multiemployer plans to reduce the plan benefits payable to

[1]Section 201 of MPRA makes parallel amendments to section 305 of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829 (1974)), as amended (ERISA). The Treasury Department has interpretive jurisdiction over the subject matter of these provisions under ERISA as well as the Code. See also section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713). Thus, these final Treasury regulations issued under section 432 of the Code apply as well for purposes of section 305 of ERISA.

participants and beneficiaries by plan amendment (referred to in the statute as a "suspension of benefits") if specified conditions are satisfied. A plan sponsor that seeks to implement a suspension of benefits must submit an application for approval of that suspension to the Secretary of the Treasury. The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor (generally referred to in this preamble as the Treasury Department, PBGC, and Labor Department, respectively), is required by the statute to approve the application upon finding that certain specified conditions are satisfied.

One condition, set forth in section 432(e)(9)(D)(vii), is a specific limitation on how a suspension of benefits must be applied under a plan that includes benefits that are directly attributable to a participant's service with any employer described in section 432(e)(9)(D)(vii)(III). An employer is described in section 432(e)(9)(D)(vii)(III) if the employer has, prior to the date MPRA was enacted (December 16, 2014): (1) withdrawn from the plan in a complete withdrawal under section 4203 of ERISA; (2) paid the full amount of the employer's withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan; and (3) pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for these participants and beneficiaries reduced as a result of the financial status of the plan. Such an employer is referred to in this preamble as a "subclause III employer," and a collective bargaining agreement under which the employer assumes liability for those benefits is referred to as a "make-whole agreement."

If section 432(e)(9)(D)(vii) applies to a plan then, under section 432(e)(9)(D)(vii)(I), the suspension of benefits must first be applied to the maximum extent permissible to benefits attributable to a participant's service with an employer that withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan. Such an employer is referred to in this preamble as a "subclause I employer." Second, under section 432(e)(9)(D)(vii)(II), except as provided in section 432(e)(9)(D)(vii)(III), a suspension of benefits must be applied to all other benefits under the plan that may be suspended. Third, under section 432(e)(9)(D)(vii)(III), a suspension must be applied to benefits under the plan that are directly attributable to a participant's service with a subclause III employer. An employer under the plan is referred to in this preamble as a "subclause II employer" if it is neither a subclause I employer nor a subclause III employer.

On October 23, 2015, the Treasury Department published a notice in the **Federal Register** (80 FR 64508) regarding an application for a proposed suspension of benefits, which represented that the plan is of the type to which section 432(e)(9)(D)(vii) applies. The notice requested public comments on all aspects of the application, including with respect to the interpretation of section 432(e)(9)(D)(vii) that is reflected in the application.

On February 11, 2016, the Treasury Department and the IRS published proposed regulations (REG-101701-16) regarding the specific limitation on a suspension of benefits under section 432(e)(9)(D)(vii) in the **Federal Register** at 81 FR 7253. Comments were received on the proposed regulations and a public hearing was held on March 22, 2016.

After consideration of the written comments received and the oral comments presented at the public hearing, the provisions of the proposed regulations are adopted as revised by this Treasury decision. The Treasury Department consulted with PBGC and the Labor Department in developing these regulations.[2]

Explanation of Provisions

These regulations amend the Income Tax Regulations (26 CFR part 1) to provide guidance regarding section 432(e)(9)(D)(vii). Section 432(e)(9)(D)(vii) sets forth a rule that limits how a suspension may be applied under a plan that includes benefits that are directly attributable to a participant's service with a subclause III employer. In determining how a suspension should be allocated consistent with MPRA's framework and purpose, the Treasury Department and the IRS analyzed the statute and applied well-established principles of statutory construction to interpret section 432(e)(9)(D)(vii). In so doing, the Treasury Department and the IRS interpreted section 432(e)(9)(D)(vii) in the context of section 432(e)(9) as a whole, which requires, among other things, that any suspension be subject to certain limitations, including that the suspension be equitably distributed across the participant and beneficiary population.

I. Application of a Suspension of Benefits to Subclause I Benefits to the Maximum Extent Permissible

Subclause (I) of section 432(e)(9)(D)(vii) provides that the suspension of benefits must first be applied "to the maximum extent permissible" to benefits attributable to

[2]TheTreasury Department and the IRS have published final regulations providing general guidance regarding section 432(e)(9). See § 1.432(e)(9)-1 (TD 9765), published in the Federal Register on April 28, 2016 (81 FR 25539).
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service with a subclause I employer (referred to in this preamble as “subclause I benefits”). Accordingly, the proposed regulations provided that, for a plan that is subject to section 432(e)(9)(D)(vii), a suspension of benefits must be applied to the maximum extent permissible to subclause I benefits before reductions are permitted to be applied to any other benefits. Under the proposed regulations, only if such a suspension is not reasonably estimated to achieve the level that is necessary to enable the plan to avoid insolvency may a suspension then be applied to other benefits that are permitted to be suspended and that are attributable to a participant’s service with other employers. No commenters objected to this provision of the proposed regulations, and these final regulations adopt this provision as proposed.

II. Relationship Between Subclause II Benefits and Subclause III Benefits

In contrast to subclause (I) of section 432(e)(9)(D)(vii), subclause (II) does not include the phrase “to the maximum extent permissible.” Accordingly, the Treasury Department and the IRS developed the rules in the proposed regulations based on the interpretation that a suspension need not be applied to the maximum extent permissible to benefits described in subclause (II) before any suspension is applied to benefits described in subclause (III).

A number of commenters expressed views regarding the rules under the proposed regulations describing how the suspension of benefits is permitted to apply to benefits attributable to service with a subclause II employer (referred to in this preamble as “subclause II benefits”) and benefits directly attributable to service with a subclause III employer (referred to in this preamble as “subclause III benefits”). Many of these commenters agreed with the analysis set forth in the preamble to the proposed regulations and supported an interpretation of the statute that subclause II benefits are not required to be reduced to the maximum extent permissible before any subclause III benefits can be reduced.

Two commenters advocated that the statute be interpreted to require that subclause II benefits be suspended to the maximum extent permissible before a suspension is permitted to apply to any subclause III benefits. These commenters maintained that this result is required by the ordinal numbering of the three subclauses and asserted that Congress intended to favor any withdrawing employer that not only paid the full amount of its withdrawal liability but also entered into a make-whole agreement. If such an approach were applied under section 432(e)(9)(D)(vii), then the benefits described in each of the first two subclauses would be required to be suspended to the maximum extent permissible before any suspension could apply to benefits described in the successive subclause. Under that approach, subclause III benefits would be permitted to be suspended only if all benefits attributable to participants' service with all subclause I and subclause II employers were suspended to the maximum extent permissible. In support of this position, one commenter asserted that the Treasury Department and the IRS misinterpreted the import of the absence of the phrase "to the maximum extent permissible" in subclause (II). This commenter asserted that the combined use in subclause (II) of "second," "except as provided by subclause (III)," and "all other benefits" has the same effect with respect to subclause II benefits as the use in subclause (I) of "to the maximum extent permissible" has with respect to subclause I benefits. This commenter argued that the difference in language between subclause (I) and subclause (II) does not prevent the two rules from having the same effect, and cited to Kirtsaeng v. John Wiley & Sons, Inc., 568 U.S. ___, 133 S. Ct. 1351, 1364 (2013) in support of this argument.

After carefully considering this argument and applicable authorities, the Treasury Department and the IRS have concluded that this interpretation is incorrect; the statute does not require subclause II benefits to be suspended to the maximum extent permissible before any subclause III benefits are permitted to be suspended, and the rule set forth in the proposed regulations is the correct interpretation of the statute. Applicable case law establishes that a difference in language between one statutory provision and the next immediately following provision should be given meaning. See Loughrin v. United States, 573 U.S. ___,134 S. Ct. 2384, 2390 (2014) ("We have often noted that when 'Congress includes particular language in one section of a statute but omits it in another'—let alone in the very next provision—this Court 'presume[s]' that Congress intended a difference in meaning." (quoting Russello v. United States, 464 U.S. 16, 23 (1983)). To read subclause (II) to require that subclause II benefits be suspended "to the maximum extent permissible" even though that language does not appear in subclause (II) would effectively rewrite the statute either by moving the phrase the "to the maximum extent permissible" from subclause (I) to the introductory language of section 432(e)(9)(D)(vii) or by adding it to subclause (II).[3] The interpretation in the proposed regulations is also consistent with the language in subclause (II) ("except as provided in subclause (III)"), which contemplates a coordinated application of two provisions that are to be applied "second" and "third;" this language in subclause (II) is not consistent with an interpretation that requires application of a suspension to

[3] See Hall v. United States, 566 U.S. ___, 132 S. Ct. 1882, 1893 (2012) ("[I]t is not for us to rewrite the statute.")

subclause II benefits that is independent of (and entirely preceding) the application of the suspension to subclause III benefits.

Kirtsaeng, which the one commenter cited to contest this interpretation in the proposed regulations, involved two phrases that "mean roughly the same thing." Id. at 1358-59, 1364 ("The language of [the relevant statute] read literally favors [petitioner's] interpretation, namely, that 'lawfully made under this title' means made 'in accordance with' or 'in compliance with' the Copyright Act."). There are no "roughly" similar phrases across subclauses (I) and (II). Kirtsaeng is therefore inapposite.[4]

The Treasury Department and the IRS recognize that the language of section 432(e)(9)(D)(vii) bears some similarity to other statutory provisions that establish priority categories requiring claims to be fully satisfied under each earlier category before any claims are permitted to be satisfied under any subsequent category--for example, section 4044(a) of ERISA and sections 507(a) and 726(a) and (c) of the Bankruptcy Code, which in each instance prescribes ordering rules relating to the distribution of limited assets. However, in contrast to the language in section 432(e)(9)(D)(vii), these other statutory provisions do not include language in one category instructing that the category must be fully exhausted before reaching the next category, while omitting that language in other categories. Furthermore, if the ordinal numbering of section 432(e)(9)(D)(vii) were to be interpreted to require that each category be fully exhausted before reaching the next category, then the phrase "to the maximum extent permissible"

[4] Kirtsaeng is further inapposite because the statutory provisions of the Copyright Act that were compared to each other in that case (i.e., 17 U.S.C. § 109 and § 602) were not in immediate proximity to each other unlike the subclauses at issue here.

in subclause (I) would not serve any purpose and would be superfluous.[5]

The broad scope of benefits included in subclause (III) further supports the conclusion that a suspension need not be applied to the maximum extent permissible to subclause II benefits before any suspension is applied to subclause III benefits. As explained in Section D of this preamble, subclause III benefits include all benefits that are directly attributable to service with a subclause III employer, without regard to whether those benefits are subject to a make-whole agreement. If subclause II benefits were required to be reduced to the maximum extent permissible before any subclause III benefits could be reduced (including subclause III benefits not subject to a make-whole agreement), then participants with subclause III benefits who are not subject to the make-whole agreement could experience significantly smaller reductions than participants with subclause II benefits (including benefits attributable to service with employers that never withdrew from the plan), without regard to whether that difference is consistent with the equitable distribution requirement.

For these reasons, these final regulations adopt the rule under the proposed regulations that subclause II benefits are not required to be suspended "to the maximum extent permissible" before any suspension is permitted to be applied to subclause III benefits.

III. Standard for Application of Suspension to Subclause III Benefits Relative to Subclause II Benefits

In order to give effect to the requirement that a suspension of benefits be applied "second" to subclause II benefits and "third" to subclause III benefits, the proposed

[5] See Marx v. General Revenue Corp., 568 U.S. ___, 133 S. Ct. 1166, 1178 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.").

regulations provided that a suspension would not be permitted to reduce subclause III benefits unless subclause II benefits were reduced to at least the same extent as subclause III benefits were reduced. Under the proposed regulations, this limitation would be satisfied if no participant's benefits that are directly attributable to service with a subclause III employer were reduced more than that participant's benefits would have been reduced if, holding constant the benefit formula, work history, and all relevant factors used to compute benefits, those benefits were attributable to service with any other employer. The effect of the proposed rule is to protect a subclause III employer from the possibility that the suspension would be expressly designed to take advantage of the employer's commitment to make participants and beneficiaries whole for the reductions.

Most commenters agreed with the analysis set forth in the preamble to the proposed regulations and supported the rule that a suspension would not be permitted to reduce subclause III benefits unless subclause II benefits are reduced to at least the same extent. However, one commenter maintained that, if the Treasury Department and the IRS were to adopt the rule set forth in the proposed regulations intended to protect a subclause III employer, then the rule should be modified to prohibit facially neutral suspension provisions that have a disparate impact on subclause III benefits or that are intentionally designed to produce such an impact. Under such a rule, a suspension of benefits that disproportionally reduces subclause III benefits in the aggregate relative to subclause II benefits in the aggregate would be prohibited under section 432(e)(9)(D)(vii) even if the suspension does not by its terms treat individuals with subclause III benefits in a less favorable manner than similarly situated individuals with subclause II benefits.

Nothing in the statute or preexisting case law requires the application of a disparate impact standard. Both Congress and the Supreme Court have required such a standard only in the unique context in which "barriers operate invidiously to discriminate on the basis of racial or other impermissible classification," Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971); see, e.g., 42 U.S.C. § 2000e-2(k)(1)(A)(i) (prohibiting "a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin"); see also Texas Department of Housing and Community Affairs, et al., v. Inclusive Communities Project, Inc., et al., 576 U. S. ___ , 135 S. Ct. 2507, 2513 (2015) ("a disparate-impact claim challenges practices that have a 'disproportionately adverse effect on minorities' and are otherwise unjustified by a legitimate rationale"). Those unique circumstances are not present here.

After considering the public comments, the Treasury Department and the IRS have determined that the rule set forth in the proposed regulations appropriately protects a subclause III employer from the possibility that the suspension would be expressly designed to take advantage of the employer's commitment to make participants and beneficiaries whole for the reductions in a manner that is most consistent with all of the statutory language.[6] However, in response to comments identifying potential ambiguities in the proposed regulations, the application of this rule

[6] The preamble to the proposed regulations requested comments on an alternative interpretation of section 432(e)(9)(vii) that would require that any suspension of benefits be applied to provide for a lesser reduction in benefits that are directly attributable to service with a subclause III employer than to benefits that are attributable to any other service. No commenters recommended adopting the alternative interpretation.

in the final regulations has been clarified. Accordingly, these final regulations provide that a suspension does not violate the required relationship between subclause III benefits and subclause II benefits if no individual's benefits that are subclause III benefits are reduced more than that individual's benefits would have been reduced if, holding constant the benefit formula, work history, and all other relevant factors used to determine the individual's benefits, those benefits were attributable to service with any other employer.

IV. Treatment of Participants with Service for a Subclause III Employer Who Are Not Covered by a Make-Whole Agreement

The proposed regulations provided that the benefits described in section 432(e)(9)(D)(vii)(III) are any benefits that are directly attributable to a participant's service with a subclause III employer, without regard to whether the employer has assumed liability for providing benefits to the participant or beneficiary that were reduced as a result of the financial status of the plan. For example, if, before the date a subclause III employer entered into a make-whole agreement, a participant commenced receiving retirement benefits under a plan that are directly attributable to service with that employer, then the participant's benefits would be described in section 432(e)(9)(D)(vii)(III) even if those benefits were not covered by the make-whole agreement. This interpretation is based on the statutory language in section 432(e)(9)(D)(vii)(III), which defines the benefits to which that subclause applies as those benefits that are directly attributable to service with an employer that has met the conditions set forth in section 432(e)(9)(D)(vii)(III)(aa) and (bb). In other words, the statutory provision refers to benefits directly attributable to service with an employer described in subclause (III) and not only to benefits covered by the make-whole agreement.

Some of the commenters on the proposed regulations expressed views regarding whether subclause III benefits should include benefits that are not covered by a make-whole agreement. Two commenters supported the rule set forth in the proposed regulations, under which subclause III benefits include all benefits directly attributable to service with a subclause III employer. Two other commenters expressed the view that subclause III benefits include only benefits that are covered by a make-whole agreement. The latter two commenters asserted that Congress included this provision in order to prevent a suspension from unreasonably shifting costs onto an employer that had entered into a make-whole agreement, and that this Congressional intent suggests that only benefits subject to the make-whole agreement were intended to be protected. They also noted that interpreting this provision to include benefits that are not covered by a make-whole agreement could result in benefits for many participants being covered under subclause III even if an employer entered into a make-whole agreement covering only a few participants, and argued that Congress did not intend such a result.

After considering the public comments, the Treasury Department and the IRS remain convinced that the rule set forth in the proposed regulations reflects the plain language of the statute. The statute defines subclause III benefits as benefits attributable to service with a subclause III employer, not benefits covered by a make-whole agreement. Furthermore, the ability of an employer to take advantage of this interpretation by entering into a make-whole agreement that covers only a few participants is limited by the fact that subclause (III) applies only if all the conditions of subclause (III) (including the condition that the employer enter into a make-whole agreement) were satisfied prior to December 16, 2014 (the date of enactment of MPRA). Because this date has passed, there is no cause for concern that an employer could plan to become a subclause (III) employer. Accordingly, these regulations adopt the rule set forth in the proposed regulations under which subclause III benefits include all benefits attributable to a participant's service with a subclause III employer without regard to whether the participant or beneficiary is covered by a make-whole agreement.

Effective/Applicability Dates

These regulations apply to suspensions for which the approval or denial is issued on or after April 26, 2016. In the case of a systemically important plan, these regulations apply with respect to any modified suspension implemented on or after April 26, 2016.

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 the Treasury Department 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 are subject to the limitation contained in section 432(e)(9)(D)(vii). Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Contact Information

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

List of Subjects in 26 CFR Part 1

Income taxes, reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 amended by revising paragraph (d)(8) to read as follows:

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

* * * * *

(d) * * *

(8) Additional rules for plans described in section 432(e)(9)(D)(vii)--(i) In general. In the case of a plan that includes the benefits described in paragraph (d)(8)(i)(C) of this section, any suspension of benefits under this section shall--

(A) First, be applied to the maximum extent permissible to benefits attributable to a participant's service for an employer that withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan;

(B) Second, except as provided by paragraph (d)(8)(i)(C) of this section, be applied to all other benefits that may be suspended under this section; and

(C) Third, be applied to benefits under a plan that are directly attributable to a participant's service with any employer that has, prior to December 16, 2014--

(1) Withdrawn from the plan in a complete withdrawal under section 4203 of ERISA and paid the full amount of the employer's withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan; and

(2) Pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the plan.

(ii) Application of suspensions to benefits that are directly attributable to a participant's service with certain employers--(A) Greater reduction in certain benefits not permitted. A suspension of benefits under this section must not be applied to provide for a greater reduction in benefits described in paragraph (d)(8)(i)(C) of this section than the reduction that is applied to benefits described in paragraph (d)(8)(i)(B) of this section. The requirement in the preceding sentence is satisfied if no individual's benefits that are directly attributable to service with an employer described in paragraph (d)(8)(i)(C) of this section are reduced more than that individual's benefits would have been reduced if, holding the benefit formula, work history, and all other relevant factors used to compute benefits constant, those benefits were attributable to service with an employer that is not described in paragraph (d)(8)(i)(C) of this section.

(B) Application of limitation to benefits of participants with respect to which the employer has not assumed liability. Benefits described in paragraph (d)(8)(i)(C) of this section include all benefits of a participant or beneficiary that are directly attributable to service with an employer described in paragraph (d)(8)(i)(C) of this section without regard to whether the employer has assumed liability for providing benefits to that participant or beneficiary that are reduced as a result of the financial status of the plan as described in paragraph (d)(8)(i)(C)(2) of this section. Thus, the rule of paragraph (d)(8)(ii)(A) of this section limits the amount by which a suspension of benefits is permitted to reduce benefits under a plan that are directly attributable to a participant's service with such an employer, even if the employer has not, pursuant to a collective bargaining agreement that satisfies the requirements of paragraph (d)(8)(i)(C)(2) of this section, assumed liability with respect to that participant's benefits.

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John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: April 29, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

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