

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 1 and 54**

[TD 9732]

RIN 1545–BH71

**Determination of Minimum Required Pension Contributions****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations providing guidance on the determination of minimum required contributions for single-employer defined benefit pension plans. In addition, this document contains final regulations regarding the excise tax for failure to satisfy the minimum funding requirements for defined benefit pension plans. These regulations affect sponsors, administrators, participants, and beneficiaries of defined benefit pension plans.

**DATES:** *Effective Date:* These regulations are effective on September 9, 2015.

*Applicability Date:* These regulations apply to plan years beginning on or after January 1, 2016.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****Background**

This document contains final Income Tax Regulations (26 CFR part 1) under sections 430(a), 430(c), 430(e), 430(f), 430(h), 430(j) and 436, as added to the Internal Revenue Code (Code) by the Pension Protection Act of 2006 (PPA '06), Public Law 109–280 (120 Stat. 780 (2006)), and amended by the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), Public Law 110–458 (122 Stat. 5092 (2008)), the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP–21), Public Law 112–141 (126 Stat. 405 (2012)), and the Highway and Transportation Funding Act of 2014 (HATFA), Public Law 113–159 (128 Stat. 1839 (2014)).<sup>1</sup> In addition,

<sup>1</sup> The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Public Law 111–192 (124 Stat. 1280 (2010)), added section 430(c)(3)(D) and section 430(c)(7) and made changes to certain provisions of PPA '06 to provide temporary relief with respect to the minimum funding requirements and related benefit restrictions under section 436. This document generally does not provide guidance regarding those changes. Guidance regarding the changes made by PRA 2010 was issued in Notice 2011–3 (2011–2 IRB 263).

this document contains final Excise Tax Regulations (26 CFR part 54) under section 4971 applicable to both single-employer and multiemployer defined benefit plans.

Section 412 provides minimum funding requirements that generally apply for pension plans (including both defined benefit pension plans and money purchase pension plans). PPA '06 made extensive changes to those minimum funding requirements that generally apply for plan years beginning on or after January 1, 2008. Section 430, which was added by PPA '06, specifies the minimum funding requirements that apply to single-employer defined benefit pension plans (including multiple employer plans) pursuant to section 412. Section 430 does not apply to multiemployer plans within the meaning of section 414(f) or CSEC plans within the meaning of section 414(y).<sup>2</sup>

Section 302 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), sets forth funding rules that are parallel to those in section 412 of the Code, and section 303 of ERISA sets forth additional funding rules for single-employer plans that are parallel to those in section 430 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (92 Stat. 3790) and section 3002 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, the Treasury regulations issued under section 430 of the Code apply as well for purposes of section 303 of ERISA.

If the value of plan assets (less the sum of the plan's prefunding balance and funding standard carryover balance) is less than the funding target, section 430(a)(1) defines the minimum required contribution as the sum of the plan's target normal cost and the shortfall and waiver amortization charges for the plan year. If the value of plan assets (less the sum of the plan's prefunding balance and funding standard carryover balance) equals or exceeds the funding target, section 430(a)(2) defines the minimum required contribution as the plan's target normal cost for the plan year reduced (but not below zero) by the amount of the excess.

<sup>2</sup> Rules regarding CSEC plans were added by the Cooperative and Small Employer Charity Pension Flexibility Act of 2014 (CSEC Act), Public Law 113–97 (128 Stat. 1137), enacted April 7, 2014, and amended by Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235 (128 Stat. 2130), enacted December 16, 2014. A CSEC plan is defined in section 414(y). In general, CSEC plans are certain plans maintained by groups of cooperatives and related organizations or groups of charitable organizations.

Section 430(c)(1) provides that the shortfall amortization charge is the total (not less than zero) of the shortfall amortization installments for the plan year with respect to any shortfall amortization base that has not been fully amortized. Section 430(c)(2)(A) provides that the shortfall amortization installments with respect to a shortfall amortization base established for a plan year are the amounts necessary to amortize the shortfall amortization base in level annual installments over the 7-plan-year period beginning with that plan year.

Section 430(c)(3) provides that a shortfall amortization base is determined for a plan year based on the plan's funding shortfall for the plan year. Under section 430(c)(4), the funding shortfall is generally the amount (if any) by which the plan's funding target for the year exceeds the value of the plan's assets (as reduced by the funding standard carryover balance and prefunding balance under section 430(f)(4)(B)). The shortfall amortization base for a plan year is the plan's funding shortfall, minus the present value of future amortization installments.

Under section 430(c)(5), a shortfall amortization base is not established for a plan year if the value of a plan's assets is at least equal to the plan's funding target for the plan year. For this purpose, the prefunding balance is subtracted from the value of plan assets, but only if an election to use that prefunding balance to offset the minimum required contribution is in effect for the plan year.

Under section 430(c)(6), if a plan's funding shortfall for a plan year is zero, any shortfall amortization bases and waiver amortization bases established for preceding plan years (and any associated shortfall amortization installments and waiver amortization installments) are eliminated.

Under section 430(e), the waiver amortization charge for a plan year is the total of the waiver amortization installments for the plan year with respect to any waiver amortization bases established for the 5 preceding plan years. Under section 430(e)(2), the waiver amortization installments with respect to a waiver amortization base established for a plan year (the amount of the waived funding deficiency for the plan year) are the amounts necessary to amortize the waiver amortization base in level annual installments over the 5-plan-year period beginning with the succeeding plan year.

Under section 430(f)(3), the prefunding balance and the funding standard carryover balance (collectively referred to as funding balances) are

permitted to be used to reduce the otherwise applicable minimum required contribution for a plan year in certain situations. Under section 430(f)(6), the prefunding balance is based on the accumulation of the contributions (other than contributions made under section 436(f) to avoid benefit restrictions) that an employer has made for preceding plan years that exceeded the minimum required contribution for those years. Under section 430(f)(7), the funding standard carryover balance generally is based on the funding standard account credit balance as determined under section 412 for a plan as of the last day of the last plan year beginning in 2007.

Section 430(h)(2) specifies the interest rates that must be used in determining a plan's target normal cost and funding target. Under section 430(h)(2)(B), in general, present value is determined using three interest rates (segment rates) for the applicable month, each of which applies to benefit payments expected to be paid during a certain period.<sup>3</sup> Prior to amendments made by HATFA, section 430(h)(2)(B)(i) provided that the first segment rate applies to benefits reasonably determined to be payable during the 5-year period beginning on the first day of the plan year. The second segment rate applies to benefits reasonably determined to be payable during the 15-year period following the initial 5-year period. The third segment rate applies to benefits reasonably determined to be payable after the end of that 15-year period.

Section 2003(d)(1) of HATFA amended section 430(h)(2)(B)(i) to provide that the first segment rate applies to benefits reasonably determined to be payable during the 5-year period beginning on the valuation date for the plan year. Pursuant to section 2003(e) of HATFA, this change is required to be applied for plan years beginning on or after January 1, 2014.

Under section 430(j), as under pre-PPA '06 law, the due date for the payment of any minimum required contribution for a plan year is 8½ months after the end of the plan year. Any payment made on a date other than the valuation date for the plan year must be adjusted for interest accruing at the plan's effective interest rate under section 430(h)(2)(A) for the plan year for the period between the valuation date and the payment date. Pursuant to section 430(g)(2), the valuation date for a plan year must be the first day of the

plan year, except in the case of a small plan described in section 430(g)(2)(B).

Under section 430(j)(3), if the plan had a funding shortfall for the preceding plan year, then the plan sponsor must pay certain quarterly installments toward the required minimum contribution for the plan year. Each quarterly installment is 25 percent of the required annual payment. The required annual payment is equal to the lesser of 90 percent of the minimum required contribution under section 430 for the plan year or 100 percent of the minimum required contribution under section 430 (determined without regard to any funding waiver under section 412(c)) for the preceding plan year. If a quarterly installment is made after the due date for that installment, then the interest rate that applies for the period of underpayment is the plan's effective interest rate plus 5 percentage points.<sup>4</sup> The requirements regarding quarterly installments are similar to the requirements that formerly applied under section 412(m) as in effect before amendments made by PPA '06.<sup>5</sup>

A plan sponsor that is required under section 430(j)(3) to pay quarterly installments to a plan (other than a small plan described in section 430(g)(2)(B)) for a plan year must make quarterly installments of liquid assets that are sufficient to ensure that a minimum level of liquid assets is available to pay benefits. Generally, this minimum level of liquid assets is the amount of liquid assets needed to pay for three years of disbursements. A plan sponsor that fails to satisfy this liquidity requirement is treated as failing to make the required quarterly installment, and pursuant to section 206(e) of ERISA, the plan is required to cease making certain types of accelerated payments that are described in section 401(a)(32)(B) of the Code. Under section 430(j)(4)(C), the period of underpayment continues until the close of the quarter in which the due date of the installment occurs. These liquidity requirements are substantially similar to the requirements that formerly applied under section 412(m)(5), as in effect before amendments made by PPA '06.

Section 4971(a) imposes an excise tax on the employer for a failure to meet

applicable minimum funding requirements. In the case of a single-employer plan (other than a CSEC plan), the tax is 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within a taxable year. In the case of a multiemployer plan, the tax is 5 percent of the accumulated funding deficiency as of the end of any plan year ending with or within the taxable year. In the case of a CSEC plan, the tax is 10 percent of the CSEC accumulated funding deficiency. Section 4971(b) provides an additional excise tax that applies if the applicable minimum funding requirements remain unsatisfied for a specified period. Section 4971(c) provides definitions that apply for purposes of section 4971, including a definition of unpaid minimum required contribution (which is based on the new section 430 rules for determining the minimum required contribution for a year). Section 4971(f)(1) imposes a tax of 10 percent of the amount of the liquidity shortfall for a quarter that is not paid by the due date for the installment for that quarter. Section 4971(f)(2) provides an additional excise tax that applies if a plan has a liquidity shortfall as of the close of 5 consecutive quarters.

Final regulations (TD 9467) under sections 430 and 436 were published in the **Federal Register** (74 FR 53004) on October 15, 2009 (the October 2009 final regulations). Those final regulations address issues under sections 430(b), 430(d), 430(f), 430(g), 430(h), 430(i), and 436.

These regulations finalize proposed regulations under sections 430 and 4971 that were published on April 15, 2008 (REG-108508-08, 73 FR 20203). The proposed regulations under section 430, addressing issues that were not addressed in the October 2009 final regulations, were proposed to apply generally to plan years beginning on or after January 1, 2009. The preamble to the proposed regulations and Notice 2008-21 (2008-1 CB 431) provided guidance on standards for applying section 430 for plan years beginning during 2008.

The proposed regulations under section 4971 generally were proposed to apply at the same time the statutory changes to section 4971 under PPA '06 become effective, but would not apply to any taxable years ending before the date the proposed regulations were published (April 15, 2008). In the case of a plan to which a delayed effective date applies pursuant to sections 104 through 106 of PPA '06, the proposed

<sup>3</sup> Section 430(h)(2)(D)(ii) provides an alternative to the use of the three segment rates, under which the corporate bond yield curve (determined without regard to the 24-month average) is substituted for the segment rates.

<sup>4</sup> Additional potential consequences of late quarterly contributions are found in section 430(k) of the Code (regarding the imposition of a lien) and sections 101(d) and 4043 of ERISA (regarding notice to participants and beneficiaries and to the Pension Benefit Guaranty Corporation).

<sup>5</sup> Guidance regarding quarterly contribution requirements under former section 412(m) was issued in Notice 89-52 (1989-1 CB 692), and guidance regarding the liquidity requirements under former section 412(m)(5) was issued in Revenue Ruling 95-31 (1995-1 CB 76).

regulations provided that the amendments made to section 4971 apply to the same taxable years, but only with respect to plan years for which section 430 applies to the plan.

Comments were received regarding the proposed regulations, and a public hearing was held on August 4, 2008. These final regulations are generally similar to the proposed regulations, but a number of changes were made in response to comments received. In addition, the final regulations reflect certain changes made by WRERA, the CSEC Act, and HATFA. The final regulations also provide the IRS with flexibility to extend certain regulatory deadlines.

## Explanation of Provisions

### I. Overview

These regulations finalize the rules proposed in REG-108508-08 (published April 15, 2008), providing guidance regarding the minimum required contribution rules that apply to sponsors of single-employer defined benefit plans under section 430 and the related excise tax rules of section 4971. These regulations also make changes to § 1.430(f)-1 (relating to elections with respect to a plan's prefunding balance and funding standard carryover balance), § 1.430(h)(2)-1 (relating to interest rates) and § 1.436-1 (relating to benefit restrictions).

### II. Section 1.430(a)-1 Determination of Minimum Required Contribution

Section 1.430(a)-1 provides rules under section 430(a) for determining the minimum required contribution for a plan year for a single-employer defined benefit plan (including a multiple employer plan under section 413(c)) subject to section 430. The determination of the amount of the minimum required contribution for a plan year depends on whether the value of plan assets, as reduced to reflect certain funding balances pursuant to section 430(f)(4)(B) (but not below zero), is less than or at least equal to the plan's funding target for the plan year. If this value of plan assets is less than the funding target for the plan year, the minimum required contribution for that plan year is equal to the sum of the plan's target normal cost for the plan year plus any applicable shortfall amortization installments and waiver amortization installments. If this value of plan assets equals or exceeds the funding target for the plan year, the minimum required contribution for that plan year is equal to the target normal cost of the plan for the plan year

reduced (but not below zero) by any such excess.

The regulations provide that the shortfall amortization installments with respect to a shortfall amortization base established for a plan year generally are the annual amounts necessary to amortize that shortfall amortization base in level annual installments over the 7-year period beginning with that plan year. As provided in § 1.430(h)(2)-1(f)(2), these installments are determined assuming that the installments are paid on the valuation date for each plan year and using the interest rates applicable under section 430(h)(2)(C) or (D). The shortfall amortization installments are determined using the interest rates that apply for the plan year for which the shortfall amortization base is established and are not redetermined in subsequent plan years to reflect changes in interest rates under section 430(h)(2) for those subsequent plan years. The regulations also provide that shortfall amortization installments are not redetermined even if the valuation date for a plan changes after the plan year for which the shortfall amortization base was established. In such a case, the dates on which the installments are assumed to be paid are changed to the anniversaries of the new valuation date, and the difference in present value attributable to this change is reflected in any new shortfall amortization base.

Under the regulations, in general, a shortfall amortization base is established for a plan year only if the value of plan assets (reduced, but not below zero, by the prefunding balance if an election is made to use any portion of the prefunding balance to offset the minimum required contribution for the plan year) is less than the funding target for the plan year. This shortfall amortization base (which can be either positive or negative) is equal to the funding shortfall for the plan year, minus the sum of the present values of any remaining shortfall amortization installments and waiver amortization installments (determined in accordance with § 1.430(h)(2)-1(f)(2) using the interest rates that apply for the current plan year rather than the amortization rates that were applied when the amortization installments were determined). For this purpose, the funding shortfall for any plan year is the excess (if any) of the funding target for the plan year over the value of plan assets for the plan year (as reduced to reflect the subtraction of the funding standard carryover balance and prefunding balance to the extent provided under § 1.430(f)-1(c)).

Commenters noted that the special rule of section 430(c)(5) can produce anomalous results in certain cases where the prefunding balance is greater than the excess of the plan assets (without reduction for such balance) over the funding target. One case in which this occurs is for a plan with no funding standard carryover balance and actuarial gains that would have caused the shortfall amortization base (and related shortfall amortization installments) to be negative. In such a case, if a small portion of the prefunding balance is used to offset the minimum required contribution, then it is possible that the minimum required contribution would be reduced by even more than the amount so used.

Another case raised by commenters—with results that are not only anomalous but also potentially circular—is a situation in which a plan has a funding standard carryover balance and the plan sponsor's election to use a portion of the prefunding balance (in addition to using the funding standard carryover balance) to offset the minimum required contribution would result in the establishment of a negative shortfall amortization base and a minimum required contribution that is smaller than the funding standard carryover balance. As a result, none of the prefunding balance can be used to offset the minimum required contribution (because no prefunding balance can be used to offset the minimum required contribution as long as the plan has a funding standard carryover balance), and the minimum required contribution must be recalculated. This results in the recalculated minimum required contribution being large enough that some of the prefunding balance would be needed to fully offset that minimum required contribution, and the first calculation would once again apply.

After consideration of these comments, the IRS and the Treasury Department have concluded that the statutory provisions require this result in these limited factual situations. However, a plan sponsor can avoid the circular results by electing to reduce the funding standard carryover balance to an amount that is too small to offset the entire minimum required contribution. After that reduction, in order to offset the entire minimum required contribution, the plan sponsor must use the full remaining funding standard carryover balance plus at least some portion of the prefunding balance. The regulations include an example of a plan sponsor reducing the funding standard carryover balance in order to avoid the circularity (*Example 10* of § 1.430(a)-1(g)).

The proposed regulations did not count contributions under section 436(b)(2), (c)(2), and (e)(2) either toward minimum required contributions for the current year or as included in plan assets for that year. Commenters suggested that any contribution under section 436(b)(2), (c)(2), or (e)(2) should be reflected in plan assets for purposes of section 430 if the corresponding increase in funding target is required to be reflected. This would have the effect of reducing the funding shortfall for the plan year. However, under sections 436(b)(2), (c)(2), and (e)(2), these contributions are characterized as “in addition to any minimum required contribution under section 430.” The final regulations adopt the rule as proposed because it reflects this requirement of the statute. This rule is also consistent with section 430(f)(6)(B)(iii), which excludes section 436 contributions from the amount that may be added to the plan’s prefunding balance. The final regulations do not include any special rule that would reduce the funding shortfall for a plan year to take into account section 436 contributions for the plan year (by either including section 436 contributions in plan assets or modifying the definition of funding shortfall). Any such section 436 contributions will be part of plan assets when measured for the following plan year and, accordingly, will reduce any positive shortfall amortization base (or increase any negative shortfall amortization base) that would otherwise be established for that following year.

Under the regulations, the waiver amortization installments with respect to a waiver amortization base established for a plan year are the annual amounts necessary to amortize that waiver amortization base in level annual installments over the 5-year period beginning with the following plan year. As provided in § 1.430(h)(2)–1(f)(2), these installments are determined assuming that the installments are paid on the valuation date for each plan year and using the interest rates applicable under section 430(h)(2). Thus, if a plan uses the segment rates, the installments are determined by applying the first segment rate to the first four installments and the second segment rate to the fifth (and final) installment. The waiver amortization installments established with respect to a waiver amortization base are determined using the interest rates that apply for the plan year for which the waiver is granted (even though the first installment with respect to the waiver amortization base is not due until the subsequent plan

year) and are not redetermined in subsequent plan years to reflect changes in interest rates under section 430(h)(2) for those subsequent plan years.

The regulations provide rules for determining the amount of a minimum required contribution for a short plan year. Under the regulations, the amortization installments are prorated for a short plan year. The regulations do not provide for any proration of the target normal cost. Instead, the determination of target normal cost must reflect benefits that accrue or are expected to accrue during the short plan year.<sup>6</sup> The regulations also provide rules for the treatment of amortization installments in subsequent plan years to take into account the proration of these installments for short plan years and to clarify the treatment of these installments in the event of a change in valuation date.

In light of the rules in the proposed regulations for determining the amount of a minimum required contribution for a short plan year (which would normally be followed by another plan year with its own minimum required contribution), questions have arisen about how to determine the minimum required contribution for a plan year if the plan terminates before the last day of the year. Under Revenue Ruling 79–237 (1979–2 CB 190) (see 26 CFR 601.601(d)(2)(ii)(b)), the minimum funding requirements apply for the year that a plan terminates but not for later years. These regulations clarify that the rules for short plan years apply for the year of termination by specifying that if a plan terminates before the last day of a plan year, then, for purposes of section 430, the plan is treated as having a short plan year that ends on the termination date. As a result, the minimum required contribution for such a plan is determined based on that short plan year. If a plan terminates before the date that would otherwise have been the valuation date for a plan year, then the valuation date for the plan year must be changed so that it falls within the short plan year.

The rules for terminated plans include a definition of termination date that is consistent with the 1982 proposed regulations under § 1.412(b)–4(d)(1) and Revenue Ruling 89–87 (1989–2 CB 2) (see 26 CFR 601.601(d)(2)(ii)(b)). These final regulations provide that, in the case of a plan subject to Title IV of ERISA, the termination date is the plan’s termination date established under section 4048(a) of ERISA.

<sup>6</sup> See 29 CFR 2530.204–2(e) for rules relating to changes in accrual computation periods.

In the case of a plan not subject to Title IV of ERISA, the regulations provide that the termination date is the plan’s termination date established by the plan administrator, provided that the termination date may be no earlier than the date on which all actions necessary to effect the plan termination (other than the distribution of plan assets) are taken. However, a plan is not treated as terminated on that date if the plan assets are not distributed as soon as administratively feasible after that date. Whether plan assets are distributed as soon as administratively feasible is determined based on all the relevant facts and circumstances. A distribution of plan assets that was delayed merely for the purpose of obtaining a higher value than current market value is generally not deemed to have been made as soon as administratively feasible. Additionally, if the plan assets are not distributed within one year following the plan’s termination date established by the plan administrator, the distribution is presumed not to have been made as soon as administratively feasible. However, a plan is not treated as failing to meet the requirement to make distributions of plan assets as soon as administratively feasible after that date to the extent that a delay in distributing plan assets is attributable to either: (1) Circumstances beyond the control of the plan administrator; or (2) the period of time necessary to obtain a determination letter from the Commissioner on the plan’s qualified status upon its termination, provided that the request for a determination letter is timely and the distributions of plan assets are made as soon as administratively feasible after the letter is obtained.

### III. Section 1.430(h)(2)–1 Interest Rates Used To Determine Present Value

The regulations update the 2009 regulations to reflect the modification under HATFA to the 5-year period for which the first segment rate applies. In accordance with section 430(h)(2)(C)(i) prior to its amendment by HATFA, § 1.430(h)(2)–1(b)(2)(i) provided that, for a plan with a valuation date that is the first day of the plan year, the first segment rate was used to determine present value of benefits expected to be payable during the 5-year period beginning on the first day of the plan year. Section 1.430(h)(2)–1(b)(2)(ii), labeled “Plans with valuation dates other than the first day of the plan year,” was reserved. The preamble to the 2009 regulations notes that the IRS and the Treasury Department continue to believe that applying the first segment rate to benefits that are

expected to be payable during the 5-year period beginning on the valuation date is the best method of valuing assets and liabilities as of the valuation date. Because section 430(h)(2)(C)(i) was then inconsistent with that interpretation and it was anticipated that a technical correction might later adopt that approach, the 2009 regulations reserved the issue of guidance on the interest rates to be used by plans with valuation dates other than the first day of the plan year.

This anticipated technical correction was made in section 2003(d) of HATFA, and the regulations reflect this technical correction. Under the regulations, in general, the first segment rate is used to determine the present value of benefits expected to be payable during the 5-year period beginning on the valuation date for the plan year. However, with respect to a plan year beginning before January 1, 2014, for a plan with a valuation date other than the first day of the plan year, the 5-year period beginning on the first day of the plan year is permitted to be used in lieu of the 5-year period beginning on the valuation date. Thus, taxpayers must follow the statute as amended for this technical correction for plan years beginning on or after January 1, 2014, and are permitted to apply this technical correction for earlier years as well.

#### *IV. Section 1.430(j)-1 Payment of Minimum Required Contributions*

##### **A. Payment of Minimum Required Contribution**

The regulations under section 430(j) provide rules related to the payment of minimum required contributions, including rules for the payment of quarterly contributions, liquidity requirements, and determining the plan year to which a contribution applies. Under these rules, if the plan has unpaid minimum required contributions that have not yet been corrected at the time a contribution is made, then the contribution is treated as a contribution for the earliest plan year for which there is an unpaid minimum required contribution to the extent necessary to correct that unpaid minimum required contribution.

Any amount of the contribution in excess of the amount needed to correct that unpaid minimum required contribution is treated as a contribution for the next earliest plan year for which there is an unpaid minimum required contribution that has not yet been corrected to the extent necessary to correct that unpaid minimum required contribution. This allocation to the earliest year with unpaid minimum

required contributions is automatic and must be shown on the actuarial report (Schedule SB, "Single-Employer Defined Benefit Plan Actuarial Information" of Form 5500, "Annual Return/Report of Employee Benefit Plan") for the earliest plan year for which a timely contribution could be allocated.

The regulations further provide that if the plan has no unpaid minimum required contributions for prior plan years at the time the contribution is made, or a portion of the contribution corrects all unpaid minimum required contributions, then the contribution (or the remainder of the contribution which is not used to correct an unpaid minimum required contribution) made during the current plan year but before the deadline for contributions for a prior plan year may be designated as a contribution for either that prior plan year or the current plan year. This designation is established by the completion (and filing, if required) of the actuarial report (Schedule SB, "Single-Employer Defined Benefit Plan Actuarial Information" of Form 5500, "Annual Return/Report of Employee Benefit Plan") for the plan year for which the contribution is designated, and this designation cannot be changed after the actuarial report is completed (and filed, if required) except as provided in guidance published in the Internal Revenue Bulletin. The regulations provide that any payment of the minimum required contribution under section 430 for a plan year that is made on a date other than the valuation date for that plan year is adjusted for interest for the period between the valuation date and the payment date, generally using the effective interest rate for the plan for that plan year determined pursuant to § 1.430(h)(2)-1(f)(1). The direction of the adjustment depends on whether the contribution is paid before or after the valuation date for the plan year. If the contribution is paid after the valuation date for the plan year, the contribution is discounted to the valuation date. If the contribution is paid before the valuation date for the plan year (which could only occur in the case of a small plan described in section 430(g)(2)(B)), the contribution is increased for interest to the valuation date.

Under the regulations, a payment of the minimum required contribution under section 430 for a plan year can be made no earlier than the first day of the plan year. The deadline for any payment of any minimum required contribution for a plan year is 8½ months after the close of the plan year. If any portion of a minimum required contribution is not

paid by this deadline, an excise tax applies under section 4971.

##### **B. Requirement for Quarterly Contributions**

The regulations provide rules for accelerated quarterly contributions for plans with funding shortfalls. These rules are similar to the rules provided under Notice 89-52 (1989-1 CB 692) (see 26 CFR 601.601(d)(2)(ii)(b)), but have been updated to reflect statutory changes. These statutory changes include changes regarding which plans are subject to the quarterly contribution requirements as well as the interest rates applicable to missed quarterly contributions.

Under the regulations, in any case in which a plan has a funding shortfall for the preceding plan year, the employer maintaining the plan must make required quarterly installments for the current plan year. The amount of each required quarterly installment is equal to 25 percent of the required annual payment. For this purpose, the required annual payment is equal to the lesser of 90 percent of the minimum required contribution under section 430(a) for the plan year or 100 percent of the minimum required contribution under section 430(a) (determined without regard to any funding waiver under section 412) for the preceding plan year. These minimum required contributions are determined under section 430 as of the valuation date for each year and are not adjusted for interest. The regulations provide that, for purposes of determining the required annual payment, the minimum required contribution for a plan year is determined without reflecting the use of the prefunding balance or funding standard carryover balance to offset the minimum required contribution for either the current year or the prior year and without regard to any installment acceleration amount under section 430(c)(7).

Pursuant to section 430(j)(3)(C), the regulations provide that the due dates for the four required quarterly installments with respect to a full plan year are as follows: The first installment is due on the 15th day of the 4th plan month, the second installment is due on the 15th day of the 7th plan month, the third installment is due on the 15th day of the 10th plan month, and the fourth installment is due on the 15th day following the end of the plan year. In the case of a short plan year, the regulations provide rules for determining the amount of the required quarterly installments and the due dates

for those installments.<sup>7</sup> The regulations also provide rules for determining the amount of the required quarterly installments if the prior plan year was a short plan year and rules for determining the plan month in the case of a plan year that does not begin on the first day of a calendar month.

As was the case in Notice 89–52, the regulations provide that a plan sponsor generally can use a plan's funding balances to satisfy quarterly contribution requirements. However, this rule is subject to the limitation on the use of funding balances by underfunded plans pursuant to section 430(f)(3)(C). Consistent with the approach taken in Notice 89–52, a contribution for a prior plan year in excess of the required minimum contribution must actually have been made and the plan sponsor's election to add the excess to the prefunding balance must have taken effect before a plan can elect to use the corresponding portion of the prefunding balance to satisfy the quarterly contribution requirements. A plan sponsor's election to use the plan's funding balances under section 430(f) satisfies the requirement to pay an installment on the date of the election, to the extent of the amount elected, as adjusted with interest at the plan's effective interest rate under section 430(h)(2)(A) for the plan year from the election date through the due date of the installment. The amount of a plan's funding balances available for such an election is increased with interest from the beginning of the plan year to the date of the election. The net effect of these two adjustments is an increase in the plan's funding balances from the beginning of the plan year to the due date of the installment.

A plan sponsor that elects to use the plan's prefunding balance or funding standard carryover balance toward satisfaction of the plan's quarterly contribution requirement before the plan's effective interest rate for the plan year has been determined should assume, in order to ensure that the quarterly contribution requirements are satisfied, that the effective interest rate is equal to the lowest of the three segment rates (generally the first segment rate) to adjust the elected amount. Because the satisfaction of these installments is determined on a cumulative basis, if the use of funding balances is more than enough to satisfy an installment requirement, then the

excess is carried forward to use to satisfy later installments.

The preamble to the proposed regulations noted that the proposed rules under section 430(f) would have provided that the amount of the funding balance used to satisfy the quarterly contribution requirements could not later be added back to the prefunding balance. The October 2009 final regulations under section 430(f) provide a different rule. Under those final regulations, to the extent that a contribution is included in the present value of excess contributions solely because the minimum required contribution has been offset by an election to use the funding standard carryover balance or prefunding balance, the contribution is adjusted for investment experience to reflect the actual rate of return on plan assets under the rules of § 1.430(f)–1(b)(3). Thus, to the extent that a quarterly installment is satisfied through the use of a funding balance but the plan sponsor replenishes its funding balances by subsequently making a contribution for the plan year that is added to the prefunding balance, the amount that may be added to the prefunding balance on account of that subsequent contribution is based on the actual rate of return for the plan year.

The proposed regulations would have credited interest on an early election to use a funding balance for purposes of satisfying the quarterly contribution requirement, but would not have credited interest on an early contribution for this purpose. Commenters asked for early contributions to be credited with interest toward quarterly contribution requirements on the same basis as an early election to use a funding balance. The final regulations make this change.

For required installments due after the valuation date, the proposed regulations would have provided that, if the employer fails to pay the full amount of a required installment when due, then the contribution that constitutes a late payment of the required installment for the period of time that begins on the due date for the required installment and that ends on the date of payment is adjusted using the effective interest rate for the plan for that plan year determined pursuant to § 1.430(h)(2)–1(f)(1) plus 5 percentage points. This increased interest rate would not have applied to installments that are due before the valuation date for the plan year because the application of an increased interest rate for such a contribution would not have had the intended effect of increasing the minimum required contribution and

section 430(j)(3) did not provide for special rules for valuation dates other than the beginning of the plan year. The proposed regulations included a reserved paragraph for the treatment of quarterly installments that are due before the valuation date. However, the preamble to the proposed regulations described a rule that the IRS and the Treasury Department were considering for inclusion in the final regulations if legislation were enacted authorizing special rules for the application of the quarterly installment requirements for plans with valuation dates other than the first day of the plan year.

Section 101(b)(2)(G)(iii) of WRERA added section 430(j)(3)(E)(iii) which provides authority for special quarterly contribution rules for plans with valuation dates other than the first day of the plan year. Pursuant to this authority, the final regulations provide for any late quarterly installment (and any late election to use the funding balances to satisfy a quarterly installment) to be discounted for interest from the date of the late contribution or election to the due date for the installment using an interest rate equal to the plan's effective interest rate under section 430(h)(2)(A) for the plan year plus 5 percentage points. The discounted amount is then treated as if it were contributed or elected on the due date and further adjusted for interest from the due date to the valuation date. This approach is mathematically equivalent to the approach suggested in the preamble of the proposed regulations if compound interest is used.

#### C. Standing Election To Satisfy Installments Through Use of Funding Balances

The proposed regulations would have permitted plans to satisfy the requirement to pay quarterly installments with an election to use funding balances. The preamble to those regulations asked for comments on the utility of standing elections with respect to funding balances. Commenters uniformly favored permitting this use of standing elections.

These final regulations include rules for providing a standing election to satisfy quarterly installments. Under these rules, a plan sponsor may provide a standing election in writing to the plan's enrolled actuary to use the funding standard carryover balance and the prefunding balance to satisfy any otherwise unpaid portion of a required installment under section 430(j)(3). The otherwise unpaid portion of a required installment is the amount necessary to satisfy the required installment rules

<sup>7</sup> As described above in section II of this preamble, a plan that terminates before the last day of the plan year is treated as having a short plan year that ends on the termination date. This rule also applies for purposes of the 8½ month deadline described in section III.A of this preamble.

under section 430(j) based on quarterly installment amounts equal to 25 percent of the minimum required contribution under section 430 for the preceding plan year. Under the regulations, if the amount of the prefunding and funding standard carryover balances available is less than the amount needed to satisfy any otherwise unpaid portion of a required installment, then the entire amount available will be used under the standing election. Any election made pursuant to a standing election is deemed to occur on the later of the last date for making the required installment under section 430(j)(3) and the date the standing election is provided to the enrolled actuary.

The regulations provide that, generally, any standing election to use the funding balances to satisfy quarterly installments remains in effect for the plan with respect to the enrolled actuary named in the election, unless the standing election is revoked or the plan's enrolled actuary is changed. However, a plan sponsor may suspend operation of a standing election for the remainder of a plan year by providing written notice to the enrolled actuary. In addition, if the current year's minimum required contribution has been determined by the plan's enrolled actuary, the plan sponsor may replace the standing election for the remainder of the plan year with a formula election to use (to the extent available) the funding balances as necessary so that the remaining required installments satisfy the required installment rules under section 430(j) based on quarterly installment amounts taking into account the determination of the current year's minimum required contribution.

#### D. Liquidity Shortfalls

The regulations provide rules for the liquidity requirements that generally apply to plans for which quarterly contributions are required. Under the regulations, if a plan sponsor of a plan (other than a small plan described in section 430(g)(2)(B)) is required to pay quarterly installments pursuant to section 430(j)(3), then the plan sponsor is treated as failing to pay the full amount of the required installment for a quarter to the extent that the value of the liquid assets contributed after the end of that quarter and on or before the due date for the installment is less than the liquidity shortfall (as defined in section 430(j)(4)(E)) for that quarter. Thus, in order to satisfy the quarterly contribution requirement for a quarter, liquid assets in the amount of the liquidity shortfall must be contributed after the end of that quarter and on or before the due date for the installment.

However, the regulations provide that if the amount of a required installment for a quarter is increased by reason of this rule, this increase generally is limited to the amount which, when added to the current required installment (determined without regard to the increase) and prior required installments for the plan year, is necessary to increase the funding target attainment percentage for the plan year to 100 percent (taking into account the expected increase in the funding target due to benefits accruing or earned during the plan year). The use of funding balances or the contribution of illiquid assets cannot remedy a liquidity shortfall.<sup>8</sup>

The regulations provide that the term liquidity shortfall generally means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which that installment is due) of the base amount with respect to the quarter, over the value (as of the last day of the quarter) of the plan's liquid assets. For this purpose, the regulations provide that the term base amount generally means, with respect to any quarter, an amount equal to three times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter. However, if the generally applicable base amount for a quarter exceeds an amount equal to two times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and the enrolled actuary for the plan certifies to the satisfaction of the Commissioner that such excess is the result of nonrecurring circumstances, the base amount with respect to that quarter is determined without regard to amounts related to those nonrecurring circumstances.

In response to comments, the regulations provide special rules for applying the liquidity requirements to a multiple employer plan to which section 413(c)(4)(A) applies.<sup>9</sup> Under these rules, the liquidity requirement is satisfied for the plan if it would be satisfied if the plan were a single-

employer plan that is not a multiple employer plan. However, if the plan does not satisfy the liquidity requirement on this basis, then the liquidity requirement must be applied separately for each employer under the plan, as if each employer maintained a separate plan. In this case, the value of plan assets as of the end of each quarter under a multiple employer plan must be allocated among the employers sponsoring the plan.

The rules under the regulations relating to the liquidity requirements are similar to the rules provided under Revenue Ruling 95-31, but have been updated to reflect statutory changes. For example, the definition of liquid assets under the proposed regulations is the same as the definition of liquid assets under Revenue Ruling 95-31. Unlike Revenue Ruling 95-31, the regulations measure satisfaction of a liquidity shortfall by reference to contributions made after the end of the quarter and by the due date for the installment (while including contributions made during the plan quarter in plan assets). Although this may appear to be a change from the rules of Revenue Ruling 95-31, the two formulations are mathematically identical.

Under section 430(j)(4)(C), any unpaid liquidity amount is treated as unpaid until the close of the quarter in which the due date for that installment occurs. Under the proposed regulations, section 430(j)(4)(C) would have applied only for purposes of applying the additional interest for late quarterly installments, and the unpaid liquidity amount due during a quarter would have been treated as unpaid until a contribution of liquid assets satisfied that requirement, even if the period of underpayment extended beyond the end of the quarter. Some commenters objected to the approach in the proposed regulations and suggested that section 430(j)(4)(C) should be interpreted so that the unpaid liquidity amount is treated as paid at the end of the quarter for all purposes.

After consideration of the comments received, the IRS and the Treasury Department have modified the final regulations to provide that, pursuant to section 430(j)(4)(C), any portion of a required installment for a quarter that is treated as unpaid by reason of the liquidity requirements is treated as unpaid until the close of the quarter in which the due date for the installment occurs (without regard to any contribution of liquid assets that is made after the due date of the required installment). After the close of the quarter in which the due date for such an installment occurs, any portion of the required installment that was treated as

<sup>8</sup> In this context, see Department of Labor Interpretive Bulletin 94-3 (29 CFR 2509.94-3), which sets forth the Department's view that, in the absence of an applicable exemption, a contribution by an employer to a defined benefit pension plan in a form other than cash constitutes a prohibited transaction under section 406 of ERISA and section 4975 of the Code.

<sup>9</sup> The liquidity requirement of section 430(j)(4) does not apply to plans with 100 or fewer participants on each day during the preceding plan year. For this purpose, the determination of the number of participants is made separately for each employer under a multiple employer plan to which section 413(c)(4)(A) applies.

unpaid solely by reason of the liquidity requirements is no longer treated as unpaid (but any portion of the required installment that would be treated as unpaid without regard to the liquidity requirements must be satisfied in accordance with the generally applicable continuing requirement to pay quarterly installments). The requirement to satisfy a liquidity shortfall applies separately with respect to each quarter. In many cases, the failure to contribute sufficient liquid assets to satisfy a liquidity shortfall for a quarter will result in a liquidity shortfall for future quarters until sufficient liquid assets have been contributed to satisfy the liquidity shortfall.

Section 430(j)(3)(A) provides that if the employer fails to pay the full amount of a required installment, the amount of interest charged on the underpayment for the period of underpayment is determined by increasing the rate of interest otherwise used to adjust the contribution to the valuation date under section 430(j)(2) by 5 percentage points. In general, the period of underpayment is the period between the date the installment is due and the date it is paid. However, under section 430(j)(4)(C), any portion of an installment that is treated as not paid by reason of the liquidity requirement continues to be treated as unpaid until the close of the quarter in which the due date for that installment occurs.

Accordingly, the regulations provide that, to the extent that an unpaid liquidity amount is satisfied with a contribution of liquid assets during the quarter in which it is due, the increased rate of interest applies for purposes of discounting a contribution for the period between the last day of the quarter and the due date of the contribution. By contrast, any portion of the required installment that would be due without regard to the liquidity requirement will remain due after the end of the quarter, and the regulations provide for the use of the increased rate of interest for purposes of discounting a contribution that is applied to that portion from the date of actual payment to the due date.

To the extent that a portion of the unpaid liquidity amount is no longer treated as unpaid after the close of the quarter, the regulations provide a special rule to reflect the requirement to use a higher rate of interest on late required installments by converting that requirement into an interest charge that increases the minimum required contribution. This ensures that the amount of the contributions necessary to satisfy the minimum funding

requirements reflects the effect of the additional interest required under section 430(j)(2) even if a portion of the unpaid liquidity amount is no longer considered unpaid after the close of the quarter. Otherwise, the sponsor of a plan with an unpaid liquidity amount could avoid an additional interest adjustment by merely deferring making a contribution until after the close of the quarter in which the liquidity amount was due, and would therefore be treated more favorably than a plan sponsor who made a contribution toward the unpaid liquidity amount within that quarter.

Under this special rule, the increase in the minimum required contribution attributable to any unpaid liquidity amount that is no longer treated as unpaid after the close of the quarter is equal to the difference between (1) the amount that is no longer treated as unpaid, discounted for interest from the end of the quarter to the valuation date using the plan's effective interest rate, and (2) the amount that is no longer treated as unpaid, discounted for interest from the end of the quarter to the due date of the required installment using the plan's effective interest rate plus 5 percent, and further discounted for interest from the due date of the installment to the valuation date using the plan's effective interest rate. The regulations include an example illustrating the calculation of the increase in the minimum required contribution due to an unpaid liquidity amount that is no longer treated as unpaid after the close of the quarter in which it is due.

Under the regulations, this increase in the minimum required contribution to reflect an interest adjustment for unpaid liquidity amounts is disregarded when calculating the required annual payment under section 430(j)(3)(D)(ii) (which is used to determine the amount of required quarterly installments).

In addition to the adjustment to reflect the higher interest rate, the regulations identify two further consequences of failing to satisfy the liquidity requirement. Section 206(e) of ERISA and section 401(a)(32) of the Code provide rules regarding the suspension of accelerated distributions for a plan with an unpaid liquidity shortfall. Also, section 4971(f) provides an excise tax with respect to the failure to pay a liquidity shortfall.

The proposed regulations included an ordering rule providing that if an employer makes a contribution of liquid assets that is allocated toward the required installment for a quarter, but the contribution is less than the total amount needed to satisfy the quarterly installment for the quarter, then the

contribution would be first attributed toward satisfying the quarterly installment without regard to the liquidity requirement. So that all contributions of liquid assets apply toward satisfaction of the liquidity requirement, the final regulations provide that any contribution of liquid assets for a quarter applies toward satisfying the liquidity requirement (as well as the otherwise applicable quarterly installment).

#### V. Section 54.4971(c)-1 Taxes on Failure To Meet Minimum Funding Standards

These regulations set forth the definitions that were modified by PPA '06 that apply for purposes of applying the rules of section 4971. These definitions are substantially the same as the definitions in the proposed regulations, but they have been modified to reflect certain changes made by the CSEC Act.

The regulations define the term *accumulated funding deficiency* to have the meaning given to that term by section 431, in the case of a multiemployer plan, or by section 433, in the case of a CSEC plan. A plan's accumulated funding deficiency for a plan year takes into account all charges and credits to the funding standard account under section 412 for plan years before the first plan year for which section 431 or section 433 applies to the plan.

The regulations define the term *unpaid minimum required contribution*, with respect to any plan year, as the portion of the minimum required contribution under section 430 for the plan year for which contributions have not been made on or before the due date for the plan year under section 430(j)(1) (after taking into account interest adjustments and any offsets from use of the funding balances). The regulations provide that a plan's accumulated funding deficiency under section 412 for the pre-effective plan year is treated as an unpaid minimum required contribution for that plan year until correction is made. Unlike the determination of accumulated funding deficiency which applied under section 412 prior to PPA '06, the total amount of unpaid minimum required contributions that is subject to the excise tax under section 4971 is not adjusted with interest. However, as described in the following paragraph, correction of an unpaid minimum required contribution does require a contribution that includes an adjustment for interest.

The regulations define the term *correct* as it applies to an accumulated

funding deficiency or an unpaid minimum required contribution. With respect to an accumulated funding deficiency under a multiemployer plan or a CSEC plan, the regulations adopt the same definition of correct that was proposed to apply to a multiemployer plan. Under the regulations, the correction of an unpaid minimum required contribution under a single-employer plan for a plan year requires the contribution, to or under the plan, of the amount that, when discounted to the valuation date for the plan year for which the unpaid minimum required contribution is due at the appropriate rate of interest, equals or exceeds the unpaid minimum required contribution. For this purpose, the appropriate rate of interest is the plan's effective interest rate for the plan year for which the unpaid minimum required contribution is due except to the extent that the payments are subject to a higher discount rate provided under section 430(j)(3) or (j)(4). With respect to an unpaid minimum required contribution, the regulations provide an ordering rule under which a contribution is attributable first to the earliest plan year of any unpaid minimum required contribution for which correction has not yet been made. With respect to an accumulated funding deficiency under section 412 for the pre-effective plan year that is treated as an unpaid minimum required contribution, the regulations provide that correction requires the contribution, to or under the plan, of the amount of that accumulated funding deficiency adjusted with interest from the end of the pre-effective plan year to the date of the contribution at the plan's valuation interest rate for the pre-effective plan year.

The regulations define the term *single-employer plan* to mean a plan to which the minimum funding requirements of section 412 apply that is not a multiemployer plan as described in section 414(f). Thus, the regulations clarify that the term *single-employer plan* includes a multiple employer plan to which section 413(c) applies.

Section 4971, as amended by PPA '06, imposes an excise tax on unpaid minimum required contributions for all years until corrected. In contrast to the pre-PPA '06 rule (under which an accumulated funding deficiency could be corrected by improvement in the plan's funded status sufficient to trigger a full funding limitation credit), an unpaid minimum required contribution may only be corrected by making the contribution as described under the regulations. Like the proposed

regulations, the final regulations apply this rule to unpaid minimum required contributions for all years, without special treatment for pre-PPA '06 funding deficiencies. The final regulations do not reflect comments asking for preservation of the full funding rule with respect to pre-PPA '06 funding deficiencies, because the statute provides the same rules with respect to unpaid contributions for all years.

#### *VI. Authority To Issue Published Guidance With Respect to Certain Generally Applicable Regulatory Deadlines*

The regulations contain modifications to § 1.430(f)-1(f)(2) and (f)(3) and adds § 1.436-1(h)(4)(iii)(C)(9) to provide the IRS with authority to issue published guidance to extend certain deadlines. These changes accommodate plan sponsor actions in response to retroactive changes in the minimum funding requirements and are the modifications that the IRS indicated were expected to be made in Q&A-G-7 of Notice 2012-61 (which provided guidance regarding MAP-21) and in sections IV and V of Notice 2014-53 (which provided guidance regarding HATFA).

#### **Effective/Applicability Dates of Regulations**

Section 430 generally applies to plan years beginning on or after January 1, 2008. Sections 1.430(a)-1 and 1.430(j)-1 and the changes made by this Treasury decision to § 1.430(f)-1 apply generally to plan years beginning on or after January 1, 2016. Plans are permitted to apply these provisions for plan years beginning before 2016 and after 2007. In addition, for plan years beginning before 2016 and after 2007, plans are also permitted to rely on either these final regulations or the proposed regulations published April 15, 2008 that are finalized by this Treasury decision. See also Notice 2008-21 for additional rules with respect to plan years beginning during 2008.

Pursuant to section 114(g) of PPA '06, as added by WREDA, the statutory changes to section 4971 apply to taxable years beginning after 2007, but only with respect to plan years beginning on or after January 1, 2008, which end with or within any such taxable year. Thus, the statutory changes to section 4971 only apply to taxable years that include the last day of a plan year to which section 430 applies to determine the minimum required contribution for the plan.

The amendments to § 54.4971(c)-1 generally apply at the same time the statutory changes to section 4971 under

PPA '06 become effective, but do not apply to any taxable years ending before the date the proposed regulations were published (April 15, 2008). Thus, for example, the amendments to § 54.4971(c)-1 do not apply to a short taxable year beginning January 1, 2008 and ending February 29, 2008.

#### **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 has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, it is hereby certified that any collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. The certification is based on the fact that § 301.6059-1 currently requires the filing with the IRS of the periodic report of the actuary for a defined benefit plan under section 6059 in accordance with applicable forms, schedules, and accompanying instructions. These regulations make minor changes to this required collection of information, and are not expected to impose an additional burden on small entities. Furthermore, two provisions of these regulations lessen the collection of information imposed on small entities. Section 1.430(f)-1(f)(1)(iii) permits certain standing elections to use funding balances to satisfy required quarterly installments, thus decreasing the number of elections made by a plan sponsor who uses this feature. Section 1.430(a)-1(b)(5)(ii) provides that, if a plan's termination date is before the date that would otherwise have been the valuation date for a plan year, then the valuation date for the plan year must be changed so that it falls within the short plan year (so that automatic approval is granted for this change). This change avoids the need for an employer to request a change in valuation date with respect to certain small plans, thus lessening the burden for required collections of information for small entities. Based on these facts, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

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.

## Statement of Availability for 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://irs.gov>.

## Drafting Information

The principal authors of these regulations are Michael P. Brewer and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

## List of Subjects

### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### 26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 54 are amended as follows:

### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the introductory text and adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805, unless otherwise noted.

\* \* \* \* \*

§ 1.430(j) 1 also issued under 26 U.S.C. 430(j)(4)(F).

■ **Par. 2.** Section 1.430(a)–1 is added to read as follows:

#### § 1.430(a)–1 Determination of minimum required contribution.

(a) *In general*—(1) *Overview.* This section sets forth rules for determining a plan's minimum required contribution for a plan year under section 430(a). Section 430 and this section apply to single-employer defined benefit plans (including multiple employer plans as defined in section 413(c)) that are subject to section 412 but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section defines a plan's minimum required contribution for a plan year. Paragraph (c) of this section provides rules for determining shortfall amortization installments. Paragraph (d) of this section provides rules for

determining waiver amortization installments. Paragraph (e) of this section provides for early deemed amortization of shortfall and waiver amortization bases for fully funded plans. Paragraph (f) of this section provides definitions that apply for purposes of this section. Paragraph (g) of this section provides examples that illustrate the application of this section. Paragraph (h) of this section provides effective/applicability dates and transition rules.

(2) *Special rules for multiple employer plans*—(i) *In general.* In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, the minimum required contribution is computed separately for each employer under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(ii) *CSEC plans.* A CSEC plan (that is, a plan that fits within the definition of a CSEC plan in section 414(y) for plan years beginning on or after January 1, 2014 and for which the election under section 414(y)(3)(A) has not been made) is not subject to the rules of section 430. See section 433 for the minimum funding rules that apply to CSEC plans.

(b) *Definition of minimum required contribution*—(1) *In general.* In the case of a defined benefit plan that is subject to section 430, except as offset under section 430(f) and § 1.430(f) 1, the minimum required contribution for a plan year is determined as the applicable amount determined under paragraph (b)(2) of this section or paragraph (b)(3) of this section, reduced by the amount of any funding waiver under section 412(c) that is granted for the plan year. See paragraph (b)(4) of this section for special rules for a plan maintained by a commercial passenger airline (or other eligible employer) for which an election under section 402 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), as amended (PPA '06), has been made, and see section 430(j) and § 1.430(j) 1(b) for rules regarding the required interest adjustment for a contribution that is paid on a date other than the valuation date for the plan year. See also § 1.430(j)–1(d)(3)(iv)(B) for rules regarding an increase to the minimum

required contribution in certain circumstances for a plan with an unpaid liquidity amount.

(2) *Plan assets less than funding target*—(i) *General rule.* For any plan year in which the value of plan assets (as reduced to reflect the subtraction of certain funding balances as provided under § 1.430(f)–1(c), but not below zero) is less than the funding target for the plan year, the minimum required contribution for that plan year is equal to the sum of—

(A) The target normal cost for the plan year;

(B) The total (not less than zero) of the shortfall amortization installments as described in paragraph (c) of this section determined with respect to any shortfall amortization base for the plan year and for each preceding plan year for which the shortfall amortization base has not been fully taken into account (generally, the 6 preceding plan years); and

(C) The total of the waiver amortization installments as described in paragraph (d) of this section determined with respect to any waiver amortization base for all preceding plan years for which the waiver amortization base has not been fully taken into account (generally, the 5 preceding plan years).

(ii) *Special rule for short plan years*—

(A) *Proration of amortization installments.* In determining the minimum required contribution in the case of a plan year that is shorter than 12 months (and is not a 52-week plan year of a plan that uses a 52–53 week plan year), the shortfall amortization installments and waiver amortization installments that are taken into account under paragraphs (b)(2)(i)(B) and (C) of this section are determined by multiplying the amount of those installments that would be taken into account for a 12-month plan year by a fraction, the numerator of which is the duration of the short plan year and the denominator of which is 1 year.

(B) *Effect on subsequent years.* In plan years after the short plan year, installments with respect to a shortfall amortization base or waiver amortization base continue to be taken into account under paragraphs (b)(2)(i)(B) and (C) of this section until the total amount of those installments, as originally determined when the base was established, has been taken into account. Thus, in the case of a plan that has a short plan year, an additional partial installment will be taken into account under paragraphs (b)(2)(i)(B) and (C) of this section for the plan year that ends after the end of the original amortization period (generally 7 years

for shortfall amortization bases and 5 years for waiver amortization bases) in an amount determined so that the total of the amortization installments (including the prorated installment payable for the short plan year and the additional partial installment) is equal to the total of the amortization installments as originally determined.

(3) *Plan assets equal or exceed funding target.* For any plan year in which the value of plan assets (as reduced to reflect the subtraction of certain funding balances as provided under § 1.430(f)–1(c), but not below zero) equals or exceeds the funding target for the plan year, the minimum required contribution for that plan year is equal to the target normal cost for the plan year reduced (but not below zero) by that excess.

(4) *Special rules for commercial passenger airlines—(i) In general.* This paragraph (b)(4) provides special rules for a plan maintained by a commercial passenger airline (or an employer whose principal business is providing catering services to a commercial passenger airline) for which an election under section 402(a)(1) of PPA '06 has been made. See paragraph (c)(4) of this section for special rules for a plan maintained by a commercial passenger airline (or an employer whose principal business is providing catering services to a commercial passenger airline) for which an election under section 402(a)(2) of PPA '06 has been made.

(ii) *Determinations during 17-year amortization period.* If an election described in section 402(a)(1) of PPA '06 applies for the plan year with respect to an eligible plan described in section 402(c)(1) of PPA '06, then the plan's minimum required contribution for purposes of section 430 of the Internal Revenue Code (Code) for the plan year is equal to the amount necessary to amortize (at an interest rate of 8.85 percent) the unfunded liability of the plan in equal installments over the remaining amortization period. For this purpose, the unfunded liability means the excess of the accrued liability under the plan determined using the unit credit funding method and an interest rate of 8.85 percent over the value of assets (as determined under section 430(g)(3) and § 1.430(g)–1(c)), and the remaining amortization period is the 17-plan-year period beginning with the first plan year for which the election was made, reduced by 1 year for each plan year after the first plan year for which the election was made. In addition, the section 430(f)(3) election to apply funding balances against the minimum required contribution does not apply to a plan to which the election described

in section 402(a)(1) of PPA '06 applies for the plan year.

(iii) *Determinations following the election period.* If an election described in section 402(a)(1) of PPA '06 applied to the plan for any preceding plan year but does not apply for the current plan year, then the plan's minimum required contribution for purposes of section 430 of the Code for the plan year is determined without regard to that election. For the first plan year for which that election no longer applies to the plan, any prefunding balance or funding standard carryover balance is reduced to zero.

(5) *Terminated plans—(i) Short plan year.* If a plan's termination date occurs during a plan year but before the last day of a plan year, then, for purposes of section 430, the plan is treated as having a short plan year that ends on the termination date.

(ii) *Valuation date.* If a plan's termination date is before the date that would otherwise have been the valuation date for a plan year, then the valuation date for the plan year must be changed so that it falls within the short plan year pursuant to § 1.430(g)–1(b)(2)(i). See § 1.430(g)–1(b)(2)(iv) for a rule providing automatic approval of changes in the valuation date that are required by section 430.

(c) *Shortfall amortization installments—(1) In general.* Except as otherwise provided in paragraphs (c)(3) and (4) of this section, the shortfall amortization installments with respect to a shortfall amortization base established for a plan year are the annual amounts necessary to amortize that shortfall amortization base in level annual installments over the 7-year period beginning with that plan year. See § 1.430(h)(2)–1(e) and (f) for rules regarding interest rates used for determining shortfall amortization installments and the date within each plan year on which the installments are assumed to be paid. The shortfall amortization installments are determined using the interest rates that apply for the plan year for which the shortfall amortization base is established and are not redetermined in subsequent plan years to reflect any changes in the valuation date or changes in interest rates under section 430(h)(2) for those subsequent plan years.

(2) *Shortfall amortization base—(i) In general.* Unless the value of plan assets (as reduced to reflect the subtraction of certain funding balances as provided under § 1.430(f)–1(c)(2), but not below zero) is equal to or greater than the funding target for the plan year, a shortfall amortization base is established for the plan year equal to—

(A) The funding shortfall for the plan year; minus

(B) The amount attributable to future installments determined under paragraph (c)(2)(ii) of this section.

(ii) *Amount attributable to future installments.* The amount attributable to future installments is equal to the sum of the present values (determined in accordance with § 1.430(h)(2)–1(e) and (f) using the interest rates that apply for the current plan year) of—

(A) The shortfall amortization installments that have been determined for the plan year and any succeeding plan year with respect to the shortfall amortization bases for any plan year preceding the plan year; and

(B) The waiver amortization installments that have been determined for the plan year and any succeeding plan year with respect to the waiver amortization bases for any plan year preceding the plan year.

(iii) *Timing assumption for installments after change in valuation date.* For purposes of determining the present value in paragraph (c)(2)(ii) of this section, the shortfall amortization installments and waiver amortization installments are assumed to be paid on the valuation date for the current plan year and anniversaries thereof even if the valuation date for a subsequent plan year is not the same as the valuation date for the plan year for which a shortfall amortization base or waiver amortization base was established. For example, assume that a plan has a July 1 to June 30 plan year and a valuation date that is the first day of the plan year, and that the plan year for the plan is changed to the calendar year, so that the plan has a short plan year beginning July 1, 2017 and ending December 31, 2017 and a calendar plan year thereafter. In this case—

(A) For the July 1, 2017 actuarial valuation, the shortfall amortization payments with respect to shortfall amortization bases established for all prior plan years are assumed to be paid on July 1, 2017 and anniversaries thereof; and

(B) For the January 1, 2018 actuarial valuation, the shortfall amortization payments with respect to shortfall amortization bases established for all prior plan years are assumed to be paid on January 1, 2018 and anniversaries thereof.

(iv) *Transition rule.* See paragraph (h)(4) of this section for a transition rule under which only a portion of the funding target is taken into account in determining whether a shortfall amortization base is established under this paragraph (c)(2).

(3) *Election of funding relief for certain plans*—(i) *Funding relief under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010.* See section 430(c)(2)(D) and section 430(c)(7) for special rules that apply to determine the amount of shortfall amortization installments with respect to shortfall amortization bases established for plan years ending on or after October 10, 2009 and beginning before January 1, 2012, for which the relief under section 430(c)(2)(D) is elected.

(ii) *Funding relief related to eligible charity plans.* See section 104(d)(3)(B) through (F) of PPA '06, which reflects amendments made by section 103(b)(2) of the Cooperative and Small Employer Charity Pension Flexibility Act of 2014, Public Law 113–97 (128 Stat. 1137), for special rules that apply to determine the amount of shortfall amortization installments with respect to plan years beginning on or after January 1, 2014, in the case of an eligible charity plan for which the relief under section 104(d)(3)(A) of PPA '06 is elected.

(iii) *Election by commercial passenger airline under section 402(a)(2) of PPA '06.* If an election described in section 402(a)(2) of PPA '06 has been made for an eligible plan described in section 402(c)(1) of PPA '06, then the minimum required contribution for purposes of section 430 is determined under generally applicable rules, except that the shortfall amortization base for the first plan year for which section 430 applies to the plan is amortized over 10 years (rather than over 7 years as provided in paragraph (c)(1) of this section) in accordance with § 1.430(h)(2)–1(e) and (f) using the interest rates that apply for purposes of determining the target normal cost for the first plan year for which section 430 applies to the plan. In such a case, the shortfall amortization installments with respect to the shortfall amortization base for that plan year will continue to be included in determining the minimum required contribution for 10 years rather than 7 years. See also § 1.430(h)(2)–1(b)(6) for a special rule for determining the funding target in the case of a plan for which an election under section 402(a)(2) of PPA '06 has been made.

(d) *Waiver amortization installments*—(1) *In general.* For purposes of this section, the waiver amortization installments with respect to a waiver amortization base established for a plan year are the annual amounts necessary to amortize that waiver amortization base in level annual installments over the 5-year period beginning with the following plan year. See § 1.430(h)(2)–1(e) and (f)

for rules regarding interest rates used for determining waiver amortization installments and the date within each plan year on which the installments are assumed to be paid. The waiver amortization installments established with respect to a waiver amortization base are determined using the interest rates that apply for the plan year for which the waiver is granted (even though the first installment with respect to the waiver amortization base is not due until the subsequent plan year) and are not redetermined in subsequent plan years to reflect any changes in the valuation date or changes in interest rates under section 430(h)(2) for those subsequent plan years.

(2) *Waiver amortization base*—(i) *In general.* For purposes of this section, a waiver amortization base is established for each plan year for which a waiver of the minimum funding standard has been granted in accordance with section 412(c). The amount of the waiver amortization base is equal to the waived funding deficiency under section 412(c)(3) for the plan year.

(ii) *Transition rule.* See paragraph (h)(3) of this section for the treatment of funding waivers granted for plan years beginning before 2008.

(e) *Early deemed amortization upon attainment of funding target.* In any case in which the funding shortfall for a plan year is zero, for purposes of determining the minimum required contribution for that plan year and subsequent plan years—

(1) The shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to those bases) are reduced to zero; and

(2) The waiver amortization bases for all preceding plan years (and all waiver amortization installments determined with respect to those bases) are reduced to zero.

(f) *Definitions*—(1) *In general.* The definitions set forth in this paragraph (f) apply for purposes of this section.

(2) *Funding shortfall.* The term *funding shortfall* means the excess (if any) of—

(i) The funding target for a plan year; over

(ii) The value of plan assets for the plan year (as reduced to reflect the subtraction of the funding standard carryover balance and prefunding balance to the extent provided under § 1.430(f)–1(c), but not below zero).

(3) *Funding target.* The term *funding target* means the plan's funding target for a plan year determined under § 1.430(d)–1(b)(2), § 1.430(i)–1(c), or § 1.430(i)–1(e)(1), whichever applies to the plan for the plan year.

(4) *Target normal cost.* The term *target normal cost* means the plan's target normal cost for a plan year determined under § 1.430(d)–1(b)(1), § 1.430(i)–1(d), or § 1.430(i)–1(e)(2), whichever applies to the plan for the plan year.

(5) *Termination date*—(i) *Plans subject to Title IV of ERISA.* In the case of a plan subject to Title IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA), the termination date means the plan's termination date established under section 4048(a) of ERISA.

(ii) *Other plans*—(A) *In general.* In the case of a plan not subject to Title IV of ERISA, the termination date means the plan's termination date established by the plan administrator, provided that the termination date may be no earlier than the date on which all actions necessary to effect the plan termination (other than the distribution of plan assets) are taken.

(B) *Requirement for prompt distribution.* A plan is not treated as terminated on the applicable date described in paragraph (f)(5)(ii)(A) of this section if the assets are not distributed as soon as administratively feasible after that date. Whether distribution of plan assets is made as soon as administratively feasible is to be determined under all the relevant facts and circumstances. In general, distribution of plan assets is deemed to have been made as soon as administratively feasible to the extent that any delay in distribution was because of circumstances outside the control of the plan administrator. However, distribution of plan assets that was delayed merely for the purpose of obtaining a higher value than current market value is generally not deemed to have been made as soon as administratively feasible.

(C) *Presumption applicable to prompt distribution requirement.* Except as provided in paragraph (f)(5)(ii)(D) of this section, distribution of plan assets which is not completed within one year following the applicable date described in paragraph (f)(5)(ii)(A) of this section is presumed not to have been made as soon as administratively feasible.

(D) *Exception to prompt distribution presumption for obtaining determination letter from Commissioner.* A plan is not treated as failing to meet the requirement to distribute plan assets as soon as administratively feasible after the proposed termination date if the delay is attributable to the period of time necessary to obtain a determination letter from the Commissioner on the plan's qualified status upon its

termination, provided that the request for a determination letter is timely and the distribution of plan assets is made as soon as administratively feasible after the letter is obtained.

(6) *Transition funding shortfall*—(i) *In general.* The term *transition funding shortfall* means the excess, if any, of—

(A) The applicable percentage of the funding target for a plan year; over

(B) The value of plan assets for the plan year (as reduced to reflect the subtraction of the funding standard carryover balance and prefunding balance to the extent provided under § 1.430(f)–1(c), but not below zero).

(ii) *Applicable percentage.* For purposes of this paragraph (f)(6), the applicable percentage is determined in accordance with the following table:

Calendar year in which the plan year begins	Applicable percentage
2008 .....	92
2009 .....	94
2010 .....	96

(g) *Examples.* The following examples illustrate the rules of this section.

Unless otherwise indicated, these examples are based on the following assumptions: Section 430 applies to determine the minimum required contribution for plan years beginning on or after January 1, 2008; the plan year is the calendar year; the valuation date is January 1; the plan's prefunding balance and funding standard carryover balance are equal to \$0; the plan sponsor did not elect any funding relief under section 430(c)(2)(D) for any plan year; and the plan has not received any funding waivers for any relevant time periods.

*Example 1.* (i) Plan A has a funding target of \$2,500,000 and assets totaling \$1,800,000 as of January 1, 2016. For purposes of this example, the segment interest rates used for the January 1, 2016 valuation are assumed to be 5.26% for the first segment interest rate and 5.82% for the second segment interest rate. No shortfall or waiver amortization bases have been established for prior plan years.

(ii) A \$700,000 shortfall amortization base is established for 2016, which is equal to the \$2,500,000 funding target less \$1,800,000 of assets.

(iii) With respect to the new shortfall amortization base of \$700,000, there is a shortfall amortization installment of \$116,852 (which is the amount necessary to amortize the \$700,000 shortfall amortization base over 7 years) for each year from 2016 through 2022. The amount of this shortfall amortization installment is determined by discounting the first five installments using the first segment interest rate of 5.26%, and by discounting the sixth and seventh installments using the second segment rate of 5.82%.

*Example 2.* (i) The facts are the same as in *Example 1*, except that the plan was granted a funding waiver for 2014, resulting in five annual waiver amortization installments of \$70,000 each, beginning with the 2015 plan year.

(ii) As of January 1, 2016, the present value of the remaining waiver amortization installments is \$259,702, which is determined by discounting the remaining four waiver amortization installments of \$70,000 each to January 1, 2016, using the first segment rate of 5.26%. See paragraph (c)(2)(ii) of this section.

(iii) A \$440,298 shortfall amortization base is established for 2016, which is equal to the \$2,500,000 funding target, less \$1,800,000 of assets, less \$259,702 (which is the present value of the remaining four waiver amortization installments).

(iv) With respect to this shortfall amortization base of \$440,298, there is a shortfall amortization installment of \$73,500 (which is equal to the \$440,298 shortfall amortization base amortized over 7 years) for each year from 2016 through 2022.

*Example 3.* (i) The facts are the same as in *Example 2*. Plan A has a \$100,000 target normal cost for the 2016 plan year and was granted a funding waiver for 2016 to the largest extent permitted under section 412(c).

(ii) If the funding waiver for 2016 had not been granted, the minimum required contribution for 2016 would have been \$243,500. This is equal to the \$100,000 target normal cost, plus the \$70,000 waiver amortization installment from the 2014 waiver, plus the \$73,500 January 1, 2016 shortfall amortization installment.

(iii) In accordance with section 412(c)(1)(C), the portion of the minimum required contribution attributable to the amortization of the 2014 funding waiver cannot be waived. Therefore, the maximum amount of the January 1, 2016 minimum required contribution that can be waived is \$173,500.

(iv) In accordance with paragraph (d) of this section, a waiver amortization base of \$173,500 is established as of January 1, 2016 to be amortized over 5 years beginning with the 2017 plan year. Although the waiver amortization installments for the 2016 funding waiver are not included in the minimum required contribution until 2017, the amount of those installments is determined based on the interest rates used for the 2016 plan year.

(v) The waiver amortization installments with respect to the 2016 funding waiver are calculated using the first segment interest rate of 5.26% for the first four installments (calculated as of January 1, 2017 through January 1, 2020) and the second segment interest rate of 5.82% for the final installment payable as of January 1, 2021. Accordingly, the waiver amortization installments with respect to the 2016 funding waiver are \$40,554 each, payable beginning January 1, 2017.

*Example 4.* (i) The facts are the same as in *Example 3*. As of January 1, 2017, Plan A has a funding target of \$2,750,000 and assets totaling \$1,900,000. For purposes of this example, the first segment rate used for the 2017 valuation is assumed to be 5.50%, the

second segment rate is assumed to be 6.00%, and the third segment rate is assumed to be 6.50%.

(ii) As of January 1, 2017, the present value of the remaining three waiver amortization installments with respect to the 2014 waiver is \$199,242, which is determined using the first segment rate of 5.50%.

(iii) As of January 1, 2017, the present value of the remaining five waiver amortization installments with respect to the 2016 waiver is \$182,701, which is determined using the first segment rate of 5.50%.

(iv) As of January 1, 2017, the present value of the remaining six shortfall amortization installments with respect to the 2016 shortfall amortization base is \$386,052, which is determined using the first segment rate of 5.50% for the first five installments and the second segment rate of 6.00% for the sixth installment.

(v) A shortfall amortization base of \$82,005 is established for 2017, which is equal to the \$2,750,000 funding target, reduced by the sum of \$1,900,000 of assets, \$199,242 (the present value of the remaining waiver amortization installments with respect to the 2014 waiver), \$182,701 (the present value of the remaining waiver amortization installments with respect to the 2016 waiver), and \$386,052 (the present value of the remaining installments with respect to the 2016 shortfall amortization base).

(vi) With respect to this shortfall amortization base of \$82,005, there is a shortfall amortization installment of \$13,766 (which is the amount necessary to amortize the \$82,005 shortfall amortization base over 7 years) for each year from 2017 through 2023.

*Example 5.* (i) As of January 1, 2016, a plan has a funding target of \$2,500,000, a target normal cost of \$175,000, and assets totaling \$2,450,000. As of January 1, 2016, there are six remaining installments of \$60,000 each with respect to the only shortfall amortization base for the plan, which was established for the 2015 plan year. Also as of January 1, 2016, there are five remaining installments of \$25,000 each with respect to the only waiver amortization base for the plan, which was established for the 2015 plan year. For purposes of this example, the segment interest rates used for the January 1, 2016, valuation are assumed to be 5.26% for the first segment interest rate and 5.82% for the second segment interest rate.

(ii) A shortfall amortization base of –\$379,812 is established for 2016, which is equal to the \$2,500,000 funding target, reduced by the sum of \$2,450,000 of assets, \$316,696 (the present value of the remaining installments with respect to the 2015 shortfall amortization base) and \$113,116 (the present value of the remaining installments with respect to the 2015 funding waiver).

(iii) The shortfall amortization installment for the 2016 shortfall amortization base is –\$63,403, which is the amount necessary to amortize the –\$379,812 shortfall amortization base over seven years. The first five shortfall amortization installments are discounted using the first segment rate of 5.26% and the sixth and seventh shortfall

amortization installments are discounted using the second segment rate of 5.82%.

(iv) The sum of the shortfall amortization installments is equal to  $-\$3,403$  ( $\$60,000$  plus  $-\$63,403$ ). However, in accordance with paragraph (b)(2)(i)(B) of this section, for purposes of determining the minimum required contribution for a plan year, the total of the shortfall amortization installments for a plan year is limited so that it is not less than zero.

(v) The minimum required contribution as of January 1, 2016 is  $\$200,000$ . This is equal to the sum of the target normal cost of  $\$175,000$ , the total of the shortfall amortization installments (as limited) of  $\$0$ , and the waiver amortization installment of  $\$25,000$ .

(vi) The shortfall amortization bases are not set to zero as of January 1, 2016, even though the sum of the shortfall amortization installments was set to zero for the 2016 plan year. Therefore, as of January 1, 2017 (unless the plan has a funding shortfall of zero as of that date), the shortfall amortization base established as of January 1, 2015 will have five remaining installments of  $\$60,000$  each and the shortfall amortization base established as of January 1, 2016 will have six remaining installments of  $-\$63,403$  each. Similarly, the waiver amortization base will have four remaining installments of  $\$25,000$  each.

*Example 6.* (i) The facts are the same as in *Example 5*, except that Plan A has assets totaling  $\$2,550,000$  as of January 1, 2016.

(ii) Because the assets of  $\$2,550,000$  exceed the funding target of  $\$2,500,000$ , no new shortfall amortization base is established under paragraph (c)(2) of this section.

(iii) Furthermore, under paragraph (e) of this section, all shortfall amortization bases and waiver amortization bases (and all shortfall amortization installments and waiver amortization installments associated with those bases) are reduced to zero as of January 1, 2016.

(iv) The minimum required contribution for the 2016 plan year is  $\$125,000$ , which is equal to the  $\$175,000$  target normal cost less the excess of the assets over the funding target ( $\$2,550,000$  minus  $\$2,500,000$ ).

*Example 7.* (i) The actuarial valuation for Plan B as of January 1, 2016, based on a 12-month plan year, results in a target normal cost of  $\$110,000$  and a shortfall amortization installment for 2016 of  $\$185,000$ , attributable to a shortfall amortization base established January 1, 2016. There are no other shortfall or waiver amortization bases for Plan B as of January 1, 2016. The plan year for Plan B is changed to April 1 through March 31, effective April 1, 2016, resulting in a short plan year beginning January 1, 2016 and ending March 31, 2016.

(ii) The target normal cost for the short plan year is redetermined in order to reflect the fact that there is a short plan year. An actuarial valuation shows that the target normal cost is  $\$25,000$  for the short plan year based on the accruals for that short plan year (determined in accordance with 29 CFR 2530.204-2(e)).

(iii) In accordance with paragraph (b)(2)(ii)(A) of this section, the shortfall amortization base is prorated to reflect the

three months covered by the short plan year. Accordingly, the shortfall amortization installment for the short plan year is  $\$46,250$  (that is,  $\$185,000$  multiplied by  $3/12$ ).

(iv) The total minimum required contribution for the short plan year is  $\$71,250$  (that is, the sum of the target normal cost of  $\$25,000$  plus the shortfall amortization installment of  $\$46,250$ ).

*Example 8.* (i) The facts are the same as in *Example 7*. For purposes of this example, assume that the first segment rate for the plan year beginning April 1, 2016 is 5.30%, and the second segment rate is 5.80%.

(ii) The present value of the remaining shortfall amortization installments with respect to the January 1, 2016 shortfall amortization base is equal to  $\$1,074,937$ . This is determined by discounting the remaining installments (6 full-year installments of  $\$185,000$  each due April 1, 2016 through April 1, 2021, and a final 9-month installment of  $\$138,750$  due April 1, 2022) using the first segment rate of 5.30% for the first five installments and the second segment rate of 5.80% for the remaining installments.

*Example 9.* (i) As of January 1, 2016, Plan C has a funding target of  $\$1,100,000$ , a target normal cost of  $\$20,000$ , and an actuarial value of assets of  $\$1,150,000$ . Prior to establishing any shortfall amortization base for 2016, the total of the shortfall amortization installments for 2016 is  $\$30,000$  and the present value of the remaining shortfall amortization installments (including installments for the 2016 plan year) is  $\$150,000$ . Based on the segment rates used for the 2016 plan year, the 7-year amortization factor for any shortfall amortization base established for 2016 is 5.9887. The funding standard carryover balance as of January 1, 2016 is  $\$40,000$  and the prefunding balance is  $\$60,000$ . The plan sponsor intends to use both balances to offset the minimum required contribution for 2016.

(ii) In accordance with sections 430(c) and 430(f)(4)(A), the test to determine whether Plan C is exempt from establishing a new shortfall amortization base for 2016 is initially applied based on assets reduced by the prefunding balance, because the plan sponsor intends to use the prefunding balance to offset the minimum required contribution. Therefore, the actuarial value of assets used for this purpose is  $\$1,150,000$  minus  $\$60,000$ , or  $\$1,090,000$ . This is less than the funding target of  $\$1,100,000$ , so a new shortfall amortization base is established for 2016.

(iii) The funding shortfall as of January 1, 2016 is the difference between the funding target and the actuarial value of assets, where the actuarial value of assets is reduced by both the funding standard carryover balance and the prefunding balance. Accordingly, the value of assets used for this calculation is  $\$1,050,000$  (that is,  $\$1,150,000 - \$40,000 - \$60,000$ ), and the funding shortfall is  $\$50,000$  (that is,  $\$1,100,000 - \$1,050,000$ ).

(iv) The shortfall amortization base established as of January 1, 2016 is the difference between the funding shortfall of  $\$50,000$  and the  $\$150,000$  present value of remaining shortfall amortization installments for bases established in prior years (that is,

$-\$100,000$ ). The shortfall amortization installment attributable to this base is  $-\$100,000 + 5.9887$ , or  $-\$16,698$ .

(v) The preliminary minimum required contribution is the sum of the target normal cost, the shortfall amortization installments for bases established prior to 2016, and the shortfall amortization installment for the new base established for 2016, or  $\$33,302$  (that is,  $\$20,000 + \$30,000 - \$16,698$ ). However, this amount is less than the funding standard carryover balance. Because section 430(f)(3)(B) and  $\S 1.430(f)-1(d)(2)$  require that the funding standard carryover balance be used before using the prefunding balance, this means that the full minimum required contribution will be offset without using the prefunding balance. Accordingly, the plan sponsor will not be electing to use any portion of the prefunding balance to offset the minimum required contribution for 2016.

(vi) Because the plan sponsor is not using the prefunding balance to offset the minimum required contribution, the test to determine whether Plan C is exempt from establishing a new shortfall amortization base for 2016 must be applied without subtracting the prefunding balance from the actuarial value of plan assets. Because the full actuarial value of assets of  $\$1,150,000$  is higher than the funding target of  $\$1,100,000$ , the plan is exempt from establishing a new shortfall amortization base for 2016. However, the actuarial value of plan assets is reduced by both balances when determining the funding shortfall, which is used to determine whether the shortfall amortization bases established prior to 2016 are reduced to zero. Because the funding shortfall is greater than zero as of January 1, 2016 (as calculated in paragraph (iii) of this *Example 9*), the shortfall amortization bases established before the 2016 plan year are retained.

(vii) The minimum required contribution for 2016 is the sum of the target normal cost and the shortfall amortization installments, or  $\$50,000$  ( $\$20,000 + \$30,000$ ). Because this is larger than the funding standard account carryover balance of  $\$40,000$ , the plan sponsor can only offset  $\$40,000$  of the minimum required contribution and must contribute  $\$10,000$  to meet the minimum funding requirements. The prefunding balance cannot be used to offset the remaining  $\$10,000$  minimum funding requirement because doing so would require recalculating the minimum required contribution as illustrated in paragraphs (ii) through (v) of this *Example 9* and the minimum required contribution would be too small to use the prefunding balance.

*Example 10.* (i) The facts are the same as in *Example 9*, except that, in lieu of making the cash contribution required in *Example 9*, the plan sponsor elects to reduce the funding standard carryover balance by  $\$9,000$ .

(ii) Because the plan sponsor intends to use the prefunding balance to offset the minimum required contribution, the test to determine whether Plan C is exempt from establishing a shortfall amortization base for 2016 is based on the actuarial value of assets reduced by the prefunding balance. The actuarial value of assets reduced for the prefunding balance ( $\$1,090,000$ ) is less than

the funding target (\$1,100,000), so a new shortfall amortization base is established for 2016.

(iii) The remaining funding standard carryover balance is \$31,000 (that is, \$40,000 minus the elected reduction of \$9,000). The funding shortfall as of January 1, 2016 is the difference between the funding target and the actuarial value of assets, where the actuarial value of assets is reduced by both the remaining funding standard carryover balance and the prefunding balance. Accordingly, the value of assets used for this calculation is \$1,059,000 (that is, \$1,150,000 – \$31,000 – \$60,000), and the funding shortfall is \$41,000 (that is, \$1,100,000 – \$1,059,000).

(iv) The shortfall amortization base established as of January 1, 2016 is the difference between the funding shortfall of \$41,000 and the \$150,000 present value of remaining shortfall amortization installments for bases established in prior years (that is, –\$109,000). The shortfall amortization installment attributable to this base is –\$109,000 ÷ 5.9887, or –\$18,201.

(v) The minimum required contribution is the sum of the target normal cost, the shortfall amortization installments for bases established prior to 2016, and the shortfall amortization installment for the new base established for 2016, or \$31,799 (that is, \$20,000 + \$30,000 – \$18,201). This amount is larger than the remaining funding standard carryover balance of \$31,000. Therefore, the plan sponsor can offset the full minimum required contribution using the remaining \$31,000 of the funding standard carryover balance and \$799 of the prefunding balance. Because a portion of the prefunding balance is used to offset the minimum required contribution, the test under section 430(c)(5) is applied by subtracting the prefunding balance from the actuarial value of assets as illustrated in paragraph (ii) of this *Example 10*, and no further adjustments are required to the minimum required contribution.

*Example 11.* (i) An amendment to Plan D was adopted during 2015, scheduled to be effective February 1, 2016. The actuary determines that, as of January 1, 2016, the amendment would increase Plan D's funding target by \$300,000, if the amendment is permitted to take effect. As of February 1, 2016, prior to taking into account the amendment, the presumed adjusted funding target attainment percentage (AFTAP) for Plan D is less than 80% but not less than 60%. Plan D's sponsor makes a section 436 contribution (under section 436(c)(2)(A)) of \$300,000, adjusted for interest as required under § 1.436–1(f)(2)(i)(A)(2), to allow the amendment to take effect.

(ii) Because the plan amendment was adopted prior to the valuation date for 2016 and becomes effective during the 2016 plan year, under § 1.430(d)–1(d)(1)(i), the plan amendment must be taken into account in the funding target as of January 1, 2016. However, because the section 436 contribution is made for the 2016 plan year, it is not included in Plan D's actuarial value of assets as of January 1, 2016.

(iii) The funding shortfall as of January 1, 2016 is calculated as the amount of the funding target (taking into account the plan

amendment) minus the actuarial value of assets, where the value of assets is reduced by any funding standard carryover balance and prefunding balance as of that date. Because the funding target takes into account the increase of \$300,000 attributable to the plan amendment but the actuarial value of assets does not include the section 436 contribution, the funding shortfall is \$300,000 higher than it would have been had the plan amendment not been allowed to take effect.

(iv) The funding shortfall as of January 1, 2017 will reflect both the cost of the plan amendment and the value of the section 436 contribution made during 2016. Therefore, in the absence of any other factors affecting the shortfall amortization base, it is expected that a negative shortfall amortization base will be established as of January 1, 2017 as a result of the section 436 contribution made during 2016.

*Example 12.* (i) Plan E has a calendar year plan year and in 2015 had 97 participants. Plan E has a valuation date of July 1. A shortfall amortization base of \$300,000 was established with the July 1, 2016 valuation. The plan had no other shortfall or waiver amortization bases. For purposes of this example, assume that the first segment rate for the 2016 plan year is 5.50% and the second segment rate is 6.00%. Accordingly, the shortfall amortization installments are determined as seven annual installments of \$50,358 each, payable as of each July 1 beginning July 1, 2016.

(ii) Sometime after January 1, 2016, the number of participants in Plan E increased to over 100 during 2016, and therefore the valuation date was changed to January 1 effective with the 2017 plan year. As of January 1, 2017, Plan E has a funding target of \$2,000,000, plan assets of \$1,600,000, and a zero funding standard carryover balance and prefunding balance. For purposes of this example, assume that as of January 1, 2017, the first segment rate is 5.75% and the second segment rate is 6.25%.

(iii) In accordance with paragraph (c)(1) of this section, the amount of the shortfall amortization installments for the base established July 1, 2016 is not adjusted for the change in valuation date. As of January 1, 2017, the outstanding balance of the shortfall amortization base established as of July 1, 2016 is \$263,047, determined as the present value of the remaining shortfall amortization installments, calculated as if the shortfall amortization installments of \$50,358 are payable annually on January 1 instead of July 1.

(iv) A new shortfall amortization base of \$136,953 is established effective January 1, 2017 equal to the difference between the funding shortfall of \$400,000 and the outstanding balance of the shortfall amortization base established as of July 1, 2016 (\$263,047). The shortfall amortization installment for this base is calculated as \$23,139.

(v) The total shortfall amortization installment for the 2017 plan year is \$73,497, equal to the sum of the installments for the shortfall amortization base established July 1, 2016 (\$50,358) and the base established January 1, 2017 (\$23,139). The total

amortization installment is determined as an amount payable as of January 1 regardless of the fact that the installment for the first base was initially calculated as an amount payable on July 1.

*Example 13.* (i) A funding waiver of \$300,000 was granted for Plan F for the 2006 plan year. The valuation interest rate for the January 1, 2007 actuarial valuation is 8.50% (which exceeds 150% of the applicable federal mid-term rate). The first segment rate for the January 1, 2008 valuation of Plan F is 5.26%.

(ii) The waiver amortization charge for the plan year beginning January 1, 2007 is \$70,166, which is equal to the \$300,000 funding waiver base amortized over 5 years at the valuation interest rate of 8.50%.

(iii) The annual waiver amortization installment for 2008 and later years is equal to the amortization charge for the 2007 plan year, or \$70,166. As of January 1, 2008, the present value of the remaining waiver amortization installments is \$260,318, which is determined by discounting the remaining four waiver amortization installments of \$70,166 to January 1, 2008, using the first segment rate of 5.26%.

*Example 14.* (i) As of January 1, 2008, Plan G has a funding target of \$2,500,000, plan assets of \$1,800,000 and a funding standard carryover balance of \$100,000. Plan G has not received a funding waiver for any past plan year. Plan G was in existence during 2007, and in the 2007 plan year was not subject to the deficit reduction contribution in section 412(l) of the Code as it existed prior to PPA '06.

(ii) Plan G qualifies for the transition rule in section 430(c)(5) of the Code (as in effect prior to amendments made by the Tax Increase Prevention Act of 2014, Public Law 113–295, 128 Stat. 4010) and paragraph (h)(4) of this section. Because Plan G's assets are less than 92% of its funding target, a shortfall amortization base must be established as of January 1, 2008.

(iii) Under the transition rule in paragraph (h)(4) of this section, the shortfall amortization base for 2008 is determined using only 92% of Plan G's funding target, or \$2,300,000. For purposes of this calculation, the value of assets is reduced by the funding standard carryover balance for a net asset figure of \$1,700,000 (that is, \$1,800,000 minus \$100,000). Accordingly, the shortfall amortization base as of January 1, 2008 is equal to \$600,000.

(h) *Effective/applicability dates and transition rules—(1) Statutory effective date/applicability date.* Section 430 generally applies to plan years beginning on or after January 1, 2008. The applicability of section 430 for purposes of determining the minimum required contribution is delayed for certain plans in accordance with sections 104 through 106 of PPA '06.

(2) *Effective date/applicability date of regulations.* This section applies to plan years beginning on or after January 1, 2016. For plan years beginning before January 1, 2016, plans are permitted to rely on the provisions set forth in this

section for purposes of satisfying the requirements of section 430(a).

(3) *Treatment of pre-PPA '06 funding waivers.* In the case of a plan that has received a funding waiver under section 412 for a plan year for which section 430 was not yet effective with respect to the plan for purposes of determining the minimum required contribution, the waiver is treated as giving rise to a waiver amortization base and the amortization charges with respect to that funding waiver are treated as waiver amortization installments as described in paragraph (d) of this section. With respect to such a pre-existing funding waiver, the amount of the waiver amortization installment is equal to the amortization charge with respect to that waiver determined using the interest rate or rates that applied for the pre-effective plan year.

(4) *Transition rule for determining shortfall amortization base—(i) In general.* Except as provided in paragraph (h)(4)(ii) of this section, in the case of plan years beginning after December 31, 2007 and before January 1, 2011, for purposes of applying the rules of paragraph (c)(2) of this section—

(A) The applicable percentage (as described in paragraph (f)(6)(ii) of this section) of the funding target is substituted for the funding target; and

(B) The transition funding shortfall is substituted for the funding shortfall.

(ii) *Transition rule not available for new plans or deficit reduction plans.* The transition rule of paragraph (h)(4)(i) of this section does not apply to a plan—

(A) That was not in effect for a plan year beginning in 2007; or

(B) That was subject to section 412(l) for the last plan year beginning during 2007, determined after the application of sections 412(l)(6) and (9) (regardless of whether the deficit reduction contribution for that plan year was equal to zero).

(5) *Pre-effective plan year—(i) In general.* For purposes of this section, the pre-effective plan year for a plan is the last plan year beginning before section 430 applies to the plan to determine the minimum required contribution. Thus, except for plans with a delayed effective date as described in paragraph (h)(1) of this section, the pre-effective plan year for a plan is the last plan year beginning before January 1, 2008.

(ii) *Eligible charity plans.* An eligible charity plan (as described in section 104(d) of PPA '06, which reflects amendments made by section 202(b)(2) of PRA 2010, Public Law 111–192, 124 Stat. 1280 (June 25, 2010)) that applies section 430 to the first plan year

beginning on or after January 1, 2008 has a pre-effective plan year that is the last plan year beginning before January 1, 2008 and a second pre-effective plan year that is the last plan year that precedes the plan year for which section 430 again applies to the plan. (Section 430 does not apply to such a plan for plan years beginning on or after January 1, 2009 and before January 1, 2017, unless the plan ceases to be an eligible charity plan, or an election under section 104(d)(2) or 104(d)(4) of PPA '06 is made for the plan not to be treated as an eligible charity plan, as of an earlier date.)

■ **Par. 3.** Section 1.430(f)–1 is amended as follows:

■ 1. The paragraph heading for paragraph (b)(5) is removed.

■ 2. Paragraph (b)(5)(i) is redesignated as paragraph (b)(5).

■ 3. The paragraph heading of newly redesignated paragraph (b)(5) is revised to read “Special rule for quarterly contributions”.

■ 4. The text of the newly redesignated paragraph (b)(5) is amended by removing the words “that are due on or after the valuation date for the plan year for which they are due” from the first sentence.

■ 5. Paragraph (b)(5)(ii) is removed.

■ 6. The paragraph heading for paragraph (d)(1)(i)(B) is removed.

■ 7. Paragraph (d)(1)(i)(B)(1) is redesignated as paragraph (d)(1)(i)(B).

■ 8. The paragraph heading of the newly redesignated paragraph (d)(1)(i)(B) is revised to read “Special rule for late election with respect to quarterly contributions.”

■ 9. The text of the newly redesignated paragraph (d)(1)(i)(B) is amended by removing the words “that is due on or after the valuation date” from the first sentence; removing the word “discounted” and adding in its place “adjusted” in the first sentence; and removing the phrase “further discounted” and adding in its place “further adjusted” in the second sentence.

■ 10. Paragraph (d)(1)(i)(B)(2) is removed.

■ 11. Paragraph (f)(1)(i) is amended by removing the phrase “as provided in paragraph (f)(1)(ii) of this section” and adding in its place “as provided in this paragraph (f)(1)” in two places.

■ 12. Paragraph (f)(1)(iii) is added.

■ 13. Paragraph (f)(2)(i) is amended by removing the phrase “as described in section 430(j)(1)” and adding in its place “as described in section 430(j)(1), or such later date as prescribed in guidance published in the Internal Revenue Bulletin”.

■ 14. Paragraph (f)(3)(i) is amended by removing the words “Except as otherwise provided in this paragraph (f)(3)” and adding in their place the words “Except as otherwise provided in this paragraph (f)(3) or in guidance published in the Internal Revenue Bulletin”.

The revisions and additions read as follows:

**§ 1.430(f)–1 Effect of prefunding balance and funding standard carryover balance.**

\* \* \* \* \*

(f) \* \* \* (1) \* \* \*

(iii) *Standing election to satisfy installments through use of funding balances—(A) In general.* A plan sponsor may provide a standing election in writing to the plan’s enrolled actuary to use (to the extent available) the funding standard carryover balance and the prefunding balance to satisfy any otherwise unpaid portion of a required installment under section 430(j)(3). Any use pursuant to a standing election under this paragraph (f)(1)(iii) is deemed to occur on the later of the last date for making the required installment and the date the standing election is provided to the enrolled actuary.

(B) *Otherwise unpaid portion of a required installment.* For purposes of paragraph (f)(1)(iii)(A) of this section, the otherwise unpaid portion of a required installment equals the amount necessary to satisfy the required installment rules under section 430(j) based on the installment amounts determined as if the required annual payment were the amount described in § 1.430(j)–1(c)(5)(ii)(B). Thus, the amount of the prefunding and funding standard carryover balances used under a standing election is the amount that is needed to satisfy an installment in the amount of 25 percent of the minimum required contribution for the prior plan year, plus installments in that amount with respect to all earlier required installment due dates for the plan year, taking into account prior contributions for the plan year and prior elections to use the funding standard carryover balance and prefunding balance for the plan year.

(C) *Duration of standing election.* Generally, any standing election under this paragraph (f)(1)(iii) remains in effect for the plan with respect to the enrolled actuary named in the election, unless either of the events described in paragraph (f)(1)(ii)(A) or (B) of this section occurs with respect to the standing election. However, a plan sponsor may suspend application of a standing election for the remaining installments with respect to a plan year by providing, in writing to the plan’s

enrolled actuary, notice that the standing election is not to apply for the remainder of the plan year. In addition, once the current year's minimum required contribution has been determined, a plan sponsor may modify application of a standing election for the remaining installments with respect to a plan year by providing, in writing to the plan's enrolled actuary, a replacement formula election to use the funding standard carryover balance and prefunding balance (to the extent available) so that the otherwise unpaid portions of the remaining required installments satisfy the required installment rules under section 430(j), taking into account the determination of the current year's minimum required contribution pursuant to § 1.430(j)-1(c)(5)(ii)(A), prior contributions for the plan year and prior elections to use the prefunding and funding standard carryover balances.

\* \* \* \* \*

■ **Par. 4.** Section 1.430(h)(2)-1(b)(2) is revised to read as follows:

**§ 1.430(h)(2)-1 Interest rates used to determine present value.**

\* \* \* \* \*

(b) \* \* \*

(2) *Benefits payable within 5 years—*  
(i) *In general.* In the case of benefits expected to be payable during the 5-year period beginning on the valuation date for the plan year, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the first segment rate with respect to the applicable month, as described in paragraph (c)(2)(i) of this section.

(ii) *Special rule for plan years beginning before January 1, 2014.* With respect to a plan year beginning before January 1, 2014, for a plan with a valuation date other than the first day of the plan year, the 5-year period beginning on the first day of the plan year is permitted to be used in lieu of the 5-year period beginning on the valuation date for the plan year under paragraph (b)(2)(i) of this section.

\* \* \* \* \*

■ **Par. 5.** Section 1.430(j)-1 is added to read as follows:

**§ 1.430(j)-1 Payment of minimum required contributions.**

(a) *In general—*(1) *Overview.* This section provides rules related to the payment of minimum required contributions, including the payment of required installments. Section 430(j) and this section apply to single-employer defined benefit plans

(including multiple employer plans as defined in section 413(c)) but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section describes the general timing requirement for minimum required contributions. Paragraph (c) of this section describes the accelerated required installment schedule for plans with a funding shortfall in the preceding plan year. Paragraph (d) of this section provides rules regarding liquidity requirements. Paragraph (e) of this section provides definitions. Paragraph (f) of this section provides examples that illustrate the rules of this section. Paragraph (g) of this section sets forth effective/applicability dates and transition rules.

(2) *Special rules for multiple employer plans—*(i) *In general.* In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, for example, required installments are determined separately for each employer under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(ii) *CSEC plans.* A CSEC plan (that is, a plan that fits within the definition of a CSEC plan in section 414(y) for plan years beginning on or after January 1, 2014 and for which the election under section 414(y)(3)(A) has not been made) is not subject to the rules of section 430. See section 433 for the minimum funding rules that apply to CSEC plans.

(3) *Applicability of section 430(j) to plans of commercial passenger airlines—*(i) *In general.* Except as otherwise provided in this section, the rules of section 430(j) and this section apply to a plan for which an election described in section 402 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780 (2006)), as amended (PPA '06), has been made in the same manner as those rules apply to any other plan subject to section 430.

(ii) *Special rules for plans for which election was made pursuant to section 402(a)(1) of PPA '06.* For purposes of applying the rules of section 430(j) and this section to a plan with respect to which the election under section 402(a)(1) of PPA '06 has been made, the effective interest rate for the plan is deemed to be 8.85 percent during the

period for which the election applies. In addition, see paragraph (e)(4)(ii) of this section for a special determination of the funding shortfall for a plan for which the election in section 402(a)(1) of PPA '06 has been made.

(b) *General timing requirement for minimum required contributions—*(1) *Earliest date for contributions.* A payment made before the first day of the plan year cannot be applied toward the minimum required contribution under section 430 for that plan year.

(2) *Deadline for contributions.* The deadline for any payment of any minimum required contribution for a plan year is 8½ months after the close of the plan year. See section 4971 and the regulations thereunder regarding an excise tax that applies with respect to minimum required contributions not paid by this deadline. For additional rules that may apply in the case of a failure to pay minimum required contributions by this deadline, see also section 430(k) of the Code and sections 101(d) and 4043 of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

(3) *Allocation of contribution to a plan year—*(i) *Plans with unpaid minimum required contributions that have not been corrected.* If a plan has unpaid minimum required contributions within the meaning of § 54.4971(c)-1(c) of this chapter that have not yet been corrected within the meaning of § 54.4971(c)-1(d)(2) of this chapter at the time a contribution is made, then the contribution is treated as a late contribution for the earliest plan year for which there is an unpaid minimum required contribution (to the extent necessary to correct that unpaid minimum required contribution). To the extent the contribution exceeds the amount necessary to correct the earlier unpaid minimum required contribution, the excess is treated as a late contribution for the next earliest plan year for which there is an unpaid minimum required contribution (to the extent necessary to correct that next earliest unpaid minimum required contribution). The allocation of the contribution under the preceding sentence is repeated until all unpaid minimum required contributions have been corrected, or until the entire contribution is allocated, whichever comes first.

(ii) *Plans without unpaid minimum required contributions.* If a contribution is made during the current plan year but before the deadline under paragraph (b)(2) of this section for contributions for a prior plan year, and the plan has no unpaid minimum required contribution for any plan year at the

time the contribution is made, then the contribution may be designated as a contribution for either that prior plan year or the current plan year. Similarly, if a contribution made during the current plan year but before the deadline under paragraph (b)(2) of this section for contributions for a prior plan year is more than enough to correct a plan's unpaid minimum required contributions for all plan years, the portion of a contribution that was not used to correct unpaid minimum required contributions may be designated as a contribution for either that prior plan year or the current plan year.

(iii) *Method of allocating contributions—(A) Reporting for contributions to correct unpaid minimum required contributions.* The allocation of a contribution under the rules of paragraph (b)(3)(i) of this section to correct unpaid minimum required contributions is automatic and must be shown on the actuarial report (Schedule SB, "Single-Employer Defined Benefit Plan Actuarial Information" of Form 5500, "Annual Return/Report of Employee Benefit Plan") for the earliest plan year with respect to which, as of the date of the contribution, the deadline for making contributions under paragraph (b)(2) of this section has not passed. See § 1.430(g)-1(d)(1) for the rules for determining the plan year for which these contributions are taken into account in determining the value of plan assets.

(B) *Designation of plan year if no unpaid minimum contribution.* In the case of a contribution described in paragraph (b)(3)(ii) of this section, the designation is established by the completion (and filing, if required) of the actuarial report (Schedule SB, "Single-Employer Defined Benefit Plan Actuarial Information" of Form 5500, "Annual Return/Report of Employee Benefit Plan") for the plan year for which the contribution is designated and cannot be changed after the actuarial report that reflects the contribution is completed (and filed, if required) except as provided in guidance published in the Internal Revenue Bulletin. Thus, a contribution that has been designated for a plan year on an actuarial report pursuant to this paragraph (b)(3)(iii)(B) generally cannot be redesignated as a contribution for either an earlier or later plan year.

(4) *Adjustment for interest—(i) In general.* Except as provided in this paragraph (b)(4), any payment toward the minimum required contribution under section 430 for a plan year that is paid on a date other than the

valuation date for that plan year is adjusted for interest for the period between the valuation date and the payment date, at the plan's effective interest rate for that plan year determined pursuant to § 1.430(h)(2)-1(f)(1). The direction of the adjustment depends on whether the contribution is paid before or after the valuation date for the plan year. If the contribution is paid after the valuation date for the plan year, the contribution is discounted to the valuation date using the plan's effective interest rate. By contrast, if the contribution is paid before the valuation date for the plan year (which could only occur in the case of a small plan described in section 430(g)(2)(B)), the contribution is increased for interest using the plan's effective interest rate.

(ii) *Interest adjustment for late quarterly installments.* In the case of a plan that must make required installments under the rules of paragraph (c) of this section, to the extent a contribution for a plan year constitutes a late required installment, the adjustment for interest for the period between the valuation date and the payment date is made in two steps. In the first step, the portion of the contribution that constitutes a late required installment is adjusted for interest from the date of the contribution to the due date for the installment by discounting it using the plan's effective interest rate for that plan year determined pursuant to § 1.430(h)(2)-1(f)(1) plus 5 percentage points. In the second step, this discounted amount is treated as if it were contributed on the installment due date for purposes of the interest adjustment under paragraph (b)(4)(i) of this section. However, a contribution made toward the unpaid liquidity amount (as defined in paragraph (d)(3) of this section) that is made before the close of the quarter in which it is due is adjusted under paragraph (b)(4)(iii) of this section.

(iii) *Interest adjustment for unpaid liquidity amounts.* In the case of a plan that is subject to the liquidity requirement rules of paragraph (d) of this section, to the extent a contribution made during a quarter constitutes a payment of the unpaid liquidity amount for that quarter as described in paragraph (d)(3) of this section, the adjustment for interest for the period between the valuation date and the payment date is made in two steps. In the first step, the portion of the contribution that constitutes a payment of the unpaid liquidity amount is increased for interest from the date of the contribution to the last day of the quarter, at the plan's effective interest

rate for that plan year determined pursuant to § 1.430(h)(2)-1(f)(1). In the second step, this adjusted amount is treated as if it were contributed on the last day of that quarter for purposes of the interest adjustment for late required installments under the rules of paragraph (b)(4)(ii) of this section. See paragraph (d)(3)(iv)(B) of this section for an increase to the minimum required contribution that gives effect to this interest adjustment for unpaid liquidity amounts in the event a portion of the required installment is no longer treated as unpaid after the close of the quarter under paragraph (d)(3)(iv)(A) of this section.

(c) *Accelerated quarterly installments required for underfunded plans—(1) Plans subject to quarterly installment requirement.* The plan sponsor of a plan that has a funding shortfall for the preceding plan year is required to pay the installments described in paragraph (c)(5) of this section by the due dates described in paragraph (c)(6) of this section. See paragraph (b)(4)(ii) of this section, section 430(k) of the Internal Revenue Code (Code) (regarding the imposition of a lien), and sections 101(d) and 4043 of ERISA (regarding notice to participants and beneficiaries and to the Pension Benefit Guaranty Corporation) for examples of consequences that generally apply following a failure to make required installments.

(2) *Satisfaction of quarterly installment requirement.* A plan sponsor may satisfy the requirement to pay an installment under paragraph (c)(1) of this section by one or a combination of the following—

(i) Making a contribution for the plan year which is allocated among the required installments under the rules of paragraph (c)(3) of this section; and

(ii) Making an election to use some or all of the plan's prefunding balance or funding standard carryover balance in accordance with the rules of paragraph (c)(4) of this section.

(3) *Satisfaction of quarterly installment requirement with contributions—(i) Contributions allocated to earliest quarterly installments.* For purposes of this section, a contribution for a plan year is allocated among the required installments for the plan year under the rules of paragraph (c)(3)(ii) or (iii) of this section, whichever is applicable. Which rule applies depends on whether, at the time the contribution is made, the plan sponsor has unpaid required installments (that is, the plan sponsor has not fully satisfied all required installments for which the due date has passed, taking into account the special

rule with respect to the unpaid liquidity amounts in paragraph (d)(3)(iv)(A) of this section).

(ii) *Early contributions increased with interest.* If a plan has no unpaid required installments for a plan year at the time a contribution for the plan year is made, then the contribution is allocated to the required installments (if any) for the plan year due on or after the date of the contribution under the rules of this paragraph (c)(3)(ii). The contribution is allocated in the order in which those installments occur, and the amount allocated to each required installment is limited to the amount necessary to satisfy the required installment (including satisfaction of the liquidity requirement under paragraph (d)(1) of this section, taking into account the special rule with respect to the unpaid liquidity amounts in paragraph (d)(3)(iv)(A) of this section) taking into account any interest as described in the next sentence. If the contribution is made before the due date of the installment to which it is allocated, then the amount credited toward the installment includes interest on the contribution from the date of the contribution to the due date of the required installment (except as provided in paragraph (d)(2) of this section). This interest adjustment is made using an interest rate equal to the plan's effective interest rate under § 1.430(h)(2)–1(f)(1) for the plan year.

(iii) *Allocation of contributions to late required installments without interest—*  
(A) *In general.* If a plan has any unpaid required installments for a plan year at the time a contribution for the plan year is made, then the contribution is allocated to those unpaid required installments under the rules of this paragraph (c)(3)(iii). The contribution is allocated in the order in which those unpaid required installments occur, and the amount allocated to each required installment is limited to the amount that satisfies the required installment without any adjustment for interest. If a contribution is allocated to an unpaid required installment under this paragraph (c)(3)(iii), then that contribution is adjusted for interest under the rules of paragraph (b)(4) of this section (regarding interest adjustments for late quarterly installments) for purposes of determining the extent to which that contribution satisfies the minimum required contribution for the plan year.

(B) *Bifurcation of contributions that exceed unpaid required installments.* Any amount of a contribution described in paragraph (c)(3)(iii)(A) of this section that is not used to satisfy the unpaid required installments for the plan year

is allocated toward any remaining required installments for the plan year under the rules of paragraph (c)(3)(ii) of this section.

(4) *Satisfaction of quarterly installment requirements through use of funding balances.* A plan sponsor may satisfy the requirement to pay an installment under paragraph (c)(1) of this section by making an election to use some or all of the plan's prefunding balance or funding standard carryover balance under section 430(f). Such an election is subject to the rules of § 1.430(f)–1 and cannot exceed the available amount of the plan's prefunding balance and funding standard carryover balance determined under § 1.430(f)–1(d)(1)(ii) as of the date of the election. The amount elected is allocated toward satisfaction of the required installments in the same manner as a contribution made on the date of the election. Thus, the amount of an election to use the plan's prefunding balance or funding standard carryover balance is increased with interest under the rules of paragraph (c)(3)(ii) of this section or is credited against the earliest unpaid required installment under the rules of paragraph (c)(3)(iii) of this section. See § 1.430(f)–1(f)(1)(iii) for rules permitting the use of a standing election for purposes of satisfying required installments through use of funding balances. See § 1.430(f)–1(d)(1)(i)(B) for rules relating to late elections to use the funding standard carryover balance or prefunding balance to satisfy the required installment rules.

(5) *Amount of required installment—*  
(i) *In general.* For purposes of this section, the amount of any required installment due for a plan year is equal to 25 percent of the required annual payment for the plan year as described in paragraph (c)(5)(ii) of this section.

(ii) *Required annual payment.* The required annual payment for a plan year is equal to the lesser of—

(A) 90 percent of the minimum required contribution under section 430 for the plan year; or

(B) 100 percent of the minimum required contribution under section 430 (determined without regard to any funding waiver under section 412) for the preceding plan year.

(iii) *Treatment of funding balances.* For purposes of paragraph (c)(5)(ii) of this section, the minimum required contribution for a plan year is determined without regard to the use of the prefunding balance or funding standard carryover balance for the current year or the prior year. However, see paragraph (c)(4) of this section regarding a plan sponsor's election to use the plan's prefunding balance or

funding standard carryover balance for the current year in order to satisfy the requirement to pay an installment.

(iv) *Disregard of certain amounts.* For purposes of paragraph (c)(5)(ii) of this section, the minimum required contribution for a plan year is determined without regard to the installment acceleration amount for the plan year determined under section 430(c)(7) or any increase to the minimum required contribution under paragraph (d)(3)(iv)(B) of this section (relating to an unpaid liquidity amount).

(6) *Due dates for installments.* For purposes of this section, there is a required installment for each quarter of the plan year, and the due dates for the required installments with respect to a full plan year are set forth in the following table:

Installment	Due date
First required installment.	15th day of 4th plan month.
Second required installment.	15th day of 7th plan month.
Third required installment.	15th day of 10th plan month.
Fourth required installment.	15th day after the end of the plan year.

(7) *Special rules for short plan years—*  
(i) *In general.* In the case of a short plan year, the rules of this paragraph (c) are modified as provided in this paragraph (c)(7).

(ii) *Current plan year is short plan year—*  
(A) *Amount of required annual payment.* In determining the required annual payment pursuant to paragraph (c)(5)(ii) of this section for a short plan year, the amount otherwise determined under paragraph (c)(5)(ii)(B) of this section (based on the prior year's minimum required contribution) is multiplied by a fraction, the numerator of which is the duration of the short plan year and the denominator of which is 1 year. This rule applies to the year that contains the plan's termination date if that date is before the date that would otherwise be the end of the plan year (because the plan is treated as having a short plan year for purposes of section 430 pursuant to § 1.430(a)–1(b)(5)).

(B) *Number and due dates of installments.* If the plan has a short plan year, then an installment is due 15 days after the end of that short plan year. In addition, an installment is required for each due date determined under paragraph (c)(6) of this section that falls within the short plan year. Thus, for example, if the short plan year ends before the 15th day of the 4th plan month of the plan year, there will be only one installment for that short plan

year, and that installment will be due on the 15th day after the end of the short plan year.

(C) *Amount of installments.* The amount of each installment required to be paid for the short plan year is equal to the required annual payment determined pursuant to paragraph (c)(5)(ii) of this section (as modified by paragraph (c)(7)(ii)(A) of this section) divided by the number of installments determined pursuant to paragraph (c)(7)(ii)(B) of this section.

(D) *No increase in prior required installments.* If a plan is amended to have a short plan year (including as a result of plan termination) and the required installments determined under paragraph (c)(7)(ii)(C) of this section are greater than the required installments determined without regard to the amendment, then—

(1) The required installments for which the due dates occur before the end of the short plan year are determined without regard to the amendment, and

(2) The required installment due on the 15th day after the end of the short plan year is increased to the extent necessary so that the total of the required installments for the year is the required annual payment determined under paragraph (c)(5)(ii) of this section, determined taking into account the rules of paragraph (c)(7)(ii)(A) of this section.

(iii) *Prior plan year is short plan year.* If the prior plan year is a short plan year, the amount otherwise determined under paragraph (c)(5)(ii)(B) of this section (based on the prior year's minimum required contribution) is multiplied by a fraction, the numerator of which is 1 year and the denominator of which is the duration of the short plan year.

(d) *Liquidity requirement in connection with quarterly installments—*(1) *In general—*(i) *Additional requirement with respect to quarterly installments.* Except as provided in this paragraph (d)(1), if a plan sponsor is required to pay the installments described in paragraph (c) of this section, then the plan sponsor is treated as failing to pay the full amount of the required installment for a quarter to the extent that the value of the liquid assets paid in the required installment after the end of that quarter and on or before the due date for the installment is less than the liquidity shortfall for that quarter. If the amount of any required installment is increased by reason of this paragraph (d)(1)(i), in no event shall this increase exceed the amount which, when added to the current required installment (determined without regard to the

increase) and prior required installments for the plan year (not including any portion of a required installment that is no longer treated as unpaid under paragraph (d)(3)(iv)(A) of this section), is necessary to increase the funding target attainment percentage for the plan year to 100 percent (taking into account the expected increase in the funding target due to benefits accruing or earned during the plan year).

(ii) *Small plan exception.* The liquidity requirement of this paragraph (d) does not apply to a plan for any plan year for which the plan is a small plan described in § 1.430(g)–1(b)(2).

(2) *Satisfaction of liquidity requirement.* The additional requirement with respect to a required installment under paragraph (d)(1) of this section can be satisfied only with an actual contribution of liquid assets that, after application of paragraph (c)(3) of this section, is allocated to satisfy the required installment for the quarter. The liquidity requirement cannot be satisfied through the use of funding balances, and satisfaction of this requirement is determined without taking into account the increase for interest for early contributions set forth in paragraph (c)(3)(ii) of this section. Any contribution of liquid assets that is allocated to satisfy the required installment for a quarter applies for purposes of determining whether the requirements of paragraph (d)(1) of this section are satisfied, even if the contribution is less than the total amount needed to satisfy the requirements of paragraph (c) of this section for the quarter (taking into account any increase in the required installment under this paragraph (d)).

(3) *Failure to satisfy liquidity requirement—*(i) *Treatment as failure to satisfy quarterly installment.* If an employer fails to satisfy the additional requirement with respect to a required installment for a quarter under paragraph (d)(1) of this section, the portion of that required installment that is treated as not paid by reason of paragraph (d)(1) of this section (the unpaid liquidity amount for that quarter) is treated as an underpayment of the required installment. See paragraph (c)(1) of this section for examples of consequences of underpayment of a required installment.

(ii) *Late satisfaction of liquidity requirement.* The rules of paragraph (d)(2) of this section apply to determine whether a contribution made after the deadline for a required installment satisfies the liquidity requirement of paragraph (d)(1) of this section. However, pursuant to section 430(j)(4)(C), the unpaid liquidity

amount is treated as unpaid until the end of the quarter in which the due date for that installment occurs, even if liquid assets in that amount are contributed during that quarter (but after the due date for the installment). See paragraph (b)(4)(iii) of this section for the application of this rule for purposes of applying the additional interest for late required installments.

(iii) *Additional consequences of failure to pay liquidity shortfall.* See section 206(e) of ERISA and section 401(a)(32) of the Code (regarding suspension of accelerated distributions for a plan with an unpaid liquidity amount). See also section 4971(f) regarding an excise tax imposed in the event of a failure to pay a liquidity shortfall.

(iv) *Treatment in subsequent quarter—*(A) *Adjustment to required installment.* After the close of the quarter in which the due date of a required installment occurs, any portion of the installment that was treated as unpaid solely by reason of paragraph (d)(1) of this section, and that was not satisfied with a contribution of liquid assets during that quarter, is no longer treated as unpaid (but any portion of the installment that would be treated as unpaid without regard to paragraph (d)(1) of this section must be satisfied in accordance with the rules of paragraph (c) of this section).

(B) *Increase to minimum required contribution for additional interest.* If a portion of the required installment is no longer treated as unpaid by reason of paragraph (d)(3)(iv)(A) of this section, then the minimum required contribution for the plan year for which the installment was due is increased by an amount equal to—

(1) The portion of the required installment that is no longer treated as unpaid by reason of paragraph (d)(3)(iv)(A) of this section, discounted for interest for the period from the last day of the quarter that includes the due date of the required installment to the valuation date, using the plan's effective interest rate for the plan year (determined pursuant to § 1.430(h)(2)–1(f)(1)); minus

(2) The portion of the required installment that is no longer treated as unpaid by reason of paragraph (d)(3)(iv)(A) of this section, discounted for interest for the period from the last day of the quarter that includes the due date of the required installment to the due date of the installment, using the plan's effective interest rate for the plan year plus 5 percentage points, and further discounted for interest for the period from the due date of the required installment to the valuation date using

the plan's effective interest rate for the plan year.

(e) *Definitions*—(1) *In general*. The definitions set forth in this paragraph (e) apply for purposes of this section.

(2) *Adjusted disbursements*—(i) *In general*. The term *adjusted disbursements* means, with respect to a time period, the amount described in paragraph (e)(2)(ii) of this section if the time period is within a single plan year, or the amount described in paragraph (e)(2)(iii) of this section if the time period spans more than one plan year.

(ii) *Period within a single plan year*. With respect to a period within a plan year, the adjusted disbursements are the disbursements from the plan during that period reduced by the product of—

(A) The plan's funding target attainment percentage determined under section 430(d)(2) for the plan year that contains that period; and

(B) The sum of the purchases of annuities and payments of single sums for that period.

(iii) *Period spanning more than one plan year*. With respect to a period of time that spans more than one plan year, the adjusted disbursements are the sum of the adjusted disbursements determined separately under paragraph (e)(2)(ii) of this section for each portion of a plan year that is included in the time period for which adjusted disbursements are determined.

(3) *Disbursements from the plan*. The term *disbursements from the plan* means all disbursements from the plan's trust, including purchases of annuities, payments of single sums and other benefits, and payments of administrative expenses.

(4) *Funding shortfall*—(i) *In general*. Except as otherwise provided in this paragraph (e)(4), the term *funding shortfall* has the same meaning as under § 1.430(a)–1(f)(2).

(ii) *Special rule for plans of commercial passenger airlines*. In the case of a plan year for which an election described in section 402(a)(1) of PPA '06 is in effect, the term *funding shortfall* means the unfunded liability for that plan year determined under § 1.430(a)–1(b)(4)(ii).

(iii) *Special rule for first effective plan year*. See paragraph (g)(5)(ii) of this section for a calculation of the funding shortfall for the plan's pre-effective plan year.

(iv) *Special rule for plan spinoffs and mergers*. [Reserved]

(5) *Liquid assets*—(i) *In general*. The term *liquid assets* means cash, marketable securities, and other assets described in this paragraph (e)(5)(i). For this purpose, marketable securities include financial instruments such as

stocks and other equity interests, evidences of indebtedness (including certificates of deposit), options, futures contracts, and other derivatives, for which there is a liquid financial market, and other interests in entities (such as partnerships, trusts, or regulated investment companies) for which there is a liquid financial market. For purposes of the preceding sentence, a liquid financial market is an established financial market described in § 1.1092(d)–1(b) (other than an interbank market or an interdealer market described in § 1.1092(d)–1(b)(1)(v) and (vi), respectively). Any security that is issued or guaranteed by the government of the United States or an agency or instrumentality thereof for which there is an established financial market described in § 1.1092(d)–1(b) is a marketable security. Finally, any financial instrument or other interest in an entity that, under its terms, contains a right by which the instrument or other interest may immediately be redeemed, exchanged, or converted into cash or a marketable security, is a marketable security, provided there are no restrictions on the exercise of that right.

(ii) *Insurance and annuity contracts*. Other assets that are treated as liquid assets of a plan are insurance, annuity, or other contracts issued by an insurance company that is licensed to do business under the laws of any State, but only if the insurance, annuity, or other contract—

(A) Contains an unrestricted right by which the insurance, annuity or other contract may immediately be redeemed, exchanged, or converted into cash or a marketable security;

(B) Provides for substantially equal monthly disbursements to the extent provided in paragraph (e)(5)(iii) of this section; or

(C) Is benefit responsive within the meaning of paragraph (e)(5)(iv) of this section.

(iii) *Insurance and annuity contracts providing for substantially equal periodic payments*. If the contract provides for substantially equal monthly disbursements (for example, an annuity contract in pay status), the only portion of the contract that may be treated as liquid assets for a quarter is the amount equal to 36 times the monthly disbursement (in the month containing the last day of the quarter) which is available under the terms of the contract, provided there are no restrictions on the right to disbursements.

(iv) *Benefit responsive insurance and annuity contracts*. A contract is considered benefit responsive if, under applicable law and contractual

provisions, the plan has the right to receive disbursements from the contract in order to pay plan benefits for any participant in the plan, without restrictions on that right.

(v) *Restrictions*. For purposes of this paragraph (e)(5), a restriction on a redemption, exchange, or conversion right, or a restriction on a right to receive a disbursement, may result not only from applicable law or contractual provisions, but also from rehabilitation, conservatorship, receivership, insolvency, bankruptcy, or similar proceedings.

(6) *Liquidity shortfall*—(i) *In general*. Except as modified in paragraph (e)(6)(iii) of this section with respect to multiple employer plans, the term *liquidity shortfall* means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which that installment is due) of—

(A) The base amount with respect to the quarter, over

(B) The value (as of the last day of the quarter) of the plan's liquid assets.

(ii) *Base amount*—(A) *In general*. For purposes of this paragraph (e)(6), the term *base amount* means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of that quarter.

(B) *Special rule*. If the generally applicable base amount for a quarter (as determined under paragraph (e)(6)(ii)(A) of this section) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and the enrolled actuary for the plan certifies to the satisfaction of the Commissioner that such excess is the result of nonrecurring circumstances, then the base amount with respect to that quarter is determined without regard to amounts related to those nonrecurring circumstances.

(iii) *Multiple employer plans—(A) Satisfaction of liquidity requirement as if plan were not a multiple employer plan*. For a multiple employer plan to which section 413(c)(4)(A) applies, the liquidity requirement of paragraph (d)(1)(i) of this section is satisfied if the liquidity requirement would be satisfied if the plan were a single-employer plan that is not a multiple employer plan to which section 413(c)(4)(A) applies.

(B) *Failure to satisfy the liquidity requirement on a plan-wide basis*. For a multiple employer plan to which section 413(c)(4)(A) applies, if the plan does not satisfy the liquidity requirement in accordance with paragraph (e)(6)(iii)(A) of this section,

then the liquidity requirement must be applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, the value of plan assets as of the end of each quarter under such a multiple employer plan must be allocated among the employers sponsoring the plan, and the liquidity shortfall must be determined for each employer based on that allocation. See section 413(c)(7)(B) and paragraph (a)(2) of this section.

(7) *Plan month*—(i) *Plan year begins on the first day of a calendar month.* For a plan year that begins with the first day of a calendar month, the term *plan month* means any calendar month that begins during the plan year.

(ii) *Plan year begins on a date other than the first day of a calendar month.* For a plan year that begins on a date other than the first day of a calendar month, the first day of each plan month is the day of the calendar month that corresponds to the day of the calendar month that is the first day of the plan year. Thus, for example, if the first day of a plan year is January 15, then a plan month starts on the 15th of each calendar month. However, if a calendar month does not contain a day that corresponds to the day of the calendar month that is the first day of the plan year (for example, if a calendar month has only 30 days and the first day of the plan year is the 31st day of a calendar month), then the first day of the plan month that begins during that calendar month is the last day of that calendar month.

(8) *Quarter.* The term *quarter* means, with respect to any required installment, the 3-plan-month period preceding the plan month in which the due date for that installment occurs.

(9) *Short plan year.* The term *short plan year* means a plan year that is shorter than 12 months (and is not a 52-week plan year of a plan that uses a 52–53 week plan year).

(f) *Examples.* The following examples illustrate the rules of this section. Unless otherwise indicated, these examples are based on the following assumptions: section 430 applies to determine the minimum required contribution for plan years beginning on or after January 1, 2008; the plan year is the calendar year; the valuation date is January 1; the plan sponsor is required to pay the installments described in paragraph (c) of this section; the plan does not have a liquidity shortfall; and the plan sponsor has not elected any funding relief under section 430(c)(2)(D) for any plan year. In addition, these examples assume that, under the funding method used for the plan, interest adjustments are calculated

to the nearest half month (rather than days) for transactions that occur on the 1st and 15th of a calendar month.

*Example 1.* (i) Plan A has a funding standard carryover balance of \$15,000 and a prefunding balance of zero as of January 1, 2016, and the plan's funding ratio for 2015 (determined under § 1.430(f)–1(d)(3)) was over 80%. The minimum required contribution for Plan A (determined prior to any offset for the funding standard carryover balance) is \$100,000 for 2016 and is \$125,000 for 2017. The effective interest rate for the 2017 plan year is 5.90%.

(ii) The required annual payment for 2017 is equal to the lesser of (a) 100% of the 2016 minimum required contribution (\$100,000) or (b) 90% of the 2017 minimum required contribution (90% of \$125,000, or \$112,500). Therefore, each required installment for 2017 is 25% of \$100,000, or \$25,000.

(iii) Installments of \$25,000 each are due by April 15, 2017, July 15, 2017, October 15, 2017, and January 15, 2018. The final contribution for the 2017 plan year is due by September 15, 2018. The amount of this final contribution is equal to \$125,000, less the contributions made prior to that date, with all contributions adjusted to the valuation date using the effective interest rate for the 2017 plan year. If the plan sponsor makes each required installment on the date due, the remaining amount due is determined as follows:

(A) The contribution paid April 15, 2017 is adjusted by discounting the contribution amount for  $3\frac{1}{2}$  months at the effective interest rate ( $\$25,000 \div 1.0590^{(3.5/12)} = \$24,585$ ).

(B) The contribution paid July 15, 2017 is discounted for  $6\frac{1}{2}$  months at the effective interest rate ( $\$25,000 \div 1.0590^{(6.5/12)} = \$24,236$ ).

(C) The contribution paid October 15, 2017 is discounted for  $9\frac{1}{2}$  months at the effective interest rate ( $\$25,000 \div 1.0590^{(9.5/12)} = \$23,891$ ).

(D) The contribution paid January 15, 2018 is discounted for  $12\frac{1}{2}$  months at the effective interest rate ( $\$25,000 \div 1.0590^{(12.5/12)} = \$23,551$ ).

(E) The sum of the above contributions for the 2017 plan year paid through January 15, 2018, adjusted for interest to the valuation date, is \$96,263. The remaining amount due for the 2017 plan year is \$125,000 minus \$96,263, or \$28,737, as of January 1, 2017.

(iv) If the final contribution is made on September 15, 2018, the remaining amount due must be increased for interest at the plan's effective interest rate for the  $20\frac{1}{2}$  months between January 1, 2017 and September 15, 2018 (so that, when it is discounted with interest for those  $20\frac{1}{2}$  months, the resulting amount will equal \$28,737). Therefore, the remaining contribution due on September 15, 2018 is  $\$28,737 \times 1.0590^{(20.5/12)} = \$31,694$ .

*Example 2.* (i) The facts are the same as in *Example 1*, except that the plan sponsor elects to use the \$15,000 funding standard carryover balance as of January 1, 2016, to offset the minimum required contribution for the 2016 plan year. The plan sponsor makes a contribution on January 1, 2016 of \$85,000, which satisfies the minimum contribution requirement for 2016.

(ii) The required installments for 2017 are unaffected by the plan sponsor's election to offset the minimum required contribution by the funding standard carryover balance for 2016. Therefore, the required annual payment for 2017 is \$100,000 (determined as the lesser of (a) 100% of \$100,000 or (b) 90% of \$125,000) and the amount of each required installment for the 2017 plan year is 25% of the required annual payment, or \$25,000.

*Example 3.* (i) The facts are the same as in *Example 1*. Plan A's funding standard carryover balance has increased to \$17,000 as of January 1, 2017, based on the actual rate of return of plan assets during the 2016 plan year. Plan A's funding ratio for 2016 (determined under § 1.430(f)–1(d)(3)) is over 80%. On March 15, 2017, the plan sponsor elects to use the entire amount of the funding standard carryover balance to offset the minimum required contribution for 2017.

(ii) The plan sponsor's election to use the funding standard carryover balance to offset the minimum required contribution is treated as satisfying the requirement to make a required installment to the extent of the amount elected, adjusted with interest for the period from the beginning of the plan year to the due date of the installment using the plan's effective interest rate for the 2017 plan year. This adjustment is made for the 2.5-month period from the beginning of the plan year to the date of the election as provided in § 1.430(f)–1(b)(5), and for the one-month period from the date of the election to the due date for the installment, as provided in paragraphs (c)(3)(ii) and (c)(4) of this section. Therefore, the \$17,000 funding standard carryover balance as of January 1, 2017 offsets  $\$17,000 \times 1.0590^{(2.5/12)} \times 1.0590^{(1/12)}$  or \$17,287 of the \$25,000 required installment due April 15, 2017, and the remaining contribution due on April 15, 2017 is \$25,000 minus \$17,287, or \$7,713.

(iii) The interest adjustments in paragraph (ii) of this *Example 3* are based on the effective interest rate even if that rate is not determined by the time that the required installment is due. If the plan's effective interest rate for the plan year has not been determined at the time that the required installment is due, the actual amount of the required installment satisfied by the use of the funding standard carryover balance is determined after the effective interest rate is determined. If the extent to which the funding standard carryover balance satisfies the required installment is overestimated and the result is that the full amount of the required installment is not paid by the due date, the plan is subject to the consequences for late or unpaid required installments as described in paragraph (c)(1) of this section.

*Example 4.* (i) The facts are the same as in *Example 3*. The plan sponsor makes a contribution of \$7,713 (which is equal to the remaining portion of the first required installment) on April 15, 2017. For the 2017 plan year, the plan sponsor makes another contribution of \$200,000 on June 30, 2017. No further contributions are made for the 2017 plan year.

(ii) The contributions made for the 2017 plan year are adjusted to the valuation date using the plan's effective interest rate for the 2017 plan year. The contribution paid April

15, 2017 is discounted for the 3½ months between January 1, 2017 and the date of payment, using the effective interest rate of 5.90% ( $\$7,713 \div 1.0590^{(3.5/12)} = \$7,585$ ). The contribution paid June 30, 2017 is discounted for 6 months using the effective interest rate ( $\$200,000 \div 1.0590^{(6/12)} = \$194,349$ ), for a total interest-adjusted contribution of \$201,934.

(iii) The present value of the excess contribution for 2017 is based on the net contribution required for that year, which is the minimum required contribution minus the offset for the funding standard carryover balance, or \$108,000 (that is, \$125,000 minus \$17,000). Accordingly, the present value of the excess contribution for 2017 is \$201,934 minus \$108,000, or \$93,934. All or a portion of this amount may be credited to the prefunding balance at the election of the plan sponsor.

*Example 5.* (i) The facts are the same as in *Example 3*. The plan sponsor pays the required installment of \$7,713 on April 15, 2017 and installments of \$25,000 each on July 15, 2017 and October 15, 2017. However, only \$10,000 of the installment due on January 15, 2018 is paid. No additional contributions are made until the final contribution for the plan year of \$55,000 is paid on September 15, 2018.

(ii) The 2017 Schedule SB shows that the contributions for the plan year exceed the minimum required contribution. This is determined by comparing the net contribution requirement of \$108,000 (equal to the minimum required contribution of \$125,000 offset by \$17,000 for the amount of funding standard carryover balance used) and the interest-adjusted contributions made for the 2017 plan year, developed as shown:

(A) The contribution paid April 15, 2017 is adjusted by discounting the contribution amount for 3½ months at the effective interest rate ( $\$7,713 \div 1.0590^{(3.5/12)} = \$7,585$ ).

(B) The contribution paid July 15, 2017 is discounted for 6½ months at the effective interest rate ( $\$25,000 \div 1.0590^{(6.5/12)} = \$24,236$ ).

(C) The contribution paid October 15, 2017 is discounted for 9½ months at the effective interest rate ( $\$25,000 \div 1.0590^{(9.5/12)} = \$23,891$ ).

(D) The contribution paid January 15, 2018 is discounted for 12½ months at the effective interest rate ( $\$10,000 \div 1.0590^{(12.5/12)} = \$9,420$ ).

(E) Pursuant to paragraph (b)(4)(ii) of this section, the interest rate used to adjust the \$15,000 underpayment of the required installment due January 15, 2018 is increased by 5 percentage points for the 8-month period of underpayment (January 15, 2018 through September 15, 2018). Accordingly, \$15,000 of the contribution paid on September 15, 2018 is discounted using a rate of 10.90% for 8 months to the due date of January 15, 2018, and is then further adjusted using the 5.90% effective interest rate for the 12½ months between the required installment due date of January 15, 2018 and the valuation date of January 1, 2017. This portion of the September 15, 2018 contribution results in an adjusted amount of \$13,189 as of January 1, 2017 ( $\$15,000 \div 1.1090^{(8/12)} \div 1.0590^{(12.5/12)}$ ).

(F) The remaining \$40,000 of the contribution paid on September 15, 2018 is discounted using the effective interest rate of 5.90% for the 20½-month period between the date of payment and the valuation date. This portion of the payment is therefore adjusted to \$36,268 as of the valuation date (that is,  $\$40,000 \div 1.0590^{(20.5/12)}$ ).

(G) The sum of the contributions (as calculated in paragraphs (ii)(A) through (F) of this *Example 5*) for the 2017 plan year paid through September 15, 2018, adjusted for interest to the valuation date, is \$114,589. This is greater than the net contribution required for the 2017 plan year of \$108,000.

*Example 6.* (i) The facts are the same as in *Example 5*, except that the plan sponsor does not make the contribution on September 15, 2018.

(ii) The 2017 Schedule SB shows an unpaid minimum required contribution of \$42,868 as of January 1, 2017. This is equal to the difference between the net contribution required for 2017 of \$108,000 (the minimum required contribution of \$125,000, offset by \$17,000 for the amount of the funding standard carryover balance used) and \$65,132 (the interest-adjusted contributions made for the 2017 plan year before the 8½ month deadline, as illustrated in paragraphs (ii)(A) through (ii)(D) of *Example 5*).

*Example 7.* (i) The facts are the same as in *Example 1*, except that the plan year is changed to an August 1–July 31 plan year effective August 1, 2017. This results in a short plan year beginning January 1, 2017 and ending July 31, 2017. The minimum required contribution for the 7-month period covered by the plan year is calculated as \$72,917 in accordance with § 1.430(a)–1(b)(2)(ii).

(ii) As provided in paragraph (c)(7) of this section, a required installment is due 15 days after the end of the short plan year (August 15, 2017), and required installments are also due on the regularly scheduled due dates for required installments that occur within the short plan year (April 15, 2017 and July 15, 2017).

(iii) The required installments are determined based on the lesser of (a) 90% of the minimum required contribution for the short plan year ending July 31, 2017 (90% of \$72,917, or \$65,625) or (b) 7/12 of 100% of the 2016 minimum required contribution ( $\$100,000 \times 7/12$ , or \$58,333). The required installments are thus based on \$58,333 because that is the smaller amount.

(iv) The amount of each required installment is determined by dividing the amount determined in paragraph (iii) of this *Example 7* by the number of required installments for the short plan year. This calculation results in required installments of \$19,444 each (that is, \$58,333 divided by 3 installments).

(v) The deadline for the remaining payment is 8½ months after the end of the short plan year, or April 15, 2018. If the plan sponsor pays the minimum required amount at each installment date, does not elect to offset any amounts by any funding standard carryover or prefunding balance, and makes a final payment on April 15, 2018, then the remaining payment is \$17,429, determined as follows:

(A) The contribution paid April 15, 2017 is adjusted by discounting the contribution amount for 3½ months at the effective interest rate ( $\$19,444 \div 1.0590^{(3.5/12)} = \$19,122$ ).

(B) The contribution paid July 15, 2017 is discounted for 6½ months at the effective interest rate ( $\$19,444 \div 1.0590^{(6.5/12)} = \$18,850$ ).

(C) The contribution paid August 15, 2017 is discounted for 7½ months at the effective interest rate ( $\$19,444 \div 1.0590^{(7.5/12)} = \$18,760$ ).

(D) The sum of the contributions for the 2017 plan year paid through August 15, 2017, adjusted for interest to the valuation date, is \$56,732. The remaining amount paid April 15, 2018 for the 2017 plan year is ( $\$72,917 - \$56,732$ )  $\times 1.0590^{(15.5/12)} = \$17,429$ .

*Example 8.* (i) Plan B has an August 10 to August 9 plan year.

(ii) For the plan year that begins on August 10, 2017, a plan month begins on the 10th day of each calendar month. Accordingly, the due dates for the required installments for that plan year are November 24, 2017, February 24, 2018, May 24, 2018 and August 24, 2018. The deadline for the final contribution for the plan year is April 24, 2019.

*Example 9.* (i) Plan C has a funding standard carryover balance of \$0 and a prefunding balance of \$65,000 as of January 1, 2017. Plan C's funding ratio for 2016 (determined under § 1.430(f)–1(d)(3)) was over 80%. The minimum required contribution for Plan C (determined prior to any offset for the funding standard carryover balance) is \$120,000 for 2016. Required installments for the 2016 plan year were made timely, and the final installment of the minimum required contribution for the 2016 plan year is due on September 15, 2017 in the amount of \$40,000.

(ii) Prior to April 15, 2017, the plan sponsor makes a standing election to use Plan C's funding balances to offset any otherwise unpaid required installments and any otherwise unpaid minimum required contribution. On June 1, 2017, the actuary completes the 2017 valuation and notifies the plan sponsor that the minimum required contribution for the 2017 plan year is \$100,000. The effective interest rate for the 2017 plan year is 5.90%. No contributions are made for the 2017 plan year until September 15, 2018.

(iii) The first required installment for the 2017 plan year is due on April 15, 2017. Under § 1.430(f)–1(f)(1)(iii)(B), the amount of the prefunding balance used as of April 15, 2017 pursuant to the standing election is 25% of the \$120,000 required annual payment for the 2016 plan year (\$30,000). The prefunding balance is reduced by this amount, adjusted for the 3½-month period between the January 1, 2017 valuation date and the April 15, 2017 due date, using the effective rate for Plan C for 2017 ( $\$30,000 \div 1.0590^{(3.5/12)}$ , or \$29,503). The prefunding balance is available to offset the April 15, 2017 required installment even though the minimum required contribution for the 2016 plan year has not yet been made, because the standing election to use Plan C's balances to offset the minimum required contribution for

the 2016 plan year does not take effect until the due date for that contribution, or September 15, 2017. Therefore, as of April 15, 2017, the prefunding balance still exists and may be used to offset the required installment due as of that date.

(iv) The second required installment for the 2017 plan year is due on July 15, 2017, after the actuary determined the minimum required contribution for the 2017 plan year. The required annual payment for 2017 is equal to the lesser of (a) 100% of the 2017 minimum required contribution (\$120,000) or (b) 90% of the 2017 minimum required contribution (90% of \$100,000, or \$90,000). Therefore, each required installment for 2017 is 25% of \$90,000, or \$22,500.

(v) Although the amount of the required installments for 2017 (\$22,500) is smaller than the amount based on the 2016 minimum required contribution (\$30,000), under § 1.430(f)-1(f)(1)(iii)(B), the amount of the prefunding balance used under the standing election continues to be the \$30,000 based on the minimum required contribution for the 2016 plan year. Alternatively, the plan sponsor can make a replacement formula election to use the prefunding balance to cover the remaining required installments for the 2017 plan year as described in § 1.430(f)-1(f)(1)(iii)(C), based on required installments of \$22,500 each.

(vi) The use of \$30,000 of the prefunding balance as of April 15, 2017 pursuant to the standing election is irrevocable, and therefore the prefunding balance is not adjusted to reflect the fact that the first required installment for the 2017 plan year (based on the actual 2017 minimum required contribution) is lower than \$30,000.

(vii) However, the excess of the \$30,000 of prefunding balance used on April 15, 2017 over the first required installment is allocated toward the second required installment. In addition, if the plan sponsor makes a replacement formula election in accordance with § 1.430(f)-1(f)(1)(iii)(C), the amount of prefunding balance used pursuant to that election takes into account the actual required installment. In this case, the amount of the prefunding balance used to satisfy the July 15, 2017 required installment is \$14,437. This amount is determined by (1) calculating the excess of the amount of the prefunding balance used on April 15, 2017 over the amount of the required installment due on that date (\$30,000 - \$22,500 = \$7,500), and adjusting it for the 3 months from April 15, 2017 to July 15, 2017, using the effective interest rate ( $\$7,500 \times 1.0590^{(3/12)} = \$7,608$ ), (2) deducting that amount from the required installment due July 15, 2017, to determine the net amount due as of that date ( $\$22,500 - \$7,608 = \$14,892$ ), and (3) adjusting the net amount to the valuation date of January 1, 2017 for the 6½-month period between the valuation date and the due date for the required installment, using the effective interest rate for Plan C for 2017 ( $\$14,892 + 1.0590^{(6.5/12)} = \$14,437$ ).

*Example 10.* (i) The facts are the same as in *Example 9*, except that Plan C's prefunding balance as of January 1, 2017 is only \$20,000, and Plan C's sponsor makes a contribution larger than the minimum required contribution for the 2016 plan year on March 1, 2017.

(ii) The amount of the April 15, 2017 required installment that is satisfied by the plan sponsor's election to offset the prefunding balance is calculated by increasing the January 1, 2017 prefunding balance with interest for 3½ months to April 15, 2017, using the effective interest rate for Plan C for 2017. This results in an offset of \$20,337 ( $\$20,000 \times 1.0590^{(3.5/12)}$ ). A cash contribution of \$2,163 ( $\$22,500 - \$20,337$ ) is needed to satisfy the required installment on that date.

(iii) The excess contribution made for the 2016 plan year cannot be used to offset the remainder of the April 15, 2017 required installment even though it was contributed prior to the date the installment is due, because the sponsor had not yet elected to credit the excess contribution to the prefunding balance. If the plan sponsor elects at a later date to credit the excess contribution to the prefunding balance, the amount can be used to offset required installments due on or after the date of that election. However, note that if Plan C's actuary reflected the excess contribution for 2016 in certifying the 2017 adjusted funding target attainment percentage (AFTAP) used to apply benefit restrictions under section 436, a later election to credit the excess contribution to the prefunding balance would reduce the AFTAP and could cause Plan C to violate section 436.

*Example 11.* (i) Plan D is not a small plan described in § 1.430(g)-1(b)(2). The valuation date for Plan D is January 1, and Plan D's funding target attainment percentage (FTAP) was 82% as of January 1, 2016 and is 90% as of January 1, 2017. The amount needed to increase the plan's FTAP for the 2017 plan year to 100% (including the expected increase in the funding target due to benefits accruing or earned during the plan year) is \$500,000. Before taking the liquidity requirement of paragraph (d) of this section into account, the plan sponsor of Plan D is required to pay installments for the 2017 plan year in the amount of \$50,000 each. During the 12-month period ending March 31, 2017, periodic annuity payments of \$425,000 and single sum payments of \$200,000 were made by Plan D. Of the single sum payments, \$125,000 were made during the 2016 plan year and \$75,000 were made during the 2017 plan year. None of these payments were due to nonrecurring circumstances. In addition, administrative expenses of \$25,000 were paid from the plan trust during the 12-month period ending March 31, 2017. As of March 31, 2017, the reported value of Plan D's assets is \$1,500,000, and the fair market value of Plan D's liquid assets is \$1,300,000.

(ii) The amount of the adjusted disbursements from Plan D for the 12-month period ending March 31, 2017 is calculated as the sum of the annuity benefits, single sum payments, and administrative expenses paid during the 12-month period, reduced by the product of the plan's FTAP and the sum of the single sum payments and any payments for annuities purchased during the plan year. This results in adjusted disbursements for the period of \$480,000 (that is, \$425,000 plus \$200,000 plus \$25,000, reduced by 82% of \$125,000 in single sum payments during

2016 and 90% of \$75,000 in single sum payments during 2017).

(iii) The base amount is calculated in accordance with paragraph (e)(6)(ii) of this section as three times the adjusted disbursements determined in paragraph (ii) of this *Example 11*, or \$1,440,000.

(iv) The liquidity shortfall is the difference between the base amount of \$1,440,000 determined in paragraph (iii) of this *Example 11* and the \$1,300,000 in liquid assets as of March 31, 2017, or \$140,000. The required installment due on April 15, 2017 is therefore \$140,000, since this amount is larger than the \$50,000 installment otherwise required, but less than the \$500,000 needed to increase the plan's FTAP (including the expected increase in the funding target due to benefits accruing or earned during the plan year) to 100%.

(v) Note that any contributions of liquid assets made through March 31, 2017 are reflected for purposes of determining the fair market value of Plan D's liquid assets as of March 31, 2017 and are not applied toward satisfying the liquidity requirement as of April 15, 2017. Similarly, any funding standard carryover balance or prefunding balance as of January 1, 2017 cannot be applied to offset the liquidity requirement. Only contributions made in cash or other liquid assets made after March 31, 2017 and by April 15, 2017 can be used to timely satisfy this requirement.

*Example 12.* (i) The facts are the same as in *Example 11*. The plan sponsor makes a cash contribution for the 2017 plan year of \$30,000 on April 15, 2017, and makes an additional cash contribution for the 2017 plan year of \$110,000 on April 30, 2017. The effective interest rate for Plan D for the 2017 plan year is 5.90%.

(ii) Under paragraph (d)(3)(i) of this section, the underpayment of the required installment due April 15, 2017 is \$110,000 (that is, \$140,000 minus \$30,000).

(iii) Because the \$110,000 contribution was made after the due date for the required installment (which reflects an unpaid liquidity amount) but during the quarter in which the installment was due, and because that contribution does not exceed the unpaid liquidity amount for the quarter, the special interest adjustment under paragraph (b)(4)(iii) of this section applies to the entire amount of the contribution. Accordingly, the contribution is adjusted for interest in two steps for the purpose of determining the portion of the minimum required contribution that is satisfied by the contribution. In the first step, the contribution is adjusted using the effective interest rate for the 2-month period from the payment date of April 30, 2017 to June 30, 2017, the last day of the quarter during which the liquidity requirement was due ( $\$110,000 \times 1.0590^{(2/12)} = \$111,056$ ). In the second step, this amount is adjusted as if that amount had been paid on June 30, 2017. Accordingly, this amount (\$111,056) is discounted for interest at a rate of 10.90% (the effective interest rate for the 2017 plan year of 5.90%, increased by 5 percentage points) for the 2½-month period from June 30, 2017 to the April 15, 2017 due date for the installment, and is further discounted using the effective interest rate of 5.90% for the 3½-month period

between April 15, 2017 and the valuation date of January 1, 2017. Therefore, the April 30, 2017 contribution is adjusted to \$106,886 as of January 1, 2017 ( $\$111,056 \div 1.1090^{(2.5/12)} \div 1.0590^{(3.5/12)}$ ).

(iv) The \$140,000 contributed during April 2017 is needed to satisfy the required installment due April 15, 2017 (determined taking into account the liquidity shortfall as of March 31, 2017), and so the full amount is applied to satisfy that installment. No portion of those contributions is applied to the required installments for subsequent quarters, and no additional payments are needed to satisfy the required installment due April 15, 2017 (because the \$110,000 payment satisfies both the unpaid liquidity amount and the remaining amount of the required installment described under paragraph (c)(5) of this section).

*Example 13.* (i) The facts are the same as in *Example 12*, except that the plan sponsor does not make the second cash contribution of \$110,000 on April 30, 2017, but instead makes a second cash contribution of \$75,000 for the 2017 plan year on July 15, 2017. The base amount as of June 30, 2017 calculated in accordance with paragraph (e)(6)(ii) of this section is \$1,500,000, and the fair market value of liquid assets as of that date is \$1,400,000.

(ii) Under paragraph (d)(3)(i) of this section, the underpayment of the required installment due April 15, 2017 is \$110,000 (that is, \$140,000 minus \$30,000).

(iii) As of June 30, 2017, no portion of the \$110,000 underpayment of the required installment due April 15, 2017 has been satisfied. Under paragraph (d)(3)(iv)(A) of this section, to the extent that the amount due April 15, 2017 solely because of the liquidity requirement under paragraph (d)(1) of this section is not satisfied with a contribution of liquid assets during the quarter, this amount is no longer considered unpaid. Of the \$110,000 underpayment of the required installment that was due on April 15, 2017, \$20,000 would have been due without regard to the liquidity requirement under paragraph (d)(1) of this section and \$90,000 was due solely because of that liquidity requirement. Accordingly, as of July 1, 2017, \$90,000 of the required installment due on April 15, 2017 is no longer treated as unpaid and \$20,000 of that required installment continues to be treated as unpaid.

(iv) Under paragraph (d)(3)(iv)(B) of this section, the interest adjustment in paragraph (b)(4)(iii) of this section for the \$90,000 portion of the installment due April 15, 2017 that is no longer treated as unpaid is given effect through an increase in the minimum required contribution. This increase to the minimum required contribution is \$837, which is determined as the difference between:

(A) The \$90,000 portion of the required installment that is no longer treated as unpaid by reason of paragraph (d)(3)(iv)(A) of this section, discounted for the 6-month period between June 30, 2017 (the last day of the quarter in which the liquidity amount was due) to January 1, 2017 (the valuation date) using the plan's effective interest rate for 2017 (5.90%), resulting in \$87,457 (that is,  $\$90,000 \div 1.0590^{(6/12)}$ ), and

(B) The \$90,000 portion of the required installment that is no longer treated as unpaid by reason of paragraph (d)(3)(iv)(A) of this section, discounted for the 2½-month period between June 30, 2017 and the April 15, 2017 due date using the plan's effective interest rate increased by 5 percentage points (10.90%), and further discounted for the 3½-month period between April 15, 2017 and January 1, 2017 valuation date using the plan's effective interest rate, for a result of \$86,620 (that is,  $\$90,000 \div 1.1090^{(2.5/12)} \div 1.0590^{(3.5/12)}$ ).

(v) The remainder of the required installment that was due on April 15, 2017 without regard to the liquidity requirement (\$20,000) remains unpaid until the July 15, 2017 contribution is made. Under paragraph (c) of this section, \$20,000 of the July 15, 2017 contribution must be allocated to the required installment due on April 15, 2017. The interest adjustment under paragraph (b)(4)(ii) of this section applies to that \$20,000 portion of the contribution because it is a late payment of a required installment. Accordingly, \$20,000 of the July 15, 2017 contribution is adjusted to April 15, 2017, using an interest rate of 10.90% for the 3-month period between July 15, 2017 and the April 15, 2017 due date, and further adjusted using the effective interest rate of 5.90% for 3½ months between April 15, 2017 and the January 1, 2017 valuation date. Therefore, the portion of the July 15, 2017 contribution attributable to the April 15, 2017 required installment is adjusted to \$19,166 as of January 1, 2017 ( $\$20,000 \div 1.1090^{(3/12)} \div 1.0590^{(3.5/12)}$ ).

(vi) The liquidity shortfall is recalculated as of June 30, 2017 as \$100,000 (that is, the base amount of \$1,500,000 minus the value of liquid assets of \$1,400,000). This amount is larger than the \$50,000 required installment otherwise applicable, and so the amount of the required installment due on July 15, 2017 is \$100,000. Of the \$75,000 contribution made on July 15, 2017, \$20,000 is applied to satisfy the remainder of the required installment due April 15, 2017, and the remaining \$55,000 is applied toward the required installment due July 15, 2017. An additional contribution of \$45,000 in liquid assets is needed to satisfy the required installment due July 15, 2017.

(vii) If instead there were no liquidity shortfall as of June 30, 2017, the required installment due July 15, 2017 would be \$50,000. Of the \$75,000 contribution made on July 15, 2017, \$20,000 would be applied to satisfy the remainder of the required installment due April 15, 2017, \$50,000 would be applied to satisfy the required installment due on July 15, 2017, and the remaining \$5,000 would be applied toward the next required installment.

*Example 14.* (i) Plan E, which is a small plan described in section 430(g)(2)(B), has a calendar year plan year and a valuation date of December 31. The required installments for the 2017 plan year are \$30,000 each and each of the required installments is paid on the due date. The effective interest rate for Plan E for the 2017 plan year is 5.90%.

(ii) The total contributions made for the plan year and before the valuation date, adjusted with interest to the valuation date,

equal \$92,402. This is developed as shown below:

(A) The contribution paid April 15, 2017 is adjusted by increasing the contribution amount for 8½ months at the effective interest rate ( $\$30,000 \times 1.0590^{(8.5/12)} = \$31,243$ ).

(B) The contribution paid July 15, 2017 is increased for 5½ months at the effective interest rate ( $\$30,000 \times 1.0590^{(5.5/12)} = \$30,799$ ).

(C) The contribution paid October 15, 2017 is increased for 2½ months at the effective interest rate ( $\$30,000 \times 1.0590^{(2.5/12)} = \$30,360$ ).

(iii) Pursuant to § 1.430(g)-1(d)(2), the interest-adjusted value of the contributions for the 2017 plan year that are made before the valuation date is subtracted from the December 31, 2017 plan assets in determining the value of plan assets for the December 31, 2017 actuarial valuation.

*Example 15.* (i) The facts are the same as in *Example 14*, except that the first contribution for the 2017 plan year is made on May 15, 2017 in the amount of \$40,000. The remaining amount of each required installment is paid on the date it is due.

(ii) In accordance with paragraph (c)(3)(iii) of this section, the amount of the required installment due on April 15, 2017 remains at \$30,000, even though the associated contribution was not paid until May 15, 2017. Therefore, \$30,000 of the payment is allocated to the April 15, 2017 required installment and the remaining \$10,000 is allocated to the installment due on July 15, 2017.

(iii) Under paragraph (c)(3)(ii) of this section, the portion of the May 15, 2017 contribution allocated to the July 15, 2017 required installment is increased for interest for the 2 months between the date of the contribution and the due date, using the effective interest rate for 2017. Therefore, the amount allocated to the July 15, 2017 installment is \$10,096 (that is,  $\$10,000 \times 1.0590^{(2/12)}$ ). The remaining installment due July 15, 2017 is \$30,000 minus \$10,096, or \$19,904.

(iv) The total amount credited against the minimum required contribution is \$122,062 as of December 31, 2017. This amount is calculated as shown below:

(A) The portion of the May 15, 2017 contribution allocated to the April 15, 2017 required installment is first adjusted for the 1 month between the due date and the payment date using the effective interest rate plus 5% ( $\$30,000 \div 1.1090^{(1/12)} = \$29,742$ ). This amount is then adjusted using the effective interest rate, for the 8½ months between the due date of April 15, 2017 and the valuation date of December 31, 2017 ( $\$29,742 \times 1.0590^{(8.5/12)} = \$30,975$ ).

(B) The remaining portion of the May 15, 2017 contribution (\$10,000) is increased for the 7½ months between the date of the contribution and the valuation date at the effective interest rate ( $\$10,000 \times 1.0590^{(7.5/12)} = \$10,365$ ).

(C) The contribution paid July 15, 2017 is increased for 5½ months at the effective interest rate ( $\$19,904 \times 1.0590^{(5.5/12)} = \$20,434$ ).

(D) The contribution paid October 15, 2017 is increased for 2½ months at the effective

interest rate  $(\$30,000 \times 1.0590^{(2.5/12)}) = \$30,360$ .

(E) The contribution paid January 15, 2018 is discounted for  $\frac{1}{2}$  month at the effective interest rate  $(\$30,000 \div 1.0590^{(0.5/12)}) = \$29,928$ .

(v) The amount deducted from valuation assets as of December 31, 2017 for contributions made before the valuation date is determined without regard to the special interest adjustment for late payment of the required installment due April 15, 2017 (and without regard to the contribution paid on January 15, 2018).

**Example 16.** (i) Plan F has a required installment of \$10,000 per quarter for the 2016 plan year. The plan sponsor makes a contribution of \$9,993 on April 10, 2016. The effective interest rate for Plan F for the 2016 plan year is 5.90%.

(ii) In accordance with paragraph (c)(3)(ii) of this section, the contribution is increased for interest at the effective interest rate, for the 5 days between the contribution date and the due date for the required installment. Therefore, the amount credited against the required installment due April 15, 2016 is \$10,001  $(\$9,993 \times 1.0590^{(5/365)})$ , and the required installment is satisfied.

**Example 17.** (i) The facts are the same as in **Example 16**, except that a contribution of \$8,000 is made on April 20, 2016.

(ii) In accordance with paragraph (c)(3)(iii) of this section, the amount of the required installment due on April 15, 2016 remains at \$10,000, even though the associated contribution was not paid until after the due date, and so \$2,000  $(\$10,000 - \$8,000)$  of the required installment remains unpaid as of April 20, 2016.

(iii) The amount of the April 20, 2016 contribution credited against the minimum required contribution for 2016 is \$7,858. This amount is determined by first adjusting the contribution for the 5 days between the due date for the required installment and the date of the contribution using the effective interest rate for Plan F for the 2016 plan year, plus 5%  $(\$8,000 \div 1.1090^{(5/365)}) = \$7,989$ . The result is further adjusted for the 105 days from the due date for the required installment to the valuation date of January 1, 2016 using the effective interest rate of 5.90%  $(\$7,989 \div 1.0590^{(105/365)}) = \$7,858$ .

(iv) Alternatively, the amount of the April 20, 2016 contribution credited against the minimum required contribution for 2016 could be determined using  $3\frac{1}{2}$  months between the due date for the required installment and the January 1, 2016 valuation date, as long as the calculation is done consistently for each contribution and for each plan year. Using this approach, the amount adjusted to the April 15, 2016 due date (using the effective interest rate for Plan F for the 2016 plan year plus 5%) is adjusted to January 1, 2016 for  $3\frac{1}{2}$  months at the effective interest rate for Plan F for the 2016 plan year. Under this approach, the amount credited against the minimum required contribution is \$7,856  $(\$8,000 \div 1.1090^{(5/365)} \div 1.0590^{(3.5/12)})$ .

**Example 18.** (i) Plan G has a funding standard carryover balance of \$15,000 and a prefunding balance of \$50,000 as of January 1, 2016. Plan G's required installments are

\$25,000 each for the 2017 plan year, and the final installment of the minimum required contribution for the 2016 plan year is due on September 15, 2017, in the amount of \$40,000. Plan G's funding ratios for both 2015 and 2016 (determined under § 1.430(f)-1(d)(3)) were over 80%. No elections were made to reduce or use Plan G's funding balances during 2016. The effective interest rate for Plan G for the 2016 and 2017 plan years are 5.40% and 5.90%, respectively.

(ii) On April 15, 2017, Plan G's sponsor elected to use the balances to offset the required installment due on that date. The amount of the required installment is adjusted to January 1, 2017, using the effective interest rate for 2017 to determine the amount by which the balances are reduced. Accordingly, this election results in a reduction of \$24,585  $(\$25,000 \div 1.0590^{(3.5/12)})$  in the funding balances as of January 1, 2017.

(iii) On September 15, 2017, Plan G's sponsor elected to use the balances to offset the remaining minimum required contribution for the 2016 plan year due on that date. This amount is adjusted to January 1, 2016, using the effective interest rate for 2016 to determine the amount by which the balances are reduced. Accordingly, this election results in a reduction of \$36,563  $(\$40,000 \div 1.0540^{(20.5/12)})$  in Plan G's funding balances as of January 1, 2016.

(iv) Section 430(f)(3)(B) and § 1.430(f)-1(d)(2) require that the funding standard carryover balance be exhausted before the prefunding balance is used to offset required contribution amounts. Although the due date for the April 15, 2017 required installment occurs earlier than the due date for the 2016 minimum required contribution, for this purpose contributions for the 2016 plan year are deemed to occur before those for the 2017 plan year. Therefore, the election to offset the 2016 minimum required contribution will eliminate Plan G's funding standard carryover balance, and the 2017 required installment due April 15, 2017 will be offset by the prefunding balance.

(g) *Effective/applicability dates and transition rules—(1) Statutory effective date/applicability date.* Section 430 generally applies to plan years beginning on or after January 1, 2008. The applicability of section 430 for purposes of determining the minimum required contribution is delayed for certain plans in accordance with sections 104 through 106 of PPA '06.

(2) *Effective date/applicability date of regulations.* This section applies to plan years beginning on or after January 1, 2016. For plan years beginning before January 1, 2016, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430(j).

(3) *First effective plan year.* For purposes of this section, the *first effective plan year* for a plan is the first plan year after the pre-effective plan year.

(4) *Pre-effective plan year.* For purposes of this section, the *pre-*

*effective plan year* is the plan year described in § 1.430(a)-1(h)(5).

(5) *Special rules relating to first effective plan year—(i) Determination of minimum required contribution for pre-effective plan year.* In the case of the plan's first effective plan year, the minimum required contribution for the preceding plan year for purposes of paragraph (c)(5)(ii)(B) of this section is equal to the minimum required contribution under section 412 for the pre-effective plan year (determined without regard to any funding waiver under section 412), determined as of the last day of the pre-effective plan year and without regard to the plan's credit balance.

(ii) *Determination of funding shortfall for pre-effective plan year—(A) First effective plan year that begins during 2008.* In general, in the case of a plan with a first effective plan year that begins during 2008, the funding shortfall for the pre-effective plan year that precedes it is determined pursuant to paragraph (e)(4) of this section.

However, for this purpose, the plan's current liability for the pre-effective plan year under section 412(l)(7) (as in effect for the pre-effective plan year) is permitted to be used in place of the plan's funding target for the pre-effective plan year. In addition, for this purpose, the value of plan assets that was used for the pre-effective plan year is permitted to be used in place of the value of plan assets computed pursuant to § 1.430(g)-1(c) for the pre-effective plan year, provided that the value of plan assets that was used for the pre-effective plan year was not less than 90 percent nor more than 110 percent of the value of plan assets computed pursuant to § 1.430(g)-1(c). If the value of plan assets that was used for the pre-effective plan year was less than 90 percent of the value of plan assets computed pursuant to § 1.430(g)-1(c), then 90 percent of the value of plan assets computed pursuant to § 1.430(g)-1(c) is permitted to be used as the value of plan assets for the pre-effective plan year. If the value of plan assets that was used for the pre-effective plan year was more than 110 percent of the value of plan assets computed pursuant to § 1.430(g)-1(c), then 110 percent of the value of plan assets computed pursuant to § 1.430(g)-1(c) is permitted to be used as the value of plan assets for the pre-effective plan year. Finally, for this purpose, the value of plan assets is permitted to be determined without subtraction for the plan's credit balance for the pre-effective plan year.

(B) *First effective plan year begins after 2008.* In the case of a plan with a first effective plan year that begins after

December 31, 2008, the determination of the funding shortfall for the pre-effective plan year that immediately precedes it is made in accordance with paragraph (e)(4)(i) of this section. Thus, the funding shortfall for the pre-effective plan year is based on the funding target for the pre-effective plan year and the value of plan assets is determined under § 1.430(g)-1(c) for the pre-effective plan year, even though section 430(g) did not apply to the plan for purposes of determining the minimum required contribution for the pre-effective plan year.

■ **Par. 6.** Section 1.436-1 is amended as follows:

■ 1. Paragraph (h)(4)(iii)(C)(7) is amended by removing the word “or”.

■ 2. Paragraph (h)(4)(iii)(C)(8) is amended by removing the word “percentage,” and adding the words “percentage; or” in its place.

■ 3. Paragraph (h)(4)(iii)(C)(9) is added. The additions read as follows:

**§ 1.436-1 Limits on benefits and benefit accruals under single employer defined benefit plans.**

- \* \* \* \* \*
- (h) \* \* \*
- (4) \* \* \*
- (iii) \* \* \*
- (C) \* \* \*

(9) Any other event prescribed in guidance published in the Internal Revenue Bulletin.

\* \* \* \* \*

**PART 54—PENSION EXCISE TAXES**

■ **Par. 7.** The authority citation for part 54 continues to read in part as follows:

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

■ **Par. 8.** Section 54.4971(c)-1 is added to read as follows:

**§ 54.4971(c)-1 Taxes on failure to meet minimum funding standards; definitions.**

(a) *In general.* This section sets forth definitions that apply for purposes of applying the rules of section 4971.

(b) *Accumulated funding deficiency—*

(1) *Multiemployer plans.* With respect to a multiemployer plan defined in section 414(f), the term *accumulated funding deficiency* has the meaning given to that term by section 431. A plan’s accumulated funding deficiency for a plan year takes into account all charges and credits to the funding standard account under section 412 for plan years before the first plan year for which section 431 applies to the plan.

(2) *CSEC plans.* With respect to a CSEC plan (that is, a plan that fits within the definition of a CSEC plan in section 414(y) for plan years beginning

on or after January 1, 2014 and for which the election under section 414(y)(3)(A) has not been made), the term *accumulated funding deficiency* means the CSEC accumulated funding deficiency determined under section 433. A plan’s CSEC accumulated funding deficiency for a plan year takes into account all charges and credits to the funding standard account under section 412 for plan years before the first plan year for which section 433 applies to the plan.

(c) *Unpaid minimum required contribution—*(1) *In general.* The term *unpaid minimum required contribution* means, with respect to any plan year, the portion of the minimum required contribution under section 430 for the plan year for which contributions have not been made on or before the due date for the plan year under section 430(j)(1). The unpaid minimum required contribution is determined after taking into account the interest adjustment to contributions under § 1.430(j)-1(b)(4) and any offsets from use of the funding balances under § 1.430(f)-1(d).

(2) *Accumulated funding deficiency for pre-effective plan year.* For purposes of this section, a plan’s accumulated funding deficiency under section 412 for the pre-effective plan year is treated as an unpaid minimum required contribution for that plan year until correction is made under the rules of paragraph (d)(2) of this section.

(d) *Correct—*(1) *Accumulated funding deficiency.* With respect to an accumulated funding deficiency for a plan year that is described in paragraph (b) of this section, the term *correct* means to contribute, to or under the plan, the amount necessary to reduce the accumulated funding deficiency as of the end of that plan year to zero. To reduce the deficiency to zero, the contribution must include interest at the plan’s valuation interest rate for the period between the end of that plan year and the date of the contribution (determined taking into account the rules of section 431(c)(8) or section 433(c)(9), as applicable).

(2) *Unpaid minimum required contribution—*(i) *In general.* With respect to an unpaid minimum required contribution for a plan year, the term *correct* means to contribute, to or under the plan, an amount that, when discounted to the valuation date for the plan year for which the unpaid minimum required contribution is due at the appropriate rate of interest, equals or exceeds the unpaid minimum required contribution. For this purpose, the appropriate rate of interest is the plan’s effective interest rate for the plan year for which the unpaid minimum

required contribution is due except to the extent that the payments are subject to additional interest as provided under section 430(j)(3) or (4).

(ii) *Pre-PPA accumulated funding deficiency.* With respect to the accumulated funding deficiency under section 412 for the pre-effective plan year that is described in paragraph (c)(2) of this section, the term *correct* means to contribute, to or under the plan, the amount of that accumulated funding deficiency increased with interest from the end of the pre-effective plan year to the date of the contribution at the plan’s valuation interest rate for the pre-effective plan year.

(iii) *Ordering rule.* For purposes of section 4971 and this section, a contribution is attributable first to the earliest plan year of any unpaid minimum required contribution for which correction has not yet been made.

(3) *Corrective action of certain retroactive plan amendments.* Certain retroactive plan amendments that meet the requirements of section 412(d)(2) may reduce the minimum required contribution for a plan year, which would reduce the accumulated funding deficiency or the amount of the unpaid minimum required contribution for a plan year.

(e) *Taxable period—*(1) *In general.* The term *taxable period* means the period beginning with the end of the plan year in which there is an accumulated funding deficiency or unpaid minimum required contribution, whichever is applicable, and ending on the earlier of:

(i) The date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by section 4971(a); or

(ii) The date on which the tax imposed by section 4971(a) is assessed.

(2) *Special rule.* Where a notice of deficiency referred to in paragraph (e)(1)(i) of this section is not mailed because a waiver of the restrictions on assessment and collection of a deficiency has been accepted or because the deficiency is paid, the date of filing of the waiver or the date of such payment, respectively, is treated as the end of the taxable period.

(f) *Single-employer plan.* The term *single-employer plan* means a plan to which the minimum funding requirements of section 412 apply that is not a multiemployer plan as described in section 414(f). The term *single-employer plan* includes a multiple employer plan to which section 413(c) applies, other than a CSEC plan as described in paragraph (b)(2) of this section.

(g) *Examples.* The following examples illustrate the rules of this section.

*Example 1.* (i) Plan A, a single-employer defined benefit plan, has a calendar year plan year and a January 1 valuation date. The sponsor of Plan A has a calendar taxable year. Plan A has no funding shortfall as of January 1, 2008, and Plan A has no unpaid minimum required contributions for 2008 or any earlier plan year. The minimum required contribution for the 2009 plan year is \$250,000. The plan sponsor makes one contribution for 2009 on July 1, 2009 in the amount of \$200,000, and the sponsor does not make an election to use the prefunding balance or funding standard carryover balance to offset the minimum required contribution for 2009. The effective interest rate for Plan A for the 2009 plan year is 5.90%.

(ii) The contribution paid July 1, 2009 is discounted for 6 months (to the valuation date) at the effective interest rate ( $\$200,000 \div 1.0590^{(6/12)} = \$194,349$ ). The unpaid minimum required contribution for the 2009 plan year is \$250,000 minus \$194,349, or \$55,651. The excise tax due under section 4971(a) is 10% of the unpaid minimum required contribution, or \$5,565.

*Example 2.* (i) The facts are the same as in *Example 1*. The plan sponsor makes an additional contribution of \$175,000 on December 31, 2010.

(ii) Under the ordering rule in paragraph (d)(2)(iii) of this section, the contribution made on December 31, 2010 is applied first to correct the unpaid minimum required contribution for 2009. The portion of the contribution paid December 31, 2010 that is required to eliminate the unpaid minimum required contribution for 2009 (taking into account the 2009 effective interest rate for the 24 months between January 1, 2009 and the payment date of December 31, 2010), is \$55,651 multiplied by  $1.059^{(24/12)}$  or \$62,412. The remaining payment of \$112,588 ( $\$175,000$  minus \$62,412) is applied to the contribution required for the 2010 plan year.

*Example 3.* (i) Plan B, a single-employer defined benefit plan, has a calendar year plan year. The sponsor of Plan B has a calendar taxable year. Plan B has an accumulated funding deficiency of \$100,000 as of December 31, 2007, including additional interest due to late required installments during 2007. The valuation interest rate for the 2007 plan year is 7.5%.

(ii) In accordance with paragraph (c)(2) of this section, the accumulated funding deficiency under section 412 as of December 31, 2007 is considered an unpaid minimum required contribution until it is corrected. Pursuant to paragraph (d)(2)(ii) of this section, the amount needed to correct that accumulated funding deficiency is \$100,000 plus interest at the valuation interest rate of 7.5% for the period between December 31, 2007 and the date of payment of the contribution.

(iii) The funding shortfall as of January 1, 2008 is calculated as the difference between the funding target and the value of assets as of that date. The assets are not adjusted by the amount of the accumulated funding deficiency. The fact that the contribution was not made for the 2007 plan year means that

the January 1, 2008 funding shortfall is larger than it would have been otherwise.

*Example 4.* (i) The facts are the same as in *Example 3*. The minimum required contribution for the 2008 plan year is \$125,000, but the plan sponsor does not make any required contributions for 2008.

(ii) The total unpaid minimum required contribution as of December 31, 2008 is the sum of the \$100,000 accumulated funding deficiency under section 412 from 2007 and the \$125,000 unpaid minimum required contribution for 2008, or \$225,000. The section 4971(a) excise tax applies to the aggregate unpaid minimum required contributions for all plan years that remain unpaid as of the end of 2008. In this case, there is an unpaid minimum required contribution of \$100,000 for the 2007 plan year and an unpaid minimum required contribution of \$125,000 for the 2008 plan year. The section 4971(a) excise tax is 10% of the aggregate of those unpaid amounts, \$22,500.

*Example 5.* (i) The facts are the same as in *Example 4*, except that the plan sponsor makes a contribution of \$150,000 on December 31, 2008. No additional contributions are paid through September 15, 2009. Required installments of \$25,000 each are due April 15, 2008, July 15, 2008, October 15, 2008, and January 15, 2009. Plan B's effective interest rate for the 2008 plan year is 5.75%.

(ii) In accordance with paragraph (c)(2) of this section, the accumulated funding deficiency under section 412 as of December 31, 2007 is treated as an unpaid minimum required contribution until it is corrected.

(iii) The December 31, 2008 contribution is first applied to the 2007 accumulated funding deficiency under section 412 that is treated as an unpaid minimum required contribution. Accordingly, the amount needed to correct the 2007 unpaid required minimum contribution ( $\$100,000$  multiplied by 1.075, or \$107,500) is applied to eliminate this unpaid minimum required contribution for the 2007 plan year.

(iv) The remaining \$42,500 December 31, 2008 contribution ( $\$150,000$  minus \$107,500) is then applied to the 2008 minimum required contribution. This amount is first allocated to the required installment due April 15, 2008. In accordance with § 1.430(j)-1(b)(4)(ii) of this chapter, the adjustment for interest on late required installments is increased by 5 percentage points for the period of underpayment. Therefore, \$25,000 of the remaining December 31, 2008 contribution is discounted using an interest rate of 10.75% for the 8½-month period between the payment date of December 31, 2008 and the required installment due date of April 15, 2008, and at the 5.75% effective interest rate for the 3½ months between April 15, 2008 and January 1, 2008. This portion of the December 31, 2008 contribution results in an adjusted amount of \$22,880 (that is,  $\$25,000 \div 1.1075^{(8.5/12)} \div 1.0575^{(3.5/12)}$ ) as of January 1, 2008.

(v) The remaining December 31, 2008 contribution is then applied to the required installment due July 15, 2008. The \$17,500 balance of the December 31, 2008 contribution ( $\$150,000$  minus \$107,500

minus \$25,000) is paid after the due date for the second required installment.

Accordingly, the remaining \$17,500 contribution is adjusted using an interest rate of 10.75% for the 5½-month period between the payment date of December 31, 2008 and the required installment due date of July 15, 2008, and at the 5.75% effective interest rate for the 6½ months between July 15, 2008 and January 1, 2008. This portion of the December 31, 2008 contribution results in an adjusted amount of \$16,202 (that is,  $\$17,500 \div 1.1075^{(5.5/12)} \div 1.0575^{(6.5/12)}$ ) as of January 1, 2008.

(vi) The remaining unpaid minimum required contribution for 2008 is \$125,000 minus the interest-adjusted amounts of \$22,880 and \$16,202 applied towards the 2008 minimum required contribution as determined in paragraphs (iv) and (v) of this *Example 5*. This results in an unpaid minimum required contribution of \$85,918 for 2008. The section 4971(a) excise tax is 10% of the unpaid minimum required contribution, or \$8,592.

*Example 6.* (i) Plan C, a single-employer defined benefit plan, has a calendar year plan year and a January 1 valuation date, and has no funding standard carryover balance or prefunding balance as of January 1, 2008. Plan C's sponsor has a calendar taxable year. The minimum required contributions for Plan C are \$100,000 for the 2008 plan year, \$110,000 for the 2009 plan year, \$125,000 for the 2010 plan year, and \$135,000 for the 2011 plan year. No contributions for these plan years are made until September 15, 2012, at which time the plan sponsor contributes \$273,000 (which is exactly enough to correct the unpaid minimum required contributions for the 2008 and 2009 plan years).

(ii) The excise tax under section 4971(a) for the 2008 taxable year is 10% of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending within the 2008 taxable year. Accordingly, the excise tax for the 2008 taxable year is \$10,000 (that is, 10% of \$100,000). The excise tax for the 2009 taxable year is \$21,000 (that is, 10% of the sum of \$100,000 and \$110,000) and the excise tax for the 2010 taxable year is \$33,500 (that is, 10% of the sum of \$100,000, \$110,000, and \$125,000).

(iii) The contribution made on September 15, 2012 is applied to correct the unpaid minimum required contributions for the 2008 and 2009 plan years by the deadline for making contributions for the 2011 plan year. Therefore, the excise tax under section 4971(a) for the 2011 taxable year is based only on the remaining unpaid minimum required contributions for the 2010 and 2011 plan years, or \$26,000 (that is, 10% of the sum of \$125,000 and \$135,000).

(iv) The plan sponsor may also be required to pay an excise tax of 100% under section 4971(b), if the unpaid minimum required contributions are not corrected by the end of the taxable period.

(h) *Effective/applicability dates and transition rules—(1) Statutory effective date—(i) In general.* In general, the amendments made to section 4971 by section 114 of the Pension Protection

Act of 2006, Public Law 109–280, 120 Stat. 780 (2006), as amended (PPA '06), apply to taxable years beginning on or after January 1, 2008, but only with respect to a plan year that—

(A) Begins on or after January 1, 2008; and

(B) Ends with or within any such taxable year.

(ii) *Plans with delayed PPA '06 effective dates.* In the case of a plan for which the effective date of section 430 for purposes of determining the minimum required contribution is delayed in accordance with sections 104 through 106 of PPA '06, the amendments made to section 4971 by

section 114 of PPA '06 apply to taxable years beginning on or after January 1, 2008, but only with respect to a plan year—

(A) To which section 430 applies to determine the minimum required contribution of the plan; and

(B) That ends with or within any such taxable year.

(2) *Effective date of regulations.* This section is effective for taxable years beginning on or after the statutory effective date described in paragraph (h)(1) of this section, but in no event does this section apply to taxable years ending before April 15, 2008.

(3) *Pre-effective plan year.* For purposes of this section, the pre-

effective plan year for a plan is the plan year described in § 1.430(a)–1(h)(5) of this chapter. Thus, except for plans with a delayed effective date under paragraph (h)(1)(ii) of this section, the pre-effective plan year for a plan is the last plan year beginning before January 1, 2008.

**John Dalrymple,**

*Deputy Commissioner for Services and Enforcement.*

Approved: July 17, 2015.

**Mark J. Mazur,**

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