DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9941]

RIN 1545–BO68 and 1545–BO78

Taxable Year of Income Inclusion Under an Accrual Method of Accounting and Advance Payments for Goods, Services, and Other Items

Correction

In rule document 2020–28563 beginning on page 810 in the issue of Wednesday, January 6, 2021, make the following correction:

On page 810, in the **DATES** section, in the second line beneath the heading, ''December 31, 2021'' should read ''December 31, 2020''.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001, 4204, 4206, 4207, 4211, 4219

RIN 1212–AB36

Methods for Computing Withdrawal Liability, Multiemployer Pension Reform Act of 2014

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations on Allocating Unfunded Vested Benefits to Withdrawing Employers and Notice, Collection, and Redetermination of Withdrawal Liability. The amendments implement statutory provisions affecting the determination of a withdrawing employer's liability under a multiemployer plan and annual withdrawal liability payment amount when the plan has had benefit reductions, benefit suspensions, surcharges, or contribution increases that must be disregarded. The amendments also provide simplified withdrawal liability calculation methods.

DATES: *Effective date:* This rule is effective February 8, 2021.

Applicability date: This rule applies to employer withdrawals from multiemployer plans that occur in plan years beginning on or after February 8, 2021.

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, 202–229–3839. (TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–229–3839.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of Regulatory Action

This rulemaking is needed to implement statutory changes affecting the determination of an employer's withdrawal liability and annual withdrawal liability payment amount when the employer withdraws from a multiemployer plan. The final regulation provides simplified methods for determining withdrawal liability and annual payment amounts, which a multiemployer plan sponsor can adopt to satisfy the statutory requirements and to reduce administrative burden. In this final rule, PBGC adopts its proposed changes implementing statutory changes and providing simplified methods, with some modifications in response to public comments.

PBGC's legal authority for this action is based on section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA; section 305(g) [1] of ERISA, which provides the statutory requirements for changes to withdrawal liability; section 4001 of ERISA (Definitions); section 4204 of ERISA (Sale of Assets); section 4206 of ERISA (Adjustment for Partial Withdrawal); section 4207 (Reduction or Waiver of Complete Withdrawal Liability); section 4211 of ERISA (Methods for Computing Withdrawal Liability); and section 4219 of ERISA (Notice, Collection, Etc., of Withdrawal Liability). Section 305(g)(5) of ERISA directs PBGC to provide simplified methods for multiemployer plan sponsors to use in determining withdrawal liability and annual payment amounts.

Major Provisions of the Regulatory Action

This final regulation amends PBGC's regulations on Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR part 4211) and Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219). The changes implement statutory changes affecting the determination of an employer's withdrawal liability and annual withdrawal liability payment amount and provide simplified methods for a plan sponsor to—

- Disregard reductions and suspensions of nonforfeitable benefits in determining the plan's unfunded vested benefits for purposes of calculating withdrawal liability.
- Disregard certain contribution increases if the plan is using the presumptive, modified presumptive, or rolling-5 method for purposes of determining the allocation of unfunded vested benefits to an employer.
- Disregard certain contribution increases for purposes of determining an employer's annual withdrawal liability payment.

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I. Background

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs for private-sector defined benefit pension plans under title IV of the Employee Retirement

[1] Section 305(g) of ERISA and section 432(g) of the Internal Revenue Code (Code) are parallel provisions in ERISA and the Code.

Income Security Act of 1974 (ERISA): A single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. In general, a multiemployer pension plan is a collectively bargained plan involving two or more unrelated employers. This final rule deals with multiemployer plans.

Under sections 4201 through 4225 of ERISA, when a contributing employer withdraws from an underfunded multiemployer plan, the plan sponsor assesses withdrawal liability against the employer. Withdrawal liability represents a withdrawing employer's proportionate share of the plan's unfunded benefit obligations. To assess withdrawal liability, the plan sponsor must determine the withdrawing employer's: (1) Allocable share of the plan's unfunded vested benefits (the value of nonforfeitable benefits that exceeds the value of plan assets) as provided under section 4211, and (2) annual withdrawal liability payment as provided under section 4219.

There are four statutory allocation methods for determining a withdrawing employer's allocable share of the plan's unfunded vested benefits under section 4211 of ERISA: The presumptive method, the modified presumptive method, the rolling-5 method, and the direct attribution method. Under the first three methods, the basic formula for an employer's withdrawal liability is one or more pools of unfunded vested benefits times the withdrawing employer's allocation fraction—

$$\text{Unfunded Vested Benefit Pool(s)}^{2} \times \frac{\text{Withdrawing employer's required contributions}}{\text{All employers' contributions}}$$

The withdrawing employer's allocation fraction is generally equal to the withdrawing employer's required contributions over all employers' contributions over the 5 years preceding the relevant period or periods. Under the fourth method, the direct attribution method, an employer's withdrawal liability is based on the benefits and assets attributed directly to the employer's participants' service, and a portion of the unfunded benefit obligations not attributable to any present employer.

PBGC's regulation on Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR part 4211) provides modifications to the allocation methods that plan sponsors may adopt. Part 4211 also provides a process that plan sponsors may use to request approval of other methods.

A withdrawn employer makes annual withdrawal liability payments at a set rate over the number of years necessary to amortize its withdrawal liability, generally limited to a period of 20 years. If any of an employer's withdrawal liability remains unpaid under the payment schedule after 20 years, the unpaid amount may be allocated to other employers in addition to their basic withdrawal liability.

Annual withdrawal liability payments are designed to approximate the employer's annual contributions before its withdrawal. The basic formula for the annual withdrawal liability payment under section 4219(c) of ERISA is a contribution rate multiplied by a contribution base. Specifically, the annual withdrawal liability payment is determined as follows—

$$\begin{array}{c}\text{Employer's highest contribution}\\ \text{rate in the 10 plan years ending}\\ \text{with the year of withdrawal}\end{array} \times \begin{array}{c}\text{Average number of contribution base units}\\ \text{(e.g., hours worked) for the highest 3}\\ \text{consecutive plan years in the 10-year period}\\ \text{preceding the year of withdrawal}\end{array}$$

As the basic formulas show, withdrawal liability and an employer's annual withdrawal liability payment depend, among other things, on the value of unfunded vested benefits and the amount of contributions.

In response to financial difficulties faced by some multiemployer plans, Congress made statutory changes in 2006 and 2014 that affect benefits and contributions under these plans. The four types of changes provided for are shown in the following table:

[2] Under ERISA sections 4211(b) and (c), the presumptive method provides for 20 distinct year-by-year liability pools (each pool represents the year in which the unfunded liability arose), the modified presumptive method provides for two liability pools, and the rolling-5 method provides for a single liability pool computed as of the end of the plan year preceding the plan year when the withdrawal occurs.

Adjustable benefit reductions	Reductions in adjustable benefits (e.g., post-retirement death benefits, early retirement benefits) and reductions arising from a restriction on lump sums and other benefits.[3]
Benefit Suspensions	Temporary or permanent suspension of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the benefit suspension.[4]
Surcharges	Surcharges, calculated as a percentage of required contributions, that certain underfunded plans are required to impose on contributing employers.[5]
Contribution Increases	Contribution increases that plan trustees may require under a funding improvement or rehabilitation plan.[6]

While each of the changes has its own requirements, they generally are all required to be ''disregarded'' by the plan sponsor in determining an employer's withdrawal liability. The statutory ''disregard'' rules require in effect that all computations in determining and assessing withdrawal liability be made using values that do not reflect the lowering of benefits or raising of contributions required to be disregarded.

The Pension Protection Act of 2006, Public Law 109–280 (PPA 2006), amended ERISA's withdrawal liability rules to require a plan sponsor to disregard the adjustable benefits reductions in section 305(e)(8) of ERISA and the elimination of accelerated forms of distribution in section 305(f) of ERISA (which, for purposes of this preamble are referred to as adjustable benefit reductions) in determining a plan's unfunded vested benefits. PPA 2006 also requires a plan sponsor to disregard the contribution surcharges in section 305(e)(7) of ERISA in determining the allocation of unfunded vested benefits.

PBGC issued a final rule in December 2008 (73 FR 79628) implementing these PPA 2006 ''disregard'' rules by modifying the definition of ''nonforfeitable benefit'' for purposes of PBGC's regulations on Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR part 4211) and on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219). PBGC provided simplified methods to determine withdrawal liability for plan sponsors required to disregard adjustable benefit reductions in Technical Update 10–3 (July 15, 2010). The 2008 final rule also excluded the employer surcharge from the numerator and denominator of the allocation fractions used under section 4211 of ERISA. The preamble included an example of the application of the exclusion of surcharge amounts from contributions in the allocation fraction.

The Multiemployer Pension Reform Act of 2014, Public Law 113–235 (MPRA), made further amendments to the withdrawal liability rules and consolidated them with the PPA 2006 changes. The additional MPRA amendments require a plan sponsor to disregard benefit suspensions in determining the plan's unfunded vested benefits for a period of 10 years after the effective date of a benefit suspension. MPRA also requires a plan sponsor to disregard certain contribution increases in determining the allocation of unfunded vested benefits. A plan sponsor must also disregard surcharges and those contribution increases in determining an employer's annual withdrawal liability payment under section 4219 of ERISA. The MPRA amendments apply to benefit suspensions and contribution increases that go into effect during plan years beginning after December 31, 2014, and to surcharges for which the obligation accrues on or after December 31, 2014.

Congress also authorized PBGC to create simplified methods for applying the ''disregard'' rules.

Proposed Regulation

On February 6, 2019 (at 84 FR 2075), PBGC published a proposed rule to explain the PPA 2006 and MPRA ''disregard'' requirements and PBGC's simplified methods. Each simplified method provided applies to one or more specific aspects of the process of determining and assessing withdrawal liability.

PBGC provided a 60-day comment period and received eight comment letters from: Actuarial consulting firms; associations representing multiemployer plans, pension practitioners, and contributing employers; and a practitioner. To address the comments, PBGC is making modifications and clarifications, adding examples, and providing additional simplified methods. The public comments, PBGC's responses, and the provisions of this final rule are discussed below.

II. Discussion of Final Regulation and Public Comments

Overview

This final rule, like the proposed, implements the PPA 2006 and MPRA requirements to disregard adjustable benefit reductions, benefit suspensions, surcharges, and contribution increases. All of the commenters commented on the provision in the proposed rule implementing the exception to the disregard rules for a contribution increase that provides an increase in benefits. The provision, comments, and changes to the proposed rule in response to the comments are discussed in more detail in section IV.A. of the preamble. Except for those changes, the final rule is substantially the same as the proposed rule.

The final rule, like the proposed rule, provides: (1) Simplified methods for disregarding adjustable benefit reductions and benefit suspensions; and (2) simplified methods for disregarding certain contribution increases in determining the allocation of unfunded vested benefits to an employer and the annual withdrawal liability payment amount. A plan sponsor may, but is not required to, adopt any one or more of the simplified methods to use in the calculation of determining and assessing withdrawal liability but must follow the statutory withdrawal liability rules for all other aspects. In response to comments, PBGC made clarifications and improvements to the simplified methods, which are discussed below in sections III and IV of the preamble.

[3] Section 305(e)(8) and (f) of ERISA and section 432(e)(8) and (f) of the Code.

[4] Section 305(e)(9) of ERISA and section 432(e)(9) of the Code. The Department of the Treasury must approve an application for a benefit suspension, in consultation with PBGC and the Department of Labor, upon finding that the plan is eligible for the suspension and has satisfied the criteria specified by the Multiemployer Pension Reform Act of 2014, Public Law 113–235 (MPRA). The Department of the Treasury has jurisdiction over benefit suspensions and issued a final rule implementing the MPRA provisions on April 28, 2016 (81 FR 25539).

[5] Under section 305(e)(7) of ERISA and section 432(e)(7) of the Code, each employer otherwise obligated to make contributions for the initial plan year and any subsequent plan year that a plan is in critical status must pay a surcharge to the plan for such plan year, until the effective date of a collective bargaining agreement (or other agreement pursuant to which the employer contributes) that includes terms consistent with the rehabilitation plan adopted by the plan sponsor.

[6] The plan sponsor of a plan in endangered status for a plan year must adopt a funding improvement plan under section 305(c) of ERISA and section 432(c) of the Code. The plan sponsor of a plan in critical status for a plan year must adopt a rehabilitation plan under section 305(e) of ERISA and section 432(e) of the Code.

Because some of the commenters found the examples illustrating calculations using the simplified methods helpful, PBGC is adding some of the examples to the operative text and to an appendix to part 4211. The final rule also eliminates some language that merely repeats statutory provisions and makes other editorial changes.

''*Safe Harbors*''

One commenter asked PBGC to clarify that the simplified methods are ''safe harbor'' methods, but that alternate simplified methods could be appropriate. The commenter requested that PBGC consider providing plan sponsors with the opportunity to seek approval for an alternative simplified method. Under the final rule, PBGC clarifies that, similar to a safe harbor, a plan sponsor that adopts one of the simplified methods satisfies the requirements of the applicable statutory provision and regulations. Consistent with the proposed rule, a plan sponsor may choose to use an alternative approach that satisfies the requirements of the applicable statutory provisions and regulations rather than any of the simplified methods. While PBGC does not approve alternative simplified methods on a plan-by-plan basis, PBGC welcomes informal consultations with trustees and their advisors on whether an alternative approach could satisfy the requirements of the applicable statutory provisions and regulations. In addition, PBGC invited comments in the proposed rule on other simplified methods that a plan might use to satisfy certain requirements in section 305(g) of ERISA and incorporated changes in the final rule in response to comments received. PBGC encourages trustees and their advisors to inform PBGC of additional simplified methods to consider for a future rulemaking.

Effective and Applicability Dates

Under the proposed rule, the changes relating to simplified methods would be applicable to employer withdrawals that occur on or after the effective date of the final rule. It further proposed that the changes relating to MPRA benefit suspensions and contribution increases for determining an employer's withdrawal liability would apply to plan years beginning after December 31, 2014, and to surcharges the obligation for which occur on or after December 31, 2014. The proposed rule did not provide an effective date.

Three commenters asked for clarification of the effective date and were concerned that the rule would require retroactive application. Two commenters were concerned that plans could be required to implement changes at some time other than the beginning or end of a specified plan year. The commenters made specific recommendations for an applicability date. One commenter recommended that the date be based on withdrawals in plan years beginning on or after the effective date of the final rule. A second commenter recommended that the regulation apply for withdrawals beginning in the plan year that next follows the plan year in which the rule becomes effective with a transition period in the event the next plan year begins within 6 months following the issuance of the final regulation. A third commenter recommended a transition period of at least 1 plan year to give plans time to evaluate and consider the methodologies included in the regulation for contribution increases that provide an increase in benefits. PBGC did not adopt this suggested transition period because the final rule does not include the proposed rule's provision implementing the exception under section 305(g)(3) of ERISA for additional contributions used to provide an increase in benefits. The provision is discussed in section IV.A. of the preamble.

In response to the comments about the rule's effective date, PBGC is clarifying that the changes made by the final rule apply to plans prospectively. Accordingly, the final rule is effective February 8, 2021 and applies to employer withdrawals from multiemployer plans that occur in plan years beginning on or after the effective date. Just as before the final rule, plan sponsors may apply their own reasonable interpretations of the statutory provisions to calculate an employer's withdrawal liability. Plan sponsors may, but are not required to, adopt the simplified methods provided in the final rule. In addition, as suggested by one commenter, PBGC added effective dates in parts 4211 and 4219 for the new sections providing simplified methods.

III. Regulatory Changes To Reflect Benefit Decreases

A. Requirement To Disregard Adjustable Benefit Reductions and Benefit Suspensions (§ 4211.6)

Under the basic methodology explained in section I above, a plan sponsor must calculate the value of unfunded vested benefits (the value of nonforfeitable benefits that exceeds the value of plan assets)[7] to determine a withdrawing employer's liability. In computing nonforfeitable benefits, under section 305(g)(1) of ERISA, a plan sponsor is required to disregard certain adjustable benefit reductions and benefit suspensions.

The final regulation, like the proposed, adds a new § 4211.6 to PBGC's unfunded vested benefits allocation regulation to implement the requirements that plan sponsors must disregard adjustable benefit reductions and benefit suspensions in allocating unfunded vested benefits. Section 4211.6 replaces the approach previously taken by PBGC to implement the PPA 2006 ''disregard'' rules by modifying the definition of ''nonforfeitable benefit.'' The added MPRA ''disregard'' rules made that prior approach difficult to sustain. The final regulation, like the proposed, eliminates the special definition of ''nonforfeitable benefit'' in PBGC's unfunded vested benefits allocation regulation and notice, collection, and redetermination of withdrawal liability regulation.

MPRA limited the requirement for a plan sponsor to disregard a benefit suspension in determining an employer's withdrawal liability to 10 years. Under the final regulation, like the proposed, the requirement to disregard a benefit suspension applies only for withdrawals that occur within the 10 plan years after the end of the plan year that includes the effective date of the benefit suspension. To calculate withdrawal liability during the 10-year period, a plan sponsor disregards the benefit suspension by including the value of the suspended benefits in determining the amount of unfunded vested benefits allocable to an employer. For example, if a plan has a benefit suspension with an effective date within the plan's 2018 plan year, the plan sponsor would include the value of the suspended benefits in determining the amount of unfunded vested benefits allocable to an employer for any withdrawal occurring in plan years 2019 through 2028. The plan sponsor would not include the value of the suspended benefits in determining the amount of unfunded vested benefits allocable to an employer for a withdrawal occurring after the 2028 plan year.

In cases where a benefit suspension ends and full benefit payments resume during the 10-year period following a suspension, the value of the suspended

[7] The term ''unfunded vested benefits'' is defined in section 4213(c) of ERISA. However, for purposes of PBGC's notice, collection, and redetermination of withdrawal liability regulation (29 CFR part 4219), the calculation of unfunded vested benefits, as used in subpart B of the regulation, is modified to reflect the value of certain claims. To avoid confusion, PBGC proposes to add a specific definition of ''unfunded vested benefits'' in each part of its multiemployer regulations that uses the term.

benefits would continue to be included when calculating withdrawal liability until the end of the plan year in which the resumption of full benefit payments was required as determined under Department of the Treasury guidance, or otherwise occurs.

B. Simplified Methods for Disregarding Adjustable Benefit Reductions and Benefit Suspensions (§ 4211.16)

Under section 305(g)(5) of ERISA, PBGC is required to provide simplified methods for a plan sponsor to determine withdrawal liability when the plan has adjustable benefit reductions or benefit suspensions that are required to be disregarded. The final regulation, like the proposed, provides a simplified framework for disregarding adjustable benefit reductions and benefit suspensions in § 4211.16 of PBGC's unfunded vested benefits allocation regulation. A plan sponsor may adopt the simplified framework in § 4211.16 to satisfy the requirements of section 305(g)(1) of ERISA and § 4211.6 of PBGC's unfunded vested benefits allocation regulation, or may choose to use an alternative approach to satisfy the requirements of the statutory provisions and regulation.

Under the simplified framework, if a plan has adjustable benefit reductions or benefit suspensions, the plan sponsor first calculates an employer's withdrawal liability using the plan's withdrawal liability method reflecting any adjustable benefit reduction and benefit suspension (§ 4211.16(b)(1)). The plan sponsor adds the employer's proportional share of the value of any adjustable benefit reduction and any benefit suspension (§ 4211.16(b)(2)). In summary, withdrawal liability for a withdrawing employer is based on the sum of the following—

(1) The amount that would be the employer's allocable amount of unfunded vested benefits determined in accordance with section 4211 of ERISA under the method in use by the plan (based on the value of the plan's nonforfeitable benefits reflecting any adjustable benefit reduction and any benefit suspension),[8] and

(2) The employer's proportional share of the value of any adjustable benefit reduction and the employer's proportional share of the value of any suspended benefits.

Consistent with the proposed rule, under the final rule, this amount is required to be calculated before application of the adjustments required by section 4201(b)(1) of ERISA, including the de minimis reduction and the 20-year cap on payments under section 4219(c)(1)(B) of ERISA.

Two commenters asked for clarification on how the rule for the application of adjustments required by section 4201(b)(1) of ERISA interacts with guidance provided under Technical Update 10–3 (July 15, 2010) for plan sponsors required to disregard adjustable benefit reductions. The commenters stated that plans may have interpreted Technical Update 10–3 to adjust for the de minimis reduction before adding the proportional share of the adjustable benefit reduction. One commenter stated that any clarification of the method provided in Technical Update 10–3 should be provided only on a prospective basis and that the final rule should provide a safe harbor for plans that may have interpreted Technical Update 10–3 differently.

PBGC agrees that Technical Update 10–3 did not specifically address how adjustments for the de minimis reduction and the 20-year cap on payments should be applied. PBGC is aware that some plans that adopted the simplified method under Technical Update 10–3 make separate calculations of an employer's liability under section 4211 of ERISA, subject to the adjustments required under section 4201, and an employer's liability for adjustable benefit reductions.

In reviewing the issue in the context of benefit suspensions, PBGC concluded that the ''allocable amount of unfunded vested benefits'' under section 4201(b)(1) of ERISA, which is calculated before adjustments are made, should include the employer's proportional share of the value of benefit suspensions required to be disregarded. For purposes of providing a simplified framework for adjustable benefit reductions and benefit suspensions, PBGC provided in the proposed rule that the adjustments required by section 4201(b)(1) of ERISA are made after adding the amount that would be the employer's allocable amount of unfunded vested benefits determined in accordance with section 4211 of ERISA and the employer's proportional share of the value of each of the benefit reductions and benefit suspensions required to be disregarded. Section 4211.16(b) of the final rule is unchanged from the proposed rule with respect to the application of the adjustments in section 4201(b)(1) of ERISA. In consideration of the comments received, PBGC is clarifying that the simplified framework in the final rule applies prospectively only and is applicable for withdrawals that occur in plan years beginning after the effective date of the final rule.

One commenter suggested that if the employer's allocable amount determined under § 4211.16(a) results in a negative value, a plan sponsor should be able to use the negative value to offset the employer's allocable share of the value of the adjustable benefit reductions and benefit suspensions under § 4211.16(b). The preamble to the proposed rule stated that under the simplified framework, the amount of unfunded vested benefits allocable to an employer under section 4211 of ERISA may not be less than zero. PBGC acknowledges that in some cases where precise actuarial calculations are being made (*i.e.,* calculations made not using a simplified method), it might be appropriate to offset an interim negative value of allocable unfunded vested benefits calculated under section 4211 of ERISA against a positive allocable value of benefit reductions or benefit suspensions. However, because the value of the employer's allocable share of the value of adjustable benefit reductions and benefit suspensions under the simplified framework are approximations that may be less than the value that would be allocated under a non-simplified actuarial calculation, PBGC did not allow for an offset of a negative number. In the final rule, a sentence is added to the basic rule for the simplified framework in § 4211.16(b) to make it clear that the amount determined under paragraph (b)(1) may not be a negative number to be used as an offset to the employer's allocable share of the value of the adjustable benefit reductions and benefit suspensions.

The same commenter stated that construction-industry plans that have no unfunded vested benefits under section 4211 of ERISA should be permitted to elect a fresh start for that plan year, even if the plan continues to have liability for adjusted benefit reductions and benefit suspensions. PBGC agrees with the comment and that a plan sponsor's decision to implement a fresh start does not affect the value of adjustable benefit reductions and benefit suspensions in calculating withdrawal liability. In the final rule, PBGC is clarifying in new § 4211.12(d)(3) that in the case of a plan that primarily covers employees in the building and construction industry, the plan year designated by a plan amendment to implement a fresh start must be a plan year for which the plan has no unfunded vested benefits determined in accordance with section 4211 of ERISA without regard to § 4211.6.

[8] The amount of unfunded vested benefits allocable to an employer under section 4211 may not be less than zero.

The commenter also suggested that to the extent adjustable benefit reductions are restored, plan sponsors should be able to treat the liability for the adjustable benefit reductions as if it had been reduced or eliminated. PBGC agrees that, in this circumstance, a plan sponsor can offset the present value of restored adjustable benefits against the unamortized balance of the adjustable benefit reduction under § 4211.16(b)(2). The present value of the restored adjustable benefits would be included in the calculation of the allocable amount of unfunded vested benefits determined under § 4211.16(b)(1).

The simplified framework provides simplified methods for calculating the employer's proportional share of the value of any adjustable benefit reduction and the employer's proportional share of the value of any suspended benefits. If a plan has adjustable benefit reductions, the plan sponsor may adopt the simplified method discussed below to determine the value of the adjustable benefit reductions. If a plan has a benefit suspension, the plan sponsor may adopt either the static value method or adjusted value method to determine the value of the suspended benefits (also discussed below). The contributions for the allocation fractions for each of the simplified methods are determined in accordance with the rules for disregarding contribution increases under § 4211.4 of PBGC's unfunded vested benefits allocation regulation (and permissible modifications and simplifications under §§ 4211.12–4211.15 of PBGC's unfunded vested benefits allocation regulation).

Under the simplified framework, a plan sponsor must include liabilities for benefits that have been reduced or suspended in the value of vested benefits. But the simplified framework does not require a plan sponsor to calculate what plan assets would have been if benefit payments had been higher. One commenter asked for the final regulation to clarify that, regardless of whether plan sponsors adopt simplified methods for disregarding adjustable benefit reductions or benefit suspensions, plans are not required to track what plan assets would have been absent those reductions or suspensions. PBGC believes that generally accepted actuarial principles and practices accommodate the adoption of assumptions about quantities (like the amount of such an asset reduction) that may not have a material effect on the results of the computation. Thus, the issue raised by the commenter is one for resolution by the plan actuary.

1. Employer's Proportional Share of the Value of an Adjustable Benefit Reduction

Except as discussed in the preamble, the final regulation, like the proposed, incorporates the guidance provided in PBGC Technical Update 10–3 for disregarding the value of adjustable benefit reductions. Technical Update 10–3 explains the simplified method for determining an employer's proportional share of the value of adjustable benefit reductions. The method applies for any employer withdrawal that occurs in any plan year following the plan year in which an adjustable benefit reduction takes effect and before the value of the adjustable benefit reduction is fully amortized. The method is summarized in the chart in section III.B.3. below.

An employer's proportional share of the value of adjustable benefit reductions is determined as of the end of the plan year before withdrawal as follows—

$$\begin{array}{c}\text{The unamortized balance of}\\ \text{the value of adjustable benefit reductions}\end{array} \times \begin{array}{c}\text{The withdrawing employer's}\\ \text{allocation fraction}\end{array}$$

The value of the adjustable benefit reductions is determined using the same assumptions used to determine unfunded vested benefits for purposes of section 4211 of ERISA. The unamortized balance as of a plan year is the value as of the end of the year in which the reductions took effect (base year), reduced as if that amount were being fully amortized in level annual installments over 15 years, at the plan's valuation interest rate, beginning with the first plan year after the base year.

The withdrawing employer's allocation fraction is the amount of the employer's required contributions over a 5-year period divided by the amount of all employers' contributions over the same 5-year period.

The 5-year period for computing the allocation fraction is the most recent 5 plan years ending before the employer's withdrawal. For purposes of determining the allocation fraction, the denominator is increased by any employer contributions owed with respect to earlier periods that were collected in the 5 plan years and decreased by any amount contributed by an employer that withdrew from the plan during those plan years, or, alternatively, adjusted as permitted under § 4211.12.

For calculating the value of adjustable benefit reductions, Technical Update 10–3 provides an adjustment if the plan uses the rolling-5 method. The value is reduced by outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that withdrew as of the end of the plan year before the employer's withdrawal. PBGC is not including this adjustment in this final rule. The requirement to reduce the unfunded vested benefits by the present value of future withdrawal liability payments for previously withdrawn employers is part of the rolling-5 calculation, and PBGC believes that excluding this adjustment avoids some ambiguity that might have led to additional unnecessary calculations and recordkeeping.

One commenter asked for the final regulation to provide an additional option for allocating the value of adjustable benefit reductions for plans using the presumptive method based on the 5 consecutive plan years ending before the plan year in which the adjustable benefit reduction takes effect. The commenter stated that the option would produce an allocation that is more consistent with the amount that would be allocated to an employer if the plan did not use a simplified allocation method. PBGC considered the comment and has determined that the option could be useful for plans using any withdrawal liability method under section 4211 of ERISA. Accordingly, PBGC has added this option to the simplified framework in § 4211.16(d).

Under the added option, the 5-year period for computing the allocation fraction is the most recent 5 plan years ending before the plan year in which the adjustable benefit reduction takes effect. For purposes of determining the allocation fraction, the denominator is increased by any employer contributions owed with respect to earlier periods that were collected in the 5 plan years and decreased by any amount contributed by an employer that withdrew from the plan during those plan years, or, alternatively, adjusted as permitted under § 4211.12.

For the additional option, the regulation requires an additional adjustment to the denominator of the allocation fraction for a plan using a method other than the presumptive method or a similar method. The denominator after the first year of the 5-year period is decreased by the contributions of any employers that withdrew and were unable to satisfy their withdrawal liability claims in any year before the employer's withdrawal. This adjustment is intended to approximate how a withdrawn employer's withdrawal liability is calculated under the rolling-5 and modified presumptive methods by fully allocating the present value of the suspended benefits to solvent employers. The adjustment is not necessary under the presumptive method, as that method has a specific adjustment for previously allocated withdrawal liabilities that are deemed uncollectible.

2. Employer's Proportional Share of the Value of a Benefit Suspension

a. Static Value Method and Adjusted Value Method

PBGC's simplified framework provides two simplified methods that a plan sponsor may choose between to calculate a withdrawing employer's proportional share of the value of a benefit suspension—the static value method and the adjusted value method. Both methods apply for any employer withdrawal that occurs within the 10 plan years after the end of the plan year that includes the effective date of the benefit suspension (10-year period). A chart including a comparison of the two methods is in section III.B.3. below.

Under either method, an employer's proportional share of the value of a benefit suspension is determined as follows—

$$\text{The present value of the suspended benefits} \times \text{The withdrawing employer's allocation fraction}$$

Under the static value method, the present value of the suspended benefits as of a single calculation date is used for all withdrawals in the 10-year period. At the plan sponsor's option, the present value could be determined as of: (1) The effective date of the benefit suspension (as similar calculations are required as of that date to obtain approval of the benefit suspension); or (2) the last day of the plan year coincident with or following the date of the benefit suspension (as calculations are required as of that date for other withdrawal liability purposes). The present value is determined using the amount of the benefit suspension as authorized by the Department of the Treasury under the plan's application for benefit suspension.

Under the adjusted value method, the present value of the suspended benefits for a withdrawal in the first year of the 10-year period is the same as under the static value method. For withdrawals in years 2–10 of the 10-year period, the value of the suspended benefits is determined as of the ''revaluation date,'' the last day of the plan year before the employer's withdrawal. The value of the suspended benefits is equal to the present value of the benefits not expected to be paid in the year of withdrawal or thereafter due to the benefit suspension. For example, assume that a calendar year multiemployer plan receives final authorization by the Secretary of the Treasury for a benefit suspension, effective January 1, 2018, and a contributing employer withdraws during the 2022 plan year. The revaluation date is December 31, 2021. The value of the suspended benefits is the present value of the benefits not expected to be paid after December 31, 2021, due to the benefit suspension.

For both methods, the withdrawing employer's allocation fraction is the amount of the employer's required contributions over a 5-year period divided by the amount of all employers' contributions over the same 5-year period.

For the static value method, the 5-year period is determined based on the most recent 5 plan years ending before the plan year in which the benefit suspension takes effect. For the adjusted value method, the 5-year period is determined based on the most recent 5 plan years ending before the employer's withdrawal (which is the same 5-year period as is used for the simplified method for adjustable benefit reductions).

For both the static value method and the adjusted value method, the denominator of the allocation fraction is increased by any employer contributions owed with respect to earlier periods that were collected in the applicable 5-year period for the allocation fraction and decreased by any amount contributed by an employer that withdrew from the plan during those same 5 plan years, or, alternatively, adjusted as permitted under § 4211.12 (the same adjustments are made using the simplified method for adjustable benefit reductions).

For the static value method, the regulation requires an additional adjustment in the denominator of the allocation fraction for a plan using a method other than the presumptive method or similar method. The denominator after the first year of the 5-year period is decreased by the contributions of any employers that withdrew and were unable to satisfy their withdrawal liability claims in any year before the employer's withdrawal. This adjustment is intended to approximate how a withdrawn employer's withdrawal liability is calculated under the rolling-5 and modified presumptive methods by fully allocating the present value of the suspended benefits to solvent employers. The adjustment is not necessary under the presumptive method, as that method has a specific adjustment for previously allocated withdrawal liabilities that are deemed uncollectible.

An example illustrating the simplified framework using the static value method for disregarding a benefit suspension is provided in § 4211.16(e) of PBGC's unfunded vested benefits allocation regulation.

b. Temporary Benefit Suspension

If a benefit suspension is a temporary suspension of the plan's payment obligations as authorized by the Department of the Treasury, the present value of the suspended benefits includes the value of the suspended benefits only through the ending period of the benefit suspension.

For example, assume that a calendar-year plan has an approved benefit suspension effective December 31, 2018, for a 15-year period ending December 31, 2033. Effective January 1, 2034, benefits are to be restored (prospectively only) to levels not less than those accrued as of December 30, 2018, plus benefits accrued after December 31, 2018. Employer A withdraws in a complete withdrawal during the 2022 plan year. The plan sponsor first determines Employer A's allocable amount of unfunded vested benefits under section 4211 of ERISA. That amount is the present value of vested benefits as of December 31, 2021, including the present value of the vested benefits that are expected to be restored effective January 1, 2034. The plan sponsor then determines Employer A's proportional share of the value of the suspended benefits. The plan uses the static value method. The value of the suspended benefits equals the present value, as of December 31, 2018, of the benefits accrued as of December 30, 2018, that would otherwise have been expected to have been paid, but for the benefit suspension, during the 15-year period beginning December 31, 2018, and ending December 31, 2033. The portion of this present value allocable to Employer A is added to the unfunded vested benefits allocable to Employer A under section 4211 of ERISA.

c. Partial Withdrawals

PBGC invited public comment on whether the examples in the proposed rule are helpful and whether there are additional types of examples that would help plan sponsors with these calculations. Two commenters stated that the provided examples are helpful and suggested that PBGC provide examples involving partial withdrawals. One commenter asked for clarification with examples of the simplified method for adjustable benefit reductions as applied to partial withdrawals. Section 4206 of ERISA and 29 CFR part 4206 provide rules for determining the amount of an employer's liability for a partial withdrawal and, in the case of a subsequent withdrawal, for determining the amount of the reduction of the employer's liability for the prior partial withdrawal. PBGC appreciates the comments requesting examples involving partial withdrawals and provides the following example using the simplified method in § 4211.16.

Example: Assume the following:

(1) The employer's allocable amount of unfunded vested benefits determined under section 4211 of ERISA is $1,000,000.

(2) The employer's proportional share of the value of the adjustable benefit reduction is $100,000 (after 8 years of amortization of the original amount).

(3) The employer's proportional share of the value of the benefit suspension is $250,000 (the employer's partial withdrawal occurs 3 years after the effective date of the benefit suspension).

To calculate the employer's withdrawal liability amount, under § 4211.16(b), the amounts in (1) through (3) above are added together for a sum of $1,350,000. Based on the sum, a de minimis reduction would not apply. The sum is then adjusted in accordance with the rules for adjustment of partial withdrawal under section 4206 of ERISA. Thus, in this example, the employer's proportional share of the value of the adjustable benefit reduction and proportional share of the value of the benefit suspension are disregarded in determining the withdrawn employer's partial withdrawal liability assessment amount.

4. Chart of Simplified Methods To Determine Employer's Proportional Share of the Value of a Benefit Suspension and an Adjustable Benefit Reduction

The following chart provides a summary of the simplified methods discussed above:

EMPLOYER'S PROPORTIONAL SHARE OF THE VALUE OF A BENEFIT SUSPENSION OR AN ADJUSTABLE BENEFIT REDUCTION

[Value of benefit × allocation fraction]

Method	Benefit suspension		Adjustable benefit reduction
	Static value method	Adjusted value method	
Value of Benefit Suspension or Adjustable Benefit Reduction.	Withdrawals in years 1–10 after the benefit suspension: Present value of the suspended benefits as authorized by the Department of the Treasury in accordance with section 305(e)(9) of ERISA calculated as of the date of the benefit suspension or the last day of the plan year coincident with or following the date of the benefit suspension.	Withdrawals in year 1 after the suspension: Same as Static Value Method. Withdrawals in years 2–10 after the suspension: The present value, determined as of the end of the plan year before a withdrawal, of the benefits not expected to be paid in the year of withdrawal or thereafter due to the benefit suspension.	Unamortized balance of the value of the adjustable benefit reduction using the same assumptions as for UVBs for purposes of section 4211 of ERISA and amortization in level annual installments over 15 years.
Allocation Fraction ..	For all three methods, the Allocation Fraction is the amount of the employer's required contributions over a 5-year period divided by the amount of all employers' contributions over the same 5-year period. The Allocation Fraction is determined in accordance with rules to disregard contribution increases under § 4211.4 and permissible modifications and simplifications under §§ 4211.12–15.		
Five-Year Period for the Allocation Fraction.	Five consecutive plan years ending before the plan year in which the benefit suspension takes effect.	Five consecutive plan years ending before the employer's withdrawal.	Choice of 5 consecutive plan years ending before the employer's withdrawal or the plan year in which the adjustable benefit reduction takes effect.
Adjustments to Denominator of the Allocation Fraction.	Same as Adjusted Value Method, but using the 5-year period for the Static Value Method. In addition, if a plan uses a method other than the presumptive method, the denominator after the first year of the 5-year period is decreased by the contributions of any employers that withdrew from the plan and were unable to satisfy their withdrawal liability claims in any year before the employer's withdrawal.	The denominator is increased by any employer contributions owed with respect to earlier periods which were collected in the 5-year period and decreased by any amount contributed by an employer that withdrew from the plan during the 5-year period, or, alternatively, adjusted as permitted under § 4211.12.	Same as Adjusted Value Method if using 5 consecutive plan years before the employer's withdrawal. If using alternative 5-year period, same as Static Value Method, but using the 5 consecutive plan years before the plan year in which the adjustable benefit reduction takes effect.

IV. Regulatory Changes To Reflect Surcharges and Contribution Increases

A. Requirement To Disregard Surcharges and Certain Contribution Increases in Determining the Allocation of Unfunded Vested Benefits to an Employer (§ 4211.4) and the Annual Withdrawal Liability Payment Amount (§ 4219.3)

Changes in contributions can affect the calculation of an employer's withdrawal liability and annual withdrawal liability payment amount. For example, such changes can increase or decrease the allocation fraction (discussed above in section I) that is used to calculate an employer's withdrawal liability. They can also increase or decrease an employer's highest contribution rate used to calculate the employer's annual withdrawal liability payment amount (also discussed above in section I).

Required surcharges and certain contribution increases would typically result in an increase in an employer's withdrawal liability even though unfunded vested benefits are being reduced by the increased contributions. Sections 305(g)(2) and (3) of ERISA mitigate the effect on withdrawal liability by providing that these surcharges and contribution increases that are required or made to enable the plan to meet the requirements of the funding improvement plan or rehabilitation plan are disregarded in determining contribution amounts used for the allocation of unfunded vested benefits and the annual payment amount. These sections do not apply for purposes of determining the unfunded vested benefits attributable to an employer by a plan using the direct attribution method under section 4211(c)(4) of ERISA or a comparable method.

Except as described below the final regulation, like the proposed, amends § 4211.4 of PBGC's unfunded vested benefits allocation regulation and § 4219.3 of PBGC's notice, collection, and redetermination of withdrawal liability regulation to incorporate the requirements to disregard these surcharges and contribution increases. The final regulation also provides simplified methods for disregarding certain contribution increases in the allocation fraction in § 4211.14 of PBGC's unfunded vested benefits allocation regulation (discussed below in section IV.B.). The final rule incorporates the disregard rules and simplified methods for contribution increases in the allocation methods for merged multiemployer plans provided in subpart D of part 4211. PBGC is not providing a simplified method for disregarding surcharges in the final rule because we believe that plans have been able to apply the statutory requirements without the need for a simplified method.

The provision regarding contribution increases applies to increases in the contribution rate or other required contribution increases that go into effect during plan years beginning after December 31, 2014.[9] A special rule under section 305(g)(3)(B) of ERISA provides that a contribution increase is deemed to be required or made to enable the plan to meet the requirement of the funding improvement plan or rehabilitation plan, such that the contribution increase is disregarded. However, the statute provides that this deeming rule does not apply to increases in contribution requirements due to increases in levels of work, employment, or periods for which compensation is provided, or additional contributions used to provide an increase in benefits, including an increase in future benefit accruals, permitted by section 305(d)(1)(B) or 305(f)(1)(B). Accordingly, the final regulation, with changes from the proposed rule as discussed below, provides that these increases are included as contribution increases for purposes of determining the allocation fraction and the highest contribution rate. In addition, under section 305(g)(4) of ERISA, contribution increases are not treated as necessary to satisfy the requirement of the funding improvement plan or rehabilitation plan after the plan has emerged from critical or endangered status. This exception applies only to the determination of the allocation fraction. The table below summarizes the statutory exceptions to the rule to disregard a contribution increase under section 305(g)(3) and (4) of ERISA.

EXCEPTIONS TO DISREGARDING A CONTRIBUTION INCREASE

Allocation fraction and highest contribution rate exceptions (simplified methods for these exceptions are explained in III.B. of the preamble).	(1) Increases in contribution requirements associated with increased levels of work, employment, or periods for which compensation is provided. (2) Additional contributions used to provide an increase in benefits, including an increase in future benefit accruals, permitted by section 305(d)(1)(B) or (f)(1)(B) of ERISA.
Allocation fraction exception (simplified methods for this exception are explained in III.C. of the preamble).	(3) The withdrawal occurs on or after the expiration date of the employer's collective bargaining agreement in effect in the plan year the plan is no longer in endangered or critical status, or, if earlier, the date as of which the employer renegotiates a contribution rate effective after the plan year the plan is no longer in endangered or critical status.

Sections 4211.4(b)(2)(ii) and 4219.3(a)(2)(ii) of the proposed rule reflected an interpretation of the exception under section 305(g)(3) of ERISA for additional contributions used to provide an increase in benefits. Those sections provided, "The contribution increase provides an increase in benefits, including an increase in future benefit accruals, permitted by sections 305(d)(1)(B) or 305(f)(1)(B) of ERISA or sections 432(d)(1)(B) or section 432(f)(1)(B) of the Code, and an increase in benefit accruals as an integral part of the benefit formula." The proposed rule required the portion of such contribution increase that is attributable to an increase in benefit accruals to be determined actuarially and for those contribution increases to be included in the calculation of a withdrawn employer's withdrawal liability and annual withdrawal liability payment amount.

Three commenters disagreed with the interpretation provided in the proposed rule. They said that the only narrow exception to include contribution increases that are used to provide an increase in benefits in the calculation of

[9] The requirement to disregard surcharges for purposes of determining an employer's annual withdrawal liability payment is effective for surcharges the obligation for which accrues on or after December 31, 2014.

withdrawal liability is for increases specifically referred to in sections 305(d)(1)(B) or 305(f)(1)(B) of ERISA. These commenters noted that plans have excluded all contribution increases under a funding improvement plan or rehabilitation plan that became effective in plan years beginning after December 31, 2014 from the calculation of withdrawal liability. In contrast, two commenters noted that some plans have included all contribution increases. One commenter explained that some plans use a benefit formula that makes it nearly impossible to allocate between what is and is not benefit bearing. Commenters objected to the requirement for the portion of the contribution increase that is benefit bearing to be determined actuarially. They stated that this would cause an increase in administrative costs and that plans have used other methods to differentiate between benefit bearing and non-benefit bearing portions of contribution increases. For example, some plan sponsors classify contribution increases as either benefit-bearing (*i.e.,* included in a benefit formula that bases accruals on contributions) or supplemental (*i.e.,* excluded from the benefit accrual formula). Finally, one commenter asked whether certifications under sections 305(d)(1)(B) or 305(f)(1)(B) of ERISA are required in the case of a plan with a percentage of contribution formula and a contribution increase required by a funding improvement plan or rehabilitation plan.

The final rule modifies proposed § 4211.4(b)(2)(ii) and § 4219.3(a)(2)(ii) to provide the exception to the disregard rules for a contribution increase that provides an increase in benefits by simply referring to section 305(g)(3) of ERISA. Specifically, § 4211.4(b)(2)(ii) and § 4219.3(a)(2)(ii) in the final rule describe the exception as applying to contribution increases ''used to provide an increase in benefits, including an increase in future benefit accruals, permitted by section (d)(1)(B) or (f)(1)(B) of ERISA.'' A plan sponsor is required to include such contribution increases in the calculation of a withdrawn employer's withdrawal liability and annual withdrawal liability payment amount. The final rule does not provide further interpretation. Commenters raised interpretive issues about sections 305(g)(3), 305(d)(1)(B), and 305(f)(1)(B) of ERISA that are under the jurisdiction of the Department of the Treasury as well as plan benefit design issues that require further study. PBGC is continuing to examine these issues with the Department of the Treasury and, if appropriate, will issue additional guidance.

B. Simplified Methods for Disregarding Certain Contribution Increases in the Allocation Fraction (§ 4211.14)

The allocation fraction that is used in the presumptive, modified presumptive, and rolling-5 methods to determine an employer's proportional share of unfunded vested benefits is discussed above in section I. The final regulation adds a new § 4211.14 to the unfunded vested benefits allocation regulation to provide a choice of one simplified method for the numerator and two simplified methods for the denominator of the allocation fraction. A plan sponsor may adopt the simplified methods in § 4211.14 to satisfy the requirements of section 305(g)(3) of ERISA and § 4211.4(b)(2) to disregard contribution increases in determining the allocation of unfunded vested benefits, or may choose an alternative approach that satisfies the requirements of the statutory provisions and regulations. A plan amended to use one or more of the simplified methods in this section must also apply the rules to disregard surcharges under new § 4211.4.

One commenter asked that the final regulation allow plans using the direct attribution method to use the simplified methods for contribution increases if use of such methods is otherwise reasonable. The disregard rules for contribution increases under section 305(g)(3)(A) of ERISA do not apply for purposes of determining the unfunded vested benefits attributable to an employer by a plan using the direct attribution method under section 4211(c)(4) of ERISA or a comparable method. PBGC's authority to provide simplified methods under section 305(g)(5) of ERISA is limited to methods for applying the disregard rules in determining withdrawal liability and payment amounts. PBGC therefore did not incorporate the commenter's requested change in the final rule.

1. Determining the Numerator Using the Employer's Plan Year 2014 Contribution Rate

Under the simplified method for determining the numerator of the allocation fraction, a plan sponsor bases the calculation on an employer's contribution rate as of the last day of each plan year (rather than applying a separate calculation for contribution increases that occur in the middle of a plan year). The plan sponsor starts with the employer's contribution rate as of the ''employer freeze date.'' The employer freeze date is the date that is the later of the last day of the first plan year that ends on or after December 31, 2014 (December 31, 2014 for a calendar year plan) and the last day of the plan year the employer first contributes to the plan. If, after the employer freeze date, the plan has a contribution rate increase that provides an increase in benefits so that the contribution increase is included, that rate increase is added to the contribution rate for each target year for which the rate increase is effective. Under the method, the product of the employer freeze date contribution rate (increased in accordance with the prior sentence, if applicable) and the withdrawn employer's contribution base units in each plan year (''target year'') are used for the numerator and the comparable amount determined for each employer is included in the denominator (described in B.2 below), unless the plan sponsor uses the proxy group method for determining the denominator (described in B.3 below). If there is more than one contribution rate or basis for calculating contribution base units, the calculations can be performed separately for each contribution rate or contribution base sub-group and then summed. An example illustrating the simplified method for disregarding certain contributions in determining the numerator using the employer's plan year 2014 contribution rate is provided in the appendix to part 4211.

2. Determining the Denominator Using Each Employer's Plan Year 2014 Contribution Rate

Under the first simplified method for determining the denominator of the allocation fraction, a plan sponsor applies the same principles as for the simplified method above for determining the numerator of the allocation fraction. The plan sponsor holds steady each employer's contribution rate as of the employer freeze date, except for contribution increases that provide benefit increases as described above. For each employer, the plan sponsor multiplies this rate by each employer's contribution base units in each target year.

3. Determining the Denominator Using the Proxy Group Method

Plans frequently offer multiple contribution schedules under a funding improvement plan or rehabilitation plan, which may have varying contribution rate increases. Under these and other circumstances, it could be administratively burdensome for plans to determine the exact amount of an employer's contributions—excluding contributions required to be disregarded in determining withdrawal liability—to include in the denominator of the allocation fraction. Accordingly, the regulation provides a second simplified method for determining contributions in the denominator. This method, called the proxy group method, is available for plans that are amended to provide for use of the method. The method permits the contributions included in the denominator of the allocation fraction for a plan year to be based on an amount calculated for ''proxy'' representatives of the plan's contributing employers.

A commenter noted that different schedules and rate increases may apply to different categories of employees of a single employer—for example, because different collective bargaining agreements apply to different categories of the employer's employees. In response, the final regulation permits a single employer whose employees have highly dissimilar contribution histories to be treated as two or more employers with more uniform contribution histories in applying the proxy group method.

Under the proxy group method, employers are grouped in rate history groups, based on similarity of contribution histories (or same percentage increases in contributions from year to year). (Notwithstanding the diversity of contribution histories, rate history groups may be limited to 10.) Representative employers, representing at least 10 percent of active plan participants, are drawn from rate history groups to form the proxy group. ''Adjusted contributions''—excluding contribution rate increases that must be disregarded for withdrawal liability purposes—are determined for employers in the proxy group; then for rate history groups, based on the adjusted contributions of employers in each rate history group; and finally for the plan, based on the adjusted contributions of rate history groups represented in the proxy group. The plan's adjusted contributions form the denominator of the withdrawal liability allocation fraction.

As with other simplified methods, only contribution rates in effect at year end need be considered.

The process of forming rate history groups may be illustrated by the following examples.

Example 1. Employers in Plan A had twelve different contribution rates at the start of the rehabilitation period, as shown in the following table:

	Column 1	Column 2	Column 3	Column 4
Row 1	$2.00	$2.25	$2.50	$2.75
Row 2	3.00	3.25	3.50	3.75
Row 3	4.00	4.25	4.50	4.75

The rehabilitation plan requires increases of $0.50 per hour per year for employers in Row 1, $0.75 per hour per year for those in Row 2, and $1.00 per hour per year for those in Row 3. All collective bargaining agreements are amended by the beginning of 2015, and the increases are effective as of the beginning of 2015. The following table shows the percentage rates of increase in contribution rates at year-end 2015 compared with year-end 2014:

	Column 1 (percent)	Column 2 (percent)	Column 3 (percent)	Column 4 (percent)
Row 1	25.00	22.22	20.00	18.18
Row 2	25.00	23.08	21.43	20.00
Row 3	25.00	23.53	22.22	21.05

Since the increase rates for employers in Column 1 are the same, the plan can put those employers in one rate group. Similarly, employers in Column 2 have relatively uniform rates and can be grouped together, and likewise for those in Columns 3 and those in Column 4. Alternatively, employers in Columns 3 and 4 of Row 1 could be grouped together with those in Column 4 of Row 2; and employers in Columns 3 and 4 of Row 3 could be grouped together with those in Column 3 of Row 2.

Example 2. Plan B has many employers and many contribution rate schedules. Contributions change between 2010 and 2021 as follows:

Under the default schedule, there are one-time increases of 50 percent in 2010 for employers in Category A (defaults occurring in 2010); 55 percent in 2011 for employers in Category B (defaults occurring in 2011); and 60 percent in 2012 for employers in Category C (defaults occurring in 2012). For employers in Category D through Y, which have negotiated new collective bargaining agreements, increases are as shown in the following table:

Category	First increase (year and quarter)	Annual percentage increase thereafter through 2021
D	2010 Q1	3.8
E	2010 Q2	3.9
F	2010 Q3	4.0
G	2010 Q4	4.1
H	2011 Q1	4.3
I	2011 Q2	4.5
J	2011 Q3	4.7
K	2011 Q4	4.9
L	2012 Q1	5.2
M	2012 Q2	5.5
N	2012 Q3	5.8
O	2012 Q4	6.1
P	2013 Q1	6.4

Category	First increase (year and quarter)	Annual percentage increase thereafter through 2021
Q	2013 Q2	6.7
R	2013 Q3	7.1
S	2013 Q4	7.5
T	2014 Q1	8.0
U	2014 Q2	8.5
V	2014 Q3	9.0
W	2014 Q4	9.5
X	2015 Q1	10.3
Y	2015 Q2 and later	11.0

The annual percentage increases for employers in Category D through Y are cumulative. Thus, if an employer's contribution rate for the second quarter of 2010 in Category F was $100.00, its contributions for 2010, 2011, and 2012 would be $104.00, $108.16, and $112.49 (based on rates in effect at year-end).

Appropriate rate history groups for 2015 through 2021 could be as follows:

Rate history group	Employer categories in group
1	A, B, C.
2	D, E, F, G.
3	H, I, J, K.
4	L, M, N, O.
5	P, Q.
6	R, S.
7	T, U.
8	V, W.
9	X.
10	Y.

These groupings take advantage of the provision that no more than ten rate history groups need be provided for.

In response to a comment requesting more flexibility in the determination of proxy groups, the final regulation omits the requirement that the proxy group employers be named in the plan. However, the regulation requires that there be consistency from year to year in the composition of both the proxy group and rate history groups, with certain exceptions. The intent is to keep these groups generally unchanged but to permit changes in their make-up to accommodate changes in circumstances such as contribution histories and employer withdrawals.

Employers contributing under the same rate schedule would typically be in the same rate history group, and a change in the rate schedule would typically not change the composition of the rate history group, because the rate histories of all employers in the group would be similarly affected. For example, suppose all the employers under a rate schedule are in the same rate history group, and the rate schedule changes. This would typically not change the composition of the rate history group, because the rate histories of all employers in the group would be similarly affected.

In the same vein, employers with disparate rate histories would typically be in different rate history groups, and the fact that they became covered by the same rate schedule would not typically place them in the same rate history group because their rate histories would remain different. For example, suppose two employers with disparate rate histories are in different rate history groups and become covered by the same rate schedule. This would not typically place them in the same rate history group because their rate histories would remain different.

On the other hand, if two employers in a rate history group moved to a different rate schedule, their rate histories would no longer match those of the other employers in the group. Depending on circumstances, this change might result in the formation of a new rate history group that (if it represented more than 5 percent of active participants) would require representation in the proxy group.

For proxy group employers, adjusted contributions for the plan year are determined by multiplying each employer's contribution base units for the plan year by what would have been the employer's contribution rate excluding contribution rate increases that are required to be disregarded in determining withdrawal liability.

Determining adjusted contributions for rate history groups is a two-step process. First, an adjustment factor is determined for the plan year for each rate history group represented in the proxy group of employers. This adjustment factor equals the sum of the adjusted contributions for the plan year for all employers in the rate history group that are in the proxy group, divided by the sum of those employers' actual total contributions for the plan year. Second, the adjustment factor for the year for each rate history group is multiplied by the contributions for the year of all employers in the rate history group (both proxy group members and non-members) to determine the adjusted contributions for the rate history group for the year.

Finally, the same steps are performed to determine adjusted contributions at the plan level. The sum of the adjusted contributions for all the rate history groups represented in the proxy group is divided by the sum of the actual contributions for the employers in those rate history groups, and the resulting adjustment factor for the plan is multiplied by the plan's total contributions for the plan year, including contributions by employers in small rate history groups not represented in the proxy group. The result—the adjusted contributions for the whole plan—is the amount of contributions for the plan year that may be used to determine the denominator for the allocation fraction under the proxy group method.

This process weights contributors by the size of their contributions. Heavy contributors' rates have a greater impact on the adjusted contributions than light contributors' rates.

A commenter asked that relief be provided for cases where information needed to determine adjusted contributions is unavailable. In response, PBGC has added a provision addressing situations where total contributions for a rate history group or a plan are unavailable to calculate adjusted contributions. In such situations, total contributions may be estimated by multiplying each contribution rate times the relevant projected contribution base units and adding all the results.

An example illustrating the simplified method for disregarding certain contributions in determining the denominator of the allocation fraction using the proxy group method is provided in the appendix to part 4211.

C. Simplified Methods After Plan Is No Longer in Endangered or Critical Status

As noted above in section IV.A., changes in contributions can affect the calculation of an employer's withdrawal liability and annual withdrawal liability payment amount. Once a plan is no longer in endangered or critical status, the ''disregard'' rules for contribution increases change. Under section 305(g)(4) of ERISA, plan sponsors are required to: (1) Include contribution increases in determining the allocation fraction used to calculate withdrawal liability under section 4211 of ERISA; and (2) continue to disregard contribution increases in determining the highest contribution rate used to calculate the annual withdrawal liability payment amount under section 4219(c) of ERISA, as follows:

PLANS NO LONGER IN ENDANGERED OR CRITICAL STATUS

Allocation Fraction (section 4211 of ERISA).	A plan sponsor is required to include contribution increases (previously disregarded) as of the expiration date of the collective bargaining agreement in effect when a plan is no longer in endangered or critical status.
Highest Contribution Rate (section 4219(c) of ERISA).	A plan sponsor is required to continue disregarding contribution increases that applied for plan years during which the plan was in endangered or critical status.

The final regulation, like the proposed, amends § 4211.4 of PBGC's unfunded vested benefits allocation regulation and § 4219.3 of PBGC's notice, collection, and redetermination of withdrawal liability regulation to incorporate the requirements for contribution increases when a plan is no longer in endangered or critical status. The final regulation also provides simplified methods required by section 305(g)(5) of ERISA that a plan sponsor could adopt to satisfy the requirements of section 305(g)(4).

1. Including Contribution Increases in Determining the Allocation of Unfunded Vested Benefits (§ 4211.15)

The rule to begin including contribution increases for purposes of determining withdrawal liability is based, in part, on when a plan's collective bargaining agreements expire. Because plans may operate under numerous collective bargaining agreements with varying expiration dates, it could be burdensome for a plan sponsor to calculate the amount contributed by employers over the 5-year periods used for the denominators of the plan's allocation method. The plan sponsor would have to make a year-by-year determination of whether contribution increases should be included or disregarded in the denominators relative to collective bargaining agreements expiring in each applicable year. The final regulation adds a new § 4211.15 to PBGC's unfunded vested benefits allocation regulation to provide two alternative simplified methods that a plan sponsor could adopt for determining the denominators in the allocation fractions when the plan is no longer in endangered or critical status.

Under the first simplified method, a plan sponsor could adopt a rule that contribution increases previously disregarded are included in the allocation fraction as of the expiration date of the first collective bargaining agreement requiring contributions that expires after the plan's emergence from endangered or critical status. If the plan sponsor adopts this rule, then for any withdrawals after the applicable expiration date, the plan sponsor would include the total amount contributed by employers for plan years included in the denominator of the allocation fraction determined in accordance with section 4211 of ERISA under the method in use by the plan. This would relieve plan sponsors of the burden of a year-by-year determination of whether contribution increases should be included or disregarded in the denominator under the plan's allocation method relative to collective bargaining agreements expiring in that year. An example illustrating this simplified method is provided in § 4211.15(c) of PBGC's unfunded vested benefits allocation regulation.

Under the second simplified method, a plan sponsor could adopt a rule that contribution increases previously disregarded are included in calculating withdrawal liability for any employer withdrawal that occurs after the first full plan year after a plan is no longer in endangered or critical status, or if later, the plan year including the expiration date of the first collective bargaining agreement requiring plan contributions that expires after the plan's emergence from endangered or critical status.

The final regulation also provides that, for purposes of these simplified methods, an ''evergreen contract'' that continues until the collective bargaining parties elect to terminate the agreement has a termination date that is the earlier of—

(1) The termination of the agreement by decision of the parties.

(2) The beginning of the third plan year following the plan year in which the plan is no longer in endangered or critical status.

PBGC invited public comment on other simplified methods that a plan operating under numerous collective bargaining agreements with varying expiration dates might use to satisfy the requirement in section 305(g)(4) of ERISA that, as of the expiration date of the first collective bargaining agreement requiring plan contributions that expires after a plan is no longer in endangered or critical status, the allocation fraction must include contribution increases that were previously disregarded. Two commenters supported PBGC's proposed simplified method as a reasonable way to satisfy the requirements of section 305(g)(4) of ERISA.

2. Continuing To Disregard Contribution Increases in Determining the Highest Contribution Rate (§ 4219.3)

The rule for determining the highest contribution rate requires a plan sponsor of a plan that is no longer in endangered or critical status to continue to disregard increases in the contribution rate that applied for plan years during which the plan was in endangered or critical status. Because an employer's highest contribution rate is determined over the 10 plan years ending with the year of withdrawal, applying the rule would require a year-by-year determination of whether contribution increases should be included or disregarded. The final regulation adds a new § 4219.3 to PBGC's notice, collection, and redetermination of withdrawal liability regulation to provide a simplified method that a plan sponsor could adopt for determining the highest contribution rate.

The simplified method provides that, for a plan that is no longer in endangered or critical status, the highest contribution rate for purposes of section 4219(c) of ERISA is the greater of—

(1) The employer's contribution rate in effect, for a calendar year plan, as of December 31, 2014, and for other plans, the last day of the plan year that ends on or after December 31, 2014, plus any contribution increases occurring after that date and before the employer's withdrawal that must be included in

determining the highest contribution rate under section 305(g)(3) of ERISA, or

(2) The highest contribution rate for any plan year after the plan year that includes the expiration date of the first collective bargaining agreement of the withdrawing employer requiring plan contributions that expires after the plan is no longer in endangered or critical status, or, if earlier, the date as of which the withdrawing employer renegotiated a contribution rate effective after a plan is no longer in endangered or critical status.

An example illustrating this simplified method is provided in § 4219.3 of PBGC's notice, collection, and redetermination of withdrawal liability regulation. PBGC received two comments about the simplified method provided in § 4219.3. One commenter asked for clarification about the contribution rate that should be included in determining the highest contribution rate if an employer withdraws after its collective bargaining agreement expires, but before a new collective bargaining agreement is adopted. Another commenter stated that under the simplified method, if the plan year ends soon after the expiration date of the collective bargaining agreement, a higher contribution rate could be imposed on an employer than the plan's later negotiated contribution rate. PBGC agrees that this could occur under the simplified method if the bargaining parties do not reach agreement by the plan year after the plan year that includes the expiration date of the first collective bargaining agreement of the withdrawing employer requiring plan contributions that expires after the plan is no longer in endangered or critical status.

A commenter suggested that a grace period could be provided after the expiration date of the collective bargaining agreement, such as 180 days, during which the higher rate would not apply if it had not been agreed to in collective bargaining. While in many cases collective bargaining agreements are not renegotiated until after the expiration date of the collective bargaining agreement, PBGC believes that the collective bargaining parties will generally have time to resolve the scenario described by the commenter before a plan emerges from endangered or critical status. In addition, PBGC's simplified method already extends the disregard period beyond the highest contribution rate ''for plan years during which the plan was in endangered or critical status'' to include the period through the end of the plan year after the plan year that includes the expiration date of the first collective bargaining agreement that expires after the plan is no longer in endangered or critical status. Therefore, PBGC did not adopt the commenter's suggestion to change the simplified method in the final rule.

V. Compliance With Rulemaking Guidelines

Executive Orders 12866, 13563, and 13771

The Office of Management and Budget (OMB) has determined that this rulemaking is not a ''significant regulatory action'' under Executive Order 12866 and Executive Order 13771. The rule provides simplified methods, as required by section 305(g)(5) of ERISA, to determine withdrawal liability and payment amounts, which multiemployer plan sponsors may choose, but are not required, to adopt. Accordingly, this final rule is exempt from Executive Order 13771 and OMB has not reviewed the rule under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes retrospective review of regulations, harmonizing rules, and promoting flexibility.

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic implications of this final rule and has concluded that the amendments providing simplified methods for plan sponsors to comply with the statutory requirements will reduce costs for multiemployer plans by approximately $1,476,000. Based on 2016 data, there are about 450 plans that are in endangered or critical status.[10] PBGC estimates that a portion of these plans using the simplified methods under the final rule will have administrative savings, as follows:

Annual amounts	Estimated number of plans affected	Savings per plan	Total savings
Savings on actuarial calculations using simplified methods and assuming an average hourly rate of $400			
Disregarding benefit suspensions (Section III.B.2.)	5	$2,000	$10,000
Exceptions to disregarding contribution increases (Section IV.A.)	40	4,000	160,000
Allocation fraction numerator (Section IV.B.1.)	200	1,200	240,000
Allocation fraction denominator using 2014 contribution rate (Section IV.B.2.)	160	4,000	640,000
Allocation fraction denominator using proxy group of employers (Section IV.B.3.)	40	8,000	320,000
Other estimated savings			
Reduced plan valuation cost for plans that have a benefit suspension and use the static value method	3	2,000	6,000
Savings on potential withdrawal liability arbitration costs assuming an average hourly rate of $400	5	20,000	100,000
Total savings			1,476,000

PBGC invited public comment on the expected savings on actuarial calculations and other costs using the simplified methods. A commenter noted that expected savings on actuarial calculations and plan administration

[10] *https://www.pbgc.gov/sites/default/files/2017_pension_data_tables.pdf,* Table M–18.

will vary greatly from plan to plan based on the plan's industry, benefit formula, and other factors. Three commenters stated that the requirement in the proposed rule that the portion of contribution increases that is funding an increase in future benefit accruals be determined actuarially would cause an increase in administrative costs. As discussed above in section IV.A. of the preamble, the final rule does not adopt this provision.

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the Regulatory Flexibility Act requires that the agency present a final regulatory flexibility analysis at the time of the publication of the final regulation describing the impact of the rule on small entities and steps taken to minimize the impact. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of the Regulatory Flexibility Act requirements with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion PBGC uses in other regulations [11] and is consistent with certain requirements in title I of ERISA [12] and the Code,[13] as well as the definition of a small entity that the Department of Labor has used for purposes of the Regulatory Flexibility Act.[14]

Thus, PBGC believes that assessing the impact of the proposed regulation on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requested comments on the appropriateness of the size standard used in evaluating the impact on small entities of the proposed amendments. PBGC did not receive any such comments.

On the basis of its definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this final rule will not have a significant economic impact on a substantial number of small entities. Based on data for recent premium filings, PBGC estimates that only 38 plans of the approximately 1,400 plans covered by PBGC's multiemployer program are small plans, and that only about 14 of those plans will be impacted by this final rule. Furthermore, plan sponsors may, but are not required to, use the simplified methods under the final rule. As shown above, plans that use the simplified methods will have administrative savings. The final rule will not impose costs on plans. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

List of Subjects

20 CFR Part 4001

Business and industry, Employee benefit plans, Pension insurance.

20 CFR Part 4204

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

20 CFR Part 4206

Employee benefit plans, Pension insurance.

20 CFR Part 4207

Employee benefit plans, Pension insurance.

29 CFR Part 4211

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4219

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

For the reasons given above, PBGC amends 29 CFR parts 4001, 4204, 4206, 4207, 4211 and 4219 as follows:

PART 4001—TERMINOLOGY

■ 1. The authority citation for part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

§ 4001.2 [Amended]

■ 2. In § 4001.2, amend the definition of ''Nonforfeitable benefit'' by removing ''will be considered forfeitable.'' and adding in its place ''are considered forfeitable.''

PART 4204—VARIANCES FOR SALE OF ASSETS

■ 3. The authority citation for part 4204 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1384(c).

■ 4. In § 4204.2, add in alphabetical order a definition for ''Unfunded vested benefits'' to read as follows:

§ 4204.2 Definitions.

* * * * *

Unfunded vested benefits means, as described in section 4213(c) of ERISA, the amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

§ 4204.12 [Amended]

■ 5. In § 4204.12:

■ a. Amend the first sentence by removing ''for the purposes of section'' and adding in its place ''for the purposes of section 304(b)(3)(A) of ERISA and section''; and

■ b. Remove the second sentence.

PART 4206—ADJUSTMENT OF LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

■ 6. The authority citation for part 4206 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1386(b).

■ 7. In § 4206.2, add in alphabetical order a definition for ''Unfunded vested benefits'' to read as follows:

§ 4206.2 Definitions.

* * * * *

Unfunded vested benefits means, as described in section 4213(c) of ERISA, the amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

PART 4207—REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

■ 8. The authority citation for part 4207 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1387.

■ 9. In § 4207.2, add in alphabetical order a definition for ''Unfunded vested benefits'' to read as follows:

[11] *See, e.g.,* special rules for small plans under part 4007 (Payment of Premiums).

[12] *See, e.g.,* section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[13] *See, e.g.,* section 430(g)(2)(B) of the Code, which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[14] *See, e.g.,* DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

§ 4207.2 Definitions.

* * * * *

Unfunded vested benefits means, as described in section 4213(c) of ERISA, the amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

■ 10. The authority citation for part 4211 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

■ 11. In § 4211.1, amend paragraph (a) by removing the sixth, seventh, and eighth sentences and adding two sentences in their place to read as follows:

§ 4211.1 Purpose and scope.

(a) * * * Section 4211(c)(5) of ERISA also permits certain modifications to the statutory allocation methods that PBGC may prescribe in a regulation. Subpart B of this part contains the permissible modifications to the statutory methods that plan sponsors may adopt without PBGC approval. * * *

* * * * *

■ 12. In § 4211.2:

■ a. Amend the introductory text by removing ''multiemployer plan,'' and adding in its place ''multiemployer plan, nonforfeitable benefit,'';

■ b. Amend the definition of ''Initial plan year'' by removing ''establishment'' and adding in its place ''effective date'';

■ c. Remove the definition of ''Nonforfeitable benefit'';

■ d. Revise the definition of ''Unfunded vested benefits'';

■ e. Amend the definition of ''Withdrawing employer'' by removing ''for whom'' and adding in its place ''for which'';

■ f. Amend the definition of ''Withdrawn employer'' by removing ''who, prior to the withdrawing employer,'' and adding in its place ''that, in a plan year before the withdrawing employer withdraws,'';

The revision reads as follows:

§ 4211.2 Definitions.

* * * * *

Unfunded vested benefits means, as described in section 4213(c) of ERISA, the amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

* * * * *

■ 13. Revise § 4211.3 to read as follows:

§ 4211.3 Special rules for construction industry and Code section 404(c) plans.

(a) *Construction plans.* A plan that primarily covers employees in the building and construction industry must use the presumptive method for allocating unfunded vested benefits, except as provided in §§ 4211.11(b) and 4211.21(b).

(b) *Code section 404(c) plans.* A plan described in section 404(c) of the Code or a continuation of such a plan must use the rolling-5 method for allocating unfunded vested benefits unless the plan sponsor, by amendment, adopts an alternative method or modification.

■ 14. Revise § 4211.4 to read as follows:

§ 4211.4 Contributions for purposes of the numerator and denominator of the allocation fractions.

(a) *In general.* Subject to paragraph (b) of this section, each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods is based on contributions that certain employers have made to the plan for a 5-year period.

(1) The numerator of the allocation fraction, with respect to a withdrawing employer, is based on the ''sum of the contributions required to be made'' or the ''total amount required to be contributed'' by the employer for the specified period.

(2) The denominator of the allocation fraction is based on contributions that certain employers have made to the plan for a specified period.

(b) *Disregarding surcharges and contribution increases.* For each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods in determining the allocation of unfunded vested benefits to an employer, a plan in endangered or critical status must disregard:

(1) *Surcharge.* Any surcharge under section 305(e)(7) of ERISA and section 432(e)(7) of the Code.

(2) *Contribution increase.* Any increase in the contribution rate or other increase in contribution requirements that goes into effect during plan years beginning after December 31, 2014, so that a plan may meet the requirements of a funding improvement plan under section 305(c) of ERISA and section 432(c) of the Code or a rehabilitation plan under section 305(e) of ERISA and 432(e) of the Code, except to the extent that one of the following exceptions applies pursuant to section 305(g)(3) or (4) of ERISA and section 432(g)(3) or (4) of the Code:

(i) The increases in contribution requirements are due to increased levels of work, employment, or periods for which compensation is provided.

(ii) The additional contributions are used to provide an increase in benefits, including an increase in future benefit accruals, permitted by section 305(d)(1)(B) or (f)(1)(B) of ERISA and section 432(d)(1)(B) or (f)(1)(B) of the Code.

(iii) The withdrawal occurs on or after the expiration date of the employer's collective bargaining agreement in effect in the plan year the plan is no longer in endangered or critical status, or, if earlier, the date as of which the employer renegotiates a contribution rate effective after the plan year the plan is no longer in endangered or critical status.

(c) *Simplified methods.* See §§ 4211.14 and 4211.15 for simplified methods of meeting the requirements of this section.

■ 15. Add § 4211.6 to read as follows:

§ 4211.6 Disregarding benefit reductions and benefit suspensions.

(a) *In general.* A plan must disregard the following nonforfeitable benefit reductions and benefit suspensions in determining a plan's nonforfeitable benefits for purposes of determining an employer's withdrawal liability under section 4201 of ERISA:

(1) *Adjustable benefit.* A reduction to adjustable benefits under section 305(e)(8) of ERISA and section 432(e)(8) of the Code.

(2) *Lump sum.* A benefit reduction arising from a restriction on lump sums or other benefits under section 305(f) of ERISA and section 432(f) of the Code.

(3) *Benefit suspension.* A benefit suspension under section 305(e)(9) of ERISA and section 432(e)(9) of the Code, but only for withdrawals not more than 10 years after the end of the plan year in which the benefit suspension takes effect.

(b) *Simplified methods.* See § 4211.16 for simplified methods for meeting the requirements of this section.

■ 16. Revise § 4211.11 to read as follows:

§ 4211.11 Plan sponsor adoption of modifications and simplified methods.

(a) *General rule.* A plan sponsor, other than the sponsor of a plan that primarily covers employees in the building and construction industry, may adopt by amendment, without the approval of PBGC, any of the statutory allocation methods and any of the modifications and simplified methods set forth in §§ 4211.12 through 4211.16.

(b) *Building and construction industry plans.* The plan sponsor of a plan that primarily covers employees in the building and construction industry may adopt by amendment, without the approval of PBGC, any of the modifications to the presumptive rule and simplified methods set forth in § 4211.12 and §§ 4211.14 through 4211.16.

■ 17. Revise § 4211.12 to read as follows:

§ 4211.12 Modifications to the presumptive, modified presumptive, and rolling-5 methods.

(a) *Disregarding certain contribution increases.* A plan amended to use the modifications in this section must apply the rules to disregard surcharges and contribution increases under § 4211.4. A plan sponsor may amend a plan to incorporate the simplified methods in §§ 4211.14 and 4211.15 to fulfill the requirements of § 4211.4 with the modifications in this section if done consistently from year to year.

(b) *Changing the period for counting contributions.* A plan sponsor may amend a plan to modify the denominators in the presumptive, modified presumptive and rolling-5 methods in accordance with one of the alternatives described in this paragraph (b). Any amendment adopted under this paragraph (b) must be applied consistently to all plan years. Contributions counted for 1 plan year may not be counted for any other plan year. If a contribution is counted as part of the ''total amount contributed'' for any plan year used to determine a denominator, that contribution may not also be counted as a contribution owed with respect to an earlier year used to determine the same denominator, regardless of when the plan collected that contribution.

(1) A plan sponsor may amend a plan to provide that ''the sum of all contributions made'' or ''total amount contributed'' for a plan year means the amount of contributions that the plan actually received during the plan year, without regard to whether the contributions are treated as made for that plan year under section 304(b)(3)(A) of ERISA and section 431(b)(3)(A) of the Code.

(2) A plan sponsor may amend a plan to provide that ''the sum of all contributions made'' or ''total amount contributed'' for a plan year means the amount of contributions actually received during the plan year, increased by the amount of contributions received during a specified period of time after the close of the plan year not to exceed the period described in section 304(c)(8) of ERISA and section 431(c)(8) of the Code and regulations thereunder.

(3) A plan sponsor may amend a plan to provide that ''the sum of all contributions made'' or ''total amount contributed'' for a plan year means the amount of contributions actually received during the plan year, increased by the amount of contributions accrued during the plan year and received during a specified period of time after the close of the plan year not to exceed the period described in section 304(c)(8) of ERISA and section 431(c)(8) of the Code and regulations thereunder.

(c) *Excluding contributions of significant withdrawn employers.* Contributions of certain withdrawn employers are excluded from the denominator in each of the fractions used to determine a withdrawing employer's share of unfunded vested benefits under the presumptive, modified presumptive and rolling-5 methods. Except as provided in paragraph (c)(1) of this section, contributions of all employers that permanently cease to have an obligation to contribute to the plan or permanently cease covered operations before the end of the period of plan years used to determine the fractions for allocating unfunded vested benefits under each of those methods (and contributions of all employers that withdrew before September 26, 1980) are excluded from the denominators of the fractions.

(1) The plan sponsor of a plan using the presumptive, modified presumptive or rolling-5 method may amend the plan to provide that only the contributions of significant withdrawn employers are excluded from the denominators of the fractions used in those methods.

(2) For purposes of this paragraph (c), ''significant withdrawn employer'' means—

(i) An employer to which the plan has sent a notice of withdrawal liability under section 4219 of ERISA; or

(ii) A withdrawn employer that in any plan year used to determine the denominator of a fraction contributed at least $250,000 or, if less, 1 percent of all contributions made by employers for that year.

(3) If a group of employers withdraw in a concerted withdrawal, the plan sponsor must treat the group as a single employer in determining whether the members are significant withdrawn employers under paragraph (c)(2) of this section. A ''concerted withdrawal'' means a cessation of contributions to the plan during a single plan year—

(i) By an employer association;

(ii) By all or substantially all of the employers covered by a single collective bargaining agreement; or

(iii) By all or substantially all of the employers covered by agreements with a single labor organization.

(d) ''*Fresh start*'' *rules under presumptive method.* (1) The plan sponsor of a plan using the presumptive method (including a plan that primarily covers employees in the building and construction industry) may amend the plan to provide that—

(i) A designated plan year ending after September 26, 1980, will substitute for the plan year ending before September 26, 1980, in applying section 4211(b)(1)(B), section 4211(b)(2)(B)(ii)(I), section 4211(b)(2)(D), section 4211(b)(3), and section 4211(b)(3)(B) of ERISA; and

(ii) Plan years ending after the end of the designated plan year in paragraph (d)(1)(i) of this section will substitute for plan years ending after September 25, 1980, in applying section 4211(b)(1)(A), section 4211(b)(2)(A), and section 4211(b)(2)(B)(ii)(II) of ERISA.

(2) A plan amendment made pursuant to paragraph (d)(1) of this section must provide that the plan's unfunded vested benefits for plan years ending after the designated plan year are reduced by the value of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn from the plan as of the end of the designated plan year.

(3) In the case of a plan that primarily covers employees in the building and construction industry, the plan year designated by a plan amendment pursuant to paragraph (d)(1) of this section must be a plan year for which the plan has no unfunded vested benefits determined in accordance with section 4211 of ERISA without regard to § 4211.6.

(e) ''*Fresh start*'' *rules under modified presumptive method.* (1) The plan sponsor of a plan using the modified presumptive method may amend the plan to provide—

(i) A designated plan year ending after September 26, 1980, will substitute for the plan year ending before September 26, 1980, in applying section 4211(c)(2)(B)(i) and section 4211(c)(2)(B)(ii)(I) and (II) of ERISA; and

(ii) Plan years ending after the end of the designated plan year will substitute for plan years ending after September 25, 1980, in applying section 4211(c)(2)(B)(ii)(II) and section 4211(c)(2)(C)(i)(II) of ERISA.

(2) A plan amendment made pursuant to paragraph (e)(1) of this section must provide that the plan's unfunded vested benefits for plan years ending after the designated plan year are reduced by the value of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn from the plan as of the end of the designated plan year.

§ 4211.13 [Amended]

■ 18. In § 4211.13:

■ a. Amend paragraph (a) by removing ''shall'' and adding in its place ''must'';

■ b. Amend paragraph (b) by removing ''shall be'' and adding in its place ''is''.

■ 19. Add § 4211.14 to read as follows:

§ 4211.14 Simplified methods for disregarding certain contributions.

(a) *In general.* A plan sponsor may amend a plan without PBGC approval to adopt any of the simplified methods in paragraphs (b) through (d) of this section to fulfill the requirements of section 305(g)(3) of ERISA and section 432(g)(3) of the Code and § 4211.4(b)(2) in determining an allocation fraction. Examples illustrating calculations using the simplified methods in this section are provided in the appendix to this part.

(b) *Simplified method for the numerator—after 2014 plan year.* A plan sponsor may amend a plan to provide that the withdrawing employer's required contributions for each plan year (a ''target year'') after the date that is the later of the last day of the first plan year that ends on or after December 31, 2014 and the last day of the plan year the employer first contributes to the plan (the ''employer freeze date'') is the product of—

(1) The employer's contribution rate in effect on the employer freeze date, plus any contribution increase in § 4211.4(b)(2)(ii) that is effective after the employer freeze date but not later than the last day of the target year; times

(2) The employer's contribution base units for the target year.

(c) *Simplified method for the denominator—after 2014 plan year.* A plan sponsor may amend a plan to provide that the denominator for the allocation fraction for each plan year after the employer freeze date is calculated using the same principles as paragraph (b) of this section.

(d) *Simplified method for the denominator—proxy group averaging.* (1) A plan sponsor may amend a plan to provide that, for purposes of determining the denominator of the unfunded vested benefits allocation fraction, employer contributions for a plan year beginning after the plan freeze date described in paragraph (d)(2)(i) of this section are calculated, in accordance with this paragraph (d), based on an average of representative contribution rates that exclude contribution increases that are required to be disregarded in determining withdrawal liability. The method described in this paragraph (d) is effective only for plan years to which the amendment applies.

(2) For purposes of this paragraph (d) —

(i) *Plan freeze date* means the last day of the first plan year that ends on or after December 31, 2014.

(ii) *Base year* means the first plan year beginning after the plan freeze date.

(iii) *Contribution history* for a plan year means the history of total contribution rates, and contribution rates that are not required to be disregarded in determining withdrawal liability, from the plan freeze date up to the end of the plan year.

(iv) *Included employer* with respect to a plan for a plan year means an employer that is a contributing employer of the plan on at least 1 day of the plan year and whose contributions for the plan year are to be taken into account under the plan in determining the denominator of the unfunded vested benefits allocation fraction under section 4211 of ERISA. If the contribution histories of different categories of employees of an employer are not substantially the same, the employer may be treated as two or more employers that have more uniform contribution histories.

(v) *Rate history group* is defined in paragraph (d)(3) of this section.

(vi) *Proxy group* is defined in paragraph (d)(4) of this section.

(vii) *Adjusted* as applied to contributions for an employer, a rate history group, or a plan is defined in paragraphs (d)(5), (6), and (7) of this section.

(3) A rate history group of a plan for a plan year is a group of included employers satisfying all of the following requirements:

(i) Each included employer of the plan is in one and only one rate history group.

(ii) The employers in the rate history group have substantially the same contribution history (or the same percentage increases in contributions from year to year), but there need not be more than ten rate history groups.

(iii) There is consistency in the composition of rate history groups from year to year.

(4) The proxy group of a plan for a plan year is a group of included employers satisfying all of the following requirements:

(i) On at least 1 day of the plan year, the employers in the proxy group represent at least 10 percent of active plan participants.

(ii) There is at least one employer in the proxy group from each rate history group of the plan for the plan year that represents, on at least 1 day of the plan year, at least 5 percent of active plan participants.

(iii) There is consistency in the composition of the proxy group from year to year.

(5) The adjusted contributions of an employer under a plan for a plan year are —

(i) The employer's contribution base units for the plan year; multiplied by

(ii) The employer's contribution rate per contribution base unit at the end of the plan year, reduced by the sum of the employer's contribution rate increases since the plan freeze date that are required to be disregarded in determining withdrawal liability.

(6) The adjusted contributions of a rate history group that is represented in the proxy group of a plan for a plan year are the total contributions for the plan year attributable to employers in the rate history group, multiplied by the adjustment factor for the rate history group. The adjustment factor for the rate history group is the quotient, for all employers in the rate history group that are also in the proxy group, of —

(i) Total adjusted contributions for the plan year; divided by

(ii) Total contributions for the plan year.

(7) The adjusted contributions of a plan for a plan year are the plan's total contributions for the plan year by all employers, multiplied by the adjustment factor for the plan. For this purpose, ''the plan's total contributions for the plan year'' means the total unadjusted plan contributions for the plan year that would otherwise be included in the denominator of the allocation fraction in the absence of section 305(g)(1) of ERISA, including any employer contributions owed with respect to earlier periods that were collected in that plan year, and excluding any amounts contributed in that plan year by an employer that withdrew from the plan during that plan year. The adjustment factor for the plan is the quotient, for all rate history groups that are represented in the proxy group, of —

(i) Total adjusted contributions for the plan year; divided by

(ii) Total contributions for the plan year.

(8) Under this method, in determining the denominator of a plan's unfunded vested benefits allocation fraction, the contributions taken into account with respect to any plan year (beginning with the base year) are the plan's adjusted contributions for the plan year.

(9) Notwithstanding the foregoing provisions of this paragraph (d), if total contributions for a year for a rate history group or for a plan are not timely and reasonably available for calculating adjusted contributions for that year,

each relevant contribution rate for the year may be multiplied by the projected contribution base units for the year corresponding to that rate and the sum, for all rates, may be used in place of total contributions for that year.

(e) *Effective and applicability dates.* (1) *Effective date.* This section is effective on February 8, 2021.

(2) *Applicability date.* This section applies to employer withdrawals from multiemployer plans that occur in plan years beginning on or after February 8, 2021.

■ 20. Add § 4211.15 to read as follows:

§ 4211.15 Simplified methods for determining expiration date of a collective bargaining agreement.

(a) *In general.* A plan sponsor may amend a plan without PBGC approval to adopt any of the simplified methods in this section to fulfill the requirements of section 305(g)(4) of ERISA and 432(g)(4) of the Code and § 4211.4(b)(2)(iii) for a withdrawal that occurs on or after the plan's reversion date.

(b) *Reversion date.* The reversion date is either—

(1) The expiration date of the first collective bargaining agreement requiring plan contributions that expires after the plan is no longer in endangered or critical status, or

(2) The date that is the later of—

(i) The end of the first plan year following the plan year in which the plan is no longer in endangered or critical status; or

(ii) The end of the plan year that includes the expiration date of the first collective bargaining agreement requiring plan contributions that expires after the plan is no longer in endangered or critical status.

(3) For purposes of paragraph (b)(2) of this section, the expiration date of a collective bargaining agreement that by its terms remains in force until terminated by the parties thereto is considered to be the earlier of—

(i) The termination date agreed to by the parties thereto; or

(ii) The first day of the third plan year following the plan year in which the plan is no longer in endangered or critical status.

(c) *Example.* The simplified method in paragraph (b)(1) of this section is illustrated by the following example.

(1) *Facts.* A plan certifies that it is not in endangered or critical status for the plan year beginning January 1, 2021. The plan operates under several collective bargaining agreements. The plan sponsor adopts a rule providing that all contribution increases will be included in the numerator and denominator of the allocation fractions for withdrawals occurring after October 31, 2022, the expiration date of the first collective bargaining agreement requiring plan contributions that expires after January 1, 2021.

(2) *Allocation fraction.* A contributing employer withdraws from the plan in November 2022, after the date designated by the plan sponsor for the inclusion of all contribution rate increases in the allocation fraction. The allocation fraction used by the plan sponsor to determine the employer's share of the plan's unfunded vested benefits includes all of the employer's required contributions in the numerator and total contributions made by all employers in the denominator, including any amounts related to contribution increases previously disregarded.

(d) *Effective and applicability dates.* (1) *Effective date.* This section is effective on February 8, 2021.

(2) *Applicability date.* This section applies to employer withdrawals from multiemployer plans that occur in plan years beginning on or after February 8, 2021.

■ 21. Add § 4211.16 to read as follows:

§ 4211.16 Simplified methods for disregarding benefit reductions and benefit suspensions.

(a) *In general.* A plan sponsor may amend a plan without PBGC approval to adopt the simplified methods in this section to fulfill the requirements of section 305(g)(1) of ERISA and section 432(g)(1) of the Code and § 4211.6 to disregard benefit reductions and benefit suspensions.

(b) *Basic rule.* The withdrawal liability of a withdrawing employer is the sum of paragraphs (b)(1) and (2) of this section, and then adjusted by paragraphs (A)-(D) of section 4201(b)(1) of ERISA. The amount determined under paragraph (b)(1) may not be less than zero.

(1) The amount that would be the employer's allocable amount of unfunded vested benefits determined in accordance with section 4211 of ERISA under the method in use by the plan without regard to § 4211.6 (but taking into account § 4211.4); and

(2) The employer's proportional share of the value of each of the benefit reductions and benefit suspensions required to be disregarded under § 4211.6 determined in accordance with this section.

(c) *Benefit suspension.* This paragraph (c) applies to a benefit suspension under § 4211.6(a)(3).

(1) *General.* The employer's proportional share of the present value of a benefit suspension as of the end of the plan year before the employer's withdrawal is determined by applying paragraph (c)(2) or (3) of this section to the present value of the suspended benefits, as authorized by the Department of the Treasury in accordance with section 305(e)(9) of ERISA, calculated either as of the date of the benefit suspension or as of the end of the plan year coincident with or following the date of the benefit suspension (the ''authorized value'').

(2) *Static value method.* A plan may provide that the present value of the suspended benefits as of the end of the plan year in which the benefit suspension takes effect and for each of the succeeding 9 plan years is the authorized value in paragraph (c)(1) of this section. An employer's proportional share of the present value of a benefit suspension to which this paragraph (c) applies using the static value method is determined by multiplying the present value of the suspended benefits by a fraction—

(i) The numerator is the sum of all contributions required to be made by the withdrawing employer for the 5 consecutive plan years ending before the plan year in which the benefit suspension takes effect; and

(ii) The denominator is the total of all employers' contributions for the 5 consecutive plan years ending before the plan year in which the suspension takes effect, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed by an employer that withdrew from the plan during those plan years. If a plan uses an allocation method other than the presumptive method in section 4211(b) of ERISA or similar method, the denominator after the first year is decreased by the contributions of any employers that withdrew from the plan and were unable to satisfy their withdrawal liability claims in any year before the employer's withdrawal.

(iii) In determining the numerator and the denominator in paragraph (c)(2) of this section, the rules under § 4211.4 (and permissible modifications under § 4211.12 and simplified methods under §§ 4211.14 and 4211.15) apply.

(3) *Adjusted value method.* A plan may provide that the present value of the suspended benefits as of the end of the plan year in which the benefit suspension takes effect is the authorized value in paragraph (c)(1) of this section and that the present value as of the end of each of the succeeding nine plan years (the ''revaluation date'') is the present value, as of a revaluation date, of the benefits not expected to be paid

after the revaluation date due to the benefit suspension. An employer's proportional share of the present value of a benefit suspension to which this paragraph (c) applies using the adjusted value method is determined by multiplying the present value of the suspended benefits by a fraction—

(i) The numerator is the sum of all contributions required to be made by the withdrawing employer for the 5 consecutive plan years ending before the employer's withdrawal; and

(ii) The denominator is the total of all employers' contributions for the 5 consecutive plan years ending before the employer's withdrawal, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed by an employer that withdrew from the plan during those plan years.

(iii) In determining the numerator and the denominator in this paragraph (c)(3), the rules under § 4211.4 (and permissible modifications under § 4211.12 and simplified methods under §§ 4211.14 and 4211.15) apply.

(iv) If a benefit suspension in § 4211.6(a)(3) is a temporary suspension of the plan's payment obligations as authorized by the Department of the Treasury, the present value of the suspended benefits in this paragraph (c)(3) includes only the value of the suspended benefits through the ending period of the benefit suspension.

(d) *Benefit reductions.* This paragraph (d) applies to benefits reduced under § 4211.6(a)(1) or (2).

(1) *Value of a benefit reduction.* The value of a benefit reduction is—

(i) The unamortized balance, as of the end of the plan year before the withdrawal, of;

(ii) The value of the benefit reduction as of the end of the plan year in which the reduction took effect; and

(iii) Determined using the same assumptions as for unfunded vested benefits and amortization in level annual installments over a period of 15 years.

(2) *Employer's proportional share of a benefit reduction.* An employer's proportional share of the value of a benefit reduction to which this paragraph (d) applies is determined by multiplying the value of the benefit reduction by a fraction—

(i) The numerator is the sum of all contributions required to be made by the withdrawing employer for the 5 consecutive plan years ending before the employer's withdrawal; and

(ii) The denominator is the total of all employers' contributions for the 5 consecutive plan years ending before the employer's withdrawal, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed by an employer that withdrew from the plan during those plan years.

(iii) The 5 consecutive plan years ending before the plan year in which the adjustable benefit reduction takes effect may be used in determining the numerator and the denominator in this paragraph (d). If such 5-year period is used, in determining the denominator, if a plan uses an allocation method other than the presumptive method in section 4211(b) of ERISA or similar method, the denominator after the first year is decreased by the contributions of any employers that withdrew from the plan and were unable to satisfy their withdrawal liability claims in any year before the employer's withdrawal.

(iv) In determining the numerator and the denominator in this paragraph (d), the rules under § 4211.4 (and permissible modifications under § 4211.12 and simplified methods under §§ 4211.14 and 4211.15) apply.

(e) *Example.* The simplified framework using the static value method under § 4211.16(c)(2) for disregarding a benefit suspension is illustrated by the following example.

(1) *Facts.* Assume that a calendar year multiemployer plan receives final authorization by the Secretary of the Treasury for a benefit suspension, effective January 1, 2018. The present value, as of that date, of the benefit suspension is $30 million. Employer A, a contributing employer, withdraws during the 2022 plan year. Employer A's proportional share of contributions for the 5 plan years ending in 2017 (the year before the benefit suspension takes effect) is 10 percent. Employer A's proportional share of contributions for the 5 plan years ending before Employer A's withdrawal in 2022 is 11 percent. The plan uses the rolling-5 method for allocating unfunded vested benefits to withdrawn employers under section 4211 of ERISA. The plan sponsor has adopted by amendment the static value simplified method for disregarding benefit suspensions in determining unfunded vested benefits. Accordingly, there is a one-time valuation of the initial value of the suspended benefits with respect to employer withdrawals occurring during the 2019 through 2028 plan years, the first 10 years of the benefit suspension.

(2) *Unfunded vested benefits allocable to Employer A.* To determine the amount of unfunded vested benefits allocable to Employer A, the plan's actuary first determines the amount of Employer A's withdrawal liability as of the end of 2021 assuming the benefit suspensions remain in effect. Under the rolling-5 method, if the plan's unfunded vested benefits as determined in the plan's 2021 plan year valuation were $170 million (not including the present value of the suspended benefits), the share of these unfunded vested benefits allocable to Employer A is equal to $170 million multiplied by Employer A's allocation fraction of 11 percent, or $18.7 million. The plan's actuary then adds to this amount Employer A's proportional 10 percent share of the $30 million initial value of the suspended benefits, or $3 million. Employer A's share of the plan's unfunded vested benefits for withdrawal liability purposes is $21.7 million ($18.7 million + $3 million).

(3) *Adjustment of allocation fraction.* If another significant contributing employer—Employer B—had withdrawn in 2019 and was unable to satisfy its withdrawal liability claim, the allocation fraction applicable to the value of the suspended benefits is adjusted. The contributions in the denominator for the last 5 plan years ending in 2017 is reduced by the contributions that were made by Employer B, thereby increasing Employer A's allocable share of the $30 million value of the suspended benefits.

(f) *Effective and applicability dates.* (1) *Effective date.* This section is effective on February 8, 2021.

(2) *Applicability date.* This section applies to employer withdrawals from multiemployer plans that occur in plan years beginning on or after February 8, 2021.

§ 4211.21 [Amended]

■ 22. In § 4211.21, amend paragraph (b) by removing ''§ 4211.12'' and adding in its place ''section 4211 of ERISA''.

§ 4211.31 [Amended]

■ 23. In § 4211.31, amend paragraph (b) by removing ''set forth in § 4211.12'' and adding in its place ''subpart B of this part''.

■ 24. Amend § 4211.32 by adding paragraph (c)(2)(iii) to read as follows:

§ 4211.32 Presumptive method for withdrawals after the initial plan year.

* * * * *

(c) * * *

(2) * * *

(iii) In determining the numerator and the denominator in this paragraph (c), the rules under § 4211.4 (and permissible simplified methods under §§ 4211.14 and 4211.15) apply.

* * * * *

■ 25. Amend § 4211.33 by adding paragraph (c)(2)(iii) to read as follows:

§ 4211.33 Modified presumptive method for withdrawals after the initial plan year.

* * * * *

(c) * * *

(2) * * *

(iii) In determining the numerator and the denominator in this paragraph (c), the rules under § 4211.4 (and permissible simplified methods under §§ 4211.14 and 4211.15) apply.

■ 26. In § 4211.36, amend paragraph (a) by adding a sentence at the end of the paragraph to read as follows:

§ 4211.36 Modifications to the determination of initial liabilities, the amortization of initial liabilities, and the allocation fraction.

(a) * * * In determining the numerators and the denominators in paragraph (d) of this section, the rules under § 4211.4 (and permissible simplified methods under §§ 4211.14 and 4211.15) apply.

* * * * *

■ 27. Add appendix to part 4211 to read as follows:

APPENDIX TO PART 4211—EXAMPLES

The examples in this appendix illustrate simplified methods for disregarding certain contribution increases in the allocation fraction provided in § 4211.14 of this part.

Example 1. Determining the Numerator of the Allocation Fraction Using the Employer's Plan Year 2014 Contribution Rate (§ 4211.14(b)).

Assume Plan X is a calendar year multiemployer plan in critical status which did not have a benefit increase after plan year 2014. In accordance with section 305(g)(3)(B) of ERISA, the annual 5 percent contribution rate increases applicable to Employer A and other employers in Plan X after the 2014 plan year were deemed to be required to enable the plan to meet the requirement of its rehabilitation plan and must be disregarded. Employer A, a contributing employer, withdraws from Plan X in 2021. Using the rolling-5 method, Plan X has unfunded vested benefits of $200 million as of the end of the 2020 plan year. To determine Employer A's allocable share of these unfunded vested benefits, Employer A's hourly required contribution rate and contribution base units for the 2014 plan year and each of the 5 plan years between 2016 and 2020 are identified as shown in the following table:

	2014 PY	2016 PY	2017 PY	2018 PY	2019 PY	2020 PY	5-year total
Employer A's Contribution Rate	$5.51	n/a	n/a	n/a	n/a	n/a	....
Contribution Base Units	800,000	800,000	800,000	900,000	900,000	900,000	4,300,000
Contributions	$4.41M	$4.86M	$5.10M	$6.03M	$6.33M	$6.64M	$28.96M

The plan sponsor makes a determination pursuant to section 305(g)(3) of ERISA that the annual 5 percent contribution rate increases applicable to Employer A and other employers in Plan X after the 2014 plan year were required to enable the plan to meet the requirement of its rehabilitation plan and should be disregarded; benefits were not increased after plan year 2014.

Applying the simplified method, contribution rate increases that went into effect during plan years beginning after December 31, 2014 would be disregarded: The $5.51 contribution rate in effect at the end of plan year 2014 would be held steady in computing Employer A's required contributions for the plan years included in the numerator of the allocation fraction. Based on 4.3 million contribution base units, this results in total required contributions of $23.7 million over 5 years. Absent section 305(g)(3) of ERISA, the sum of the contributions required to be made by Employer A would have been determined by multiplying Employer A's contribution rate in effect for each plan year by the contribution base units in that plan year, producing total required contributions of $28.96 million over 5 years.

Example 2. Determining the Denominator of the Allocation Fraction Using the Proxy Group Method (§ 4211.14(d)).

Assume a plan covers ten employers. For 2017, three small employers were in rate history group X, representing less than 5 percent of active plan participants; employers A and B and two other employers were in rate history group Y; and employer C and two other employers were in rate history group Z. For 2018, there were changes in contribution rates for some of B's employees, and as a result, employer B is being treated as two employers, B1 and B2. B1 remained in rate history group Y because, while B1 has a significantly lower contribution rate than A, the contributions of both are subject to the same percentage increase each year. B2 was added to rate history group X. X continues to represent less than 5 percent of active plan participants, and the plan continues to ignore it in forming the proxy group. The plan forms a 2018 proxy group of three employers—A and B1 from rate history group Y and C from rate history group Z—that together represent more than 10 percent of active plan participants.

Contributions for 2018 are $1,000,000: $20,000 for rate history group X, $740,000 for rate history group Y, and $240,000 for rate history group Z, with A and B1 accounting for $150,000 and C accounting for $45,000 of the total contribution amounts.

Contribution rates for 2018 for A, B1, and C (excluding rate increases required to be disregarded for withdrawal liability purposes) and contribution base units for the three employers are: For A, 87 cents and 100,000 CBUs; for B1, 43 cents and 50,000 CBUs; and for C, 70 cents and 60,000 CBUs, as shown in rows (1) and (2) of the table below. Thus, the three employers' adjusted contributions are $87,000, $21,500, and $42,000 respectively, as shown in row (3).

Moving from the employer level to the rate history group level, the adjusted contributions for employers in the proxy group that are in the same rate history group are added together (row (4)). Those totals are then divided by total actual contributions for the proxy group employers in each rate history group (row (6)) to derive an adjustment factor for each rate history group (row (7)) that is applied to the actual contributions of all employers in the rate history group (row (8)) to get the adjusted contributions for each rate history group represented in the proxy group (row (9)).

Moving from the rate history group level to the plan level, the same process is repeated. Adjusted employer contributions for the rate history group are summed (row (10)) and divided by the total contributions for all rate history groups represented in the proxy group (row (11)) to get an adjustment factor for the plan (row (12)). Contributions for rate history group X are excluded from row (11) because no employer in rate history group X is in the proxy group. The adjustment factor for the plan is then applied to total plan contributions (row (13)) to get adjusted plan contributions (row (14)). Contributions for rate history group X are included in row (13) because—although X was ignored in determining the adjustment factor for the plan — the adjustment factor applies to all plan contributions (other than those by employers excluded from the plan's allocation fraction denominator). The plan will use the adjusted plan contributions in row (14) as the total contributions for 2018 in determining the denominator of any allocation fraction that includes contributions for 2018.

Row number	Regulatory reference in § 4211.14(d)	Description of action	Rate history group		
			Y		Z
			Employer A	Employer B1	Employer C
(1)	(6)(ii)	2018 contribution rate excluding disregarded increases.	$0.87 per CBU	$0.43 per CBU	$0.70 per CBU
(2)	(6)(i)	2018 CBUs	100,000	50,000	60,000
(3)	(6)	Adjusted employer contributions (1)x(2).	$87,000	$21,500	$42,000
(4)	(7)(i)	Sum of adjusted contributions for proxy employers by rate history group.	$108,500		$42,000
(5)	(7)(ii)	Unadjusted contributions for proxy employers.	$100,000	$25,000	$45,000
(6)	(7)(ii)	Sum of unadjusted contributions for proxy employers by rate history group.	$125,000		$45,000
(7)	(7)	Adjustment factor by rate history group (4)/(6).	0.868		0.933
(8)	(7)	Total actual contributions by rate history group.	$740,000		$240,000
(9)	(7)	Adjusted contributions by rate history group (7)x(8).	$642,320		$223,920
(10)	(8)(i)	Sum of adjusted contributions for rate history groups represented in proxy group.	$866,240		
(11)	(8)(ii)	Total actual contributions for rate history groups represented in proxy group.	$980,000		
(12)	(8)	Adjustment factor for plan (10)/(11)	0.884		
(13)	(8)	Total plan contributions	$1,000,000		
(14)	(8)	Adjusted plan contributions (for allocation fraction denominators) (12)x(13).	$884,000		

PART 4219—NOTICE, COLLECTION, AND REDETERMINATION OF WITHDRAWAL LIABILITY

■ 28. The authority citation for part 4219 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

■ 29. In § 4219.1:

■ a. Amend paragraph (a) by adding two sentences at the end of the paragraph;

■ b. Amend paragraph (b)(1) by removing in the third sentence ''shall'' and adding in its place ''does'';

■ c. Amend paragraph (b)(2) by removing in the second sentence ''shall cease'' and adding in its place ''cease'';

■ d. Amend paragraph (c) by removing in the second sentence ''whom'' and adding in its place ''which''.

The additions read as follows:

§ 4219.1 Purpose and scope.

(a) * * * Section 4219(c) of ERISA requires a withdrawn employer to make annual withdrawal liability payments at a set rate over the number of years necessary to amortize its withdrawal liability, generally limited to a period of 20 years. This subpart provides rules for disregarding certain contribution increases in determining the highest contribution rate under section 4219(c) of ERISA.

* * * * *

§ 4219.2 [Amended]

■ 30. In § 4219.2:

■ a. Amend paragraph (a) by removing ''multiemployer plan,'' and adding in its place ''multiemployer plan, nonforfeitable benefit,'';

■ b. Amend the definition of ''Mass withdrawal valuation date'' by removing the last sentence of the definition;

■ c. Amend the definition of ''Reallocation record date'' by removing ''shall be'' and adding in its place ''is'';

■ d. Amend the definition of ''Unfunded vested benefits'' by removing ''a plan's vested nonforfeitable benefits (as defined for purposes of this section)'' and adding in its place ''a plan's nonforfeitable benefits''.

■ 31. Add § 4219.3 to read as follows:

§ 4219.3 Disregarding certain contributions.

(a) *General rule.* For purposes of determining the highest contribution rate under section 4219(c) of ERISA, a plan must disregard:

(1) *Surcharge.* Any surcharge under section 305(e)(7) of ERISA and section 432(e)(7) of the Code the obligation for which accrues on or after December 31, 2014.

(2) *Contribution increase.* Any increase in the contribution rate or other increase in contribution requirements

that goes into effect during a plan year beginning after December 31, 2014, so that a plan may meet the requirements of a funding improvement plan under section 305(c) of ERISA and section 432(c) of the Code or a rehabilitation plan under section 305(e) of ERISA and section 432(e) of the Code, except to the extent that one of the following exceptions applies pursuant to section 305(g)(3) of ERISA and section 432(g)(3) of the Code:

(i) The increases in contribution requirements are due to increased levels of work, employment, or periods for which compensation is provided.

(ii) The additional contributions are used to provide an increase in benefits, including an increase in future benefit accruals, permitted by section 305(d)(1)(B) or (f)(1)(B) of ERISA and section 432(d)(1)(B) or (f)(1)(B) of the Code.

(b) *Simplified method for a plan that is no longer in endangered or critical status.* A plan sponsor may amend a plan without PBGC approval to use the simplified method in this paragraph (b) for purposes of determining the highest contribution rate for a plan that is no longer in endangered or critical status. The highest contribution rate is the greater of—

(1) The employer's contribution rate as of the date that is the later of the last day of the first plan year that ends on or after December 31, 2014 and the last day of the plan year the employer first contributes to the plan (the ''employer freeze date'') plus any contribution increases after the employer freeze date, and before the employer's withdrawal date that are determined in accordance with the rules under § 4219.3(a)(2)(ii); or

(2) The highest contribution rate for any plan year after the plan year that includes the expiration date of the first collective bargaining agreement of the withdrawing employer requiring plan contributions that expires after the plan is no longer in endangered or critical status, or, if earlier, the date as of which the withdrawing employer renegotiated a contribution rate effective after the plan year the plan is no longer in endangered or critical status.

(c) *Example:* The simplified method in paragraph (b) of this section is illustrated by the following example.

(1) *Facts.* A contributing employer withdraws in plan year 2028, after the 2027 expiration date of the first collective bargaining agreement requiring plan contributions that expires after the plan is no longer in critical status in plan year 2026. The plan sponsor determines that under the expiring collective bargaining agreement the employer's $4.50 hourly contribution rate in plan year 2014 was required to increase each year to $7.00 per hour in plan year 2025, to enable the plan to meet its rehabilitation plan. The plan sponsor determines that, over this period, a cumulative increase of $0.85 per hour was used to fund benefit increases, as provided by plan amendment. Under a new collective bargaining agreement effective in 2027, the employer's hourly contribution rate is reduced to $5.00.

(2) *Highest contribution rate.* The plan sponsor determines that the employer's highest contribution rate for purposes of section 4219(c) of ERISA is $5.35, because it is the greater of the highest rate in effect after the plan is no longer in critical status ($5.00) and the employer's contribution rate in plan year 2014 ($4.50) plus any increases between 2015 and 2025 ($0.85) that were required to be taken into account under section 305(g)(3) of ERISA.

(d) *Effective and applicability dates.* (1) *Effective date.* This section is effective on February 8, 2021.

(2) *Applicability date.* This section applies to employer withdrawals from multiemployer plans that occur in plan years beginning on or after February 8, 2021.

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2020–28866 Filed 1–7–21; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 220

[COE–2020–0009]

RIN 0710–AA85

Design Criteria for Dam and Lake Projects

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes the U.S. Army Corps of Engineers' part titled Design Criteria for Dam and Lake Projects. This part is out-of-date and otherwise covers internal agency operations that have no public compliance component or adverse public impact. Therefore, this part can be removed from the Code of Federal Regulations (CFR).

DATES: This rule is effective on January 8, 2021.

ADDRESSES: Department of the Army, U.S. Army Corps of Engineers, ATTN: CECW–EC (Mr. Robert Bank), 441 G Street NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Bank at (202) 761–5532 or by email at *Robert.Bank@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

This final rule removes from the 33 CFR part 220, Design Criteria for Dam and Lake Projects providing policy, design, and report requirements for low level discharge facilities for drawdown of lakes to be impounded by Corps Civil Works projects. The rule was initially published in the **Federal Register** on May 8, 1975 (40 FR 20081), and amended on August 22, 1975 (40 FR 36774). While the rule applies only to Corps design criteria on Corps dam and lake projects, it was published, at that time, in the **Federal Register** to aid public accessibility.

The solicitation of public comment for this removal is unnecessary because the rule is out-of-date, duplicative of existing internal agency guidance, and otherwise covers internal agency operations that have no public compliance component or adverse public impact. For current public accessibility purposes, updated internal agency policy on this topic may be found in Engineer Manual 1110–2–1602, ''Hydraulic Design of Reservoir Outlet Works'' (available at *https://www.publications.usace.army.mil/Portals/76/Publications/EngineerManuals/EM_1110-2-1602.pdf*). The agency policy is only applicable to field operating activities having responsibility for the design of Corps Civil Works projects and provides guidance specific to the Corps' hydraulic design analysis of reservoir outlet works facilities.

This rule removal is being conducted to reduce confusion for the public as well as for the Corps regarding the current policy which governs the Corps' design criteria for Corps dam and lake projects. Because the regulation does not place a burden on the public, its removal does not provide a reduction in public burden or costs.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, the requirements of E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' do not apply. This removal supports a recommendation of the DoD Regulatory Reform Task Force.

List of Subjects in 33 CFR Part 220

Dams, Flood control.