§ 4211.11 Changes not subject to PBGC approval.

(a) General rule. A plan, other than a plan that primarily covers employees in the building and construction industry, may adopt, by amendment, any of the statutory allocation methods and any of the modifications set forth in §§ 4211.12 and 4211.13, without the approval of the PBGC.

(b) Building and construction industry plans. A plan that primarily covers employees in the building and construction industry may adopt, by amendment, any of the modifications to the presumptive rule set forth in § 4211.12 without the approval of the PBGC.

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

(a) 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. Except as provided in paragraph (a)(4) of this section, any amendment adopted under this paragraph shall be applied consistently to all plan years. Contributions counted for one 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” 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 412(c)(10) or section 431(c)(8) of the Code and regulations thereunder.

(2) A plan sponsor may amend a plan to provide that “the sum of all contributions made” or “total amount contributed” 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 412(c)(10) or 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 received during a specified period of time after the close of the plan year not to exceed the period described in section 412(c)(10) or section 431(c)(8) of the Code and regulations thereunder.

(4) A plan sponsor may amend a plan to provide that—

(i) For plan years ending before September 26, 1980, “the sum of all contributions made” or “total amount contributed” means the amount of total contributions reported on Form 5500 and, for years before the plan was required to file Form 5500, the amount of total contributions reported on any predecessor reporting form required by the Department of Labor or the IRS; and

(ii) For subsequent plan years, “the sum of all contributions made” or “total amount contributed” means the amount described in § 4211.4(b), or the amount described in paragraph (a)(1), (a)(2) or (a)(3) of this section.

(b) 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 (b)(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 shall be excluded from the denominators of the fractions used in those methods.

(2) For purposes of this paragraph (b), “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% of all contributions made by employers for that year.

(3) If a group of employers withdraw in a concerted withdrawal, the plan shall treat the group as a single employer in determining whether the members are significant withdrawn employers under paragraph (b)(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.

(c) “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—

(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) 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 (c)(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.

(d) “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(b)(2)(A), and section 4211(b)(2)(B)(ii)(I) of ERISA.

(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(b)(2)(B)(ii)(II) and section 4211(b)(2)(C)(i)(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.

§ 4211.13 Modifications to the direct attribution method.

(a) Error in direct attribution method. The unfunded vested benefits allocated to a withdrawing employer under the direct attribution method are the sum

4211(b)(2)(A), and section 4211(b)(2)(B)(ii)(I) of ERISA.