Highway	From	To
US12	North Dakota State Line	Jct I–29 at Summit.
US14	Jct US83 at Ft. Pierre	Jct US14B in Pierre.
US14	Jct US14B east of Pierre	W Jct US14 Bypass at Brookings.
US14B	Jct US14 in Pierre	Jct US14 east of Pierre.
US14B	W Jct US14 at Brookings	Jct I–29 Exit 133 at Brookings.
US16B	Jct SD79 south of Rapid City	Jct I–90 at Rapid City.
US18	E Jct US18B at Hot Springs	Jct US385 at Oelrichs.
US18B	W Jct US18 at Hot Springs	E Jct US18 at Hot Springs.
US212	Wyoming State Line	Jct US85 at Belle Fourche.
US212	W Jct US83 west of Gettysburg	E Jct US83 west of Gettysburg.
US212	W Jct US281 in Redfield	E Jct US281 in Redfield.
US281	Jct I–90 Exit 310 at Plankinton	S Jct US14 west of Huron.
US281	Jct US14 north of Wolsey	W Jct US212 in Redfield.
US281	E Jct US212 in Redfield	North Dakota State Line.
US83	Jct I–90 near Vivian	Jct US14 at Ft. Pierre.
US83	Jct US14 east of Pierre	W Jct US212 west of Gettysburg.
US83	E Jct US212 west of Gettysburg	Jct US12 south of Selby.
US83	Jct US12 west of Selby	North Dakota State Line.
US85	I–90 Exit 10 at Spearfish	North Dakota State Line.
SD34	W Jct SD37	E Jct SD37.
SD37	Jct I–90 at Mitchell	E Jct SD34.
SD37	W Jct SD34	Jct US14 at Huron.
SD50	Burleigh Street in Yankton	Jct I–29 Exit 26.
SD79	Jct US18 & US385 at Oelrichs	Jct US16B south of Rapid City.

Legal Citations: SDCL 32–22–8.1, –38, –39, –41, –42, and –52; and Administrative Rules 70:03:01:37,:47,:48, and:60 through:70.

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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: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation proposes to amend its regulations on Allocating Unfunded Vested Benefits to Withdrawing Employers and Notice, Collection, and Redetermination of Withdrawal Liability. The proposed amendments would 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 proposed amendments would also provide simplified withdrawal liability calculation methods.

DATES: Comments must be submitted on or before April 8, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Email: reg.comments@pbgc.gov.* Include the RIN for this rulemaking (RIN 1212–AB36) in the subject line.

• *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and the RIN for this rulemaking (RIN 1212–AB36). All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov*, including any personal information provided. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, 202–326–4400, extension 3839. (TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400, extension 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 proposed regulation would provide simplified methods for determining withdrawal liability and annual payment amounts. A multiemployer plan sponsor could adopt these simplified methods to satisfy the statutory requirements and to reduce administrative burden.

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

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

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 proposed regulation would amend 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 proposed changes would provide guidance and 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, and rolling-5 methods 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.

Table of Contents

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 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 proposed 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—

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

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

[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.

contribution base. Specifically, the annual withdrawal liability payment is determined as follows—

Employer's highest contribution rate in the 10 plan years ending with the year of withdrawal x Average number of contribution base units (e.g., hours worked) for the highest 3 consecutive plan years in the 10-year period preceding the year of withdrawal

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:

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. Each simplified method described in the proposed rule applies to one or more specific aspects of the process of determining and assessing withdrawal liability, and the use of the simplified methods does not detract from the requirement to follow the statutory rules for all other aspects. A plan sponsor would be able to adopt any one or more of the simplified methods. However, a plan sponsor can choose to use an alternative approach that satisfies the requirements of the applicable statutory provisions and regulations rather than any of the simplified methods.

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

[4] Section 305(e)(9) of ERISA and 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 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 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 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 432(e) of the Code.

The following sections explain the PPA 2006 and MPRA ''disregard'' requirements and PBGC's proposed simplified methods. The proposed rule also would eliminate some language that merely repeats statutory provisions and make other editorial changes.

II. Proposed Regulatory Changes To Reflect Benefit Decreases

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

Under the basic methodology explained 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 proposed regulation would add 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. Proposed § 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 make that prior approach difficult to sustain. The proposed regulation would eliminate 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 proposed regulation, the requirement to disregard a benefit suspension would apply 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 would disregard 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 2017 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 2018 through 2027. 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 2027 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 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. PBGC proposes to provide a simplified framework for disregarding adjustable benefit reductions and benefit suspensions in § 4211.16 of PBGC's unfunded vested benefits allocation regulation.

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

(1) 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.

This is calculated before application of the adjustments required by section 4201(b)(1) of ERISA, including the 20-year cap on payments under section 4219(c)(1)(B) of ERISA.

The proposed simplified framework would provide simplified methods for calculating item (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. If a plan has adjustable benefit reductions, the plan sponsor would be able to adopt the simplified method discussed below to determine the value of the adjustable benefit reductions. The simplified method is essentially the same as the simplified method described in PBGC Technical Update 10–3. If a plan has a benefit suspension, the plan sponsor would be able to 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 would be 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. PBGC considered including an adjustment to plan assets in the proposed rule and concluded that it would require additional complicated calculations while only minimally changing results.

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

The proposed regulation would incorporate the guidance provided in PBGC Technical Update 10–3 (July 15, 2010) for disregarding the value of adjustable benefit reductions. Technical

[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.

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

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 II.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—

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

The value of the adjustable benefit reductions would be 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 would be 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 would be the most recent five plan years ending before the employer's withdrawal. For purposes of determining the allocation fraction, the denominator would be increased by any employer contributions owed with respect to earlier periods that were collected in the five 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 year before the employer's withdrawal. PBGC is not including this adjustment in this proposed 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 in the proposed rule avoids some ambiguity that might have led to additional unnecessary calculations and recordkeeping.

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

a. Static Value Method and Adjusted Value Method

PBGC's proposed simplified framework would provide two simplified methods that a plan sponsor could 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 II.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 would be used for all withdrawals in the 10-year period. At the plan sponsor's option, that 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 would be 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 would be determined as of the ''revaluation date,'' the last day of the plan year before the employer's withdrawal. The value of the suspended benefits would be 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 would be December 31, 2021. The value of the suspended benefits would be 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 would be 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 would be 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 would be 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 proposed regulation would require 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 would be 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 would be 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.

Example of Simplified Framework Using the Static Value Method for Disregarding a Benefit Suspension

Assume that a calendar year multiemployer plan receives final authorization by the Secretary of the Treasury for a benefit suspension, effective January 1, 2017. The present value, as of that date, of the benefit suspension is $30 million. Employer A, a contributing employer, withdraws during the 2021 plan year. Employer A's proportional share of contributions for the 5 plan years ending in 2016 (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 2021 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 2018 through 2027 plan years, the first 10 years of the benefit suspension.

To determine the amount of unfunded vested benefits allocable to Employer A, the plan's actuary would first determine the amount of Employer A's withdrawal liability as of the end of 2020 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 2020 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 would be equal to $170 million multiplied by Employer A's allocation fraction of 11 percent, or $18.7 million. The plan's actuary would then add 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 would be $21.7 million ($18.7 million + $3 million).

If another significant contributing employer—Employer B—had withdrawn in 2018 and was unable to satisfy its withdrawal liability claim, the allocation fraction applicable to the value of the suspended benefits would be adjusted. The contributions in the denominator for the last 5 plan years ending in 2016 would be 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.

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 would first determine 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 would then determine 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 would equal 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 would be added to the unfunded vested benefits allocable to Employer A under section 4211 of ERISA.

3. 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	Static value method benefit suspension	Adjusted value method benefit suspension	Adjustable benefit reduction
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 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.	Same as Adjusted Value Method.
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.

III. Proposed 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 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.

The proposed regulation would amend § 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 proposed regulation also would provide 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 III.B). PBGC is not providing a simplified method for disregarding surcharges in the proposed 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 contributions due to increases in levels of work or increases in contributions that are used to provide an increase in benefits. Accordingly, the proposed regulation would provide that these increases are included as contribution increases for purposes of determining the allocation fraction and the highest contribution rate. Under the proposed regulation, the contributions that are used to provide an increase in benefits includes both contributions that are associated with a plan amendment and additional contributions that provide an increase in benefits as an integral part of the benefit formula (a

[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 accrue on or after December 31, 2014.

''benefit bearing'' contribution increase). 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 exceptions to the rule to disregard a contribution increase.

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 contributions 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 sections 305(d)(1)(B) or 305(f)(1)(B) of ERISA and 432(d)(1)(B) or 432(f)(1)(B) of the Code, and additional contributions used to provide a ''benefit-bearing'' contribution increase.
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.

Under sections 305(d)(1)(B) or 305(f)(1)(B) of ERISA and sections 432(d)(1)(B) or 432(f)(1)(B) of the Code, a plan that is subject to a funding improvement or rehabilitation plan could be amended to increase benefits, including future benefit accruals, if the plan actuary certifies that such an increase is paid for out of additional contributions. To determine contribution amounts used for the allocation fraction and the highest contribution rate, a plan sponsor would include contributions that go into effect during plan years beginning after December 31, 2014, that the plan actuary certifies are used to provide an increase in benefits or future accruals. If a plan has a contribution increase that is used to provide an increase in benefits or future accruals for purposes of the allocation fraction, the plan sponsor must also use the contribution increase for determining the highest contribution rate for purposes of the annual withdrawal liability payment amount.

Example: Assume that a plan has an hourly contribution rate of $3.25 in effect in the plan's 2014 plan year. The plan sponsor determines that after the plan's 2014 plan year it will disregard hourly contribution rate increases of $0.25 per year in determining withdrawal liability because such increases were made to meet the requirements of the plan's rehabilitation plan. Beginning with the plan's 2018 plan year, the plan sponsor dedicates $0.20 of the $0.25 increase to an increase in benefits. The plan sponsor would use the employers' hourly contribution rate of $3.25 in effect in the 2014 plan year to determine contributions until the 2018 plan year. For the 2018 plan year and subsequent years, the plan sponsor would use a $3.45 hourly contribution rate to determine contribution amounts used for the allocation fraction and the highest contribution rate.[10]

A plan sponsor would also include a ''benefit-bearing'' contribution increase, *i.e.,* a contribution increase that funds an increase in benefits or accruals as an integral part of the plan's benefit formula in the determination of contribution amounts that are taken into account for withdrawal liability purposes. Under the proposed regulation, the portion of the contribution increase (fixed amount, specific percentage, etc.) that is funding the increased future benefit accruals must be determined actuarially.[11]

Example: Assume benefits are 1 percent of contributions per month under a percentage of contributions formula and the employer's hourly contribution rate increases from $4.00 to $4.50 effective in the 2018 plan year. Thus, under the plan formula, the $0.50 increase provides an increase in future benefit accruals. While the full $0.50 increase is credited as a benefit accrual under the plan formula, the plan sponsor obtains an actuarial determination that only $0.20 of that increase is actuarially necessary to fund the nominal increase in benefit accrual and that $0.30 of the increase will fund past service obligations. For purposes of withdrawal liability, 40 percent of the rehabilitation plan contribution increase is deemed to increase benefit accruals for withdrawal liability purposes ($0.50 × 40% = $0.20). Effective for the 2018 plan year, the plan sponsor would use a $4.20 hourly contribution rate to determine contribution amounts for the allocation fraction and the highest contribution rate.

PBGC invites public comment on alternative methods that plans might use to identify contribution increases used to provide an increase in benefits.

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

The allocation fraction that is used to determine an employer's proportional share of unfunded vested benefits is discussed above in section I. The proposed regulation would add 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 that a plan sponsor could adopt to satisfy the requirements of section 305(g)(3) of ERISA to disregard contribution increases in determining the allocation of unfunded vested benefits.[12] A plan amended to use one or more of the simplified methods in this section must also apply the rules to disregard surcharges under proposed § 4211.4.

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

Under the simplified method for determining the numerator of the

[10] This rate is increased again at such time as Plan X determines that any further increase in contributions is used to fund an increase in benefits.

[11] This is consistent with ERISA sections 305(d)(1)(B) and 305(f)(1)(B) and Code sections 432(d)(1)(B) and 432(f)(1)(B), which permit a plan that is subject to a funding improvement or rehabilitation plan to be amended to increase benefits, including future benefit accruals, if the plan actuary certifies that such increase is paid for out of additional contributions.

[12] Section 305(g)(5) of ERISA requires PBGC to prescribe simplified methods to disregard contribution increases in determining the allocation of unfunded vested benefits. Under section 4211(c)(2)(D) of ERISA, PBGC may permit adjustments in the denominator of the allocation fraction where such adjustment would be appropriate to ease administrative burdens of plans in calculating such denominators.

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 would start with the employer's contribution rate as of the ''freeze date.'' The freeze date, for a calendar year plan, is December 31, 2014, and for non-calendar year plans, is the last day of the first plan year that ends on or after December 31, 2014. If, after the 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 would be added to the contribution rate for each target year that the rate increase is effective for.

Under the method, the product of the 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'') would be used for the numerator and the comparable amount determined for each employer would be 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).

Example of Determining the Numerator Using the Employer's Plan Year 2014 Contribution Rate

Assume Plan X is a calendar year multiemployer plan 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 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.

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 would apply the same principles as for the simplified method above for determining the numerator of the allocation fraction. The plan sponsor would hold steady each employer's contribution rate as of the freeze date, except for contribution increases that provide benefit increases as described above. For each employer, the plan sponsor would multiply 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 or rehabilitation plan, which may have varying contribution rate increases. Under these and other circumstances, it could be administratively burdensome to require plans to identify each employer's contribution increase schedule each year to include the exact amount of the employer's contributions in the denominator.

Accordingly, the proposed regulation would provide a second simplified method to permit plan sponsors to determine total contributions in the denominator. This method, called the proxy group method, allows a plan sponsor to determine ''adjusted contributions''—the amount of contributions that would have been made excluding contribution rate increases that must be disregarded for withdrawal liability purposes—based on the exclusion that would apply for a representative ''proxy'' group of employers, rather than performing calculations for each of the employers in the plan. If the proxy group method applies for a plan for a plan year, then the contributions included in the denominator of the allocation fraction for that plan year are the plan's adjusted contributions for that year. The proxy group must meet certain requirements and must be identified in the plan for each plan year to which the method applies. The proxy group, as established for the first plan year to which the proxy group method applies, may change only to reflect changed circumstances, such as a new contribution schedule or the withdrawal of a large employer in the proxy group.

To use the proxy group method, a plan sponsor must identify the plan's rate schedule groups. Each rate schedule group consists of those employers that have a similar history of both total rate increases and disregarded rate increases. The plan sponsor must select a group of employers that includes at least one employer from each rate schedule group, except that the proxy group of employers does not need to include a member of a rate schedule group that represents less than 5 percent of active plan participants. The employers in the proxy group must together account for at least 10 percent of active plan participants. The proxy group is determined initially for the first plan year beginning after the freeze date (for a calendar year plan, December 31, 2014, and for non-calendar year plans, the last day of the first plan year that ends on or after December 31, 2014).

Using the proxy group method for a plan year, the plan sponsor would first determine adjusted contributions for each employer in the proxy group. This is done 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.

Next, the plan sponsor would determine adjusted contributions for the plan year for each rate schedule group represented in the proxy group of employers. There are two parts to this step. First, for each rate schedule group represented in the proxy group, the sponsor determines the sum of the adjusted contributions for the plan year for all proxy group employers in the rate schedule group, divided by the sum of those employers' actual total contributions for the plan year, to get an adjustment factor for the rate schedule group for the year. Second, the adjustment factor for the year for each rate schedule group is multiplied by the contributions for the year of all employers in the rate schedule group (both proxy group members and non-members) to determine the adjusted contributions for the rate schedule group for the year.

Finally, the plan sponsor must perform the same steps to determine adjusted contributions at the plan level. The sum of the adjusted contributions for all the rate schedule groups represented in the proxy group is divided by the sum of the actual contributions for the employers in those rate schedule 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 schedule groups not represented in the proxy group. (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 result—the adjusted contributions for the whole plan—is the amount of contributions for the plan year that the plan sponsor uses 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.

PBGC invites public comment on alternative bases that plan sponsors might use to define a proxy group of employers and on the determination of contributions in the denominator.

Example of Determining the Denominator of the Allocation Fraction Using the Proxy Group Method

Example 1: Plan With Two Rate Schedule Groups Included in Proxy Group

Assume a plan has three rate schedule groups, X, Y, and Z. Because rate schedule group X represents less than 5 percent of active plan participants for 2017, the plan decides to ignore it in forming the proxy group. Assume further that the plan forms a 2017 proxy group of three employers—A and B from rate schedule group Y and C from rate schedule group Z—that together represent more than 10 percent of active plan participants. Assume 2017 contributions were $1,000,000: $20,000 for rate schedule group X, $740,000 for rate schedule group Y, and $240,000 for rate schedule group Z, with A and B accounting for $150,000 and C accounting for $45,000 of the total contribution amounts.

Assume A's, B's, and C's 2017 contribution rates (excluding rate increases required to be disregarded for withdrawal liability purposes) and contribution base units are 87 cents and 100,000 CBUs, 85 cents and 50,000 CBUs, and 70 cents and 60,000 CBUs, respectively, as shown in rows (1) and (2) of the table below. Thus, the three employers' adjusted contributions are $87,000, $42,500, and $42,000 respectively, as shown in row (3).

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

Moving from the rate schedule group level to the plan level, the same process is repeated. Adjusted employer contributions for the rate schedule group are summed (row (10)) and divided by the total contributions for all rate schedule groups represented in the proxy group (row (11)) to get an adjustment factor for the plan (row (12)). Contributions for rate schedule group X are excluded from row (11) because no employer in rate schedule 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 schedule 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 2017 in determining the denominator of any allocation fraction that includes contributions for 2017.

Row No.	Regulatory reference	Description	Schedule Y		Schedule Z
			Employer A	Employer B	Employer C
1	§ 4211.14(d)(5)(ii))	2017 contribution rate excluding increases that must be disregarded for withdrawal liability purposes.	$0.87 per CBU	$0.85 per CBU	$0.70 per CBU.
2	§ 4211.14(d)(5)(i)	2017 CBUs	100,000	50,000	60,000.
3	§ 4211.14(d)(5)	Adjusted employer contributions (1) × (2)	$87,000	$42,500	$42,000.
4	§ 4211.14(d)(6)(i)	Sum of adjusted employer contributions for proxy employers by rate schedule.	$129,500		$42,000.
5	§ 4211.14(d)(6)(ii)	Unadjusted employer contributions for proxy employers by rate schedule.	$100,000	$50,000	$45,000.

Row No.	Regulatory reference	Description	Schedule Y		Schedule Z
			Employer A	Employer B	Employer C
6	§ 4211.14(d)(6)(ii)	Sum of unadjusted contributions for proxy employers by rate schedule.	$150,000		$45,000.
7	§ 4211.14(d)(6)	Adjustment factor by rate schedule (4)/(6)	0.86		0.93.
8	§ 4211.14(d)(6)	Total actual employer contributions by rate schedule	$740,000		$240,000.
9	§ 4211.14(d)(6)	Adjusted employer contributions by rate schedule (7) × (8).	$636,400		$223,200.
10	§ 4211.14(d)(7)(i)	Sum of adjusted employer contributions for each rate schedule group with proxy employers.	$859,600.		
11	§ 4211.14(d)(7)(ii)	Total actual employer contributions for rate schedule groups with proxy employers (10)/(11).	$980,000.		
12	§ 4211.14(d)(7)	Adjustment factor for plan	0.88.		
13	§ 4211.14(d)(7)	Total plan contributions	$1,000,000.		
14	§ 4211.14(d)(7)	Adjusted plan contributions (to be used in determining allocation fraction denominators) (12) × (13).	$880,000.		

Example 2: Plan With Two Rate Schedules That Were Updated Between the Freeze Date and the Target Year

The facts are the same as in *Example 1,* but each of the two rate schedules for employers included in the proxy group was updated effective 2016 and substantially all employers covered by schedule Y move to new schedule YZ and employers covered by schedule Z move to new schedule ZZ. This would still count as only two rate schedule groups, and the calculations would be similar to *Example 1.*

Example 3: Plan With Two Rate Schedules With Significant Movement of Employers Between the Freeze Date and the Target Year

The facts are the same as in *Examples 1 and 2,* but a group of employers (Employers D and E) have moved from schedule Y to schedule Z, and that group of employers represents more than 5 percent of the total active plan participants. This would entail effectively a third rate-schedule group and the calculations would need to reflect three rate schedule groups. At least one of the employers in the third rate-schedule group would need to be in the proxy group and the proxy group would be changed prospectively.

Example 4: Plan With Two Rate Schedules That Merged Into One Rate Schedule

The facts are the same as in Example 1, but schedule Y and schedule Z were merged into one rate schedule effective in 2016. This would still entail two schedules because under the proxy group method each rate schedule group consists of those employers that have a similar history of both total rate increases and disregarded rate increases. The calculations would be similar to Example 1.

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

As noted above in section III.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 proposed regulation would amend § 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 proposed regulation also would provide 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 proposed regulation would add 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 would be 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.

Example: 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. 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 would include 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.

Under the second simplified method, a plan sponsor could adopt a rule that contribution increases previously disregarded would be 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 proposed regulation also would provide that, for purposes of these simplified methods, an ''evergreen contract'' that continues until the collective bargaining parties elect to terminate the agreement would have 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 invites 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.

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 proposed regulation would add 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 would provide 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.

Example: 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. 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.

IV. Request for Comments

PBGC encourages all interested parties to submit their comments, suggestions, and views concerning the provisions of this proposed regulation. In particular, PBGC is interested in any area in which additional guidance may be needed. The specific requests for comments identified above are repeated here for your convenience. Please identify the question number in your response:

Question 1: Examples of Simplified Methods. PBGC invites public comment on whether the examples in this proposed rule are helpful and whether there are additional types of examples that would help plan sponsors with these calculations.

Question 2: III.A. Requirement to Disregard Certain Contribution Increases in Determining the Allocation of Unfunded Vested Benefits to an Employer and the Annual Withdrawal Liability Payment Amount. As discussed in section III.A., a plan sponsor would be able to include in the determination of contribution amounts a ''benefit-bearing'' contribution increase—a contribution increase that funds an increase in benefits or accruals as an integral part of the plan's benefit formula. The proposed regulation would require the portion of the contribution increase (fixed amount, specific percentage, etc.) that is funding the increased future benefit accruals to be determined actuarially. PBGC invites public comment on alternative methods that plan sponsors might use to identify additional contributions used to provide an increase in benefits.

Question 3: III.B.3. Simplified Method for Determining the Denominator Using the Proxy Group Method. The proposed regulation would provide a simplified method to permit plan sponsors to determine total contributions in the denominator based on a representative proxy group of employers rather than performing calculations for all employers. PBGC invites public comment on alternative bases that plan sponsors might use to define a proxy group of employers and on the determination of contributions in the denominator.

Question 4: III.C. Simplified Methods After Plan is No Longer in Endangered or Critical Status in Determining the Allocation of Unfunded Vested Benefits. The proposed regulation would provide a simplified method for plan sponsors to comply with 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. PBGC invites 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.

Question 5: VI. Compliance with Rulemaking Guidelines. PBGC has estimated that plans using the simplified methods under the proposed rule would have administrative savings as shown on the chart in section VI. PBGC invites public comment on the expected savings on actuarial calculations and other costs using the simplified methods.

V. Applicability

The changes relating to simplified methods for determining an employer's share of unfunded vested benefits and an employer's annual withdrawal liability payment would be applicable to employer withdrawals from multiemployer plans that occur on or after the effective date of the final rule.

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 accrue on or after December 31, 2014.

VI. Compliance With Rulemaking Guidelines

Executive Orders 12866, 13563, and 13771

PBGC 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 proposed 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 proposed rule and has concluded that the amendments providing simplified methods for plan sponsors to comply with the statutory requirements would reduce costs for multiemployer plans by approximately $1,476,000. Based on 2015 data, there are about 450 plans that are in endangered or critical status.[13] PBGC estimates that a portion of these plans using the simplified methods under the proposed rule would 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 II.B.2)	5	$2,000	$10,000
Exceptions to disregarding contribution increases (Section III.A)	40	4,000	160,000
Allocation fraction numerator (Section III.B.1)	200	1,200	240,000
Allocation fraction denominator using 2014 contribution rate (Section III.B.2)	160	4,000	640,000
Allocation fraction denominator using proxy group of employers (Section III.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

[13] *https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf,* Table M–18.

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 603 of the Regulatory Flexibility Act requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed regulation describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of the Regulatory Flexibility Act requirements with respect to this proposed regulation, 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 [14] and is consistent with certain requirements in title I of ERISA [15] and the Code,[16] as well as the definition of a small entity that the Department of Labor has used for purposes of the Regulatory Flexibility Act.[17]

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 requests comments on the appropriateness of the size standard used in evaluating the impact on small entities of the proposed amendments.

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 proposed 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 would be impacted by this proposed rule. Furthermore, plan sponsors may, but are not required to, use the simplified methods under the proposed rule. As shown above, plans that use the simplified methods would have administrative savings. The proposed rule would 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.

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

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

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

[17] *See, e.g.,* DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66,637, 66,644 (Oct. 27, 2011).

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 proposes to amend 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), 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:

§ 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 contribution increase 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:

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

(ii) 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 portion of such contribution increase that is attributable to an increase in benefit accruals must be determined actuarially.

(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 or 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 or section 432(f) of the Code.

(3) *Benefit suspension.* A benefit suspension under section 305(e)(9) of ERISA or 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 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'' 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.

(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 is 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.

(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, for a calendar year plan, December 31, 2014, and for other than a calendar year plan, the last day of the first plan year that ends on or after December 31, 2014 (the ''freeze date'') is the product of—

(1) The employer's contribution rate in effect on the freeze date, plus any contribution increase in § 4211.4(b)(2)(ii) that is effective after the freeze date; 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 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 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 for the plan year that exclude contribution increases that are required to be disregarded in determining withdrawal liability. The amendment is effective only for plan years for which the plan provides for a proxy group that satisfies the requirements in paragraph (d)(2)(v) of this section.

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

(i) *Freeze date* means for a calendar year plan, December 31, 2014, and for other than a calendar year plan, 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 freeze date.

(iii) *Included employer* means, for a plan for a plan year, an employer 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.

(iv) *Rate schedule group* is defined in paragraph (d)(3) of this section.

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

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

(3) A rate schedule group of a plan for a plan year consists of all included employers that have, since the freeze date up to the end of the plan year, substantially the same—

(i) Total contribution rate increases; and

(ii) Contribution rate increases that are not required to be disregarded in determining withdrawal liability.

(4) A plan's proxy group for a plan year is a group of employers named in the plan and satisfying all of the following requirements—

(i) Each employer is an included employer and is a contributing employer on at least 1 day of the plan year.

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

(iii) For each rate schedule 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, at least one employer in the proxy group is a member of the rate schedule group.

(iv) For a plan year that is subsequent to the base year, the proxy group is the same as the year before except for changes needed to make the proxy group satisfy the requirements under paragraphs (d)(4)(i), (ii), and (iii) of this section.

(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 freeze date that are required to be disregarded in determining withdrawal liability.

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

■ 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.

■ 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 or section 432(g)(1) of the Code to disregard benefit reductions and benefit suspensions under § 4211.6.

(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.

(1) 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 nine 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 five 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 five 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 allocation 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 five consecutive plan years ending before the employer's withdrawal; and

(ii) The denominator is the total of all employers' contributions for the five 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, determined; and

(iii) 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 five consecutive plan years ending before the employer's withdrawal; and

(ii) The denominator is the total of all employers' contributions for the five 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 (d), the rules under § 4211.4 (and permissible modifications under § 4211.12 and simplified methods under §§ 4211.14 and 4211.15) apply.

§ 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''.

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

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

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

■ 25. 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]

■ 26. 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''.
■ 27. 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 or section 432(e)(7) of the Code the obligation for which accrues on or after December 31, 2014.

(2) *Contribution increase.* Any contribution increase 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 or section 432(c) of the Code or a rehabilitation plan under section 305(e) of ERISA or section 432(e) of the Code, except to the extent that one of the following exceptions applies:

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

(ii) 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 portion of such contribution increase that is attributable to an increase in benefit accruals must be determined actuarially.

(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, for a calendar year plan, as of December 31, 2014, and for other than a calendar year plan, as of the last day of the first plan year that ends on or after December 31, 2014 (the ''freeze date'') plus any contribution increases after the 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.

Issued in Washington, DC.

William Reeder,

Director, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 38 and 39

RIN 2900–AQ28

Government-Furnished Headstones, Markers, and Medallions; Unmarked Graves

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations related to the provision of government-furnished headstones, markers, and medallions. These proposed revisions would clarify eligibility for headstones, markers, or medallions, would establish replacement criteria for such headstones, markers, and medallions consistent with VA policy, would define the term ''unmarked grave'' consistent with VA policy, and would generally reorganize and simplify current regulatory language for ease of understanding.

DATES: Written comments must be received on or before April 8, 2019.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AQ28—Government-Furnished Headstones, Markers, and Medallions; Unmarked Graves.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly Wright, Director, Office of Field Programs, National Cemetery Administration (NCA), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Telephone: (202) 461–6748 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In accordance with 38 U.S.C. 2306(a), VA must ''furnish, when requested, appropriate Government headstones or markers at the expense of the United States for the unmarked graves of'' eligible individuals as further listed in sec. 2306(a)(1)–(5). The regulations governing the provision of Government headstones and markers are found in 38 CFR part 38, specifically 38 CFR 38.600 and §§ 38.630 through 38.632. We propose to revise these regulations to conform to statutory amendments made by Public Law 114–315, 130 Stat. 1536