

# SECTION 412

## Minimum Funding And Waivers

### Single Employer Plans

## **§412(a)(1)**

### **MINIMUM FUNDING STANDARDS**

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**Non-multiemployer DB plans:**

**Must pay contributions    minimum required contribution for the plan year under IRC 430**

**Money purchase plans:**

**Must pay contributions for the plan year as required under terms of the plan**

**Multiemployer DB plans:**

**Must pay contributions so there is no accumulated funding deficiency at the end of the plan year under IRC 431**

## **§412(b)**

### **LIABILITY FOR CONTRIBUTIONS**

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**Contributions under 412 or 430 must be paid by employer who is responsible under the terms of the plan**

#### **Controlled Group Rule:**

**If the employer is a member of a controlled group, then each member is jointly and severally liable for payment of contributions under the plan**

## **§412(c)(1)(A)**

### **FUNDING WAIVER REQUIREMENTS**

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#### **Non-multiemployer DB plans:**

- 1. Temporary Substantial business hardship**
- 2. Application of minimum funding standard would be adverse to interests of plan participants**
- 3. May waive not more than 3 of 15 consecutive years' minimum funding standard**

#### **EXAM CONDITION 36:**

**No prior waivers have been granted**

## **§412(c)(1)(B)**

### **EFFECT OF FUNDING WAIVER**

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**Reduce minimum required contribution for the plan year (IRC 430) by amount of waiver**

**Amortize waiver for the plan year (IRC 430(e))**

## **§412(c)(1)(C) PRIOR FUNDING WAIVERS**

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**You can not waive any portion of the minimum funding standard that is attributed to a prior waived funding deficiency**

## **§412(c)(2)**

### **DETERMINATION OF BUSINESS HARDSHIP**

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**Factors include (but are not limited to):**

- ) Employer is operating at an economic loss**
- ) Substantial unemployment or underemployment in the trade / business / industry**
- ) Sales and profits of industry are depressed or declining**
- ) Reasonable to expect the plan only will be continued if waiver is granted**

## **§412(c)(5)**

### **RULES FOR SINGLE-EMPLOYER PLANS**

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- (A) Waiver application must be submitted prior to 2 ½ months after the end of the plan year**
- (B) Temporary substantial business hardship must exist for:**
  - ) The single employer being granted waiver, and**
  - ) All members of the controlled group**



## **§412(c)(6)**

### **ADVANCE NOTICE**

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**When applying for waiver, must provide evidence of prior notice to affected parties of extent of funding of guaranteed benefits and benefit liabilities**

**Affected parties:**

- (A) Participants in the plan,**
- (B) Beneficiaries under the plan**
- (C) Each employee organization  
representing participants in the plan**
- (D) The PBGC**

## **§412(c)(7)**

### **RESTRICTION ON PLAN AMENDMENTS**

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**If waiver in effect, can not adopt amendment that increases plan liabilities by**

- ) Increase in benefits**
- ) Change accrual of benefits**
- ) Change in vesting schedule**

**If plan is amended, the waiver will not apply to any plan year ending on or after the adoption date of the amendment**

## **§412(c)(7)**

### **RESTRICTION ON PLAN AMENDMENTS**

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#### **Exceptions – allowable amendments**

- ) Secretary finds amendment is reasonable, and only provides de minimis increase in plan liability**
- ) Amendment repeals a retroactive amendment under 412(d)(2)**
- ) Amendment is required for plan to remain qualified**

**CHANGE IN METHOD OR YEAR**

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**Change in any of these items only becomes effective if approved by the Secretary**

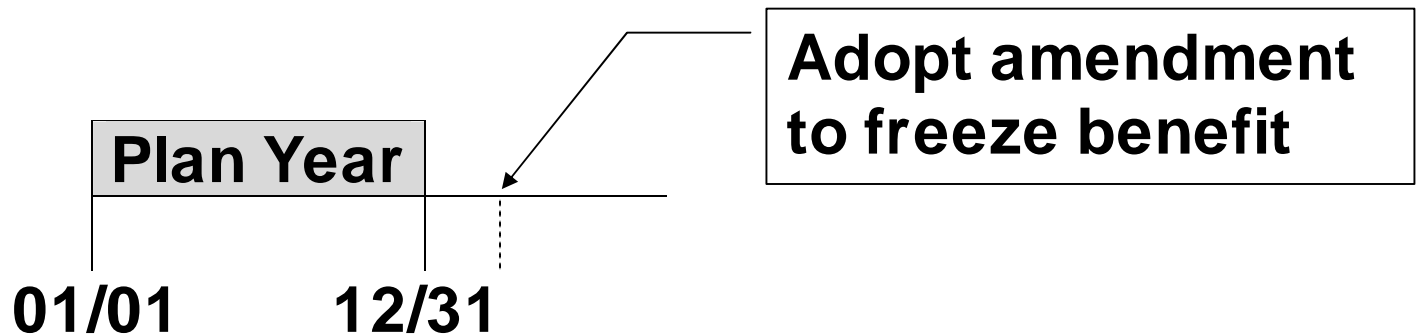
**) Funding method**

**) Plan year**

## **§412(d)(2)**

### **RETROACTIVE PLAN AMENDMENTS**

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**Can treat a retroactive amendment as if it was made at the start of the plan year IFF:**

- ) Plan administrator elects retroactive effect**
- ) Adopted within 2½ months after plan year ends**
- ) Can not reduce participant's accrued benefit as of start of plan year**
- ) Can not reduce participant's accrued benefit as of date of adoption**

**If amendment does reduce accrued benefit, must file notice. Approval will be granted if amendment is necessary due to substantial business hardship and a funding waiver is unavailable or inadequate.**

## **§412(e)**

### **PLANS SUBJECT TO §412**

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- ) Applies to plan whose trust qualified under §401(a)**
- ) Applies to plan which satisfies §403(a)**
- ) Exceptions include**
  - Profit sharing and stock bonus plans**
  - Insurance contract plans described in §412(e)(3) (was §412(i))**
  - Governmental plans per §414(d)**
  - Church plans that did not make election under §410(d)**
  - Plans with no employer contributions**
  - Plans established and maintained under §501(c)(8) or §501(c)(9) with no contributions paid by employers of participants in the plan**

# **GUIDANCE - INTERNAL REVENUE SERVICE**

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**ERISA passed in 1974**

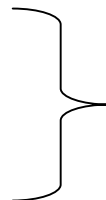
**No regulations until 1981**

**Regulations  
Revenue Rulings**



**Examples and  
Clarifications**

**Notices  
Announcements  
Revenue Procedures**



**Procedural  
Information**

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