

SECTION 412

Minimum Funding And Waivers

Single Employer Plans
+ Multiemployer Plans

§412(a)(1)

MINIMUM FUNDING STANDARDS

Non-multiemployer DB plans:

Must pay contributions \geq 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

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

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

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

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

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

- (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

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

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

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**

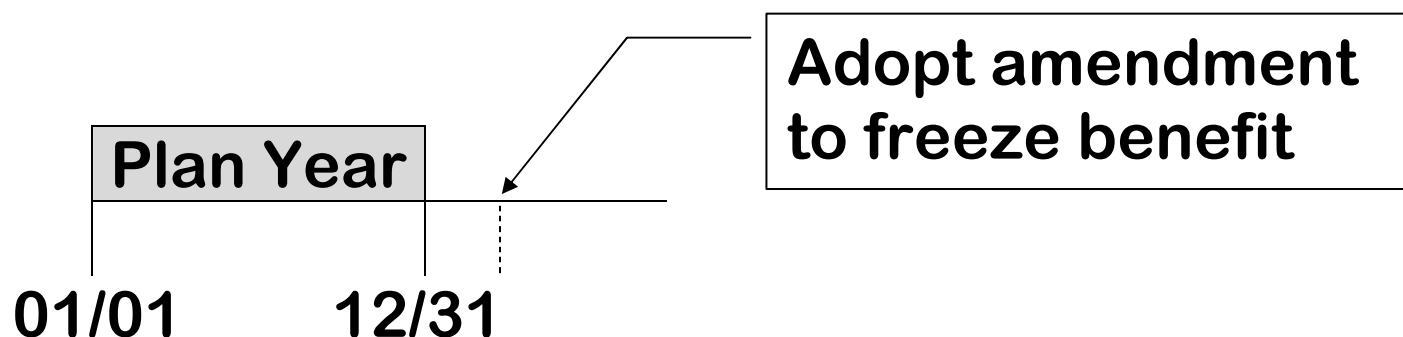
CHANGE IN METHOD OR YEAR

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

- **Funding method**
- **Plan year**

§412(d)(2)

RETROACTIVE PLAN AMENDMENTS



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 (within 2 years for multiemployer plans)
- 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

- **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

ERISA passed in 1974

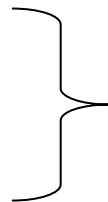
No regulations until 1981

**Regulations
Revenue Rulings**



**Examples and
Clarifications**

**Notices
Announcements
Revenue Procedures**



**Procedural
Information**

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