

SECTION 432

ENDANGERED STATUS
CRITICAL STATUS

MULTIEMPLOYER
PLANS

§432(i)

FUNDED PERCENTAGE

Calculated as $AAV / (\text{Accrued Liability})$

Accrued liability determination

- **Unit Credit funding method**
- **IRC 431(c)(3) valuation assumptions**

§432(b)(1)
ENDANGERED STATUS

MEPRA 2014

- 1. Plan not described in 432(b)(2) or 432(b)(5) for the plan year, and satisfies either (2) or (3) below**
- 2. Plan's funded percentage < 80%**
- 3. Plan has accumulated funding deficiency for plan year, or is projected to have one in any of the succeeding 6 plan years (allowing for amortization extensions under 431(d))**

If plan satisfies both (2) and (3) above, then plan is in “seriously endangered” status

§432(b)(2)

CRITICAL STATUS

Plan satisfies one or more of the definitions in 432(b)(2)(A) through 432(b)(2)(D) at the start of the plan year:

432(b)(2)(A)

Funded percentage < 65%, and for the current and the 6 succeeding plan years, the market value of assets plus PV of contributions < PV of nonforfeitable benefit payments and expenses

432(b)(2)(D)

For the current and the 4 succeeding plan years, the market value of assets plus PV of contributions < PV of all benefit payments and expenses

§432(b)(2)(B)

CRITICAL STATUS - DEFINITIONS

432(b)(2)(B)(i)

Plan has accumulated funding deficiency for the current year, ignoring extension of amortization periods

432(b)(2)(B)(ii)

-) Funded percentage > 65%, and plan is projected to have accumulated funding deficiency for any of the 3 succeeding plan years, ignoring extension of amortization periods, or**
-) Funded percentage ≤ 65%, and plan is projected to have accumulated funding deficiency for any of the 4 succeeding plan years, ignoring extension of amortization periods**

§432(b)(2)(C)

CRITICAL STATUS - DEFINITIONS

432(b)(2)(C)

-) The normal cost for the current year plus interest on the unfunded benefit liabilities (on the last day of prior plan year) exceeds the PV of expected employer and employee contributions for the current plan year, and**
-) At the beginning of the year, PV of nonforfeitable benefits for inactives exceeds the PV of nonforfeitable benefits for active employees, and**
-) Plan has accumulated funding deficiency, or is projected to have accumulated funding deficiency for any of the 4 succeeding plan years, ignoring extension of amortization periods**

**§432(b)(4)
ELECTION - CRITICAL STATUS**

MEPRA 2014

-) Plan not currently in critical status**
-) Projected to be in critical status in any of 5 succeeding plan years**
-) Within 30 days after actuarial certification date, plan can elect to be in critical status for current year**

Plan can only emerge from critical status based on 432(e)(4)(B)

SPECIAL RULE - ENDANGERED / SAFE

) Plan currently in endangered status

) Plan not in critical or endangered status for prior plan year

) Projected not to be in endangered status at end of 10th year following current plan year

Plan is not required to set up funding improvement plan

CRITICAL AND DECLINING STATUS

-) Plan currently in critical status and**
-) Plan is projected to become insolvent**
 - Within current plan year, or**
 - Within 14 succeeding plan years, or**
 - Within 19 succeeding plan years, and**
 - Ratio of inactive to active participants exceeds 2.0 or**
 - Funded percentage is less than 80%**

Plan must reduce accrued benefits for active employees, and also for retirees

**ANNUAL ACTUARIAL CERTIFICATION
DEADLINE DATE**

By 90th day of plan year, plan actuary must certify to plan sponsor and the Secretary of Treasury:

- 1. Whether or not, for the current plan year, the plan is in**
 -) endangered status**
 -) "endangered / safe" due to 432(b)(5)**
 -) critical status**
 -) critical and declining status for the current or any of the next 5 plan years**
- 2. If plan is in funding improvement (or rehabilitation) period, whether or not the plan is making the scheduled progress to meet the plan requirements**

§432(b)(3)(B) ANNUAL ACTUARIAL CERTIFICATION PROJECTIONS

Projections must be based on actuarial estimates, assumptions and methods that reflect the actuary's best estimate of future experience

Projection of future covered employment and contribution levels

- **Based on information furnished by plan sponsor**
- **Plan sponsor must act in good faith**

§432(b)(3)(C)
ANNUAL ACTUARIAL CERTIFICATION
PENALTY – NOT TIMELY

Failure of actuary to certify plan's status by 90th day of plan year is treated as failure (or refusal) by plan administrator to file annual report under ERISA 101(b)(4)

**ANNUAL ACTUARIAL CERTIFICATION
NOTICE REQUIREMENT**

If plan is certified in endangered or critical status for plan year, plan sponsor must provide notice of plan's endangered or critical status within 30 days after certification to:

- Participants and beneficiaries**
- Bargaining parties**
- Pension Benefit Guaranty Corporation**
- Department of Labor**

Plans which elect to be in critical status under IRC 432(b)(4) must provide notice above. Also must notify Secretary of the Treasury within 30 days after certification.

**ANNUAL ACTUARIAL CERTIFICATION
NOTICE REQUIREMENT**

If plan is "endangered/safe" under IRC 432(b)(5), must provide notice that plan is not endangered to bargaining parties and the PBGC.

If plan is not currently in critical status, but is projected to be so in any of the 5 succeeding plan years, must provide notice to the PBGC within 30 days after certification.

§432(c)(1)(A)
ENDANGERED STATUS
IMPROVEMENT PLAN - ADOPTION DATE

Funding improvement plan must be adopted no later than 240 days after required date for the actuarial certification

**§432(c)(3)
ENDANGERED STATUS
FUNDING IMPROVEMENT PLAN**

MEPRA 2014

DEFINITION

Actions or range of options formulated to provide for

- **Increase in the plan's funding percentage (FP) by end of funding improvement period**
 1. **For seriously endangered plans,
final FP = "initial" FP + 20%(100% - FP)**
 2. **For endangered plans,
final FP = "initial" FP + 33%(100% - FP)**
- **Avoidance of accumulated funding deficiency for the last plan year of the funding improvement period**

§432(c)(4)(A)

ENDANGERED STATUS

FUNDING IMPROVEMENT PERIOD

For endangered plan, funding improvement period is 10 years. For seriously endangered plan, period is 15 years.

Funding improvement period begins on 1st day of 1st plan year beginning after earlier of

- Second anniversary of adoption date for funding improvement plan, or**
- Expiration of collective bargaining agreements in effect on due date for actuarial certification of endangered status for initial determination year. CBA must cover at least 75% of active participants at that due date.**

§432(d)(1)
OPERATIONAL RULES -
ENDANGERED STATUS
IMPROVEMENT **ADOPTION PERIOD**

The plan sponsor is not allowed to enter into a collective bargaining agreement that

- reduces the rate of contributions, or**
- suspends contributions, or**
- excludes younger or newly hired employees from participation**

No plan amendments are allowed which increase

- the amount of benefits,**
- the rate of benefit accrual, or**
- the rate of vesting of benefits**

Exception - plan amendments which are required for plan to remain qualified

§432(d)(1)(C)

MEPRA 2014

**OPERATIONAL RULES -
SERIOUSLY ENDANGERED STATUS
IMPROVEMENT ADOPTION PERIOD**

(requirements eliminated)

**OPERATIONAL RULES -
ENDANGERED STATUS
FUNDING IMPROVEMENT PERIOD**

The plan sponsor is not allowed to enter into a collective bargaining agreement that

- reduces the rate of contributions, or**
- suspends contributions, or**
- excludes younger or newly hired employees from participation**

No plan amendments are allowed which increase

- the amount of benefits,**
- the rate of benefit accrual, or**
- the rate of vesting of benefits**

Exception - increase in benefits is paid by additional contributions that are not required by the funding improvement plan to meet any applicable benchmark

§432(e) CRITICAL STATUS REHABILITATION PLAN

DEFINITION

Actions or range of options formulated to enable plan to no longer be in critical status at the end of the rehabilitation period

If plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, the rehabilitation plan must define measures to emerge from critical status at a later time, or to forestall insolvency

§432(e)(1)(A)

CRITICAL STATUS

REHABILITATION PLAN - ADOPTION DATE

Rehabilitation plan must be adopted no later than 240 days after required date for the actuarial certification

§432(e)(4)(A) CRITICAL STATUS REHABILITATION PERIOD

For plan in critical status, rehabilitation period is 10 years

Rehabilitation period begins on 1st day of 1st plan year beginning after earlier of

- Second anniversary of adoption date for rehabilitation plan, or**
- Expiration of collective bargaining agreements in effect on due date for actuarial certification of critical status for initial determination year. CBA must cover at least 75% of active participants at that due date.**

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§432(e)(7)
CRITICAL STATUS
AUTOMATIC EMPLOYER SURCHARGE

If a plan is in critical status, additional payment to the plan (MFSA) is required

-) For the first year, surcharge is 5% of the otherwise required contribution**
-) For successive years the surcharge is 10%**

Surcharge does not apply until 30 days after employer is notified the plan is in critical status

The surcharge terminates after a collective bargaining agreement is negotiated which reflects the terms of a new contribution schedule in the rehabilitation plan

§432(f)(4)

OPERATIONAL RULES - CRITICAL STATUS REHABILITATION **ADOPTION PERIOD**

The plan sponsor is not allowed to enter into a collective bargaining agreement that

- reduces the rate of contributions, or**
- suspends contributions, or**
- excludes younger or newly hired employees from participation**

No plan amendments are allowed which increase

- the amount of benefits,**
- the rate of benefit accrual, or**
- the rate of vesting of benefits**

Exception - plan amendments which are required for plan to remain qualified

§432(f)(1)

OPERATIONAL RULES - CRITICAL STATUS REHABILITATION PERIOD

The plan can not pay

- **Any payment in excess of the straight life annuity monthly benefit, plus any Social Security supplement, or**
- **Any payment for purchase of an irrevocable commitment from an insurer**
- **Any other payment specified by the Secretary**

No plan amendments are allowed which increase

- **the amount of benefits,**
- **the rate of benefit accrual, or**
- **the rate of vesting of benefits**

Exception - increase in benefits is paid by additional contributions that are not part of the rehabilitation plan, and the plan is still expected to emerge from critical status “on schedule”

**EMERGENCE FROM CRITICAL STATUS
GENERAL RULE**

Plan no longer in critical status for a plan year if

- **Plan no longer satisfies any definition in 432(b)(2)(A) through 432(b)(2)(D) and**
- **Plan is not projected to become insolvent in any of the 30 succeeding plan years, and**
- **Plan is not projected to have accumulated funding deficiency for that year, or any of the 9 succeeding plan years**
 - **Including amortization extensions under IRC 431(d)(2), and**
 - **Ignoring the shortfall funding method**

**EMERGENCE FROM CRITICAL STATUS
SPECIAL EMERGENCE RULE**

Plan with automatic amortization extensions under IRC 431(d)(1) no longer in critical status for a plan year if

- Plan is not projected to become insolvent in any of the 30 succeeding plan years, and**
- Plan is not projected to have accumulated funding deficiency for that year, or any of the 9 succeeding plan years**
 - Including amortization extensions under IRC 431(d)(2), and**
 - Ignoring the shortfall funding method**

NOTE - does not matter if plan satisfies any definition in 432(b)(2)(A) through 432(b)(2)(D)

REENTRY INTO CRITICAL STATUS

Plan with automatic amortization extensions under IRC 431(d)(1) (described on prior page) will not reenter critical status for any subsequent plan year unless

- Plan is projected to become insolvent in any of the 30 succeeding plan years, or**
- Plan is projected to have accumulated funding deficiency for that year, or any of the 9 succeeding plan years**
 - Including amortization extensions under IRC 431(d)(2), and**
 - Ignoring the shortfall funding method**

Plans can reduce benefits (benefit suspensions) for actives and retirees

- **Plan is in "critical and declining" status**
- **All reasonable actions to avoid insolvency have been taken**
- **Actuary certifies that benefit suspensions are necessary for plan to avoid insolvency**
- **Plan must be amended**
- **Benefit suspensions can be temporary or permanent**
- **Benefits can not be lower than 110% of PBGC multiemployer guarantee amount**

Retiree benefit suspensions are limited

- **No suspensions for disabled employees**
- **No suspensions for retirees age 80 and above**
- **Phase-out of benefit reductions for participants between ages 75 and 80. Varying percentages based on current age and years of service.**

§432(e)(9)
BENEFIT SUSPENSIONS
NOTICE REQUIREMENTS

MEPRA 2014

Plan trustees must submit benefit suspension plan to Department of Treasury for approval. Treasury can raise objection within 225 days, otherwise application is considered approved

Plan trustees must notify

- Contributing employers**
- Participants and beneficiaries**
- Bargaining parties**

Once Treasury approves plan for suspension, it must be ratified by majority vote of participants and beneficiaries.

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