

SECTION 436

FUNDING-BASED BENEFIT RESTRICTIONS

SINGLE EMPLOYER DB PLANS

To satisfy 401(a)(29), a single employer plan must meet requirements of these subsections

- (b) Shutdown benefits and other unpredictable contingent event benefits**
- (c) Amendments increasing benefit liability**
- (d) Accelerated benefit distributions**
- (e) Benefit accruals for plans with severe funding shortfalls**

NOTES:

- Multi-employer plans are subject to much less stringent rules in IRC 432**
- 436(l) defines "single employer plan" to include multiple employer plans**

§436(g)

EXCEPTION FOR NEW PLANS

Subsections (b), (c), and (e) shall not apply to a plan for the first 5 plan years of the plan, or any predecessor plan.

**Subsection (d) does apply to new plans:
Accelerated benefit distributions**

§436(i) TREATMENT OF PLAN AT CLOSE OF PROHIBITED PERIOD

Benefit payments and accruals will resume on 1st day of plan year following close of period for which any limitation under subsections (d) or (e) applies

At option of plan sponsor, benefits may (or may not) accrue for period of freeze

Nothing in §436 should affect benefits which should have been paid or accrued during the period of limitation

§430(d)

FUNDING TARGET DEFINITIONS

FUNDING TARGET:

Present value of accrued benefits at start of plan year (if not at-risk plan)

FUNDING TARGET ATTAINMENT PERCENTAGE

$$\text{FTAP} = \frac{\text{AAV} - \text{CB} - \text{PB}}{\text{Funding target (not at-risk)}}$$

§436(j)

ADJUSTED FUNDING TARGET ATTAINMENT PERCENTAGE (AFTAP)

Adjust numerator and denominator of FTAP by non-HCE annuity purchases (NHAP) during the prior two plan years:

$$\text{AFTAP} = \frac{\text{NHAP} + \text{AAV} - \text{CB} - \text{PB}}{\text{NHAP} + \text{Funding target (not at-risk)}}$$

§436(j)

EXAMPLES - AFTAP CALCULATION

SCENARIO

Valuation results	PLAN 1	PLAN 2
AAV	850	680
CB + PB	100	90
AAV – CB – PB	750	590
Funding Target	850	735
FTAP		
NHAP	150	60
AFTAP		

§436(j)(3)

AFTAP - CREDIT BALANCE REDUCTION

If FTAP 100% using AAV not reduced by CB and PB, then use unreduced AAV for AFTAP:

$$\text{FTAP2} = \frac{\text{AAV} - 0}{\text{Funding target (not at-risk)}}$$

$$\text{AFTAP2} = \frac{\text{NHAP} + \text{AAV} - 0}{\text{NHAP} + \text{Funding target (not at-risk)}}$$

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§436(j)(3)

AFTAP - CREDIT BALANCE REDUCTION

EXAMPLES

SCENARIO

Valuation results

AAV

CB + PB

AAV – CB – PB

Funding Target

FTAP

NHAP

AFTAP

AAV – zero

FTAP2 for year

AFTAP2 for year

PLAN 1

PLAN 2

850	680
100	90
750	590
850	735
750 / 850	590 / 735
88.2%	80.2%
150	60
900 / 1000	650 / 795
90.0%	81.7%
850	680

§436(b)(3)
SHUTDOWN BENEFITS AND OTHER
UNPREDICTABLE CONTINGENT EVENT BENEFITS

Definition of UCEB

**Benefit payable solely due to plant shutdown,
or any event other than**

- **Attainment of age**
- **Performance of service**
- **Receipt or derivation of any compensation**
- **Death**
- **Disability**

§436(b)
SHUTDOWN BENEFITS AND OTHER
UNPREDICTABLE CONTINGENT EVENT BENEFITS

Unpredictable contingent event (UCE) benefits with respect to a UCE occurring during a plan year will not be provided if the AFTAP for that plan year satisfies either case:

CASE A – AFTAP < 60% before event

CASE B – AFTAP < 60% after reflecting UCE

§436(b) SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS

Exemption

Restriction no longer applies to any plan year (as of first day of plan year) where plan sponsor makes contribution (in excess of minimum) equal to

- In case (A) above, the increase in the Funding Target due to the occurrence**
- In case (B) above, the amount necessary so the AFTAP is at least 60%**

NOTE:

IRC 436 incorrectly refers to FTAP for 2nd item. This is “a typo”, based on IRC 436 regulations

§436(c)(1)

PLAN AMENDMENTS INCREASING BENEFIT LIABILITIES

No plan amendment increasing benefit liabilities can take effect if either

CASE A – AFTAP < 80%, before amendment

CASE B – AFTAP < 80% after amendment

§436(c)(1)

PLAN AMENDMENTS INCREASING BENEFIT LIABILITIES

Exception

Restriction does not apply to any amendment which provides for an increase in benefits

- **Under a formula which is not based on a participant's compensation**
- **Only if the rate of such increase is not in excess of
“the contemporaneous rate of increase in average wages of participants covered by the amendment”**

§436(c)(2)

PLAN AMENDMENTS INCREASING BENEFIT LIABILITIES

EXAMPLES

SCENARIO

Valuation results

PLAN 1

PLAN 2

AAV – CB – PB

600

510

Funding Target

Pre-Amendment

750

700

FTAP

600 / 750

510 / 700

80.0%

72.8%

NHAP

150

60

AFTAP

Funding Target

Post-Amendment

850

800

FTAP

600 / 850

510 / 800

70.5%

63.7%

NHAP

150

60

AFTAP

Case A or B?

§436(c)(2)

PLAN AMENDMENTS INCREASING BENEFIT LIABILITIES

Exemption

Restriction no longer applies to any plan year (as of first day of plan year, or later effective date) where plan sponsor makes contribution (in excess of minimum) equal to

- In case (A) above, the increase in the Funding Target due to the amendment**
- In case (B) above, the amount necessary so the AFTAP is at least 80%**

§436(c)(2)

PLAN AMENDMENTS INCREASING BENEFIT LIABILITIES

EXAMPLES

SCENARIO

Valuation results

AAV – CB – PB

Funding Target

Pre-Amendment

Post-Amendment

FTAP

NHAP

AFTAP

PLAN 1	PLAN 2
600	510
750	700
850	800
600 / 850 70.5%	510 / 800 63.7%
150	60
750 / 1000 75.0%	570 / 860 66.2%

Case A or B?

Additional contrib

Resulting AFTAP

CASE B	CASE A

§436(d)

ACCELERATED BENEFIT DISTRIBUTIONS

- (1) If plan's AFTAP < 60%, can not pay any prohibited payments after the valuation date for that year**
- (2) If plan sponsor in Chapter 11, can not pay any prohibited payments. Restriction no longer applies once AFTAP 100%.**

Exception

Limitations above do not apply to plans frozen since 09/01/2005

ACCELERATED BENEFIT DISTRIBUTIONS

Prohibited payment

- **Any payment to participant / beneficiary**
 - **Whose annuity starting date occurs during any period a limitation under paragraph 436(d)(1) or (2) is in effect**
 - **Can not make payment in excess of the monthly amount paid under a single life annuity (including social security supplements)**
- **Any payment for annuity purchase from an insurer**
- **Any other payment specified by the Secretary by regulations**
- **Exception for benefit cash-out under 411(a)(11)**

§436(d)(3)

LIMITED PAYMENT (60% AFTAP < 80%)

Plan may not make any prohibited payment after valuation date for the year if prohibited payment exceeds lesser of

- **50% of payment that could otherwise be paid**
- **417(e) present value of PBGC maximum guaranteed benefit (ERISA 4022)**

§436(d)(3)

ONE-TIME APPLICATION (60% AFTAP < 80%)

One prohibited payment may be made to a participant (or beneficiary) during any period of consecutive plan years a limitation under paragraph 436(d)(1) or (2) is in effect

§436(e)

LIMITATION ON BENEFIT ACCRUALS – PLANS WITH SEVERE FUNDING SHORTFALLS

**If AFTAP < 60%, benefit accruals must cease
as of the valuation date**

Exemption

**Restriction no longer applies to any plan year
where plan sponsor makes contribution equal
to the amount necessary so the AFTAP is at
least 60%**

- **Effective as of first day of plan year**
- **Contribution in excess of 430 minimum**

§436(f)(1)

CONTRIBUTIONS REQUIRED TO AVOID BENEFIT LIMITATIONS

AFTAP calculation will treat as an asset any security provided by a plan sponsor

Form of Security

- **Bond issued by corporate surety company**
- **Cash or U.S. obligations that mature in 3 years or less, held in escrow**
- **Other form of security per Secretary**

§436(f)(1)

CONTRIBUTIONS REQUIRED TO AVOID BENEFIT LIMITATIONS

Enforcement

Security must be converted into cash contribution any time after the earlier of

- **Plan termination**
- **Failure to pay minimum required contribution**
- **Valuation date of 7th consecutive year where AFTAP < 60%**

§436(f)(2)

CONTRIBUTIONS REQUIRED TO AVOID BENEFIT LIMITATIONS

Can not use PB or CB as payment under these subsections to avoid or terminate any limitation:

- (b) Shutdown benefits and other
unpredictable contingent event benefits**
- (c) Amendments increasing benefit liability**
- (e) Benefit accruals for plans with severe
funding shortfalls**

§436(f)(3)

CONTRIBUTIONS REQUIRED TO AVOID BENEFIT LIMITATIONS

Deemed reduction of funding balances

If limitation under subsection (b)(1), (c)(1) or (e)(1) applies to a collectively bargained plan

- **Treat plan sponsor as having made election under 430(f) to reduce CB or PB**
- **Reduce CB or PB by necessary amount so benefit limitation is no longer applicable**
- **If benefit limitation can not be avoided, then no reduction is made in CB or PB**

Similar rules apply for ALL plans for limitation under subsection (d)(1):

Accelerated benefit distributions

436(h)

PRESUMED CONTINUED UNDERFUNDING

Limitation under subsection (b), (c), (d) or (e) did apply to the immediately preceding plan year (prior year AFTAP < 80%)

Until actuary certifies AFTAP value for current plan year

- **Assume AFTAP for current year = prior year AFTAP**
- **If no AFTAP certified for prior year, assume AFTAP for current year < 60%**

1.436-1(h)(2)

PRESUMED UNDERFUNDING

Nearly Underfunded Plans:

80% prior year AFTAP < 90% or

60% prior year AFTAP < 70%

- **Assume that actuary has not certified AFTAP value by 1st day of 4th month of current plan year**
- **Until actuary certifies AFTAP value for current plan year, assume AFTAP for current year = prior year AFTAP less 10%**

NOTE

Final regulation (above) does not match wording in IRC 436(h)

§436(h)

PRESUMED UNDERFUNDING (ALL PLANS)

Actuary has not yet certified AFTAP value by 1st day of 10th month of current plan year

- **“Conclusively presume” AFTAP < 60% for purposes of subsections (b), (c), (d) or (e)**
- **Benefits freeze at 1st day of 10th month**

ALTERNATE VALUATION DATE

The Secretary may prescribe rules for application of IRC 436 to plans with a valuation date other than the first day of the plan year

**§436(I)
SINGLE EMPLOYER PLAN**

WRERA

The term "single employer plan" includes all plans that are not multiemployer plans

FINAL 436 REGULATION

- Released 10/2009
- Quite similar to 08/2007 proposed regulation
- New portions are really complicated - some is still unclear

1.436-1(a)(3)(ii)

TERMINATED PLANS

- **IRC 436 restrictions continue to apply to a terminated plan**
- **Restrictions do NOT apply to extent they must be waived in order to implement the termination of the plan**
- **Example - annuity purchases are allowed**

NOTE: New item - only in final regulation

1.436-1(a)(4)(ii)(A)

TREATMENT OF PLAN AT CLOSE OF PROHIBITED / CESSATION PERIOD

- **Plan can be amended to allow participants affected by 436(d) to make a new benefit election**
- **Participant election creates new annuity starting date under IRC 415 and IRC 417**
- **Plan can be amended to allow restoration of benefit accruals that were limited by 436(e)**
- **Document language can allow (in advance) for above items**

ASSUMPTION - TESTED ON EA-2F EXAM

1.430(d)-1(c)(1)(iii)

DETERMINATION OF FUNDING TARGET AND TARGET NORMAL COST

- Proposed regulation - ignore effect of IRC 436 restrictions
- Final regulation
 - Ignore effect of IRC 436(e) restrictions (benefit accruals) for target NC
 - Calculation of Funding Target depends on document language

ASSUMPTION - TESTED ON EA-2F EXAM

1.430(d)-1(c)(1)(iii)(C)

**DETERMINATION OF FUNDING TARGET AND
TARGET NORMAL COST -
LIMITATION ON PROHIBITED PAYMENTS**

- If benefit commenced, and affected by 436(d), must reflect restrictions
- If benefit has not yet commenced, must ignore 436(d) restrictions

ASSUMPTION - TESTED ON EA-2F EXAM

1.430(d)-1(c)(1)(iii)(D)

DETERMINATION OF FUNDING TARGET AND TARGET NORMAL COST - LIMITATION ON BENEFIT ACCRUALS

- Assume benefit accruals are restricted under 436(e)
- If no plan language on restoration of benefit accruals, must reflect restriction in calculating Funding Target
- If plan language automatically restores benefit accruals:
 - If restricted less than 12 months, must not reflect restriction in Funding Target (assumed temporary)
 - If restricted 12 months or more, must reflect restriction in Funding Target

EXAM CONDITION

21. Plan has language to automatically restore benefit accruals

1.436-1(d)(3)

LIMITED PAYMENT: 60% AFTAP < 80%

- **Plan can make one prohibited payment per participant**
- **Present value must not exceed lesser of these items, determined under 417(e)(3)**
 - **50% of payment that could otherwise be paid, or**
 - **Present value of PBGC maximum guaranteed benefit (ERISA 4022)**

1.436-1(d)(3)

LIMITED PAYMENT: 60% AFTAP < 80%

- **Unrestricted portion of benefit is 50% of benefit, reduced (if necessary) to satisfy requirement based on PV of PBGC MGB**
- **Restricted portion is remainder of benefit**

1.436-1(d)(3)

LIMITED PAYMENT: 60% AFTAP < 80%

BIFURCATION OF BENEFITS

- **Assume participant elected lump sum, and can not be paid lump sum due to 436(d)**
- **Participant receives unrestricted portion of benefit as lump sum**
- **Plan must allow participant to make different optional form election for restricted portion of benefit**
 - **Choose any optional form for restricted portion, if it is not a prohibited payment, or**
 - **Defer commencement of restricted portion**

1.436-1(d)(3)(v)

LIMITED PAYMENT: 60% AFTAP < 80%
BIFURCATION OF BENEFITS

Example 1 from regulation

- **Benefit is 10,000 per month**
- **Lump sum value is 1,416,000**
- **PBGC MGB is 4,500 per month, with present value of 637,200**
- **IRC 436(d)(3) limitation applies**
- **Maximum allowable lump sum is 637,200**
- **Unrestricted portion of benefit is 4,500**
- **Restricted portion of benefit is 5,500**
 - **Can elect any allowable optional form, or**
 - **Can elect to defer receipt**

1.436-1(g)(2)(ii)

PRESUMED AFTAP PRIOR TO CERTIFICATION DEEMED REDUCTION IN CB / PB

- **No reduction in CB / PB if presumed AFTAP <60% due to no prior year certified AFTAP**
- **For other plans, must apply "deemed reduction" rules based on presumed AFTAP**
- **For non-collectively bargained plans, deemed reductions only apply for 436(d) restriction - prohibited payments**

1.436-1(a)(5)(iii)

DEEMED ELECTION TO REDUCE CB / PB

Definition of collectively bargained plan

- **At least 50% of employees benefiting under the plan are covered by CBA and have benefit levels specified in CBA, or**
- **At least 25% of plan participants are covered by CBA and have benefit levels specified in CBA**

NOTE: First part of definition is a new item - only in final regulation

1.436-1(f)(2)(i)(A)(2)

CONTRIBUTIONS TO AVOID OR TERMINATE BENEFIT LIMITATIONS – INTEREST ADJ.

- **If contribution is paid after valuation date, it must be interest adjusted**
- **Use current year's effective interest rate**
- **If valuation not yet done, effective interest rate is unknown. Must use highest of three segment interest rates**

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436-44B

1.436-1(g)(2)(ii)

PRESUMED AFTAP PRIOR TO CERTIFICATION DEEMED REDUCTION IN CB / PB

- **Must derive "presumed adjusted funding target" that corresponds to presumed AFTAP**
- **Presumed adjusted funding target equals (Interim value of adjusted assets) / AFTAP**
- **Interim value of adjusted assets**
 - **Valuation assets at start of plan year**
 - **Minus CB and PB at start of plan year**
 - **Minus value of any receivable contribution for prior plan year not yet made at determination date**

1.436-1(g)(2)(ii)

PRESUMED AFTAP PRIOR TO CERTIFICATION DEEMED REDUCTION IN CB / PB

- **60% threshold equals
60%*(presumed adjusted funding target)**
- **80% threshold equals
80%*(presumed adjusted funding target)**

1.436-1(g)(2)(ii)

PRESUMED AFTAP PRIOR TO CERTIFICATION DEEMED REDUCTION IN CB / PB

- **Deemed reduction to meet 60% occurs if**
 - **Interim value of adjusted assets + CB + PB > (60% threshold) and**
 - **Interim value of adjusted assets < (60% threshold)**
- **Then deemed reduction in CB / PB to meet 60% equals (60% threshold) - (Interim value of adjusted assets)**
- **Similar definition for deemed reduction to meet 80%**

1.436-1(g)(6)

PRESUMED AFTAP PRIOR TO CERTIFICATION DEEMED REDUCTION IN CB / PB

Example 1 from regulation

- **Certified AFTAP for 2010 is 75%**
- **01/01/11 values:**
 - **Valuation not yet completed**
 - **AAV = 3,300,000**
 - **PB = 300,000**
 - **Presumed AFTAP = 75%**
- **Plan is subject to 436(d) restriction on prohibited payments**
- **Interim value of assets is 3,000,000, which equals 3,300,000 - 300,000**
- **Presumed adjusted funding target =
 $4,000,000 = 3,000,000 / .75$**

1.436-1(g)(6)

PRESUMED AFTAP PRIOR TO CERTIFICATION DEEMED REDUCTION IN CB / PB

Example 1 from regulation - continued

- **To avoid restriction, need AFTAP = 80%**
- **80% threshold = 3,200,000 = .8(4,000,000)**
- **Deemed reduction to meet 80% equals
200,000 = 3,200,000 - 3,000,000**
- **Resulting PB is 100,000 = 300,000 - 200,000**
- **New Interim value of assets is 3,200,000,
which equals 3,300,000 - 100,000**
- **Revised presumed AFTAP is 80%, which
equals 3,200,000 / 4,000,000**

1.436-1(h)(4)(i)

CERTIFICATION OF AFTAP

- **Certification must be made in writing**
- **Must be signed and dated to show the date of the signature**
- **Must be provided to the plan administrator**
- **Must certify the plan's adjusted funding target attainment percentage for the plan year**

EXAM CONDITION

20. AFTAP certification was timely

1.436-1(h)(4)(i)

CERTIFICATION OF AFTAP

- **Except in the case of a range certification, the certification must set forth**
 - **Value of plan assets**
 - **Prefunding and carryover balances**
 - **Value of the funding target used**
 - **Annuity purchases included**
 - **Unpredictable contingent event benefits permitted to be paid for unpredictable contingent events that occurred during the current plan year that were taken into account for the current plan year (including any associated section 436 contributions)**
 - **Plan amendments that took effect in the current plan year that were taken into account for the current plan year (including any associated section 436 contributions)**
 - **Any benefit accruals that were restored for the plan year (including any section 436 contributions)**
 - **And any other relevant factors**

1.436-1(h)(4)(ii)

RANGE CERTIFICATION

- **Actuary may certify that the plan's AFTAP for the plan year is**
 - **Less than 60%**
 - **From 60% up to 80%**
 - **80% or higher**
 - **100% or higher**
- **Actuary should certify specific value of AFTAP by last day of plan year**
- **If actuary does not certify specific value, the AFTAP is retroactively deemed less than 60% at 1st day of 10th month of plan year**

1.436-1(h)(4)(iii)

CHANGE IN CERTIFIED PERCENTAGE

- **Actuary may issue later certification that changes the plan's AFTAP for the plan year**
 - **May correct prior certification**
 - **May be required to update AFTAP (e.g. to reflect 436 contributions paid for year)**
- **This new AFTAP must be applied for the period beginning on the date of the earlier certification**

1.436-1(h)(4)(iii)

CHANGE IN CERTIFIED PERCENTAGE

MATERIAL CHANGE

Change in AFTAP value for current plan year results in plan disqualification

Due to failure to satisfy IRC 436 restrictions for either current year, or next year (change affects presumed AFTAP for next year)

1.436-1(h)(4)(iii)

CHANGE IN CERTIFIED PERCENTAGE

IMMATERIAL CHANGE

- **Immaterial change - defined as anything that is NOT a material change**
- **Certain changes are deemed immaterial**
 - **Increase in assets due to additional contributions paid for prior plan year**
 - **Election by plan sponsor to reduce CB / PB for either prior year or current year**
 - **Election by plan sponsor to apply CB / PB against minimum required contribution for the prior year**
 - **Plan amendment that takes effect (changing the funding target and AFTAP) due to additional 436 contribution**
 - **Plan amendment that takes effect (changing the funding target and AFTAP) because AFTAP is not below 80%**

**FUNDING BASED LIMITS ON BENEFITS
SINGLE EMPLOYER DB PLANS**

- (a) General rule**
- (b) Shutdown benefits and other unpredictable contingent event benefits**
- (c) Amendments increasing benefit liability**
- (d) Accelerated benefit distributions**
- (e) Benefit accruals for plans with severe funding shortfalls**
- (f) Contributions required to avoid benefit limitations**
- (g) New plans**
- (h) Presumed underfunding**
- (i) Plan operation at close of prohibited period (or cessation period)**
- (j) Funding Target attainment percentage**
- (k) Alternate valuation date**
- (l) Single employer plan - definition**
- (m) Special rule for 2008**