

Minimum Standards for Qualified Plans

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Background

- ERISA
 - Title I – Department of Labor
 - Title II – Department of Treasury/IRS
 - Title IV – Pension Benefit Guaranty Corporation
- Satisfaction of Internal Revenue Code (“IRC”) for tax qualification
 - Voluntary
 - Many requirements duplicated in ERISA

IRC – Tax Advantages

- Significant Financial Benefits
 - Employer
 - Tax Deduction
 - Tax Deferred Build up of Plan Assets
 - Employee
 - Tax Deferral for Contributions
 - Match/Employer Contributions
 - Tax-deferred build-up of plan assets
 - Rollover:

Consequences of Noncompliance

- Plan Disqualification
- Loss of Employer Deduction
- Plan Earnings are Taxed
- Taxes Deplete Plan Assets
- Vested Participants Taxed on Contributions and Value of Plan Benefit

Topics To Be Covered

- Types of plans and types of plan formulas
- Definition of employee
- Calculating service
- Participation and coverage
- Minimum coverage testing
- Vesting
- Forfeitures
- Plan loans
- IRS determination process
- Defined contribution nondiscrimination testing rules

Topics (cont.)

- Defined benefit accrual rules
- Benefit limitations
- Defined benefit nondiscrimination testing rules
- Minimum funding rules
- Timing of benefit payments
- Forms of benefit payments
- Taxation of benefits

Types of Plans

- Defined Benefit Plans
- Defined Contributions Plans
- Single Employer Plan v. Multiple Employer or Multiemployer Plan
- Application of qualification rules vary based on type of plan or type of entity sponsoring plan

Defined Benefit (DB) Plans

- Definite formula providing fixed benefit for life at normal retirement age
- Contributions
 - Employer responsible
 - Based on actuarial projections
- Employer bears the investment risk
- Provides benefits for surviving spouse unless waived

Defined Benefit Plans (cont.)

- Benefit Formulas
 - Unit Benefit
 - Flat Benefit
 - Fixed Benefit
 - Cash Balance
- Title IV of ERISA

Defined Contribution Plans

- Benefit based on account value
- Definite formula for allocating contributions
- Benefits may be paid before retirement
- Some provide benefits for surviving spouses unless waived

Defined Contribution Plans (cont.)

- 401(k)/Profit Sharing Plans
- Stock Bonus Plans
- Money Purchase Pension Plans
- Employee Stock Ownership Plans
- 403(b)/457(b) Plans

Employer/Plan Sponsor

- Purpose of aggregation of related entities
- Controlled groups
- Affiliated service groups
- Qualified Separate Lines of Business (“QSLOBs”)
- Plan Sponsor
 - Single employer
 - Multiemployer/Multiple Employer

Definition of Employee

A. Common Law

B. Self-Employed Individuals

C. Leased Employees

Calculating Service

- A. Hours of Service
 - 1. The Basic Definition
 - 2. Plan Document
 - 3. Equivalencies

Calculating Service

B. Computation Periods

1. Introduction

2. Eligibility and Participation

3. Vesting

4. Benefit Accrual

5. Change in Computation Period

Calculating Service

C. Disregarding Service After Breaks in Service

1. Breaks in Service
2. The Rule of Parity
3. One-Year Hold Out Rule
4. Family Leave
5. Military Leave

Calculating Service

- D. The Elapsed Time Alternative
 - 1. General
 - 2. Period of Service
 - 3. Combination of Crediting Methods
 - 4. Period of Severance

Calculating Service

- E. Changing from Hours Counting Method to Elapsed Time Method
 - 1. General
 - 2. From Hours Method to Elapsed Time Method

Minimum Participation Rule

- Minimum level of participation
 - §401(a)(26)
- Defined Benefit Plan
 - At least the lesser of 50 participants, or
 - 40% of the employer's employees
- Defined Contribution Plan

Participation and Coverage

- **OVERVIEW**

- Qualified plan cannot be limited to highly compensated employees
- Plan must cover sufficiently broad group and proportionate number of lower-paid employees.
- Three general groups of rules:
 - Minimum age and service and time of participation rules to prevent unreasonable conditions **before** participation.
 - Minimum coverage rules to ensure sufficient % of lower paid employees **eligible** to participate.
 - Minimum participation rules to ensure employers cover sufficient # of employees.

Eligibility To Participate

AGE AND SERVICE CONDITIONS AND TIME OF PARTICIPATION

- **Minimum Age and Service Basic Rule.**
 - No more than 1 year of service and no age limit above 21; or
 - Up to 2 years of service if 100% vested after 2 years
- **Initial Participation.**
 - Employee who meets eligibility rule must commence participation no later than earlier of:
 - 1st day of 1st plan year after meeting age and service rules; or
 - A date six months after satisfying age and service rules.
- **No Maximum Age Conditions.**

Exceptions to Eligibility

- **Permissible Business Criteria Exclusions.**
- **Caution** -- IRS Field Directive on part-time employees
- **One-Year Hold Out.**
 - General Rule: All years of service with an employer are taken into account for eligibility.
 - Reemployed person picks up where he or she left off on years of service *as of* his or her reemployment date.
 - Exception: “One year hold out” rule allows plan to disregard (temporarily) service credited *before* one-year break in service until year of service is completed *after* return to employment.
 - Once employee completes year of service after reemployment, pre-break in service must be retroactively credited effective as of the reemployment date.

Minimum Coverage Tests

- **Basic Rule:** Plan not required to cover all employees of employer -- Code § 410(b) requires plan cover minimum % of non-“HCE” not excluded from participating (such as by business criteria).
- Complex rules apply in determining “plan” tested and aggregating and disaggregating different groups of employees tested.
- **Definition of HCE.** Employee highly compensated (“HCE”) for testing year if employee:
 - is 5% owner in *current* or *preceding* year; or
 - had compensation in *preceding* year over \$125,000 (for 2019 determinations looking back to 2017).
 - Employer may limit to top 20% of employees ranked by compensation (“top paid group”).
- Employee who does not meet definition of HCE for year is non-highly compensated employee (“NHCE”) for year.

Minimum Coverage Tests

- Code § 410(b) provides 3 alternative coverage tests (meet 1):
 - percentage test;
 - ratio test; and
 - average benefits test.
- **Percentage Test** requires plan to benefit at least 70% of all NHCEs in testing group.
- **Ratio Test** compares % of HCEs benefiting under plan to % of NHCEs benefiting.
- If plan satisfies percentage test, also satisfies ratio test, so two tests are “ratio percentage test.”
- Coverage of NHCEs must be at least 70% of coverage of HCEs.
- Example: plan covers 50% of HCEs and at least 35% of NHCEs (70% of 50%).
- “Free pass” if plan covers only NHCEs or only CBA employees or employer has only HCEs.

Minimum Coverage Tests

- **Average Benefit Test. (If can't pass ratio percentage)**
 - Plan benefits employees under *reasonable* classification that does not *discriminate* in favor of HCEs; and
 - “average benefit percentage” for NHCEs at least 70% of average benefit percentage for HCEs.
- **Reasonable Classification.** Meet either:
 - **Safe Harbor** = % rule for NHCE ratio benefiting vs. HCE benefiting
 - **Facts and Circumstances** = Meet minimum ratio % (“unsafe harbor percentages”) and Classification is nondiscriminatory
- **Average Benefit Percentage (ABP) Test.**
 - ABP for NHCEs must be at least 70% of ABP for HCEs.
 - ABP for each employee = convert to equivalent contributions or equivalent benefits or use one of optional testing approaches

Minimum Coverage Tests

Exclusions. Following categories of employees excluded in applying coverage tests:

- Employee in collective bargaining agreement unit (“CBUs”). (Special rule for multiemployer plans allows employees who participated as CBU in past be treated as CBU in current year.)
- In-flight commercial airline employees (special rule)
- Nonresident alien with no earned income from U.S. sources
- Employee not meeting minimum age or service requirements
- Coverage test by each separate line of business
- Any employee who failed to meet minimum period of service/employed on last day rule and left employment during plan year with no more than 500 hours of service

Minimum Coverage Tests

- **How Plans Test -- Data Substantiation Guidelines.**
- For both coverage and non-discrimination tests
- If precise data is not available at reasonable expense, use “substantiation quality data” if this is best data available at reasonable expense and data establishes high likelihood plan will pass using precise data.
- Test using data as of “snap shot day” vs. every day in year
- Test once in 3 year cycle if no significant changes in plan, workforce or compensation practices.
- Multiemployer plans may rely on employer certifications concerning data or results of testing, if reliance reasonable.
- May apply to qualified separate lines of business.

Vesting

- Normal Retirement Age (“NRA”)
 - § 411(a)(8) – later of age 65 or 5th anniversary
 - Substantiation if age 55-62
 - Multiemployer plan safe harbor
- Normal Retirement Benefit at NRA
- Vesting of Accrued Benefit Prior to NRA

Vesting (cont.)

- Vesting of Accrued Benefit Prior to NRA
 - Defined Benefit Plans
 - Five-Year Cliff
 - Three-to-Seven Year Graded
 - Defined Contribution Plans
 - Three-Year Cliff
 - Two-to-Six Year Graded
- Exclusions

Vesting (cont.)

- Can't amend plan to take away vested right
- Can't extend vesting schedule for anyone with at least 3 years of service
- Full Vesting of Affected Participants Required
 - Plan termination
 - Complete discontinuance of contributions
 - Partial plan termination
- Faster Vesting
 - Top Heavy DB Plans
 - Hybrid Plans

Forfeitures

A. General

B. Circumstances Not Treated as Forfeitures

1. Death
2. Reemployment
3. Retroactive Amendment
4. Withdrawals
5. Cessation/Reduction of Contributions Under Multiemployer Plan
6. Forfeiture of Matching Contribution

Forfeitures

C. Special Forfeiture Concerns

1. Without a Break in Service
2. With Five Consecutive Breaks in Service

Plan Loans – Basics

Loans to participants if certain conditions met:

- Must not exceed lesser of (a) \$50,000 minus highest outstanding unpaid loan balance in year before new loan, or (b) greater of $\frac{1}{2}$ of vested benefit or \$10,000.
- Repay within 5 years unless to buy participant's principal residence.
- Substantially level payments (not less frequently than quarterly).
- Exception to level payments for up to 1 year leave of absence with reduced or no pay (with conditions on loan restart).
- May permit cure period for missed payments, up to last day of calendar quarter following quarter in which payment missed.
- Special rules for participants who enter qualified military service.
- Legally enforceable written agreement with amount, term and repayment schedule.

Plan Loans

If plan is subject to ERISA, loans generally must satisfy ERISA's rules requiring that loans:

- Be available to all participants and beneficiaries who are parties in interest on reasonably equivalent basis;
- Not be made available to HCE, officers or shareholders in greater amount than available to other employees;
- Must bear a reasonable rate of interest; and
- Be adequately secured.

Good Loans Gone Bad

- If loan fails to meet rules or defaults on payments = deemed distribution
 - Excise taxes if early distributions or to five percent owners.
- Deemed distribution not treated as in-service or rollover distribution.
- Plan loan offset occurs when account offset to repay loan.
- Offset = actual distribution. Can't offset if no in-service distribution.
- If deemed distribution but not repaid, no future loan nontaxable unless repayments by payroll deduction and more security.
- Deemed distribution counts for determining amount of future loans.
- To avoid deemed distribution, prior defaulted loan must be repaid in same substantially level installments.
- No limit on number of loans under final regulations.

Determination Letter Procedures

- **NOT REQUIRED** but most plans request IRS “determination letter” or “DL” that plan document meets qualification requirements.
- IRS reviews document for defects and qualification issues.
- If IRS issues favorable DL, plan protected against subsequent IRS challenge as to *form* of plan.
- Not protection against failure to *operate* in compliance with qualification requirements.
- IRS determination letter procedures change frequently.
- Before submitting application to IRS, notice to “interested parties”.
- Special timing rules for notices and model notice.

Old Determination Letter Procedures

- Old rules - **Revised Staggered Remedial Amendment Period Program** -- regular, 5 year cycles for individually designed plans and 6 year cycles for master and prototype and volume submitter plans.
- IRS issues Cumulative List of Changes in Plan Requirements every year with qualification requirements for written plan document.
- Interim amendments must be adopted if statutory or regulatory changes impact written plan.
- If interim amendments timely adopted, Cycle Procedures extends RAP (time to fix) to last day of plan's 5 or 6 year cycle.
- Extension applies to adoption of interim amendment for qualification requirement or no amendment where plan sponsor determines in good faith within deadline that no amendment required.
- Discretionary amendment timely if adopted by end of plan year.

New Determination Letter Procedures

- Generally effective January 1, 2017.
 - Letter Program for tax-qualified individually designed plans (IDPs)
 - Requirements for when plan amendments must be adopted under IRC Section 401(b)
- Plan sponsor can request determination letter only if any of these apply:
 - Plan has never received a letter before (new plan or never filed plan)
 - Plan is terminating
 - IRS makes special exception. IRS anticipates making exceptions based on program capacity to work additional applications, and the need for rulings in certain areas.

BENEFIT ACCRUAL – DEFINED CONTRIBUTION PLANS

Types of DC Plans

- Profit sharing
- Stock bonus
- Money purchase
- 401(k) – technically a feature of a plan (e.g., part of a profit sharing plan)

Benefit Accrual – DC Plans

- Contributions + investment earnings or losses = accrued benefit
- Plan specifies when contributions are made
- Definitely determinable benefits – plan specifies how allocations will be done
- Employer contributions are generally a percentage of compensation

Special Nondiscrimination Rules for 401(k) Plans

- Average deferral percentage (ADP)
- Average contribution percentage (ACP)
- Safe harbor plans do not have to test

401(k) Plans (cont'd)

- ADP/ACP % for HCEs
 - No more than 125% of prior year NHCE % or
 - No more than 200% of and 2 % points over prior year NHCE%
- Employer may elect to use current year NHCE%

Nondiscrimination Testing

- Safe harbor or general test for profit sharing contributions
- Benefits, rights and features testing for all plans

Defined Benefit Plan Accruals

- **General.** Offers lifetime monthly benefit and allows benefit:
 - Based on specified % of salary or per year accrual
 - To increase for service already been performed (retirees, non-work periods e.g. long-term disability)
 - Enriched for early retirement or longer service (w/in limits)
- **Types of Defined Benefit (“DB”) Plans.**
 - Final pay plans.
 - Career average plans.
 - Flat benefit/fixed/unit credit dollar plans.
 - Cash balance plans and Hybrid Defined Benefit Plans.
 - “Integrated” plans.
 - Contributory plans – can be used with any of above.

Defined Benefit Plan Accruals

- Subject to accrual rules, benefits need not accrue uniformly. Formula may be “frontloaded,” *i.e.*, richer for earlier years of career or “backloaded” so pension units higher for later years.
- **Statutory Constraints on Defined Benefit Accruals.**
- DB accrual formulas must meet 1 of 3 statutory tests:
 - “3% method”
 - “133-1/3% rule”
 - “Fractional rule”
- Accrual tests make allowances for accelerated benefit growth toward end of employee’s career due to benefit and pay increases.

Defined Benefit Plan Accruals

Age discrimination.

- Accruals may not be reduced or discontinued on account of employee's age.
- May set outside limits on accruals based on length of service (e.g. a maximum of 30 years of service)
- May offset benefits paid to employee working past NRA for post-NRA benefit accruals.
- May suspend benefits at NRA if continue to work (rules vary by type of plan)
- PPA supports hybrid plans (e.g., cash balance plans) -- not age discriminatory if participant's account balance, determined as of any date under plan, at least as great as similarly situated, younger participant. (Conditioned on interest credits not greater than market rate of return.)

Maximum Annual Benefit Limits

Code §415 limits:

- annual pension that employer may provide to employee under all of qualified **DB** plans it sponsors
- amounts that may be allocated each year to employee's accounts under all of employer's **DC** plans.
- Maximum annual DB pension limit \$220,000 in 2018 (indexed annually) for benefit payable annually as life annuity or QJSA at NRA.
- Benefit in another form adjusted to equivalent of straight life annuity.
- Maximum limit reduced for retirements before age 62 and increased for retirements after age 65.
- Options for plans to increase payments after retirement if restricted by Code §415 (but not retroactively).

Maximum Annual Benefit Limits

Maximum annual limits reduced for:

- Employees with less than 10 years of service (10% of limit per year).
- 100% of employee's average pay for highest-paid 3 consecutive years of plan participation. (Not applied to multiemployer plans.)
- High 3 Limit phased in at 10% per year over employee's years of service (not participation!) including before plan was adopted.
- "Pass" for annual pension of up to \$10,000 for employees never covered by employer's DC plan (phased in over 10 years.)
- Definition of pay used in plan formula also limited.
 - Safe harbor definitions of pay and options
 - Code limit on includible pay (\$275,000 for 2018)

DB Plan Nondiscrimination Tests

- **Nondiscrimination.** Neither contributions nor benefits may discriminate in favor of HCEs.
- Benefits for employees covered by CBA deemed nondiscriminatory automatically
 - No exception for benefits for *non-CBA* employees in CBA plan.
- **Benefit testing.** Looks at accrual rates for HCE and NHCE based upon mathematical calculations.
- Employees are separated into groups based upon rates of benefit accrual.
- Safe harbors
 - Uniform benefit formula for all participants.
 - Same percentage of compensation or dollar amount to all participants with same number of years of service at NRA.

DB Nondiscrimination Tests

Plan also must test nondiscrimination of:

- **Compensation** used for testing (options to include/exclude variations on compensation definition if impact not discriminatory).
- **Benefits, rights and features** -- must be available to non-discriminatory group.
- **Timing of plan amendments and plan terminations** -- must not discriminate significantly in favor of HCEs.
- Nondiscrimination rules applied separately to former employees (only required in year former employee accrues benefits).
- **Cross testing.** DB plan may test using actuarially equivalent employer contributions.
- Governmental plans exempt from Code § 401(a)(4).

Other Annual Benefit Rules/Limit

- **Definitely determinable benefits.**
 - Participant's benefits under DB plan must be “definitely determinable” at any given time.
 - Need fixed formula, even if all facts, such as final average pay or total service, may not be known at every point.
 - Limits employer discretion
- **Top-heavy requirements.** Ratio of value of accrued benefits for key employees (5% owners, 1% owners over \$150,000 and 50 highest-paid officers over \$175,000) vs. non-key can't exceed 60%.
- Minimum accrual for non-key employees if top heavy plan in year.
- **Other federal laws.**
 - Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”)

Minimum Funding Standards and Benefit Restrictions

- A. Single Employer Plans
- B. Benefit Restrictions for Single Employer Plans
- C. Moving Ahead for Progress in the 21st Century Act (“MAP-21”)
- D. Highway and Transportation Funding Act of 2014 (HAFTA)
- E. Multiemployer Plans — New MPRA Changes
- F. Deduction Limits
- G. Actuarial Assumptions

Single Minimum Funding Standards

- **Plan Years Beginning 2008.**
- Funding target attainment percentage (FTAP) = difference between 100% of FTAP (liabilities) and assets.
- Choices of interest rates to determine plan liabilities – higher rate=lower liability
- If plan “at-risk” (less than 80% FTAP), accelerated funding requirements (unless 500 or fewer participants).

Benefit Restrictions for Single Employer Plans

Plan Years Beginning 2008

- Benefit restrictions triggered by plan's current year Adjusted Funding Attainment Percentage (AFTAP)
- If AFTAP less than 60%, no shutdown benefits and other unpredictable contingent event benefits and benefit accruals must cease (i.e., become frozen) and no lump sum distributions.
- If AFTAP less than 80%, no plan amendment to increase liabilities (e.g., new benefits; changes in rate of accruals; or faster vesting schedule).
- If AFTAP between 60% and 79.99%, lump sum payments permitted up to lesser of 50% of full lump sum value or 100% of PBGC guaranteed amount.
- Rules on Presumed AFTAP until actual AFTAP for current year certified.

Moving Ahead for Progress in 21st Century Act (“MAP-21”)

- Funding relief from historically low interest rates (adds floor on low rates).
- Section 430 specifies interest rates used to calculate minimum required contribution, funding targets, etc.
- Effective plan years beginning on or after January 1, 2012.
- Sets rates limited based on average rates for 25-year period and each rate limited to no less than 90% and no more than 110% of corresponding 25-year average rate.
- Starting 2015, range no less than 70% and no more than 130%.
- Relief does not apply to funding percentage for: maximum deductible limit; minimum present value requirement for distributions; excess assets that can be transferred to retiree health; PBGC variable-rate premiums; and reportable events.
- Additional disclosures on annual funding notice to participants.

Highway and Transportation Funding Act of 2014 (HATFA)

- HATFA amended interest rates set by MAP-21.
- Reduces required minimum contributions and changed restrictions on benefits for underfunded plans.
- HATFA slowed increase in interest rates used in 2012 to 2021.
- For 2012 to 2017, each segment rate adjusted to no less than 90% and no more than 110% of 25-year average segment rates.
- For 2018 to 2020, range increases until 2021, to no less than 70% and no more than 130% of 25-year average segment rates.
- HATFA limits relief for plans sponsored by employer in bankruptcy – no accelerated distributions (i.e. lump sums) until plan 100% funded.

Funding Basics For Multi-Employer Defined Benefit Plans

- Four Separate Categories of Financial Status
 - Endangered/Seriously Endangered (**Yellow Zone**)
 - Critical (**Red Zone**)
 - Trustees of plan not in red zone for plan year but projected to be any of next 5 plan years may elect to be red zone for current plan year
 - Critical and Declining (**Deep Red Zone**)
 - Other Plans (**Green Zone**)
 - New Status – Elected Critical Status (if projected to be in the next 5 Plan Years)
- Status must be certified by actuary to IRS within 90 days after start of each plan year.
- Failure to certify could result in penalty of \$1,317 per day assessed against **Board of Trustees.**
- Within 30 days of certification, notice to participants, beneficiaries, bargaining parties, PBGC, IRS

Yellow and Red Zones Plans

- By 330th day of initial Plan Year.
 - Yellow Zone plan trustees must adopt Fund Improvement Plan (“FIP”).
 - Red Zone plan trustees must adopt Rehabilitation Plan (“RP”).
- Annual plan year update for both after initial year.
- Plan funding status must improve or “emerge” by end of funding improvement period/rehabilitation period.
- Funding improvement period is 10 year period.
- Seriously endangered plans --15 yr. funding improvement period.
- Rehabilitation period is 10 year period (13 with WRERA extension).

What Is Funding Improvement Plan?

- Alternative schedules containing benefits and contribution structures that would enable Fund to meet benchmarks by end of Funding Improvement Period.
- Default schedule must include maximum allowable reductions in future benefit accruals necessary for Fund to meet required benchmarks and assumes contribution increases only after reductions.
- One schedule must include contribution increase necessary for Fund to meet required benchmarks assuming future benefit accruals not reduced.
- Any other alternative schedules trustees choose.
- If bargaining parties can't agree, default schedule is implemented after 180 days from date bargaining agreement expires.

What Is Rehabilitation Plan?

- One schedule is default schedule: assumes no increases in contributions under plan other than increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits protected under section 411(d)(6)) have been reduced to maximum extent permitted by law.
- Reduction in future accruals under default schedule may not be below: (1) 1% of contributions or (2) current accrual rate, if lower.
- Bargaining parties can still negotiate lower rates.
- Trustees can adopt other schedules with other benefit/contribution scenarios (no legal limit on number of schedules).
- If bargaining parties can't agree by 180 days after expiration of CBA in effect after critical status, default schedule is implemented.
- Surcharges continue until schedule adopted by parties for the first CBA exception.

While in Red Zone

- Trustees may not reduce accrued benefits payable at NRA.
- Trustees can reduce “Adjustable Benefits” if needed – includes post retirement death benefits, 60 month guarantees, early retirement benefits and retirement subsidies, disability benefits, benefit options other than QJSA (unclear if QOSA included), benefit increases adopted or effective for less than 60 months.
- Notice of reduction in adjustable benefits 30 days before effective.
- Once critical status notice is sent, no benefit payments in excess of monthly amount paid under a single life annuity. No lump sums other than small payouts.

CBA's That Have Not Expired By Effective Date Of First Rehabilitation Plan

- After notice of critical status, employers must pay 5% surcharge on contributions in 1st plan year.
- 10% surcharge on contributions in next plan year and future years until CBA parties adopt schedule under first RP (even if default schedule imposed).
- Surcharges do not apply upon subsequent CBA expirations.

Multiemployer Pension Funding Reform Act of 2014 (MPRA)

- MPRA solved “sunset” of PPA -- extended the funding provisions indefinitely.
- Doubled PBGC premium rates to \$26 for these plans.
- Changes withdrawal liability by disregarding automatic surcharges (5/10%) and rehab. plan contribution increases when determining unfunded vested benefits and employer’s highest contribution rate.
 - RESULT: Reduces speed of payment of withdrawal liability and therefore decreasing amount of withdrawal liability paid in cases where 20 year payment cap applies.
- Recognizes plan’s ability to settle withdrawal liability cases by excluding from list of prohibited transactions between multiemployer plans and employers.
- Allows plans to elect critical status before actually critical.
- Expanded disclosures of plan information to participants, unions, employers.
- Expanded PBGC’s ability to facilitate plan mergers and partitions.

“Critical and Declining” Zone Status

- Zone gives Trustees more funding improvement tools
- Plan projected to become insolvent either:
 - During next 15 plan years, or
 - In next 20 plan years, and Ratio of inactives to actives more than 2 to 1; or Funded percentage less than 80%
- New ability to “suspend” benefits otherwise protected under law if conditions met
 - Even if payee is already retired/in pay status
- Payee affected by suspension of pension benefit has no claim to sue under Title I of ERISA (fiduciary breach claims)
- BUT total suspensions may not materially exceed level necessary to avoid insolvency

Requirements for Suspensions

- Absent suspension, plan becomes insolvent, even with all reasonable measures that have been taken
- Plan projected to avoid insolvency with suspensions
- Approval process by government and participants (except mega-plans)
- LIMITS ON SUSPENSION:
 - Per Participant: Benefit “floor” of 110% of PBGC-guarantee on date of suspension (so “floor benefit” is \$1,179.75 for 30 years of service)
 - Age: No suspension if age 80 or older. If age 75-80, suspension proportionately reduced (20% a year)
 - Disability: Disability benefits may not be suspended
- Suspensions must be “equitably distributed”.
- Eleven factors Trustees must consider (not apply) (see outline)

TIMING OF DISTRIBUTIONS

Time of Payment From DC Plan

- Typically, termination of employment
- While employed (profit sharing, stock bonus)
 - Occurrence of specified event (e.g., disability)
 - After fixed number of years
 - Hardship
 - After age 59 ½
- 401(k) plan – qualified reservist distributions
- Plan termination (401(k) partial termination)

Time of Payment From DB Plan

- Attainment of normal retirement age
- Disability
- Death
- PPA added an in-service distribution option at age 62

Required Minimum Distributions

- Distribution must begin by April 1 of calendar year following later of calendar year participant:
 - Reaches age 70 ½
 - Retires
- Exception: 5% Owners
 - Always April 1st after reaching age 70 ½

Required Minimums (cont'd)

- 2002 Final Regulations greatly simplify application
- 50% excise tax on participant if required amount not distributed
 - Waived for reasonable error

Death Distributions

- Distributions after death continue as selected by participant
- If distributions have not begun at death, paid to beneficiary
 - Within 5 years
 - Begin within 1 year and paid over beneficiary's life
- Spouse may defer until participant would have been 70 ½

BENEFIT PAYMENT FORMS

Standard DB Payment Options

- Single life annuity-required “QJSA” for unmarried participants
- Joint and survivor annuity-qualified and optional
- Term certain annuities (e.g., 120 months)
- Lump sums – perhaps limited to small benefits (\$5,000 or less)

Standard DC Payment Options

- Lump sum
- Installments for 10, 15, or 20 years
- Money purchase pension plans must satisfy QJSA/QPSA/QOSA rules
- Other DC plans not affected if –
 - No annuities
 - Surviving spouse is sole beneficiary or consents to another beneficiary

Taxation of Distributions

- A. Penalties on Early Distributions
- B. Special Treatment for Lump-Sum Distributions
- C. Basis Recovery Rules
 1. General
 2. Defined Benefit Plan
 3. Defined Contribution Plan

Taxation of Distributions

D. Net Unrealized Appreciation

E. Rollovers

F. Direct Rollovers