DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–101701–16]

RIN 1545–BN24

Additional Limitation on Suspension of Benefits Applicable to Certain Pension Plans Under the Multiemployer Pension Reform Act of 2014

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: The Multiemployer Pension Reform Act of 2014 (''MPRA''), which was enacted by Congress as part of the Consolidated and Further Continuing Appropriations Act of 2015, relates to multiemployer defined benefit pension plans that are projected to have insufficient funds, within a specified timeframe, to pay the full plan benefits to which individuals will be entitled (referred to as plans in ''critical and declining status''). Under MPRA, the sponsor of such a plan is permitted to reduce the pension benefits payable to plan participants and beneficiaries if certain conditions and limitations are satisfied (referred to in MPRA as a ''suspension of benefits''). One specific limitation governs the application of a suspension of benefits under any plan that includes benefits directly attributable to a participant's service with any employer that has withdrawn from the plan in a complete withdrawal, paid its full withdrawal liability, and, pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries equal to any benefits for such participants and beneficiaries reduced as a result of the financial status of the plan. This document contains proposed regulations that would provide guidance relating to this specific limitation. These regulations affect active, retired, and deferred vested participants and beneficiaries under any such multiemployer plan in critical and declining status as well as employers contributing to, and sponsors and administrators of, those plans.

DATES: Comments must be received by March 15, 2016. Outlines of topics to be discussed at the public hearing scheduled for March 22, 2016 must be received by March 15, 2016.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–101701–16), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–101701–16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–101701–16). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, the Department of the Treasury MPRA guidance information line at (202) 622–1559; concerning submissions of comments, the hearing, and/or being placed on the building access list to attend the hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 432(e)(9) of the Internal Revenue Code (Code), as amended by section 201 of the Multiemployer Pension Reform Act of 2014, Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235 (128 Stat. 2130 (2014)) (MPRA).[1] As amended, section 432(e)(9) permits plan sponsors of certain multiemployer plans to reduce the plan benefits payable to participants and beneficiaries by plan amendment (referred to in the statute as a ''suspension of benefits'') if specified conditions are satisfied. A plan sponsor that seeks to implement a suspension of benefits must submit an application that the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor (generally referred to in this preamble as the Treasury Department, PBGC, and Labor Department, respectively), is required by the statute to approve upon finding that certain specified conditions are satisfied. One condition is that the plan is in critical and declining status, meaning that the plan is projected to have insufficient funds, within a specified timeframe, to pay the full benefits to which individuals will be entitled under the plan.

Another condition, set forth in section 432(e)(9)(D)(vii), is a specific limitation on how a suspension of benefits must be applied under a plan that, as described in section 432(e)(9)(D)(vii)(III), includes benefits that are directly attributable to a participant's service with any employer that has, prior to the date MPRA was enacted, withdrawn from the plan in a complete withdrawal under section 4203 of ERISA, paid the full amount of the employer's withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan, and, pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for these participants and beneficiaries reduced as a result of the financial status of the plan. Such an employer is referred to in this preamble as a ''subclause III employer,'' and the agreement to assume liability for those benefits is referred to as a ''make-whole agreement.''

If the specific limitation of section 432(e)(9)(D)(vii) applies to a plan, then section 432(e)(9)(D)(vii)(I) requires that the suspension of benefits first be applied to the maximum extent permissible to benefits attributable to a participant's service with an employer that withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan. Such an employer is referred to in this preamble as a ''subclause I employer.'' Second, under section 432(e)(9)(D)(vii)(II), except as provided in section 432(e)(9)(D)(vii)(III), a suspension of benefits must be applied to all other benefits. Third, under section 432(e)(9)(D)(vii)(III), a suspension must be applied to benefits under a plan that are directly attributable to a participant's service with a subclause III employer.

On June 19, 2015, the Treasury Department and the IRS published temporary regulations (TD 9723) under section 432(e)(9) in the **Federal Register** (80 FR 35207) providing general guidance regarding section 432(e)(9) as well as outlining the requirements for a plan sponsor of a plan that is in critical and declining status to apply for approval of a suspension of benefits and for the Treasury Department to begin processing such an application. A notice of proposed rulemaking cross-

[1] Section 201 of MPRA makes parallel amendments to section 305 of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA). The Treasury Department has interpretive jurisdiction over the subject matter of these provisions under ERISA as well as the Code. See also section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713). Thus, these proposed Treasury regulations issued under section 432 of the Code apply as well for purposes of section 305 of ERISA.

referencing the temporary regulations (REG–102648–15) and providing additional guidance was published in the same issue of the **Federal Register** (80 FR 35262). Neither the temporary nor the proposed regulations include guidance regarding the limitation under section 432(e)(9)(D)(vii).

On October 23, 2015, the Treasury Department published a notice in the **Federal Register** (80 FR 64508) regarding an application for a proposed suspension of benefits, which represented that the plan is of the type to which section 432(e)(9)(D)(vii) applies. The notice requested public comments on all aspects of the application, including with respect to the interpretation of section 432(e)(9)(D)(vii) that is reflected in the application. The Treasury Department and the IRS have considered the comments received in response to that notice in developing these proposed regulations.

Explanation of Provisions

These proposed regulations would amend the Income Tax Regulations (26 CFR part 1) to provide guidance regarding section 432(e)(9)(D)(vii). The Treasury Department consulted with PBGC and the Labor Department in developing these proposed regulations. These proposed regulations would add a new paragraph (d)(8) to proposed § 1.432(e)(9)-1 and do not otherwise affect the provisions of the proposed regulations published in the **Federal Register** (80 FR 35262) on June 19, 2015.

Section 432(e)(9)(D)(vii) sets forth a rule that limits how a suspension may be applied under a plan that includes benefits that are directly attributable to a participant's service with any employer that, as defined in section 432(e)(9)(D)(vii)(III), has withdrawn, paid the full amount of its withdrawal liability, and, pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the multiemployer plan. In determining how a suspension should be allocated consistent with the statutory framework, the Treasury Department and the IRS analyzed the statute and applied principles of statutory construction.

Subclause (I) of section 432(e)(9)(D)(vii) provides that the suspension of benefits should first be applied ''to the maximum extent permissible.'' Accordingly, the Treasury Department and the IRS conclude that reductions with respect to benefits attributable to service with a subclause I employer must be applied first to the maximum extent permissible before reductions are permitted to be applied to any other benefits. Consequently, these proposed regulations require that a suspension of benefits under a plan that is subject to section 432(e)(9)(D)(vii) be applied to the maximum extent permissible to benefits attributable to service with a subclause I employer. Only if such a suspension is not reasonably estimated to achieve the level that is necessary to enable the plan to avoid insolvency may a suspension then be applied to other benefits that are permitted to be suspended and that are attributable to a participant's service with other employers.

In contrast, subclause (II) does not include the phrase ''to the maximum extent permissible,'' and therefore the Treasury Department and the IRS have concluded that the best interpretation of section 432(e)(9)(D)(vii) is that a suspension need not be applied to the maximum extent permissible to benefits described in subclause (II) before any suspension is applied to benefits described in subclause (III).[2] This interpretation is also consistent with the language in subclause (II) providing for application of a suspension ''except as provided in subclause (III),'' contemplating a coordinated application of those subclauses, which are to be applied ''second'' and ''third,'' respectively.[3] Because of the order of application of subclauses (II) and (III) and the coordinated application described in the preceding sentence, the Treasury Department and the IRS conclude that the best interpretation of section 432(e)(9)(D)(vii) is that the application of a suspension to benefits described in subclause (II) must be greater than or equal to the application of the suspension to benefits described in subclause (III).

Under these proposed regulations, a suspension would not be permitted to reduce benefits directly attributable to service with a subclause III employer, unless other benefits are first reduced and are reduced to at least the same extent (thus protecting a subclause III employer from the possibility that the suspension would be expressly designed to take advantage of the employer's agreement to make participants and beneficiaries whole for the reductions). Under these proposed regulations, a suspension would not violate this restriction if no participant's benefits that are directly attributable to service with a subclause III employer are reduced more than that individual's benefits would have been reduced if, holding constant the benefit formula, work history, and all other relevant factors used to determine the individual's benefits, those benefits were attributable to that participant's service with any other employer.

These proposed regulations would also provide that the benefits described in section 432(e)(9)(D)(vii)(III) are any benefits for a participant under a plan that are directly attributable to service with a subclause III employer, without regard to whether the employer has assumed liability for providing benefits to the participant that were reduced as a result of the financial status of the plan. For example, if a participant commenced receiving retirement benefits under a plan, which are directly attributable to service with such an employer, before the date the employer entered into a make-whole agreement, then the participant's benefits would be described in section 432(e)(9)(D)(vii)(III) even if those benefits were not covered by the make-whole agreement. This interpretation is based on the statutory language in section 432(e)(9)(D)(vii)(III), which defines the benefits to which that subclause applies as those benefits that are directly attributable to service with an employer that has met the conditions set forth in section 432(e)(9)(D)(vii)(III)(aa) and (bb). In other words, the statutory provision refers to benefits directly attributable to service with an employer described in subclause III, and not only to benefits covered by the make-whole agreement.

The Treasury Department and the IRS are also considering an alternative to the ordering rule set forth in these proposed regulations. Under the alternative, as under the proposed regulations, the rule would require that a suspension of benefits under a plan that is subject to

[2] *See Loughrin* v. *United States*, 134 S. Ct. 2384, 2390 (2014) (''We have often noted that when 'Congress includes particular language in one section of a statute but omits it in another'—let alone in the very next provision—this Court 'presume[s]' that Congress intended a difference in meaning.'' (quoting *Russello* v. *United States*, 464 U.S. 16, 23 (1983)). To read subclause (II) to require that benefits be suspended ''to the maximum extent permissible'' without that language would either render that language superfluous in subclause (I), *see Marx* v. *General Revenue Corp.*, 133 S. Ct. 1166, 1178 (2013) (''[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.''), or effectively rewrite subclause (II) to include that requirement, *see Hall* v. *United States*, 132 S. Ct. 1882, 1893 (2012) (''[I]t is not for us to rewrite the statute.'').

[3] *See Corley* v. *United States,* 556 U.S. 303, 314 (2009) (rejecting constructions ''at odds with the basic interpretive canon that ' '[a] statute should be construed [to give effect] to all its provisions, so that no part will be inoperative or superfluous, void or insignificant' ' ' ' (quoting *Hibbs* v. *Winn*, 542 U.S. 88, 101 (2004)).

section 432(e)(9)(D)(vii) be applied to the maximum extent permissible to benefits attributable to service with a subclause I employer before any suspension is applied to benefits attributable to service with other employers. However, in contrast to the approach described in these proposed regulations, the alternative would require that any such suspension of benefits be applied to provide for a *lesser* reduction in benefits that are directly attributable to service with a subclause III employer than to benefits that are attributable to any other service. The alternative approach could be satisfied if, for example, benefits that are directly attributable to service with a subclause III employer are reduced less, on a percentage basis, than benefits would have been reduced if, holding constant the benefit formula, work history, and all other relevant factors used to determine benefits, those benefits were attributable to service with any other employer.

The Treasury Department and the IRS recognize that the language of section 432(e)(9)(D)(vii) has similarities to other statutory provisions that establish priority categories requiring claims to be fully satisfied under each earlier category before any claims are permitted to be satisfied under any subsequent category. For example, section 4044 of ERISA provides for the allocation of pension plan assets in the event of a distress termination and for categories of payments to be made ''in the following order:'' ''First,'' ''Second,'' ''Third,'' ''Fourth,'' ''Fifth'' and ''Sixth.'' [4]

If such an approach were applied under section 432(e)(9)(D)(vii), then the maximum permitted suspension would be required to be imposed with respect to benefits described in each subclause before any suspension could apply to benefits described in a successive subclause. Under that approach, any suspension of benefits would first have to be applied to the maximum extent permissible to benefits attributable to a participant's service with a subclause I employer. Only if such a suspension were not reasonably estimated to achieve the level that is necessary to enable the plan to avoid insolvency would the suspension then be applied to other benefits that are permitted to be suspended and that are attributable to a participant's service with any other employers (except for benefits that are directly attributable to service with a subclause III employer). Under this approach, only if the additional suspension were not reasonably estimated to achieve the level that is necessary to enable the plan to avoid insolvency would the suspension then be applied also to benefits directly attributable to a participant's service with a subclause III employer.

Based on the language of the statute as well as principles of statutory construction described in this preamble, the proposed regulations and alternative rule do not reflect the approach described in the preceding paragraph.[5] In addition, in contrast to section 4044 of ERISA, which includes the language ''in the following order,'' there is no similar generally applicable ordering language in section 432(e)(9)(D)(vii) and section 305(e)(9)(D)(vii) of ERISA. As under section 4044 of ERISA, in enacting section 432(e)(9)(D)(vii) and its counterpart under ERISA, Congress could readily have used consistent language in describing the scope of permissible benefit suspensions with respect to the benefits described in each of the three statutory subclauses. Instead of doing so, Congress created a distinction in describing the treatment of benefits described in the three subclauses in section 432(e)(9)(D)(vii).[6] For these reasons, the Treasury Department and the IRS have concluded that the best reading of Congressional intent is that a suspension of benefits described in section 432(e)(9)(D)(vii)(II) does not need to be applied ''to the maximum extent permissible'' before any suspension is permitted to be applied to benefits described in section 432(e)(9)(D)(vii)(III). However, the Treasury Department and the IRS request comments on whether ''to the maximum extent permissible'' should be applied to benefits described in subclause II in the final regulations.

Effective/Applicability Dates

These regulations are proposed to be effective on and apply with respect to suspensions for which the approval or denial is issued on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In this case, the IRS and the Treasury Department believe that the regulations likely would not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. This certification is based on the fact that the number of small entities affected by this rule is unlikely to be substantial because it is unlikely that a substantial number of small multiemployer plans in critical and declining status are subject to the limitation contained in section 432(e)(9)(D)(vii). Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the Treasury Department and the IRS as prescribed in this preamble in the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of these proposed regulations, including the interaction of the provisions of the proposed regulation with the limitation described in section 432(e)(9)(D)(vi) relating to the requirement that a suspension of benefits be equitably distributed.

In addition to the comment request included in this preamble under the ''Explanation of Provisions'' heading, the Treasury Department and the IRS request comments regarding the alternative rule also described under the ''Explanation of Provisions'' heading or any other alternative. With respect to the alternative rule described in this preamble, comments are specifically requested regarding whether satisfaction of the alternative rule described in this preamble should be required on an individual-by-individual basis or on an aggregate basis (comparing the aggregate suspension of benefits that are directly attributable to service with a subclause III employer to what the aggregate

[4] The regulations interpreting this provision provide: ''If the plan has sufficient assets to pay for all benefits in a priority category, the remaining assets shall then be allocated to the next lower priority category. This process shall be repeated until all benefits in priority categories 1 through 6 have been provided or until all available plan assets have been allocated.'' See 29 CFR 4044.10(d).

[5] See footnotes 2 and 3 and accompanying text.

[6] That is, the phrase ''to the maximum extent permissible'' appears in subclause (I) but not in subclause (II).

would have been if, holding constant the benefit formula, work history, and all other relevant factors used to determine benefits, those benefits were attributable to service with any other employer).

All comments will be available for public inspection and copying at *www.regulations.gov* or upon request. **Please Note:** All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

A public hearing on these proposed regulations has been scheduled for March 22, 2016 beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by March 15, 2016, and an outline of topics to be discussed and the amount of time to be devoted to each topic by March 15, 2016. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Contact Information

For general questions regarding these regulations, please contact the Department of the Treasury MPRA guidance information line at (202) 622–1559 (not a toll-free number). For information regarding a specific application for a suspension of benefits, please contact the Treasury Department at (202) 622–1534 (not a toll-free number).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.432(e)(9)–1 is added to read as follows:

§ 1.432(e)(9)–1 Benefit suspensions for multiemployer plans in critical and declining status.

(a) through (c) [Reserved]

(d) *Limitations on suspension.* (1) through (7) [Reserved]

(8) *Additional rules for plans described in section 432(e)(9)(D)(vii)*—(i) *In general.* In the case of a plan that includes the benefits described in paragraph (d)(8)(i)(C) of this section, any suspension of benefits under this section shall—

(A) First, be applied to the maximum extent permissible to benefits attributable to a participant's service for an employer that withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan;

(B) Second, except as provided by paragraph (d)(8)(i)(C) of this section, be applied to all other benefits that may be suspended under this section; and

(C) Third, be applied to benefits under a plan that are directly attributable to a participant's service with any employer that has, prior to December 16, 2014—

(*1*) Withdrawn from the plan in a complete withdrawal under section 4203 of ERISA and paid the full amount of the employer's withdrawal liability under section 4201(b)(1) of ERISA or an agreement with the plan, and

(*2*) Pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the plan.

(ii) *Application of suspensions to benefits that are directly attributable to a participant's service with certain employers*—(A) *Greater reduction in certain benefits not permitted.* A suspension of benefits under this section must not be applied to provide for a greater reduction in benefits described in paragraph (d)(8)(i)(C) of this section than the reduction that is applied to benefits described in paragraph (d)(8)(i)(B) of this section. This requirement is satisfied if no participant's benefits that are directly attributable to service with an employer described in paragraph (d)(8)(i)(C) of this section are reduced more than that participant's benefits would have been reduced if, holding the benefit formula, work history, and all relevant factors used to compute benefits constant, those benefits were attributable to service with an employer that is not described in paragraph (d)(8)(i)(C) of this section.

(B) *Application of limitation to benefits of participants with respect to which the employer has not assumed liability.* Benefits under a plan that are directly attributable to a participant's service with an employer described in paragraph (d)(8)(i)(C) of this section include all such benefits without regard to whether the employer has assumed liability for providing benefits to the participant that were reduced as a result of the financial status of the plan as described in paragraph (d)(8)(i)(C)(*2*) of this section. Thus, all benefits under a plan that are directly attributable to a participant's service with an employer described in paragraph (d)(8)(i)(C) of this section are subject to the limitation in paragraph (d)(8)(ii)(A) of this section, even if the employer has not, pursuant to a collective bargaining agreement that satisfies the requirements of paragraph (d)(8)(i)(C)(*2*) of this section, assumed liability for providing those benefits to participants and beneficiaries of the plan.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0022]

RIN 1625–AA08

Safety Zone; Cooper River Bridge Run, Cooper River, and Town Creek Reaches, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on the waters of