

**§ 1.412(c)(1)-3**

**(B) COMPUTATION OF GAIN OR LOSS**

1. Expected unfunded liability as of 12-31-76	\$907,393
2. Actual unfunded liability as of 12-31-76 .....	900,000
3. Gain (or loss) (item 1 - item 2) .....	7,393

(i) *Election procedure*—(1) *In general.* To elect the shortfall method, a collectively bargained plan must attach a statement to the annual report required under section 6058 (a) for the first plan year to which it is applied. The statement shall state that the shortfall method is adopted, beginning with the plan year covered by such report. Advance approval from the Internal Revenue Service is not required if the shortfall method is first adopted on or before the later of—

- (i) The first plan year to which section 412 applies or
- (ii) The last plan year commencing before December 31, 1981.

However, approval must be received pursuant to section 412(c)(5) prior to the adoption of the shortfall method at a later time, or the discontinuance of such method, once adopted.

(2) *Use of specific computation method.* A specific method of computation under the shortfall method is described in paragraph (b)(3) of this section, regarding the treatment of more than one contract, employer, or benefit level under the plan. This specific method may be adopted with respect to any plan year to which the shortfall method applies. Approval from the Commissioner must be received under section 412(c)(5) prior to the adoption of this specific computation method for a plan year subsequent to the first plan year to which the shortfall method applies, or prior to the discontinuance of a specific computation method, once adopted.

(3) *Reporting requirements.* Each annual report required by section 6058(a) and periodic report of the actuary required by section 6059 must include all additional information relevant to the use of the shortfall method as may be required by the applicable forms and the instructions for such forms.

(j) *Transitional rule.* In lieu of paragraphs (g)(2) and (h)(2) of this section relating to the amortization period for shortfall and experience gains and losses, for gains and losses arising in plan years beginning before January 1,

1981, a plan may rely on the prior published position of the Internal Revenue Service with respect to the amortization period for shortfall and experience gains and losses.

(k) *Supersession.* This section and § 1.412 (c) (1)-1 supersede §§ 11.412 (c) (1)-1 and (c) (1)-2 of the Temporary Income Tax Regulations Under the Employee Retirement Income Security Act of 1974.

(Secs. 412, 7805, Internal Revenue Code of 1954 (88 Stat. 914 and 68A Stat. 917; (26 U.S.C. 412 and 7805)), and sec. 3 (31) of the Employee Retirement Income Security Act of 1974 (88 Stat. 837; (29 U.S.C. 1002)))

[T.D. 7733, 45 FR 75202, Nov. 14, 1980]

**§ 1.412(c)(1)-3 Applying the minimum funding requirements to restored plans.**

(a) *In general*—(1) *Restoration method.* The restoration method is a funding method that adapts the underlying funding method of section 412 in the case of certain plans that are or have been terminated and are later restored by the Pension Benefit Guaranty Corporation (PBGC). The normal operation of the funding standard account, and all other provisions of section 412 and the regulations thereunder, are unchanged except as provided in this § 1.412(c)(1)-3. Under the restoration method, the PBGC shall determine a restoration payment schedule, extending over no more than 30 years, that replaces all charges and credits to the funding standard account attributable to pre-restoration amortization bases. The restoration payment schedule is determined on the basis of an actuarial valuation of the accrued liability of the plan on the initial post-restoration valuation date less the actuarial value of the plan assets on that date. The initial post-restoration valuation date is the date of the valuation that falls in the first plan year beginning on or after the date of the restoration order.

(2) *Applicability of restoration method.* A plan must use the restoration method if, and only if—

- (i) The plan is being or has been terminated pursuant to section 4041(c) or section 4042 of the Employee Retirement Income Security Act of 1974 (ERISA); and

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(ii) The plan has been restored by the PBGC pursuant to its authority under section 4047 of ERISA.

(b) *Computation and effect of the initial restoration amortization base*—(1) *In general.* The initial restoration amortization base is determined under the underlying funding method used by the plan. When the plan uses a spread gain funding method that does not maintain an unfunded liability, the plan must change either to an immediate gain method that directly calculates an accrued liability or to a spread gain method that maintains an unfunded liability. A plan may adopt any cost method that satisfies this requirement and that is acceptable under section 412 and the regulations thereunder, provided that the plan administrator follows the procedures established by the Commissioner for changes in funding methods. The initial restoration amortization base is determined using the valuation for the plan year in which the initial post-restoration valuation date falls. The initial restoration amortization base equals the accrued liability with respect to plan benefit liabilities returned by the PBGC less the value of the plan assets returned by the PBGC. The initial restoration amortization base replaces all prior amortization bases including those under section 412(b)(2) (B), (C), and (D) and under section 412(b)(3)(B). Any base resulting from a change in funding method, including a change required under this paragraph, is treated as a prior amortization base within the meaning of this paragraph (b). Any accumulated funding deficiency or credit balance in the funding standard account is set equal to zero when the initial restoration amortization base is established.

(2) *Example.* The following example illustrates the provisions of this paragraph (b):

*Example.* A pension plan uses the calendar year as its plan year, makes its annual periodic valuation as of January 1, and uses the unit credit actuarial cost method for funding purposes. The plan is in the process of being terminated. By order of the PBGC the plan is restored as of July 1, 1991. The initial post-restoration valuation date is January 1, 1992, and a restoration payment schedule order is issued on October 31, 1992. If, as of January 1, 1992, the accrued liability of the plan is \$1,000,000 and the value of the plan assets is

\$200,000, the initial restoration amortization base is \$800,000.

(c) *Establishment of a restoration payment schedule*—(1) *Certification requirement.* When the PBGC establishes a restoration payment schedule, the Executive Director of the PBGC must certify to the PBGC's Board of Directors, and to the Internal Revenue Service, that the PBGC has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of deferrals authorized under paragraph (c)(4) of this section), and any other factor that the PBGC deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the pension insurance program that the restored plan not be reterminated.

(2) *Requirements for restoration payment schedule*—(i) *Amortization of base over period of no more than 30 years.* The restoration payment schedule must be prescribed in an order requiring the employer to make stated contributions to the plan sufficient to amortize the initial restoration amortization base over a period extending not more than 30 years after the initial post-restoration valuation date (the restoration payment period). Payments included in the restoration payment schedule order are charged to the funding standard account of the plan at the end of each plan year in accordance with paragraph (d) of this section. The restoration payment schedule must provide for total charges that are sufficient to amortize the entire amount of the initial restoration amortization base by the end of the restoration payment period. The scheduled charges need not be in level amounts, but the present value of the prescribed charges on the initial post-restoration valuation date, computed with interest at the valuation rate, must equal the initial restoration amortization base.

(ii) *Minimum annual charge.* The restoration payment schedule must prescribe annual charges that are sufficient to prevent the outstanding balance of the initial restoration amortization base from exceeding whichever

of the following amounts is applicable—

(A) During the first 10 plan years on the restoration payment schedule, the amount of the initial restoration amortization base on the date the base was established; or

(B) During plan years 11 through 20 on the restoration payment schedule, the maximum permitted outstanding balance of the initial restoration amortization base at the end of the tenth plan year, as calculated under paragraph (c)(2)(iii) of this section; or

(C) During plan years 21 through the end of the restoration payment schedule, the maximum permitted outstanding balance of the initial restoration amortization base at the end of the twentieth plan year, as calculated under paragraph (c)(2)(iii) of this section.

(iii) *Interim amortization requirements.* The restoration payment schedule must provide for sufficient periodic charges so that the outstanding balance of the initial restoration amortization base at the end of the tenth plan year and at the end of the twentieth plan year of the restoration payment period will not be larger than the outstanding balance that would have remained at the end of the tenth plan year and at the end of the twentieth plan year, respectively, if the initial restoration amortization base had been amortized in level annual amounts over the restoration payment period at the valuation rate.

(3) *Amendments to the restoration payment schedule.* The order establishing the restoration payment schedule may be amended by the PBGC from time to time with respect to any remaining payments, provided that no amendment may extend the restoration payment period beyond 30 years from the initial post-restoration valuation date, and provided further that the restoration payment schedule, as amended, satisfies the requirements of paragraph (c)(2) of this section.

(4) *Deferral of minimum scheduled annual payment amounts*—(i) *Authority to grant deferral.* Not later than 2½ months following the end of the plan year, the PBGC may grant a deferral of the charges required in the restoration payment schedule for that plan year if

the requirements in paragraph (c)(4)(ii) of this section are satisfied. The PBGC may require the plan sponsor and its controlled group members to provide security to the plan as a condition to granting a deferral.

(ii) *Determination of business hardship.* Before granting a deferral under this paragraph (c)(4), the PBGC must make a determination that the granting of the deferral is in the best interests of plan participants and the plan termination insurance system, and that the plan sponsor and its controlled group members are unable to make the scheduled restoration payments without experiencing temporary substantial business hardship. In making these determinations, the factors the PBGC shall consider, include, but are not limited to, the following—

(A) Whether the plan sponsor and its controlled group members are operating at an economic loss;

(B) Whether there is substantial unemployment or underemployment in the trades or businesses of the plan sponsor and its controlled group members;

(C) Whether the sales and profits of the industry or industries are depressed or declining; and

(D) Whether it is reasonable to expect that the plan termination insurance system will suffer a greater loss if the plan is terminated than if it is continued as a restored plan.

(iii) *Amount of deferral.* The amount of the deferral for any particular plan year may not exceed the lesser of the amount that would have been required to be contributed under the restoration payment schedule for that year or interest at the valuation rate on the outstanding balance of the initial restoration amortization base for that year. An amortization payment for a deferral granted for a prior plan year may not be deferred. No deferral may extend the overall restoration payment period beyond 30 years.

(iv) *Modification of payment schedule.* The restoration payment schedule must be adjusted to reflect any deferral granted for a plan year in the manner prescribed in this paragraph (c). The charge otherwise specified in the schedule is reduced by the amount of any deferral. The charges under the

restoration payment schedule for the subsequent plan years are increased by the amounts in paragraph (c)(4)(v) of this section.

(v) *Amortization of deferred amount.* The amount of any deferral granted by the PBGC for any plan year must be amortized in level amounts over five years or such shorter period as may be prescribed by the PBGC, at the valuation rate, beginning with the plan year following the year of the deferral.

(vi) *Number of deferrals permitted.* The PBGC may not grant more than five deferrals of the minimum scheduled payments as required by this section during the restoration payment period and no more than three of these deferrals may be granted during the first ten years of that period.

(vii) *Deferrals override minimum annual charges and interim amortization requirements.* In determining the minimum annual charge under paragraph (c)(2)(ii) of this section and in applying the interim amortization requirements of paragraph (c)(2)(iii) of this section, the unamortized balances of any deferrals granted by the PBGC under this paragraph shall be added to the outstanding balance of the initial restoration amortization base otherwise allowable.

(d) *Charging the scheduled restoration payments to the funding standard account.* In addition to any other charges and credits prescribed in the normal operation of the funding standard account under section 412, the amount of each payment specified in the restoration payment schedule shall be charged against the funding standard account of the plan for the plan year to which that payment is attributed in the restoration payment schedule. To the extent that the restoration payment schedule provides for payments before the end of the plan year, the annual charge to the funding standard account attributable to the restoration payment schedule is equal to the sum of the periodic payments for the plan year accumulated with interest at the valuation rate to the last day of the plan year.

(e) *Changes in actuarial assumptions or methods.* The plan administrator must notify the PBGC of any changes in the actuarial assumptions or methods used

by the plan. Upon notification of any such change, the PBGC may make any changes to the restoration payment schedule that it deems appropriate.

(f) *Change to restoration method.* A plan that has been restored must use the restoration method until the initial restoration amortization base has been fully amortized. The use of this method does not require prior approval from the Commissioner. A plan using the restoration method must compute the charges to the funding standard account to amortize the initial restoration amortization base in accordance with the order of the PBGC and in accordance with this section.

(g) *Deficit reduction contribution—(1) Calculation of deficit reduction contribution.* For any plan using the restoration method, the deficit reduction contribution under section 412(1)(2) is equal to the sum of—

(i) The unfunded section 412(1) restoration liability amount; plus

(ii) The unfunded new liability amount.

(2) *Unfunded section 412(1) restoration liability amount.* The unfunded section 412(1) restoration liability amount is the amount necessary to amortize fully the unfunded section 412(1) restoration liability in installments, as prescribed by the PBGC, over not more than 30 years. The annual amount need not be level, but at all times the present value of the future amortization charges prescribed under the restoration payment schedule, at the current liability interest rate, must equal the outstanding balance of the unfunded section 412(1) restoration liability and the schedule must provide that at the end of no more than 30 years the entire amount of the unfunded section 412(1) restoration liability base will have been fully amortized. The schedule prescribed for amortization of the unfunded section 412(1) restoration liability must comply with the requirements imposed in paragraph (c) of this section on the restoration payment schedule, except as provided in paragraph (g)(7) of this section and except that the maximum permitted outstanding balance of the unfunded section 412(1) restoration liability at the end of the tenth plan year must not be greater than the outstanding balance of the section 412(1)

restoration liability that would have remained at the end of the tenth plan year if the unfunded section 412(1) restoration liability had been amortized in level amounts over the restoration payment period at the actual current liability interest rate for each year, increased by the current liability interest rate differential as defined under paragraph (g)(7) of this section. The unfunded section 412(1) restoration liability amount for the tenth plan year otherwise prescribed under the restoration payment schedule is increased by any outstanding current liability interest rate differential. By issuing an appropriate order, the PBGC may permit the outstanding current liability interest rate differential to be amortized over the tenth through the fourteenth plan years. If the PBGC permits the amortization of the outstanding current liability interest rate differential, then the unfunded section 412(1) restoration liability amount for each year to which an amortization payment is attributed under the order shall be increased by such payment. The outstanding balance otherwise required by paragraph (g)(2) of this section is increased by the outstanding balance, if any, of the base resulting from the amortization of the current liability interest rate differential. The PBGC may amend the amortization schedule for the unfunded section 412(1) restoration liability subject to the limits on amendments to the amortization schedule prescribed for the initial restoration amortization base.

(3) *Establishment of unfunded section 412(1) restoration liability.* In the plan year in which the initial post-restoration valuation date falls, the unfunded section 412(1) restoration liability is equal to the unfunded current liability of the plan.

(4) *Unfunded new liability amount.* In the case of a plan using the restoration method, the unfunded new liability amount is the applicable percentage, as defined in section 412(1)(4)(C), of the unfunded new liability determined under paragraph (g)(5) of this section.

(5) *Unfunded new liability.* The unfunded new liability of a plan using the restoration method is the excess, if any, of the unfunded current liability of the plan, within the meaning of sec-

tion 412(1)(8)(A) for the plan year (determined without taking into account any unpredictable contingent event benefits, even if the event has occurred) over the outstanding balance of the unfunded section 412(1) restoration liability determined under paragraph (g)(3) of this section.

(6) *Offset of amortization charges.* The amounts charged to the funding standard account pursuant to the restoration payment schedule in order to amortize the initial restoration base, as described in paragraph (d) of this section, must be offset against the deficit reduction contribution in paragraph (g)(1) of this section along with any other applicable amounts provided in section 412(1)(1)(A)(ii).

(7) *Interest rate differential.* During the first 10 plan years after the initial post-restoration valuation date, the restoration payment schedule must prescribe an unfunded section 412(1) restoration liability amount for each plan year that is sufficient to prevent the outstanding balance of the unfunded section 412(1) restoration liability from exceeding the initial amount of the unfunded section 412(1) restoration liability increased by the current liability interest rate differential. The current liability interest rate differential at any point during the first ten years of the restoration payment period is the excess, if any, of the outstanding balance of the unfunded section 412(1) restoration liability determined using the actual current liability interest rate for each year, taking into account the charges described in paragraph (d) of this section, over the outstanding balance of the unfunded section 412(1) restoration liability determined using the lowest, for each year, of the initial current liability interest rate, the current liability interest rate for the computation year, and the valuation interest rate, taking into account the charges described in paragraph (d) of this section.

(h) *Election of the alternative minimum funding standard.* A plan using the restoration method may not elect the alternative minimum funding standard under section 412(g).

(i) *Funding review by the PBGC.* The PBGC must review the funding of any plan using the restoration method at

least once in each plan year. As a result of a funding review, the PBGC may amend the restoration payment schedule as provided in paragraph (c)(3) of this section. As part of the funding review, the Executive Director of the PBGC must certify to the PBGC's Board of Directors, and to the Internal Revenue Service, that the PBGC has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of deferrals authorized under paragraph (c)(4) of this section), and any other factor that the PBGC deems relevant, and, based on that review, determines that it is in the best interests of participants and beneficiaries of the plan and the pension insurance program that the restored plan not be reterminated.

[T.D. 8494, 58 FR 54491, Oct. 22, 1993]

**§ 1.412(c)(1)-3T Applying the minimum funding requirements to restored plans (temporary).**

(a) *In general*—(1) *Restoration method.* The restoration method is a funding method that adapts the underlying funding method of section 412 in the case of certain plans that are or have been terminated and are later restored by the Pension Benefit Guaranty Corporation. The normal operation of the funding standard account, and all other provisions of section 412 and the regulations thereunder, are unchanged except as provided in this § 1.412(c)(1)-3T. Under the restoration method, the Pension Benefit Guaranty Corporation shall determine a restoration payment schedule, extending over no more than 30 years, that replaces all charges and credits to the funding standard account attributable to pre-restoration amortization bases. The restoration payment schedule is determined on the basis of an actuarial valuation of the accrued liability of the plan on the initial post-restoration valuation date less the actuarial value of the plan assets on that date. The initial post-restoration valuation date is the date of the first valuation that falls in the first plan year beginning on or after the later of October 23, 1990, or the date of the restoration order.

(2) *Applicability of restoration method.* A plan must use the restoration method if, and only if:

(i) The plan is being or has been terminated pursuant to section 4041(c) or section 4042 of the Employee Retirement Income Security Act of 1974 (ERISA), and

(ii) The plan has been restored by the Pension Benefit Guaranty Corporation pursuant to its authority under section 4047 of ERISA.

(b) *Computation and effect of the initial restoration amortization base*—(1) *In general.* The initial restoration amortization base is determined under the underlying funding method used by the plan. When the plan uses a spread gain funding method that does not maintain an unfunded liability, the plan must change either to an immediate gain method that directly calculates an accrued liability or to a spread gain method that maintains an unfunded liability. A plan may adopt any cost method that satisfies this requirement and that is acceptable under section 412 and the regulations thereunder, provided that the plan follows the procedures established by the Commissioner for changes in funding methods. The initial restoration amortization base is determined using the valuation for the plan year in which the initial post-restoration valuation date falls. The initial restoration amortization base equals the accrued liability with respect to plan benefit liabilities returned by the Pension Benefit Guaranty Corporation less the value of the plan assets returned by the Pension Benefit Guaranty Corporation. The initial restoration amortization base replaces all prior amortization bases including those under subparagraphs (B), (C), and (D) of section 412(b)(2) and under subparagraph (B) of section 412(b)(3). Any base resulting from a change in funding method is treated as a prior amortization base within the meaning of this paragraph (b). Any accumulated funding deficiency or credit balance in the funding standard account is set equal to zero when the initial restoration amortization base is established.

(2) *Example.* A pension plan uses the calendar year as its plan year, makes