MANUAL TRANSMITTAL

7.11.6

Department of the Treasury
Internal Revenue Service

SEPTEMBER 1, 2023

EFFECTIVE DATE

(09-01-2023)

PURPOSE

(1) This transmits revised IRM 7.11.6, Employee Plans Determination Letter Program, Multi-employer Plans.

MATERIAL CHANGES

(1) Updated for current revenue procedures and plain language edits throughout.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 7.11.6 dated October 7, 2021.

AUDIENCE

Tax Exempt and Government Entities
Employee Plans

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Tax Exempt and Government Entities

7.11.6
Multi-employer Plans

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7.11.6.1
(09-06-2017)
Program Scope and Objectives

(1) *Purpose:* This IRM describes the procedures for reviewing Employee Plans (EP) Determination Letter (DL) applications for multi-employer plans.

(2) *Audience:* EP Determinations and Quality Assurance (QA) staff

(3) *Policy Owner:* Director, EP

(4) *Program Owner:* EP

(5) *Program Goals:* The goal of EP Determinations is to ensure that plans comply with the tax laws by reviewing applications for DLs and opinion letters and to protect the public interest by applying the tax law with integrity and fairness to all.

7.11.6.1.1
(09-06-2017)
Background

(1) A multi-employer plan is a plan maintained per one or more Collective Bargaining Agreements (CBA) and to which more than one employer is required to contribute. IRC 414(f).

Caution: Multi-employer plans are not the same as multiple employer plans. See IRC 413(c) and IRM 7.11.7 Multiple Employer Plans.

(2) Multi-employer plans allow employees who move among employers within unionized industries - such as trucking, construction, and grocery-store chains - to participate in the same retirement plan negotiated under either separate or common CBAs.

(3) Multi-employer plans are subject to the qualification rules under IRC 401(a), including, but not limited to:

a. Eligibility
b. Vesting
c. Joint and survivor
d. Distribution

Note: However, some rules, such as IRC 415, apply differently to multi-employer plans. See IRM 7.11.6.6, Plan Review Guidelines and Language Requirements.

(4) Multi-employer plans are also subject to additional qualification rules under IRC 413(b).

7.11.6.1.2
(08-22-2019)
Authority

(1) Delegation Order 7-1 delegates the authority to issue determination letters on the qualified status of pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans to the Director, EP. See IRM 1.2.2.8.1(1).

(2) Find a complete list of delegation orders governing EP Rulings and Agreements at *http://irm.web.irs.gov/imd/del/search.aspx, Delegation Orders by Process*.

(3) See IRM 7.1.1, Exhibit 7.1.1-1 for a complete list of the major EP revenue procedures currently in effect.

7.11.6.1.3
(10-23-2020)
Acronyms

(1) The table lists commonly used acronyms and their definitions

Acronym	Definition
CBA	Collective Bargaining Agreement
CODA	Cash or Deferred Arrangement
COLA	Cost of Living Adjustment
DC	Defined Contribution
DB	Defined Benefit
DL	Determination Letter
EGTRRA	Economic Growth & Tax Relief Reconciliation Act of 2001
EP	Employee Plans
NRA	Normal Retirement Age
MPRA	Multi-employer Pension Reform Act of 2014
PBGC	Pension Benefit Guaranty Corporation
PPA '06	Pension Protection Act of 2006
PRA	Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010
QA	Quality Assurance
RAC	Remedial Amendment Cycle
SECURE	Setting Every Community Up for Retirement Enhancement Act of 2019
WRERA	Workers, Retiree, and Employer Recovery Act of 2008

7.11.6.2
(08-22-2016)
Auxiliary Documents

(1) A **Collective Bargaining Agreement (CBA)** is a written agreement negotiated between a local, regional, or national union and individual employers or an association bargaining for a group of employers. It generally lasts one to five years. Among other terms, the CBA:

a. Specifies the basis for employers to make contributions.
b. Sets the rate of contribution.
c. Identifies the class of employees covered by the plan.

(2) A **Reciprocity Agreement** is an agreement among two or more multi-employer plans. These agreements:

a. Allow participants to aggregate their service under several plans to qualify for a plan benefit.
b. Spell out how much of the benefit each multi-employer plan pays.

(3) Reciprocity agreements are optional but, if used, allow a multi-employer plan "home plan" to accept contributions for participants or recognize service credits that participants earn for service they perform for employers under an unrelated multi-employer plan "away plan". In other words, the agreement

allows a plan to recognize “reciprocity service”. Reciprocity agreements don’t violate the exclusive benefit rule. They typically are one of two types:

a. “Money follows the worker” agreements, where contributions a worker accrues in the away plan are transferred to the worker’s home plan and applied to benefits under the home plan.
b. “Pro rata” agreements, where service a participant earns toward a benefit under the away plan is recognized for vesting and/or accrual purposes under the home plan.

(4) A **Participation agreement** (or side agreement) allows non-collectively bargained employees to participate in a multi-employer plan. There are three important aspects.

a. Non-collectively bargained employees can only participate in a multi-employer plan if the plan document specifically allows it;
b. A participation agreement will say who is eligible and the amount of benefit/contribution they’ll receive; and
c. The participant agreement must be executed prior to the non-collectively bargained employees participating in the plan.

(5) A **Funding Improvement plan** is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, which if the plan follows, are reasonably expected to close the plan’s funding gap by 1/3, or otherwise improve the plan’s funded status per IRC 432(c)(3).

(6) A **Rehabilitation plan** is a plan which consists of actions, including options or a range of options, which if the plan takes, are reasonably expected to bring the plan out of critical status by the end of the rehabilitation period, or otherwise forestall plan insolvency, per IRC 432(e)(3).

7.11.6.3 (09-01-2023) Incorporating Auxiliary Documents by Reference

(1) A plan sponsor is permitted to incorporate the terms of a CBA, participation agreement or reciprocity agreement by reference to inform employers and participants of the specific plan terms. However, this incorporation doesn’t always provide sufficient information for IRS to review a DL application.

(2) When plans incorporate provisions of auxiliary documents by reference, there are two separate issues. Make sure:

a. You can review the plan to determine that it satisfies all of the qualification requirements necessary to receive a favorable determination letter (DL).
b. The plan language is sufficient for it to receive reliance on the letter for the specific sections incorporated by reference.

Note: Any document incorporated by reference needs to be clearly identified. If a document is updated or changed, the plan needs to be amended to indicate such update was made.

(3) Generally, if the sponsor wants reliance for parts of these auxiliary documents, they must submit the exact language of the parts being incorporated as an appendix to the plan. CBAs, participation agreements or reciprocity agreements in their entirety are not accepted for review.

(4) For DL applications, if any of the plan's IRC 401(a) provisions (coverage, benefit formula, distribution options, class of covered employees, etc.) are incorporated by referencing an auxiliary document, then the plan sponsor **must** add the applicable parts of the auxiliary document to the plan, regardless of whether they want reliance for these parts of the auxiliary documents.

Note: The two most common provisions that plans incorporate from CBAs are class of covered employees and contribution rates. Both of these provisions relate to IRC 401(a) issues, and if incorporated by reference, must be attached to the document as an appendix.

Example: A money purchase plan states that contributions for each participant are made in accordance with the CBA schedule. The contribution part of the CBA must be attached to the plan as an appendix to ensure that the contribution schedule is definitely determinable and not subject to employer discretion.

(5) If the plan doesn't prohibit the Board of Trustees from entering into reciprocity agreements, the plan should:

a. State whether the agreement uses the "Money follows the worker" or "Pro rata" rule, or attach the applicable section of the reciprocity agreement as an appendix. See IRM 7.11.6.2(3)
b. Identify the class of employees benefiting under the agreement and their benefit formula, or attach the applicable section of the participation agreement as an appendix. .

(6) A sponsor doesn't have to amend the plan document if they adopt a Funding Improvement or Rehabilitation plan unless the Funding Improvement or Rehabilitation plan changes the plan's provisions (See IRC 432). If the trustees adopt a plan and the bargaining parties approve it, the sponsor needs to either:

a. Amend any plan provisions that are changed by the Funding Improvement or Rehabilitation plan.
b. Add a provision in the plan that states the Funding Improvement or Rehabilitation plan is controlling over any inconsistent provisions and incorporate the Funding Improvement or Rehabilitation plan into the plan document.

Note: If the sponsor wants reliance for the incorporated provisions of a Funding Improvement or Rehabilitation plan, they must attach the incorporated provisions to the plan as an appendix.

(7) Add caveat 38 to DLs for all multi-employer plans which states: "This determination letter doesn't apply to any parts of the document that incorporate the terms of an auxiliary agreement (collective bargaining, reciprocity, or participation agreement), unless you attach the exact language of the sections you incorporated by reference to the plan document."

7.11.6.4
(09-01-2023)
Remedial Amendment Cycle (RAC)

(1) Effective January 1, 2017, under Rev. Proc. 2016-37, the RAC system is eliminated and a plan sponsor of an individually designed plan is only permitted to submit a DL application for:

a. Initial plan qualification.
b. Qualification upon plan termination.
c. Certain other circumstances announced by the IRS.

(2) Governmental multi-employer plans generally were submitted under Cycle C.

(3) If a plan changed its status by becoming or ceasing to be a multi-employer plan, the plan's five-year RAC was then determined per Rev. Proc's section 9 or 10 (Rev. Proc. 2007-44 section 11.01(6)).

7.11.6.5
(10-23-2020)
Effective Dates of Certain Amendments

(1) Collectively bargained plans, including multi-employer plans, often have later effective dates for required plan provisions.

(2) They also receive special extensions for certain provisions of new law changes. Many of the effective dates depend on the CBA termination date. So, if a sponsor claims the CBA termination date is the plan's effective date, you may need to review the relevant CBA to verify whether the later effective dates apply.

(3) The charts below show law/regulatory changes for which collectively bargained plans received extensions.

Economic Growth & Tax Relief Reconciliation Act of 2001 (EGTRRA)

Provision	Special Effective Date
Plans must vest employer matching contributions at least as generous as three-year cliff or six-year graded schedule (EGTRRA Section 633).	Plan years beginning after the earlier of: 1. January 1, 2006, or 2. Later of: January 1, 2002, or the last CBA termination date on or after EGTRRA's enactment (May 26, 2001).

Pension Protection Act of 2006 (PPA '06)

Provision	Special Effective Date
Plans must specify how they will satisfy minimum cost requirements of a qualified transfer of excess pension assets to retiree health accounts. IRC 420(c)(3)	May 25, 2007. (Optional for all plans but, if used, must specify how they'll satisfy minimum cost requirements of a qualified transfer of excess pension assets to retiree health accounts.) Also, Public Law 110-28 makes technical corrections (also effective May 25, 2007) to an internal cross-reference in IRC 420 for PPA '06 changes to defined benefit (DB) plans minimum funding requirements.

Provision	Special Effective Date
Plans must diversify employer securities in some DC plans. IRC 401(a)(35)	The earlier of: 1. The later of: a. Dec. 31, 2007, or b. The date on which the last of those collective bargaining agreements terminates (determined not considering any extensions) after August 17, 2006); or 2. Dec. 31, 2008. ***Note:*** The general effective date is the plan year beginning after Dec. 31, 2006.
DB plans and other plans mentioned in IRC 401(a)(11) must add the Qualified Optional Survivor Annuity. See IRC 417(g)	Plan years beginning after the earlier of: 1. The later of: a. January 1, 2008, or b. The date on which the last CBA for the plan terminates (determined without considering any extension after August 17, 2006); or 2. January 1, 2009.

Provision	Special Effective Date
DB plans that reference a hypothetical account balance or equivalent amounts, i.e., cash balance plans, must use special rules for computing accrued benefits. IRC 411(a)(13)	For a CBA plan ratified on or before November 13, 2015, plan years that begin on or after the later of: 1. January 1, 2017 2. Earlier of: a. January 1, 2019, and b. The date on which the last CBA for the plan terminates (determined without considering any extension after November 13, 2015) Originally part of PPA '06, the effective date of this law change was extended several times until the final regulations were put in place. ***Note:*** The relief from the anti-cutback requirements of IRC 411(d)(6) provided in 26 CFR 1.411(b)(5)-1(e)(3)(vi) only to plan amendments that are adopted before the effective date of the final regulations. See (79 FR 56442 (Sept. 19, 2014), 80 FR 70680 (Nov. 16, 2015)) and 26 CFR 1.411(a)13)-1

Regulatory Changes to Normal Retirement Age (NRA)

Provision	Special Effective Date
Plan's NRA must be an age that's not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. 26 CFR 1.401(a)-1(b)(2). If a multi-employer plan has an NRA earlier than age 62, but not earlier than age 55, then the NRA is considered to be reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. However, if the NRA is less than age 55, complete the NRA check sheet in the **NRA Final Regulations** folder on the shared server and send to QA who helps determine if the plan complies with 26 CFR 1.401(a)-1(b)(2).	For CBAs ratified and in effect on May 22, 2007, the Regulations are effective the first plan year that begins after the last of the CBAs in effect on May 22, 2007, terminates (without considering any extension of the agreements) or, if earlier, May 22, 2010.

Setting Every Community Up for Retirement Enhancement (SECURE Act) (2019)

Provision	Special Effective Date
IRC 401(a)(9) as modified by SECURE Act Section 401- Modification of Required Distribution Rules for Designated Beneficiaries.	The amendments made by this section shall apply to distributions to employees who die in calendar years beginning after the earlier of: A.) the later of— 1. The date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof agreed to on or after December 20, 2019), or 2. December 31, 2019, or B.) December 31, 2021. For subparagraph (A)(1), any plan amendment made per a collective bargaining agreement for the plan which amends the plan solely to conform to any requirement added by this section isn't treated as a termination of that collective bargaining agreement.
Section 601(b)(1) - Provisions relating to plan Amendments	In general, this section applies to any amendment to any retirement plan or annuity contract which is made: 1. On or before the last day of the first plan year beginning on or after January 1, 2022, or 2. Such later date as the Secretary of the Treasury may prescribe. In the case of a collectively bargained plan this paragraph shall be applied by substituting "2024'" for "2022."

7.11.6.5.1
(10-23-2020)
Changes Affecting Multi-employer Plans

(1) The table below lists laws that changed multi-employer plans, the affected Code section, and a description of the change.

Law	Affected IRC Section	Provision
1. Pension Protection Act of 2006 (PPA '06) Section 1106(b) 2. U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Section 6611(a)(2) and (b)(2)	IRC 414(f)(6)	1. Offers multi-employer status election 2. PPA '06 Section 1106 added paragraph (6) to 414(f) to amend the time period for plans to make the election.
1. Pension Reform Act of 2010 2. Notice 2010-83, 2010-51 I.R.B. 862	IRC 431	1. Added IRC 431(b)(8) special relief for the IRC 431 provisions, which are similar to IRC 436. However, unlike IRC 436, IRC 431 doesn't require the plan to adopt any language. 2. Offers guidance on two special funding rules available to multi-employer plans under IRC 431(b)(8).
1. PPA '06 Section 212(a) 2. WRERA Sections 204 and 205	IRC 432	1. Added the Funding Improvement Plan & Rehabilitation Plan for Multi-employer Plans which must be adopted for multi-employer plans in endangered or critical status and provided for certain benefit reductions. There is no plan language requirement. 2. Modified IRC 432

Law	Affected IRC Section	Provision
1. Worker, Retiree, And Employer Recovery Act of 2008 2. Notice 2009-31, 2009-16 I.R.B. 856, as modified by Notice 2009-42 3. WRERA Section 205	IRC 432, cont.	1. Gave multi-employer plans a temporary delay to designate if they are in endangered or critical status. 2. Gave multi-employer plans procedures for the election and notice requirements to implement the temporary delay above. 3. Gave multi-employer plans election and notice procedures for multi-employer plans under WRERA Section 205. If the plan is going to reduce early retirement benefits or other adjustable benefits under WRERA Section 205, the plan sponsor must amend the plan document to reflect these reductions. 4. Gave multi-employer plans in endangered or critical status for 2008 and 2009 a temporary extension of the funding improvement or rehabilitation periods.
Multi-employer Pension Reform Act of 2014 (in Division O of the Consolidated and Further Continuing Appropriations Act)	IRC 432(e)(9)	1. Passed to help financially struggling multi-employer DB plans and the PBGC that insures the plans. 2. Increased the premiums to PBGC; amended the multi-employer DB funding rules; and developed procedures to help some multi-employer DB plans avoid insolvency. 3. Permits multi-employer plan sponsors to suspend benefits if certain conditions are satisfied. For more information about MPRA, see IRM 7.11.6.6.12.1.

Law	Affected IRC Section	Provision
The Bipartisan American Miners Act of 2019 (in Division M of The Further Consolidated Appropriations Act, 2020)	IRC 432(e), IRC 412(b)(3), IRC 4971(g)(1)(A)	Provides a transfer of federal money to the United Mine Workers of America (UMWA) 1974 Pension Plan. The plan is in financial trouble and needs help to try to avoid insolvency.
Setting Every Community Up for Retirement Enhancement of 2019 (the SECURE Act), Section 112	IRC 410(b)(3)	States that Qualified Cash or Deferred Arrangements must allow long-term employees working more than 500 but less than 1,000 hours per year to participate. The provision doesn't apply to employees under IRC section 410(b)(3) (employees excluded because of a collectively bargained agreement).

7.11.6.6
(09-01-2023)
Plan Review Guidelines and Language Requirements

(1) The following subsections list guidelines to review multi-employer plans for a DL. Also see Issue Resource Guide - Multi-employer Plans (Currently not available to the public).

7.11.6.6.1
(09-01-2023)
IRC Sections Automatically Satisfied

(1) Multi-employer plans automatically satisfy the following code sections for collectively-bargained participants:

a. IRC 401(a)(4), Nondiscrimination.
b. IRC 401(a)(26), Minimum Participation.
c. IRC 401(m), Average Contribution Percentage test.
d. IRC 410(b), Coverage.
e. IRC 416, Top heavy.

(2) However, the plan must still satisfy the IRC sections in IRM 7.11.6.6.1 (1) for all non-collectively bargained participants. If a plan covers both collectively and non-collectively bargained employees, the plan must satisfy all of these requirements for the mandatorily disaggregated portion (also known as "the non-collectively bargained portion") of the plan. See 26 CFR 1.410(b)-2(b)(7); 26 CFR 1.401(a)(4)-1(c)(5); 26 CFR 1.401(a)(26)-1(b)(2)(i) and 26 CFR 1.401(a)(26)-1(b)(2)(ii); 26 CFR 1.416-1, T-38.

Note: Multi-employer plans are also exempt from the IRC 436 funding rules even if they have non-collectively bargained employees; they are subject to the funding rules of IRC 431 and IRC 432 instead.

(3) Check the eligibility section of the plan document to see if non-collectively bargained employees are permitted to participate. If so, the plan document may be required to satisfy the IRC sections in IRM 7.11.6.6.1 (1).

(4) Actual Contribution Percentage (ACP) nondiscrimination testing for eligible bargaining unit employees of a multi-employer plan is automatically satisfied; therefore, it's not applicable. See CFR 1.401(m)-1(b)(2) ACP Test.

Note: Actual Deferral Percentage (ADP) nondiscrimination testing for eligible bargaining unit employees of a multi-employer plan is required. See CFR 1.401(k)-1(b)(4)(v) ADP Test. Also, both ADP and ACP nondiscrimination testing is always required for non-bargaining unit employees eligible to participate in a multi-employer plan.

7.11.6.6.2
(09-18-2015)
Benefits and Service Credit Conditioned on Making Contributions

(1) A pension plan (including a money purchase plan) can't condition a participant's crediting of service and/or receiving an allocation on the employer's payment of the contribution. A plan provision that has language withholding an accrual or allocation due to delinquent contributions violates the definitely-determinable benefit rule and should be deleted. See Rev. Rul. 85-130.

(2) If a participant's service credit is withheld due to delinquent contributions, this plan language also violates the requirement that plans take into account all years of a participant's service with the employers maintaining the plan for participation and vesting purposes. See DOL Reg. 2530.210.

7.11.6.6.3
(09-18-2015)
Suspension of Benefits

(1) Review the plan's suspension of benefit provisions, if any, to determine if they satisfy IRC 411(a)(3)(B) and DOL Reg. 2530.203-3.

(2) A retired participant's benefit may be suspended if he/she returns to work for at least 40 hours per month in the same industry, same trade or craft, and same geographical region, as were covered by the plan at the time payment commenced.

(3) If the plan language states that a retired participant's benefit is suspended due to reemployment and it doesn't meet IRC 411(a)(3)(B) and DOL Reg. 2530.203-3, then the provision is a prohibited forfeiture under IRC 411(a).

(4) Examples of suspension provisions that don't satisfy DOL Reg. 2530.203-3:

Example: A plan states it will suspend a participant's benefit as soon as he or she works one hour of non-collectively bargained service. This is a violation of the requirement that benefits not be suspended for a reemployed, retired participant who works less than 40 hours per month.

Example: A plan states a participant will lose service credit toward an early retirement benefit if he/she engages in 40 or more hours per month of nonunion employment. This violates the regulations because only **benefit** payments can be suspended, not **service credit**.

(5) If an amendment expands the plan's suspension of benefits provision, for benefits already accrued, it violates IRC 411(d)(6) and must be corrected. See IRM 7.11.6.6.4, Central Laborers' Pension Fund v. Heinz.

7.11.6.6.4
(09-18-2015)
Central Laborers' Pension Fund v. Heinz

(1) A plan may not be amended to take away a protected right associated with benefits already accrued (26 CFR 1.411(d)-3(a)(3)). Therefore, plans can't be amended to add or expand a permitted forfeiture under IRC 411(a)(3)(B) (the suspension of benefits on account of reemployment).

(2) This was upheld in Central Laborers' Pension Fund v. Heinz, 541 U.S. 739 (2004). Heinz worked as a construction worker and retired. Upon retirement, he began to receive pension payments from the Central Laborers' Pension Plan. He took a job as a supervisor in the construction industry. The pension plan had a list of occupations in which a recipient could not work while receiving pension payments, but construction supervisors was not on that list. After two years, however, Central Laborers' Pension amended the list of prohibited professions to include construction supervisors. As a result, Heinz stopped receiving his pension payment. He filed suit in federal district court. He claimed that the amendment, because it was passed after he had already started receiving the benefits, violated the anti-cutback provision of ERISA and IRC 411(d)(6). Heinz claimed that it had reduced his accrued benefit because the amendment barred Heinz from receiving payments to which he was otherwise eligible. Central Laborers' Pension argued that Heinz was still eligible to receive the same pension, he just could not receive it while working as construction supervisor. The US Supreme Court unanimously held that the amendment to the plan had narrowed Heinz's rights to the benefits promised him at the time he retired, and that such a narrowing violated ERISA. Justice David H. Souter, in the Opinion of the Court, wrote, "[A] participant's benefits cannot be understood without reference to the conditions imposed on receiving those benefits. ... We simply do not see how, in any practical sense, this change of terms could not be viewed as shrinking the value of Heinz's pension rights and reducing his promised benefits."

(3) Due to conflicting IRS guidance at the time, the Court allowed plans to retroactively correct these types of amendments as long as they were corrected by the last day of the EGTRRA remedial amendment period. See Rev. Proc. 2005-23 and Rev. Proc. 2005-76. A sponsor that adds or expands a permitted forfeiture after that time violates IRC 411(d)(6).

7.11.6.6.5
(09-18-2015)
Delayed Payment of Accrued Benefit Due to Application Requirement

(1) A DB plan that contains language requiring a retiree to file a claim for benefit payments before payment begins must also contain language to actuarially adjust the benefit whenever the annuity starting date occurs after the participants' normal retirement date (unless the plan provides that the benefit will be suspended under plan terms that satisfy the requirements of DOL Reg. 2530.203-3).

(2) The 7th Circuit Court of Appeals found in Contilli v. Teamsters Local 705 Pension Fund, 559 F.3d 720 (7th Cir. 2009) that plan procedures may require a retiree to submit an application to commence benefits before receiving a benefit. However, if a plan chooses to do this, to satisfy IRC 411(a)(7), it must also have language to ensure that no impermissible forfeiture will occur.

(3) IRC 411(c)(3) states, "If the employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, then the employee's accrued benefit must be the actuarial equivalent of such benefit". For the plan language to be qualified in form, it must define how it'll adjust the benefit for delayed commencement. It may adjust the benefit in one or more of these ways:

a. Increasing the amount of each payment so that they're the actuarial equivalent to the amount that would have been paid on the annuity starting date.
b. Retroactively paying the original amount of the benefit that would've been paid at the participant's Normal Retirement Date.
c. Making an additional one-time payment to represent those payments that were missed.

7.11.6.6.6
(09-18-2015)
Delayed Retirement

(1) Pension plans that allow a delayed commencement of pension benefits past normal retirement age must actuarially adjust the benefit unless the plan states that the participant's benefit will be suspended. Not actuarially adjusting a benefit for a delayed commencement creates an impermissible forfeiture. See IRC 411(a)(7) and IRC 411(c)(3).

(2) A plan must also provide that, if retirement is delayed past a participant's required beginning date, it'll actuarially adjust the participant's benefit even if the plan also permits suspensions. See 26 CFR 1.401(a)(9)-6.

(3) The plan must contain language stating how it'll make up the missed payments. This can be done in any one or more of the ways in IRM 7.11.6.6.5(3), Delayed Payment of Accrued Benefit Due To Application Requirement.

7.11.6.6.7
(09-18-2015)
IRC 411(d)(6) Protection of a COLA

(1) An amendment that reduces or eliminates a Cost of Living Adjustment (COLA) feature that is part of the accrued benefit violates IRC 411(d)(6) even if the COLA feature was added to the plan after a participant retired per 26 CFR 1.411(d)-3(a)(1). The Regulation:

a. Was issued after the decision in Sheet Metal Workers' National Pension Fund v. C.I.R., 318 F. 3rd 599 (Fourth Cir. 2003), which held that these types of amendments are permitted.
b. States that the IRS will disqualify any plan that adopts provisions similar to those upheld under Sheet Metal Workers' Case.

Note: Consult with Counsel about any plan with a similar amendment adopted before August 12, 2005, the regulations' effective date, or based within the jurisdiction of the 4th circuit (Maryland, North Carolina, South Carolina, Virginia and West Virginia).

(2) Plans that adopt ad hoc COLAs (in other words, a one-time benefit increase for retirees in pay status) for several years in a row may violate IRC 411(d)(6) in the first year that they don't adopt an ad hoc COLA. See 26 CFR 1.411(d)-4, Q&A-1(c)(1).

a. Ask the plan sponsor to submit copies of any ad hoc COLA amendments to the plan that might not be included in the restated plan.
b. If the plan has offered ad hoc COLA's of similar design for at least three years and then fails to offer a COLA in the subsequent year, the plan may have violated IRC 411(d)(6).

7.11.6.6.8
(09-18-2015)
Limitations of IRC 415

(1) There are a number of special rules for applying the IRC 415 limits to multi-employer plans, as described below. See also 26 CFR 1.415(a)-1(c)(4), which lists a convenient cross-reference table for these rules.

7.11.6.6.8.1
(09-18-2015)
Compensation Limit

(1) The compensation limit of IRC 415(b)(1)(B) doesn't apply to multi-employer DB plans for limitation years beginning after December 31, 2001. See 26 CFR 1.415(b)-1(a)(6)(ii) and IRC 415(b)(11).

7.11.6.6.8.2
(09-18-2015)
Definition of Severance from Employment

(1) Normally, an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan. However, for IRC 415 purposes, a special definition of severance from employment applies for multi-employer plans.

(2) A participant in a multi-employer plan isn't considered to incur a severance from employment with the employer maintaining the multi-employer plan if the participant continues to be an employee of another employer maintaining the multi-employer plan. See 26 CFR 1.415(a)-1(f)(5)(ii).

7.11.6.6.8.3
(09-18-2015)
Application of the Minimum $10,000 Limitation on Benefits

(1) The special $10,000 exception in 26 CFR 1.415(b)-1(f)(1) applies to a participant in a multi-employer plan without considering whether that participant ever participated in one or more other plans maintained by an employer who also maintains the multi-employer plan, as long as none of those other plans were maintained as a result of collective bargaining involving the same employee representative as the multi-employer plan. See 26 CFR 1.415(b)-1(f)(3).

7.11.6.6.8.4
(09-18-2015)
Benefits Attributable to Service with More Than One Employer

(1) For limitation years before July 1, 2007, 26 CFR 1.415-1(e) stated that to apply IRC 415 limits, a participant's benefits, compensation and contributions from all employers could either be:

a. Aggregated or
b. Applied separately to the benefit or contribution attributable to each employer for whom the participant worked.

(2) For limitation years beginning on or after July 1, 2007, the limits may no longer be applied on an employer-by-employer basis. 26 CFR 1.415(a)-1(e) now requires plans to aggregate participant's benefits, compensation and contributions from all employers maintaining the plan.

7.11.6.6.8.5
(08-22-2016)
Aggregation of Benefits under More Than One Plan

(1) Multi-employer plans aren't aggregated with other multi-employer plans per IRC 415(f)(3) for determining:

a. Benefits limited under IRC 415(b).
b. Contributions limited under IRC 415(c).

7.11.6.6.8.6
(09-18-2015)
Aggregation Only for Benefits Provided by the Employer

(1) In spite of the rule in 26 CFR 1.415(a)-1(e) described in IRM 7.11.6.6.8.4, Benefits Attributable to Service with More Than One Employer, under 26 CFR 1.415(f)-1(g)(2)(i), a multi-employer plan may provide that only the benefits under an employer's multi-employer plan are aggregated with that employer's non-multi-employer plans.

(2) Therefore, a multi-employer plan may state that if a participating employer has both a multi-employer plan and a single-employer plan, only the participant's benefits/contributions in the employer's multi-employer plan are aggregated with the single-employer plan's benefits/contributions to apply the dollar limit.

Note: The IRC 415(b)(1)(B) compensation limit is not aggregated, so this limit only applies to benefits accrued and payable from the single-employer plan per 26 CFR 1.415(f)-1(g)(2)(ii).

(3) The plan document must specify the aggregation of benefits/contributions in the multi-employer and single-employer plan for it to be effective since it is optional.

7.11.6.6.8.7
(09-18-2015)
Plan Disqualification Rules for Aggregated Plans

(1) As a general rule, if a participant's annual benefit exceeds the IRC 415(b)(1)(B) dollar limit solely due to the aggregation rules of IRC 415(f)(1), then one or more of the plans is disqualified under 26 CFR 1.415(g)-1(b)(3)(ii) - (iv) until, (not considering the annual benefits/additions under the disqualified plan(s)), the remaining plans satisfy the applicable 415 limits.

If	Then	Example
If there are two or more plans that haven't been terminated at any time including the last day of the particular limitation year, and if one or more of those plans is a multi-employer plan, ***Note:*** Determine whether a plan is a multi-employer plan as of the last day of the particular limitation year.	Then one or more of the **non-terminated non-multi-employer plans** (as needed to satisfy the IRC 415 limits) is disqualified in that limitation year (26 CFR 1.415(g)-1(b)(3)(ii)(A)).	Three plans are aggregated for IRC 415(f)(1) and exceed the IRC 415 limits, two plans are single employer plans and one plan is a multi-employer plan. The two single employer plans would be disqualified before the multi-employer plan.

If	Then	Example
If, after applying 26 CFR 1.415(g)-1(b)(3)(ii) above, there are two or more plans and one or more of the plans has been terminated at any time including the last day of the particular limitation year.	Then one or more of the **non-terminated plans** (as needed to satisfy the applicable IRC 415 limits) (regardless of whether the plan is a multi-employer plan) is disqualified in that limitation year.	Three plans are aggregated together for purposes of IRC 415(f)(1) and exceed the IRC 415 limits, two plans are single employer plans and one plan is a multi-employer plan. The two single employer plans would be disqualified before the multi-employer, but if the multi-employer plan still failed to meet the IRC 415 limits, it would also be disqualified.

7.11.6.6.9
(09-18-2015)
Defined Contribution Plan

(1) A plan must designate the plan type. For a defined contribution plan, it must designate whether it is a profit sharing or money purchase plan. See IRC 401(a)(27)(B).

(2) Also, per Rev. Rul. 94-76, any money purchase plan amended to become a profit-sharing plan must ensure that any accrued benefits remain subject to the same distribution restrictions (Qualified Joint & Survivor Annuity) that applied before the amendment.

7.11.6.6.10
(09-18-2015)
Cash or Deferred Arrangements (CODAs)

(1) CODAs present certain issues for multi-employer plans, including those described below.

7.11.6.6.10.1
(09-18-2015)
401(k) Plan Language for Multi-employer Plans

(1) A multi-employer 401(k) plan document should contain all the provisions required of a regular 401(k) plan. This would include:

a. Basic definitions
b. Testing methods
c. Method(s) of correction

(2) If the plan contains matching employer contributions or after-tax employee contributions, it should list the necessary 401(m) language.

(3) Most multi-employer plans don't typically contain compensation definitions or testing methods, unlike many single employer plans, which may lead to operational failures. However, all plans must include an IRC 415(c)(3) definition of compensation.

(4) Because of the inherent design of multi-employer plans, multi-employer 401(k) plan administrators may have trouble getting accurate compensation data for participants from the various contributing employers.

   a. However, multi-employer 401(k) plans, like others, must provide a method for identifying whether Highly Compensated Employees (HCEs) participate in the plan.
   b. If HCEs do participate, then the plan likely has to perform the Actual Deferral Percentage (ADP) test.
   c. If the ADP test is necessary, it's essential to have accurate compensation data to properly compute it.

(5) Because of their lack of access to actual compensation data, some multi-employer 401(k) plans may impermissibly contain language to approximate participant compensation.

Example: Plan A's formula multiplies a participant's hours worked during the year by the current CBA's negotiated hourly wage. This language is not permitted.

7.11.6.6.10.2
(09-18-2015)
CODAs in Money Purchase Plans

(1) The only money purchase plans permitted to include a CODA are pre-ERISA plans (existed June 27, 1974 and included the CODA at that time). See IRC 401(k)(1).

(2) Plans or CBAs may contain provisions that, although not described as a CODA, result in elective deferrals. Unless this arrangement is part of a profit-sharing plan and satisfies the requirements of IRC 401(k), the CODA isn't qualified. See IRC 401(k)(1).

(3) Scrutinize multi-employer plans that incorporate tiered contribution or allocation formulas to determine whether these formulas provide an election.

   a. In most cases, when an employee changes classes/tiers, the plan makes an increased contribution and decreases the participant's wages by the same amount.
   b. If the participant may elect to reduce their wages and increase their contribution, then the plan is, in effect, a cash or deferred arrangement.

(4) To detect this type of arrangement, read the language in the CBAs and in the plan.

(5) If the language is incorporated by reference, be sure that the incorporation follows the rules of IRM 7.11.6.3, Incorporating Auxiliary Documents by Reference.

(6) The tiered annuity contribution formula could also fail the definitely determinable rule of 26 CFR 1.401-1(b)(1)(i) if the tiers are determined by an individual or party other than the employee participant. The plan may not allow discretion for contributions to the plan, and the contribution must be the employees' decision.

(7) If you find a post-ERISA money purchase plan with a CODA, disqualify the plan unless:

   a. It's an initial plan submitted within its first remedial amendment period and the plan is amended to remove the CODA.

b. The taxpayer enters the Closing Agreement Program. See IRM 7.11.8, EP Determinations Closing Agreement Program.
c. The taxpayer is entitled to IRC 7805(b) relief.

(8) These arrangements are often difficult to detect and tend to be at least partially contained in the CBA. See IRM Exhibit 7.11.6-1, Sample Language of a CODA in a Money Purchase Plan, for sample language which may indicate that a CODA is present.

7.11.6.6.11 (09-18-2015)
Thirteenth Check Distributions

(1) Some multi-employer pension plans issue an extra yearly payment to pay-status participants when the plan assets perform better than expected. The extra payment is referred is as a thirteenth check. Thirteenth check distributions are permitted by:

a. Plan language permitting 13th check distributions.
b. Plan amendment or trustee action authorization.

Example: In 2020, S's pension fund realized investment earnings for the fiscal year (ending June 30) of $350 million. Costs for the fund, including retiree payments and broker fees, were $250 million. That left a balance of $100 million, which was a large enough surplus to trigger that plan's 13th check program and retirees **received an extra check** at the end of 2020.

Note: The 13th check can't be limited to "dues paying" members or other similar restrictions, as the trustee has a duty to **all** of the participants and not to the participating employers or union that named the trustee. If the trustee required retirees to pay union dues or another similar restriction to receive the 13th check, the trustee would be breaching their duty.

(2) To satisfy the definitely determinable requirement of 26 CFR 1.401-1(b)(1), the authorizing plan language or amendment should define:

a. Who is eligible for the extra payment.
b. How the amount of the payment will be calculated.
c. When the payment will occur.

Example: This pension plan's language is acceptable: "A 13th check will be issued in December, following the end of a fiscal year (ending Sept. 30) where the earnings less the cost of the fund produces a number greater than $100,000. To be eligible for the benefit, you must have at least 10 years of service credit and be on the retirement payroll for the month of December in the year in which the benefit is paid. Eligible participants will receive up to $45 per year of service credit."

(3) If the plan doesn't have a permanent provision, but is regularly amended to provide 13th checks (as well as other retiree increases), the series of amendments may create an expectation of these payments and be subject to protection as an accrued benefit under IRC 411(d)(6).

(4) Consider also:

a. A generous 13th check may violate IRC 415 limits or cause the benefit formula to be back-loaded in violation of IRC 411(b).

b. The 13th checks that are part of the participant's accrued benefit are subject to joint and survivor requirements. If any non-collectively bargained retirees receive a 13th check, these distributions must satisfy the non-discrimination rules for former employees in 26 CFR 1.401(a)(4)-10.

7.11.6.6.12
(09-18-2015)
Amendments in Compliance with Special Funding Rules under IRC 432

(1) PPA '06 added IRC 432 to provide special rules for underfunded multi-employer DB plans. These rules include two provisions that may require plan amendments:

a. If a multi-employer DB plan is certified to be in critical status (defined in IRC 432(b)(2)), it must be amended in its initial critical year to suspend the payment of benefits in the form of a lump sum or other accelerated payment form, if offered under the plan. IRC 432(f)(2).
b. If a multi-employer DB plan is certified to be in critical status (defined in IRC 432(b)(2)), it may, but isn't required to, be amended to reduce or eliminate adjustable benefits (defined in IRC 432(e)(8)), including adjustable benefits that are otherwise protected under IRC 411(d)(6), as based on the outcome of collective bargaining over these reductions and conditioned on providing appropriate notice. IRC 432(e)(8).

Note: If the plan does reduce or eliminate adjustable benefits, then it must be amended.

7.11.6.6.12.1
(08-22-2016)
Benefit Suspensions Under the Multi-employer Pension Reform Act (MPRA) of 2014

(1) Under the Multi-employer Pension Reform Act of 2014 (MRPA), a plan in critical and declining status may, via plan amendment, suspend benefits that the sponsor deems appropriate. MRPA added Code Section 432(e)(9) which:

a. Prescribes rules for these suspensions.
b. Lists conditions that must be satisfied before a plan sponsor may suspend benefits.

(2) A plan is in critical and declining status per IRC 432(b)(6) if it is both:

a. In critical status
b. Projected to become insolvent per IRC 418E during the current plan year or any of the next 14 succeeding plan years (or 19 succeeding plan years if a plan has a ratio of inactive participants to active participants that exceeds two to one, or if the plan is less than 80 percent funded).

(3) Under MRPA, the Treasury Secretary, in consultation with the Pension Benefit Guaranty Corporation (PBGC) & Secretary of Labor, must approve any benefit suspension. Final guidance on the MPRA benefit suspensions was issued in April 2016. See Rev. Proc. 2016-27 & 26 CFR 1.432(e)(9)-1.

(4) If your case has a MPRA amendment, consult your manager for how to proceed.

7.11.6.6.12.2
(10-07-2021)
Benefit Relief Under the American Rescue Plan of 2021

(1) Under the American Rescue Plan of 2021, critical & declining multi-employer funds will be able to apply for Federal grants to be used to provide benefits to participants. Details are still being developed, however:

a. The new law establishes a new ERISA Section, §4262.
b. Eligible plans can apply for Federal grants to be used for participants' benefits.

c. The application can be made through the year 2025.
d. If a plan accepts the relief, the fund MUST restore benefits that were suspended under MPRA. In determining how to implement the restored benefits, the fund **MAY** make up for missed benefits via a lump-sum payment, OR provide a 5-year make-up of the benefits spread out over 60 monthly payments.
e. Grant funds must be invested in investment grade bonds, and segregated from other plan assets.

7.11.6.6.13
(08-22-2016)
Plans Terminated for PBGC and Title IV Purposes

(1) Rev. Rul. 89-87, "Termination of a multi-employer plan under Title IV of ERISA generally does not result in plan assets being distributed as soon as administratively feasible after the date of plan termination under Title IV. Accordingly, such a plan will not be treated as terminated under section 401(a) of the Code and will have to continue to meet the requirements of section 401(a) to retain its qualified status."

(2) Therefore, even if a plan is terminated for PBGC and Title IV purposes, it's treated as an on-going plan for IRC 401(a) purposes until all assets are distributed.

Exhibit 7.11.6-1 (09-22-2014)
Sample Language of a CODA in a Money Purchase Plan

Sample Plan Language which could indicate a CODA in a Money Purchase Plan
A Covered Employee shall be permitted to change his classification as specified in the language of the collective bargaining agreement covering such Employees. Changes in a Covered Employee's classification shall be in writing on an approved form and in accordance with the rules and regulations adopted by the Board of Trustees.

Sample Plan Language which could indicate a CODA in a Money Purchase Plan
Class I $0.75 Class II $1.50 (All Class II employees will have their base hourly wage reduced by $.75 per hour) Class III $2.25 (All Class III employees will have their base hourly wage reduced by $1.50 per hour) Class I shall include all second, third, fourth and fifth year apprentices and all employees not identified as Class II or Class III. Class II shall consist of employees who have performed at least six months at the journeyman level or above. Class III shall consist of employees with five years or more employment in the industry. Each Employee shall submit to the Local Union by May 1 or November 1 of each year any classification change request. Notifications shall be made on an approved form in accordance with the rules and regulations adopted by the Union and approved by the Chapter.