

Code Section 436 (Funding-Based) Benefit Limits

Internal Revenue Code Section 436 requires the Plan to meet specified funding thresholds to pay lump sums or other accelerated distributions, provide continued benefit accruals, pay unpredictable contingent event benefits (UCEBs), or implement amendments improving benefits. The AFTAP is the funded status measure used to determine which of these limitations (if any) apply, as summarized in the table below. Because both documentary and operational compliance with Code Section 436 is a qualification requirement, the Plan could be in violation of those requirements if it pays benefits prohibited by Code Section 436 limitations, or if it fails to pay benefits provided under the terms of the Plan when they are *not* limited by Code Section 436.

AFTAP	Code Section 436 restrictions
Less than 60%	<p>Benefit accruals must be frozen</p> <p>Plan may not pay lump sums or other accelerated distributions</p> <p>No amendment increasing benefits may take effect</p> <p>UCEBs cannot be paid unless immediately funded</p>
At least 60% but less than 80%	<p>Benefit accruals are <i>not</i> restricted</p> <p>If sponsor is not in bankruptcy, the Plan may pay partial lump sums or other accelerated distributions; if sponsor is in bankruptcy, no lump sums or other accelerated distributions may be paid</p> <p>Amendments increasing benefits cannot take effect unless immediately funded</p> <p>Plan may not pay UCEBs unless funded to an AFTAP of at least 60% after taking the UCEBs into account</p>
80% or higher	<p>Benefit accruals are <i>not</i> restricted</p> <p>Lump sums and other accelerated distributions are not restricted unless the sponsor is in bankruptcy; if sponsor is in bankruptcy, no lump sums or other accelerated distributions may be paid unless the actuary has certified that the AFTAP for the current year is at least 100%</p> <p>Amendments increasing benefits cannot take effect unless funded to an AFTAP of at least 80% after taking the amendment into account</p> <p>Plan may not pay UCEBs unless funded to an AFTAP of at least 60% after taking the UCEBs into account</p>

Code Section 401(a)(33)

Internal Revenue Code Section 401(a)(33) prohibits plan improvements increasing liabilities while the sponsor is in bankruptcy if the AFTAP would be less than 100% after taking the amendment into account (with some very limited exceptions). IRS has not yet issued regulations under this Code section. This restriction is in addition to the Code Section 436 restriction on plan amendments.

Situations Requiring AFTAP Certification Updates

Treas. Reg. Section 1.436-1(h)(4)(v) requires plan administrators to obtain updated AFTAP certifications if the sponsor makes a Code Section 436 contribution to reach either the 60% or 80% AFTAP threshold to allow continued benefit accrual, payment of UCEBs, or implementation of a plan amendment improving benefits. In addition, a revised AFTAP certification must be obtained as soon as practicable after any of the following events if it would change the operation of the Plan (including the Plan's operation in the following year under presumption rules described above):

- The sponsor makes additional contributions for the prior plan year or elects to apply carryover or prefunding balance toward the prior year's minimum required contribution;
- The sponsor elects to waive credit balance;
- UCEBs are paid because the actuary determines the UCEBs would not reduce the AFTAP below 60% or the sponsor makes a Code Section 436 contribution to fully fund the UCEBs;
- A plan amendment takes effect because the actuary determines the amendment would not reduce the AFTAP below 80% or the sponsor makes a Code Section 436 contribution to fully fund the amendment, and the amendment is not already reflected in the AFTAP certification.

If implementation of a plan amendment or payment of UCEBs or other event that could change the AFTAP but would not change the Plan's operation in the current or following year (for example, a plan amendment reduces the AFTAP from 88% to 85%), an updated AFTAP certification is not required but may optionally be requested by the plan administrator. Obtaining updated certifications in these situations will generally simplify administration of amendment and UCEB restrictions for the remainder of the year and while presumptions are in effect for the following year.