Resolution No. 4 (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977.

SUBTITLE C—ENROLLMENT OF ACTUARIES

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 1023 of this title; title 26 section 7701.

§ 1241. Joint Board for the Enrollment of Actuaries

The Secretary of Labor and the Secretary of the Treasury shall, not later than the last day of the first calendar month beginning after September 2, 1974, establish a Joint Board for the Enrollment of Actuaries (hereinafter in this part referred to as the ''Joint Board'').

(Pub. L. 93–406, title III, §3041, Sept. 2, 1974, 88 Stat. 1002.)

§ 1242. Enrollment by Board; standards and qualifications; suspension or termination of enrollment

(a) The Joint Board shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services with respect to plans in which this chapter applies and, upon application by any individual, shall enroll such individual if the Joint Board finds that such individual satisfies such standards and qualifications. With respect to individuals applying for enrollment before January 1, 1976, such standards and qualifications shall include a requirement for an appropriate period of responsible actuarial experience relating to pension plans. With respect to individuals applying for enrollment on or after January 1, 1976, such standards and qualifications shall include—

(1) education and training in actuarial mathematics and methodology, as evidenced by—

(A) a degree in actuarial mathematics or its equivalent from an accredited college or university,

(B) successful completion of an examination in actuarial mathematics and methodology to be given by the Joint Board, or

(C) successful completion of other actuarial examinations deemed adequate by the Joint Board, and

(2) an appropriate period of responsible actuarial experience.

Notwithstanding the preceding provisions of this subsection, the Joint Board may provide for the temporary enrollment for the period ending January 1, 1976, of actuaries under such interim standards as it deems adequate.

(b) The Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual under this section if the Joint Board finds that such individual—

(1) has failed to discharge his duties under this chapter, or

(2) does not satisfy the requirements for enrollment as in effect at the time of his enrollment.

The Joint Board may also, after notice and opportunity for hearing, suspend or terminate the temporary enrollment of an individual who fails to discharge his duties under this chapter or who does not satisfy the interim enrollment standards.

(Pub. L. 93–406, title III, §3042, Sept. 2, 1974, 88 Stat. 1002.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

SUBCHAPTER III—PLAN TERMINATION INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1056, 1058, 1082, 1083, 1103, 1104, 1144, 1222 of this title; title 26 sections 401, 412, 414, 6103; title 45 section 743.

SUBTITLE A—PENSION BENEFIT GUARANTY CORPORATION

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 1371 of this title.

§ 1301. Definitions

(a) For purposes of this subchapter, the term—

(1) ''administrator'' means the person or persons described in paragraph (16) of section 1002 of this title;

(2) ''substantial employer'', for any plan year of a single-employer plan, means one or more persons—

(A) who are contributing sponsors of the plan in such plan year,

(B) who, at any time during such plan year, are members of the same controlled group, and

(C) whose required contributions to the plan for each plan year constituting one of—

(i) the two immediately preceding plan years, or

(ii) the first two of the three immediately preceding plan years,

total an amount greater than or equal to 10 percent of all contributions required to be paid to or under the plan for such plan year;

(3) ''multiemployer plan'' means a plan—

(A) to which more than one employer is required to contribute,

(B) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

(C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation,

except that, in applying this paragraph—

(i) a plan shall be considered a multiemployer plan on and after its termination date if the plan was a multiemployer plan under this paragraph for the plan year preceding such termination, and

(ii) for any plan year which began before September 26, 1980, the term ''multiemployer

plan'' means a plan described in section 414(f) of title 26 as in effect immediately before such date;

(4) ''corporation'', except where the context clearly requires otherwise, means the Pension Benefit Guaranty Corporation established under section 1302 of this title;

(5) ''fund'' means the appropriate fund established under section 1305 of this title;

(6) ''basic benefits'' means benefits guaranteed under section 1322 of this title (other than under section 1322(c)[1] of this title), or under section 1322a of this title (other than under section 1322a(g) of this title);

(7) ''non-basic benefits'' means benefits guaranteed under section 1322(c)[1] of this title or 1322a(g) of this title;

(8) ''nonforfeitable benefit'' means, with respect to a plan, a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of this chapter (other than submission of a formal application, retirement, completion of a required waiting period, or death in the case of a benefit which returns all or a portion of a participant's accumulated mandatory employee contributions upon the participant's death), whether or not the benefit may subsequently be reduced or suspended by a plan amendment, an occurrence of any condition, or operation of this chapter or the Internal Revenue Code of 1986;

(9) ''reorganization index'' means the amount determined under section 1421(b) of this title;

(10) ''plan sponsor'' means, with respect to a multiemployer plan—

(A) the plan's joint board of trustees, or

(B) if the plan has no joint board of trustees, the plan administrator;

(11) ''contribution base unit'' means a unit with respect to which an employer has an obligation to contribute under a multiemployer plan, as defined in regulations prescribed by the Secretary of the Treasury;

(12) ''outstanding claim for withdrawal liability'' means a plan's claim for the unpaid balance of the liability determined under part 1 of subtitle E of this subchapter for which demand has been made, valued in accordance with regulations prescribed by the corporation;

(13) ''contributing sponsor'', of a single-employer plan, means a person described in section 1082(c)(11)(A) of this title (without regard to section 1082(c)(11)(B) of this title) or section 412(c)(11)(A) of title 26 (without regard to section 412(c)(11)(B) of such title).[2]

(14) in the case of a single-employer plan—

(A) ''controlled group'' means, in connection with any person, a group consisting of such person and all other persons under common control with such person;

(B) the determination of whether two or more persons are under ''common control'' shall be made under regulations of the corporation which are consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under subsections (b) and (c) of section 414 of title 26; and

(C)(i) notwithstanding any other provision of this subchapter, during any period in which an individual possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an affected air carrier of which he was an accountable owner, whether through the ownership of voting securities, by contract, or otherwise, the affected air carrier shall be considered to be under common control not only with those persons described in subparagraph (B), but also with all related persons; and

(ii) for purposes of this subparagraph, the term—

(I) ''affected air carrier'' means an air carrier, as defined in section 40102(a)(2) of title 49, that holds a certificate of public convenience and necessity under section 41102 of title 49 for route number 147, as of November 12, 1991;

(II) ''related person'' means any person which was under common control (as determined under subparagraph (B)) with an affected air carrier on October 10, 1991, or any successor to such related person;

(III) ''accountable owner'' means any individual who on October 10, 1991, owned directly or indirectly through the application of section 318 of title 26 more than 50 percent of the total voting power of the stock of an affected air carrier;

(IV) ''successor'' means any person that acquires, directly or indirectly through the application of section 318 of title 26, more than 50 percent of the total voting power of the stock of a related person, more than 50 percent of the total value of the securities (as defined in section 1002(20) of this title) of the related person, more than 50 percent of the total value of the assets of the related person, or any person into which such related person shall be merged or consolidated; and

(V) ''individual'' means a living human being;

(15) ''single-employer plan'' means any defined benefit plan (as defined in section 1002(35) of this title) which is not a multiemployer plan;

(16) ''benefit liabilities'' means the benefits of employees and their beneficiaries under the plan (within the meaning of section 401(a)(2) of title 26);

(17) ''amount of unfunded guaranteed benefits'', of a participant or beneficiary as of any date under a single-employer plan, means an amount equal to the excess of—

(A) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title) of the benefits of the participant or beneficiary under the plan which are guaranteed under section 1322 of this title, over

(B) the current value (as of such date) of the assets of the plan which are required to

[1] See References in Text note below.

[2] So in original. The period probably should be a semicolon.

be allocated to those benefits under section 1344 of this title;

(18) ''amount of unfunded benefit liabilities'' means, as of any date, the excess (if any) of—

(A) the value of the benefit liabilities under the plan (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title), over

(B) the current value (as of such date) of the assets of the plan;

(19) ''outstanding amount of benefit liabilities'' means, with respect to any plan, the excess (if any) of—

(A) the value of the benefit liabilities under the plan (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title), over

(B) the value of the benefit liabilities which would be so determined by only taking into account benefits which are guaranteed under section 1322 of this title or to which assets of the plan are allocated under section 1344 of this title;

(20) ''person'' has the meaning set forth in section 1002(9) of this title;

(21) ''affected party'' means, with respect to a plan—

(A) each participant in the plan,

(B) each beneficiary under the plan who is a beneficiary of a deceased participant or who is an alternate payee (within the meaning of section 1056(d)(3)(K) of this title) under an applicable qualified domestic relations order (within the meaning of section 1056(d)(3)(B)(i) of this title),

(C) each employee organization representing participants in the plan, and

(D) the corporation,

except that, in connection with any notice required to be provided to the affected party, if an affected party has designated, in writing, a person to receive such notice on behalf of the affected party, any reference to the affected party shall be construed to refer to such person.

(b)(1) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of title 26. For purposes of this subchapter, under regulations prescribed by the corporation, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer and all such trades and businesses as a single employer. The regulations prescribed under the preceding sentence shall be consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under section 414(c) of title 26.

(2) For purposes of subtitle E of this subchapter—

(A) except as otherwise provided in subtitle E of this subchapter, contributions or other payments shall be considered made under a plan for a plan year if they are made within the period prescribed under section 412(c)(10) of title 26 (determined, in the case of a terminated plan, as if the plan had continued beyond the termination date), and

(B) the term ''Secretary of the Treasury'' means the Secretary of the Treasury or such Secretary's delegate.

(Pub. L. 93–406, title IV, §4001, Sept. 2, 1974, 88 Stat. 1003; Pub. L. 96–364, title IV, §402(a)(1), Sept. 26, 1980, 94 Stat. 1296; Pub. L. 99–272, title XI, §11004, Apr. 7, 1986, 100 Stat. 238; Pub. L. 100–203, title IX, §§9312(b)(4), (5), 9313(a)(2)(F), Dec. 22, 1987, 101 Stat. 1330–363, 1330–365; Pub. L. 101–239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 102–229, title II, §214, Dec. 12, 1991, 105 Stat. 1718; Pub. L. 103–465, title VII, §761(a)(11), Dec. 8, 1994, 108 Stat. 5034.)

REFERENCES IN TEXT

Section 1322(c) of this title, referred to in subsec. (a)(6), (7), was redesignated section 1322(d) of this title by Pub. L. 100–203, title IX, §9312(b)(3)(A)(i), Dec. 22, 1987, 101 Stat. 1330–362.

This chapter, referred to in subsec. (a)(8), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (a)(8), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

In subsec. (a)(14)(C)(ii)(I), ''section 40102(a)(2) of title 49'' substituted for ''section 101(3) of the Federal Aviation Act of 1958'' and ''section 41102 of title 49'' substituted for ''section 401 of such Act'' on authority of Pub. L. 103–272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1994—Subsec. (a)(13). Pub. L. 103–465 substituted ''means a person described in section 1082(c)(11)(A) of this title (without regard to section 1082(c)(11)(B) of this title) or section 412(c)(11)(A) of title 26 (without regard to section 412(c)(11)(B) of such title).'' for ''means a person—

''(A) who is responsible, in connection with such plan, for meeting the funding requirements under section 1082 of this title or section 412 of title 26, or

''(B) who is a member of the controlled group of a person described in subparagraph (A), has been responsible for meeting such funding requirements, and has employed a significant number (as may be defined in regulations of the corporation) of participants under such plan while such person was so responsible;''.

1991—Subsec. (a)(14)(C). Pub. L. 102–229, which directed the amendment of section 4001(a)(14) of the Employment Retirement Income Security Act of 1974 by adding subpar. (C), was executed to section 4001(a)(14) of the Employee Retirement Income Security Act of 1974, which is classified to this section, to reflect the probable intent of Congress.

1989—Subsec. (a)(8). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsecs. (a)(13)(A), (14)(B), (b)(1), (2)(A). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1987—Subsec. (a)(16). Pub. L. 100–203, § 9312(b)(4), amended par. (16) generally. Prior to amendment, par. (16) read as follows: ''`benefit commitments', to a participant or beneficiary as of any date under a single-employer plan, means all benefits provided by the plan with respect to the participant or beneficiary which—

''(A) are guaranteed under section 1322 of this title,

''(B) would be guaranteed under section 1322 of this title, but for the operation of subsection 1322(b) of this title, or

''(C) constitute—

''(i) early retirement supplements or subsidies, or

''(ii) plant closing benefits,

irrespective of whether any such supplements, subsidies, or benefits are benefits guaranteed under section 1322 of this title, if the participant or beneficiary has satisfied, as of such date, all of the conditions required of him or her under the provisions of the plan to establish entitlement to the benefits, except for the submission of a formal application, retirement, completion of a required waiting period subsequent to application for benefits, or designation of a beneficiary;''.

Subsec. (a)(18). Pub. L. 100–203, § 9313(a)(2)(F), amended par. (18) generally. Prior to amendment, par. (18) read as follows: ''`amount of unfunded benefit commitments', of a participant or beneficiary as of any date under a single-employer plan, means an amount equal to the excess of—

''(A) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title) of the benefit commitments to the participant or beneficiary under the plan, over

''(B) the current value (as of such date) of the assets of the plan which are required to be allocated to those benefit commitments under section 1344 of this title;''.

Subsec. (a)(19). Pub. L. 100–203, § 9312(b)(5), amended par. (19) generally. Prior to amendment, par. (19) read as follows: ''`outstanding amount of benefit commitments', of a participant or beneficiary under a terminated single-employer plan, means the excess of—

''(A) the actuarial present value (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title) of the benefit commitments to such participant or beneficiary under the plan, over

''(B) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title) of the benefits of such participant or beneficiary which are guaranteed under section 1322 of this title or to which assets of the plan are required to be allocated under section 1344 of this title;''.

1986—Subsec. (a)(2). Pub. L. 99–272, § 11004(a)(1), amended par. (2) generally, substituting provisions defining ''substantial employer'' for any plan year of a single-employer plan for provisions defining ''substantial employer'' for any plan year as an employer, treating employers who are members of the same affiliated group as one employer, who has made contributions to or under a plan under which more than one employer, other than a multi-employer plan, makes contributions for each of the two immediately preceding plan years or the second and third preceding plan years equaling or exceeding 10 percent of all employer contributions paid to or under that plan for such year.

Subsec. (a)(13). Pub. L. 99–272, § 11004(a)(2)–(4), added par. (13).

Subsec. (a)(14). Pub. L. 99–272, § 11004(a)(2)–(4), added par. (14).

Subsec. (a)(15) to (21). Pub. L. 99–272, § 11004(a)(2)–(4), added pars. (15) to (21).

Subsec. (b). Pub. L. 99–272, § 11004(b), designated existing provisions as par. (1), added par. (2), and struck out amendments by Pub. L. 96–364, § 402(a)(1)(F), which had been executed by designating existing provisions as par. (1) and adding pars. (2) to (4). See 1980 Amendment note below. For successor provisions to former pars. (2), (3), and (4), see subsecs. (a)(15), (b)(2)(A), and (b)(2)(B), respectively.

1980—Subsec. (a)(2). Pub. L. 96–364, § 402(a)(1)(A), inserted provision excepting multiemployer plan.

Subsec. (a)(3). Pub. L. 96–364, § 402(a)(1)(B), substantially revised definition of term ''multiemployer plan'' by, among other changes, adding subpars. (A) to (C) and cl. (i), and restating existing provisions as cl. (ii) with respect to plan years beginning before Sept. 26, 1980.

Subsec. (a)(6). Pub. L. 96–364, § 402(a)(1)(C), inserted references to section 1322a of this title.

Subsec. (a)(7). Pub. L. 96–364, § 402(a)(1)(D), inserted reference to section 1322a(g) of this title.

Subsec. (a)(8) to (12). Pub. L. 96–364, § 402(a)(1)(E), added pars. (8) to (12).

Subsec. (b). Pub. L. 96–364, § 402(a)(1)(F), which was executed by designating existing provisions as par. (1) and adding pars. (2) to (4), notwithstanding directory language that pars. (2) to (4) be added at end of subsec. (c)(1) as redesignated, was struck out by Pub. L. 99–272, § 11004(b). See 1986 Amendment note above.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective as if included in the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, see section 761(b)(2) of Pub. L. 103–465, set out as a note under section 1056 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9312(d)(1) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VII, § 7881(f)(9), Dec. 19, 1989, 103 Stat. 2440, provided that: ''The amendments made by this section [amending this section and sections 1305, 1322, 1341, 1342, 1349, 1362, 1364, and 1368 of this title and repealing section 1349 of this title] shall apply with respect to—

''(A) plan terminations under section 4041 of ERISA [29 U.S.C. 1341] with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987, and

''(B) plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of ERISA [29 U.S.C. 1342] after December 17, 1987.''

Section 9313(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1341 and 1367 of this title] shall apply with respect to plan terminations under section 4041 of ERISA [29 U.S.C. 1341] with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

COORDINATION OF INTERNAL REVENUE CODE OF 1986 WITH EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

This subchapter not applicable in interpreting Internal Revenue Code of 1986, except to the extent specifically provided in such Code, or as determined by the Secretary of the Treasury, see section 9343(a) of Pub. L. 100–203, set out as a note under section 401 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1023, 1056, 1082, 1083, 1085a, 1365, 1366, 1441, 1461 of this title; title 26 sections 412, 418.

§ 1302. Pension Benefit Guaranty Corporation

(a) Establishment within Department of Labor

There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation. In carrying out its functions under this subchapter, the corporation shall be administered by the chairman of the board of directors in accordance with policies established by the board. The purposes of this subchapter, which are to be carried out by the corporation, are—

(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

(2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this subchapter applies, and

(3) to maintain premiums established by the corporation under section 1306 of this title at the lowest level consistent with carrying out its obligations under this subchapter.

(b) Powers of corporation

To carry out the purposes of this subchapter, the corporation has the powers conferred on a nonprofit corporation under the District of Columbia Nonprofit Corporation Act [D.C. Code, § 29–501 et seq.] and, in addition to any specific power granted to the corporation elsewhere in this subchapter or under that Act, the corporation has the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by the board of directors, by laws, rules, and regulations relating to the conduct of its business and the exercise of all other rights and powers granted to it by this chapter and such other bylaws, rules, and regulations as may be necessary to carry out the purposes of this subchapter;

(4) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this chapter in any State or other jurisdiction without regard to qualification, licensing, or other requirements imposed by law in such State or other jurisdiction;

(5) to lease, purchase, accept gifts or donations of, or otherwise to acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of, any property, real, personal, or mixed, or any interest therein wherever situated;

(6) to appoint and fix the compensation of such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, and, to the extent desired by the corporation, require bonds for them and fix the penalty thereof, and to appoint and fix the compensation of experts and consultants in accordance with the provisions of section 3109 of title 5;

(7) to utilize the personnel and facilities of any other agency or department of the United States Government, with or without reimbursement, with the consent of the head of such agency or department; and

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all others acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to the corporation by this chapter.

(c) Omitted

(d) Board of directors; compensation; reimbursement for expenses

The board of directors of the corporation consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce. Members of the Board shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the board. The Secretary of Labor is the chairman of the board of directors.

(e) Meetings

The board of directors shall meet at the call of its chairman, or as otherwise provided by the bylaws of the corporation.

(f) Adoption of bylaws; amendment, alteration; publication in the Federal Register

As soon as practicable, but not later than 180 days after September 2, 1974, the board of directors shall adopt initial bylaws and rules relating to the conduct of the business of the corporation. Thereafter, the board of directors may alter, supplement, or repeal any existing bylaw or rule, and may adopt additional bylaws and rules from time to time as may be necessary. The chairman of the board shall cause a copy of the bylaws of the corporation to be published in the Federal Register not less often than once each year.

(g) Exemption from taxation

(1) The corporation, its property, its franchise, capital, reserves, surplus, and its income (including, but not limited to, any income of any fund established under section 1305 of this title), shall be exempt from all taxation now or hereafter imposed by the United States (other than taxes imposed under chapter 21 of title 26, relating to Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.], and chapter 23 of title 26, relating to Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of the corporation shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed.

(2) The receipts and disbursements of the corporation in the discharge of its functions shall be included in the totals of the budget of the United States Government. The United States is not liable for any obligation or liability incurred by the corporation.

(3) Omitted.

(h) Advisory committee to corporation

(1) There is established an advisory committee to the corporation, for the purpose of advising the corporation as to its policies and procedures relating to (A) the appointment of trustees in termination proceedings, (B) investment of moneys, (C) whether plans being terminated should be liquidated immediately or continued in operation under a trustee, and (D) such other issues as the corporation may request from time to time. The advisory committee may also recommend persons for appointment as trustees in termination proceedings, make recommendations with respect to the investment of moneys in the funds, and advise the corporation as to whether a plan subject to being terminated should be liquidated immediately or continued in operation under a trustee.

(2) The advisory committee consists of seven members appointed, from among individuals recommended by the board of directors, by the President. Of the seven members, two shall represent the interests of employee organizations, two shall represent the interests of employers who maintain pension plans, and three shall represent the interests of the general public. The President shall designate one member as chairman at the time of the appointment of that member.

(3) Members shall serve for terms of 3 years each, except that, of the members first appointed, one of the members representing the interests of employee organizations, one of the members representing the interests of employers, and one of the members representing the interests of the general public shall be appointed for terms of 2 years each, one of the members representing the interests of the general public shall be appointed for a term of 1 year, and the other members shall be appointed to full 3–year terms. The advisory committee shall meet at least six times each year and at such other times as may be determined by the chairman or requested by any three members of the advisory committee.

(4) Members shall be chosen on the basis of their experience with employee organizations, with employers who maintain pension plans, with the administration of pension plans, or otherwise on account of outstanding demonstrated ability in related fields. Of the members serving on the advisory committee at any time, no more than four shall be affiliated with the same political party.

(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. Any vacancy occurring in the office of a member of the advisory committee shall be filled in the manner in which that office was originally filled.

(6) The advisory committee shall appoint and fix the compensation of such employees as it determines necessary to discharge its duties, including experts and consultants in accordance with the provisions of section 3109 of title 5. The corporation shall furnish to the advisory committee such professional, secretarial, and other services as the committee may request.

(7) Members of the advisory committee shall, for each day (including traveltime) during which they are attending meetings or conferences of the committee or otherwise engaged in the business of the committee, be compensated at a rate fixed by the corporation which is not in excess of the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(8) The Federal Advisory Committee Act does not apply to the advisory committee established by this subsection.

(Pub. L. 93–406, title IV, § 4002, Sept. 2, 1974, 88 Stat. 1004; Pub. L. 94–455, title XV, § 1510(a), Oct. 4, 1976, 90 Stat. 1741; Pub. L. 96–364, title IV, §§ 403(*l*), 406(a), Sept. 26, 1980, 94 Stat. 1302, 1303; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which appears in chapter 5 (§ 29–501 et seq.) of Title 29, Corporations, of the District of Columbia Code.

This chapter, referred to in subsec. (b)(3), (4), and (8), was in original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Federal Insurance Contributions Act, referred to in subsec. (g)(1), is act Aug. 16, 1954, ch. 736, §§ 3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§ 3101 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3128 of Title 26 and Tables.

The Federal Unemployment Tax Act, referred to in subsec. (g)(1), is act Aug. 16, 1954, ch. 736, §§ 3301 to 3311, 68A Stat. 454, as amended, which is classified generally to chapter 23 (§ 3301 et seq.) of Title 26. For complete classification of this Act to the Code, see section 3311 of Title 26 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (h)(8), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Subsec. (c) amended section 5108 of Title 5, Government Organization and Employees, and subsec. (g)(3) amended section 846 of former Title 31, Money and Finance.

AMENDMENTS

1989—Subsec. (g)(1). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1980—Subsec. (b)(3). Pub. L. 96–364, § 403(*l*), inserted provisions respecting bylaws, etc., to carry out this subchapter.

Subsec. (g)(2). Pub. L. 96–364, § 406(a), substituted provisions relating to inclusion of receipts and disbursements in United States budget totals and nonliability of United States for obligation or liability of corporation, for provisions relating to noninclusion of receipts and disbursements in United States budget totals, exemption from limitations with respect to budget outlays, and restrictions on liability for obligation or liability incurred by the corporation.

1976—Subsec. (g)(1). Pub. L. 94–455 exempted corporation from all taxation now or hereafter imposed by United States (other than taxes imposed under chapter 21 of title 26, relating to Federal Insurance Contributions Act, and chapter 23 of title 26, relating to Federal Unemployment Tax Act).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

Section 406(b) of Pub. L. 96–364 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to fiscal years beginning after September 30, 1980.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1510(b) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on September 2, 1974.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1301 of this title.

§ 1303. Operation of corporation

(a) Investigatory authority; audit of statistically significant number of terminating plans

The corporation may make such investigations as it deems necessary to enforce any provision of this subchapter or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the corporation shall determine, as to all the facts and circumstances concerning the matter to be investigated. The corporation shall annually audit a statistically significant number of plans terminating under section 1341(b) of this title to determine whether participants and beneficiaries have received their benefit commitments and whether section 1350(a) of this title has been satisfied. Each audit shall include a statistically significant number of participants and beneficiaries.

(b) Discovery powers vested in board members or officers designated by the chairman

For the purpose of any such investigation, or any other proceeding under this subchapter, any member of the board of directors of the corporation, or any officer designated by the chairman, may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the corporation deems relevant or material to the inquiry.

(c) Contempt

In the case of contumacy by, or refusal to obey a subpena issued to, any person, the corporation may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. The court may issue an order requiring such person to appear before the corporation, or member or officer designated by the corporation, and to produce records or to give testimony related to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district in which such person is an inhabitant or may be found.

(d) Cooperation with other governmental agencies

In order to avoid unnecessary expense and duplication of functions among government agencies, the corporation may make such arrangements or agreements for cooperation or mutual assistance in the performance of its functions under this subchapter as is practicable and consistent with law. The corporation may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment. The head of each department, agency, or establishment of the United States shall cooperate with the corporation and, to the extent permitted by law, provide such information and facilities as it may request for its assistance in the performance of its functions under this subchapter. The Attorney General or his representative shall receive from the corporation for appropriate action such evidence developed in the performance of its functions under this subchapter as may be found to warrant consideration for criminal prosecution under the provisions of this or any other Federal law.

(e) Civil actions by corporation; jurisdiction; process; expeditious handling of case; costs; limitation on actions

(1) Civil actions may be brought by the corporation for appropriate relief, legal or equitable or both, to enforce (A) the provisions of this subchapter, and (B) in the case of a plan which is covered under this subchapter (other than a multiemployer plan) and for which the conditions for imposition of a lien described in section 1082(f)(1)(A) and (B) of this title or section 412(n)(1)(A) and (B) of title 26 have been met, section 1082 of this title and section 412 of title 26.

(2) Except as otherwise provided in this subchapter, where such an action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(3) The district courts of the United States shall have jurisdiction of actions brought by the corporation under this subchapter without re-

gard to the amount in controversy in any such action.

(4) Repealed. Pub. L. 98–620, title IV, § 402(33), Nov. 8, 1984, 98 Stat. 3360.

(5) In any action brought under this subchapter, whether to collect premiums, penalties, and interest under section 1307 of this title or for any other purpose, the court may award to the corporation all or a portion of the costs of litigation incurred by the corporation in connection with such action.

(6)(A) Except as provided in subparagraph (C), an action under this subsection may not be brought after the later of—

(i) 6 years after the date on which the cause of action arose, or

(ii) 3 years after the applicable date specified in subparagraph (B).

(B)(i) Except as provided in clause (ii), the applicable date specified in this subparagraph is the earliest date on which the corporation acquired or should have acquired actual knowledge of the existence of such cause of action.

(ii) If the corporation brings the action as a trustee, the applicable date specified in this subparagraph is the date on which the corporation became a trustee with respect to the plan if such date is later than the date described in clause (i).

(C) In the case of fraud or concealment, the period described in subparagraph (A)(ii) shall be extended to 6 years after the applicable date specified in subparagraph (B).

(f) Civil actions against corporation; appropriate court; award of costs and expenses; limitation on actions; jurisdiction; removal of actions

(1) Except with respect to withdrawal liability disputes under part 1 of subtitle E of this subchapter, any person who is a fiduciary, employer, contributing sponsor, member of a contributing sponsor's controlled group, participant, or beneficiary, and is adversely affected by any action of the corporation with respect to a plan in which such person has an interest, or who is an employee organization representing such a participant or beneficiary so adversely affected for purposes of collective bargaining with respect to such plan, may bring an action against the corporation for appropriate equitable relief in the appropriate court.

(2) For purposes of this subsection, the term ''appropriate court'' means—

(A) the United States district court before which proceedings under section 1341 or 1342 of this title are being conducted,

(B) if no such proceedings are being conducted, the United States district court for the judicial district in which the plan has its principal office, or

(C) the United States District Court for the District of Columbia.

(3) In any action brought under this subsection, the court may award all or a portion of the costs and expenses incurred in connection with such action to any party who prevails or substantially prevails in such action.

(4) This subsection shall be the exclusive means for bringing actions against the corporation under this subchapter, including actions against the corporation in its capacity as a trustee under section 1342 or 1349[1] of this title.

(5)(A) Except as provided in subparagraph (C), an action under this subsection may not be brought after the later of—

(i) 6 years after the date on which the cause of action arose, or

(ii) 3 years after the applicable date specified in subparagraph (B).

(B)(i) Except as provided in clause (ii), the applicable date specified in this subparagraph is the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

(ii) In the case of a plaintiff who is a fiduciary bringing the action in the exercise of fiduciary duties, the applicable date specified in this subparagraph is the date on which the plaintiff became a fiduciary with respect to the plan if such date is later than the date specified in clause (i).

(C) In the case of fraud or concealment, the period described in subparagraph (A)(ii) shall be extended to 6 years after the applicable date specified in subparagraph (B).

(6) The district courts of the United States have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

(7) In any suit, action, or proceeding in which the corporation is a party, or intervenes under section 1451 of this title, in any State court, the corporation may, without bond or security, remove such suit, action, or proceeding from the State court to the United States district court for the district or division in which such suit, action, or proceeding is pending by following any procedure for removal now or hereafter in effect.

(Pub. L. 93–406, title IV, § 4003, Sept. 2, 1974, 88 Stat. 1006; Pub. L. 96–364, title IV, §§ 402(a)(2), 403(k), Sept. 26, 1980, 94 Stat. 1297, 1302; Pub. L. 98–620, title IV, § 402(33), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 99–272, title XI, §§ 11014(b)(1), (2), 11016(c)(5), Apr. 7, 1986, 100 Stat. 262, 264, 274; Pub. L. 103–465, title VII, §§ 773(a), 776(b)(1), Dec. 8, 1994, 108 Stat. 5044, 5048.)

REFERENCES IN TEXT

Section 1349 of this title, referred to in subsec. (f)(4), was repealed by Pub. L. 100–203, title IX, § 9312(a), Dec. 22, 1987, 101 Stat. 1330–361.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–465, § 776(b)(1), inserted ''and whether section 1350(a) of this title has been satisfied'' before period at end of second sentence.

Subsec. (e)(1). Pub. L. 103–465, § 773(a), inserted ''(A)'' after ''enforce'' and substituted '', and'' and cl. (B) for period at end.

1986—Subsec. (a). Pub. L. 99–272, § 11016(c)(5), inserted provisions directing the corporation to audit annually a statistically significant number of plans terminating under section 1341(b) of this title to determine whether participants and beneficiaries have received their benefit commitments and to include a statistically significant number of participants and beneficiaries in each audit.

Subsec. (e)(6). Pub. L. 99–272, § 11014(b)(2), added par. (6).

[1] See References in Text note below.

Subsec. (f). Pub. L. 99–272, § 11014(b)(1), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''Except as provided in section 1451(a)(2) of this title, any participant, beneficiary, plan administrator, or employee adversely affected by any action of the corporation, or by a receiver or trustee appointed by the corporation, with respect to a plan in which such participant, beneficiary, plan administrator or employer has an interest, may bring an action against the corporation, receiver, or trustee in the appropriate court. For purposes of this subsection the term 'appropriate court' means the United States district court before which proceedings under section 1341 or 1342 of this title are being conducted, or if no such proceedings are being conducted the United States district court for the district in which the plan has its principal office, or the United States district court for the District of Columbia. The district courts of the United States have jurisdiction of actions brought under this subsection without regard to the amount in controversy. In any suit, action, or proceeding in which the corporation is a party, or intervenes under section 1451 of this title, in any State court, the corporation may, without bond or security, remove such suit, action, or proceeding from the State court to the United States District Court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect.''

1984—Subsec. (e)(4). Pub. L. 98–620 struck out par. (4) which provided that upon application by the corporation to a court of the United States for expedited handling of any case in which the corporation was a party, it was the duty of that court to assign such case for hearing at the earliest practical date and to cause such case to be in every way expedited.

1980—Subsec. (a). Pub. L. 96–364, § 402(a)(2)(A), substituted ''enforce'' for ''determine whether any person has violated or is about to violate''.

Subsec. (e)(1). Pub. L. 96–364, § 402(a)(2)(B), substituted ''enforce'' for ''redress violations of''.

Subsec. (f). Pub. L. 96–364, §§ 402(a)(2)(C), 403(k), substituted ''Except as provided in section 1451(a)(2) of the title, any'' for ''Any'' and inserted provisions relating to removal of actions.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 773(b) of Pub. L. 103–465 provided that: ''The amendments made by this section [amending this section] shall be effective for installments and other payments required under section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082] or section 412 of the Internal Revenue Code of 1986 [26 U.S.C. 412] that become due on or after the date of the enactment of this Act [Dec. 8, 1994].''

Amendment by section 776(b)(1) of Pub. L. 103–465 effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103–465, set out as a note under section 1056 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 11014(b)(3) of Pub. L. 99–272 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to actions filed after the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by section 11016(c)(5) of Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1341, 1461 of this title.

§ 1304. Repealed. Pub. L. 99–272, title XI, § 11016(c)(6), Apr. 7, 1986, 100 Stat. 274

Section, Pub. L. 93–406, title IV, § 4004, Sept. 2, 1974, 88 Stat. 1008, related to appointment, within 270 days after Sept. 2, 1974, and powers and functions of a receiver to assume control of terminated plan and its assets.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as an Effective Date of 1986 Amendment note under section 1341 of this title.

§ 1305. Pension benefit guaranty funds

(a) Establishment of four revolving funds on books of Treasury of the United States

There are established on the books of the Treasury of the United States for revolving funds to be used by the corporation in carrying out its duties under this subchapter. One of the funds shall be used with respect to basic benefits guaranteed under section 1322 of this title, one of the funds shall be used with respect to basic benefits guaranteed under section 1322a of this title, one of the funds shall be used with respect to nonbasic benefits guaranteed under section 1322 of this title (if any), and the remaining fund shall be used with respect to nonbasic benefits guaranteed under section 1322a of this title (if any), other than subsection (g)(2) thereof (if any). Whenever in this subchapter reference is made to the term ''fund'' the reference shall be considered to refer to the appropriate fund established under this subsection.

(b) Credits to funds; availability of funds; investment of moneys in excess of current needs

(1) Each fund established under this section shall be credited with the appropriate portion of—

(A) funds borrowed under subsection (c) of this section,

(B) premiums, penalties, interest, and charges collected under this subchapter,

(C) the value of the assets of a plan administered under section 1342 of this title by a trustee to the extent that they exceed the liabilities of such plan,

(D) the amount of any employer liability payments under subtitle D of this subchapter, to the extent that such payments exceed liabilities of the plan (taking into account all other plan assets),

(E) earnings on investments of the fund or on assets credited to the fund under this subsection,

(F) attorney's fees awarded to the corporation, and

(G) receipts from any other operations under this subchapter.

(2) Subject to the provisions of subsection (a) of this section, each fund shall be available—

(A) for making such payments as the corporation determines are necessary to pay benefits guaranteed under section 1322 or 1322a of this title or benefits payable under section 1350 of this title,

(B) to purchase assets from a plan being terminated by the corporation when the corporation determines such purchase will best protect the interests of the corporation, participants in the plan being terminated, and other insured plans,

(C) to repay to the Secretary of the Treasury such sums as may be borrowed (together with interest thereon) under subsection (c) of this section,

(D) to pay the operational and administrative expenses of the corporation, including reimbursement of the expenses incurred by the Department of the Treasury in maintaining the funds, and the Comptroller General in auditing the corporation, and

(E) to pay to participants and beneficiaries the estimated amount of benefits which are guaranteed by the corporation under this subchapter and the estimated amount of other benefits to which plan assets are allocated under section 1344 of this title, under single-employer plans which are unable to pay benefits when due or which are abandoned.

(3) Whenever the corporation determines that the moneys of any fund are in excess of current needs, it may request the investment of such amounts as it determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States but, until all borrowings under subsection (c) of this section have been repaid, the obligations in which such excess moneys are invested may not yield a rate of return in excess of the rate of interest payable on such borrowings.

(c) Authority to issue notes or other obligations; purchase by Secretary of the Treasury as public debt transaction

The corporation is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $100,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations of the corporation. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations issued by the corporation under this subsection, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(d) Establishment of fifth fund; purpose, availability, etc.

(1) A fifth fund shall be established for the reimbursement of uncollectible withdrawal liability under section 1402 of this title, and shall be credited with the appropriate—

(A) premiums, penalties, and interest charges collected under this subchapter, and

(B) earnings on investments of the fund or on assets credited to the fund.

The fund shall be available to make payments pursuant to the supplemental program established under section 1402 of this title, including those expenses and other charges determined to be appropriate by the corporation.

(2) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

(e) Establishment of sixth fund; purpose, availability, etc.

(1) A sixth fund shall be established for the supplemental benefit guarantee program provided under section 1322a(g)(2) of this title.

(2) Such fund shall be credited with the appropriate—

(A) premiums, penalties, and interest charges collected under section 1322a(g)(2) of this title, and

(B) earnings on investments of the fund or on assets credited to the fund.

The fund shall be available for making payments pursuant to the supplemental benefit guarantee program established under section 1322a(g)(2) of this title, including those expenses and other charges determined to be appropriate by the corporation.

(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

(f) Deposit of premiums into separate revolving fund

(1) A seventh fund shall be established and credited with—

(A) premiums, penalties, and interest charges collected under section 1306(a)(3)(A)(i) of this title (not described in subparagraph (B)) to the extent attributable to the amount of the premium in excess of $8.50,

(B) premiums, penalties, and interest charges collected under section 1306(a)(3)(E) of this title, and

(C) earnings on investments of the fund or on assets credited to the fund.

(2) Amounts in the fund shall be available for transfer to other funds established under this section with respect to a single-employer plan but shall not be available to pay—

(A) administrative costs of the corporation, or

(B) benefits under any plan which was terminated before October 1, 1988,

unless no other amounts are available for such payment.

(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

(g) Other use of funds; deposits of repayments

(1) Amounts in any fund established under this section may be used only for the purposes for

which such fund was established and may not be used to make loans to (or on behalf of) any other fund or to finance any other activity of the corporation.

(2) None of the funds borrowed under subsection (c) of this section may be used to make loans to (or on behalf of) any fund other than a fund described in the second sentence of subsection (a) of this section.

(3) Any repayment to the corporation of any amount paid out of any fund in connection with a multiemployer plan shall be deposited in such fund.

(h) Voting by corporation of stock paid as liability

Any stock in a person liable to the corporation under this subchapter which is paid to the corporation by such person or a member of such person's controlled group in satisfaction of such person's liability under this subchapter may be voted only by the custodial trustees or outside money managers of the corporation.

(Pub. L. 93–406, title IV, §4005, Sept. 2, 1974, 88 Stat. 1009; Pub. L. 96–364, title IV, §403(a), Sept. 26, 1980, 94 Stat. 1300; Pub. L. 99–272, title XI, §11016(a)(1), (2), (c)(7), Apr. 7, 1986, 100 Stat. 268, 274; Pub. L. 100–203, title IX, §§9312(c)(4), 9331(d), Dec. 22, 1987, 101 Stat. 1330–364, 1330–368; Pub. L. 103–465, title VII, §776(b)(2), Dec. 8, 1994, 108 Stat. 5048.)

CODIFICATION

In subsec. (c), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act, as amended'' and ''that Act, as amended,'', respectively, on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1994—Subsec. (b)(2)(A). Pub. L. 103–465, which directed the amendment of subpar. (A) by inserting ''or benefits payable under section 1350 of this title'' after ''section 1322a of this title'', was executed by making the insertion after ''section 1322 or 1322a of this title'' to reflect the probable intent of Congress.

1987—Subsec. (f). Pub. L. 100–203, §9331(d), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100–203, §9331(d), redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Pub. L. 100–203, §9312(c)(4), struck out ''or fiduciaries with respect to trusts to which the requirements of section 1349 of this title apply'' after ''money managers of the corporation''.

Subsec. (h). Pub. L. 100–203, §9331(d), redesignated former subsec. (g) as (h).

1986—Subsec. (b)(1)(F), (G). Pub. L. 99–272, §11016(a)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (b)(2)(E). Pub. L. 99–272, §11016(a)(1), added subpar. (E).

Subsec. (g). Pub. L. 99–272, §11016(c)(7), added subsec. (g).

1980—Subsec. (a). Pub. L. 96–364, §403(a)(1), substituted provisions respecting benefits guaranteed under sections 1322 and 1322a of this title, for provisions respecting benefits guaranteed under sections 1322 and 1323 of this title.

Subsec. (b)(2). Pub. L. 96–364, §403(a)(2), (3), in subpar. (A) inserted reference to section 1322a of this title, struck out subpar. (B) relating to payments under section 1323 of this title, and redesignated former subpars. (C) to (E) as (B) to (D), respectively.

Subsecs. (d) to (f). Pub. L. 96–364, §403(a)(4), added subsecs. (d) to (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103–465, set out as a note under section 1056 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9312(c)(4) of Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 of this title.

Section 9331(f) of Pub. L. 100–203 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1306 and 1307 of this title] shall apply to plan years beginning after December 31, 1987.

''(2) SEPARATE ACCOUNTING.—The amendments made by subsection (d) [amending this section] shall apply to fiscal years beginning after September 30, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1301, 1302, 1308, 1322a, 1361, 1461 of this title.

§ 1306. Premium rates

(a) Schedules for premium rates and bases for application; establishment, coverage, etc.

(1) The corporation shall prescribe such schedules of premium rates and bases for the application of those rates as may be necessary to provide sufficient revenue to the fund for the corporation to carry out its functions under this subchapter. The premium rates charged by the corporation for any period shall be uniform for all plans, other than multiemployer plans, insured by the corporation with respect to basic benefits guaranteed by it under section 1322 of this title, and shall be uniform for all multiemployer plans with respect to basic benefits guaranteed by it under section 1322a of this title.

(2) The corporation shall maintain separate schedules of premium rates, and bases for the application of those rates, for—

(A) basic benefits guaranteed by it under section 1322 of this title for single-employer plans,

(B) basic benefits guaranteed by it under section 1322a of this title for multiemployer plans,

(C) nonbasic benefits guaranteed by it under section 1322 of this title for single-employer plans,

(D) nonbasic benefits guaranteed by it under section 1322a of this title for multiemployer plans, and

(E) reimbursements of uncollectible withdrawal liability under section 1402 of this title.

The corporation may revise such schedules whenever it determines that revised schedules are necessary. Except as provided in section 1322a(f) of this title, in order to place a revised schedule described in subparagraph (A) or (B) in effect, the corporation shall proceed in accordance with subsection (b)(1) of this section, and such schedule shall apply only to plan years beginning more than 30 days after the date on which a joint resolution approving such revised schedule is enacted.

(3)(A) Except as provided in subparagraph (C), the annual premium rate payable to the corporation by all plans for basic benefits guaranteed under this subchapter is—

(i) in the case of a single-employer plan, for plan years beginning after December 31, 1990, an amount equal to the sum of $19 plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;

(ii) in the case of a multiemployer plan, for the plan year within which the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980 falls, an amount for each individual who is a participant in such plan for such plan year equal to the sum of—

(I) 50 cents, multiplied by a fraction the numerator of which is the number of months in such year ending on or before such date and the denominator of which is 12, and

(II) $1.00, multiplied by a fraction equal to 1 minus the fraction determined under clause (i),

(iii) in the case of a multiemployer plan, for plan years beginning after September 26, 1980, an amount equal to—

(I) $1.40 for each participant, for the first, second, third, and fourth plan years,

(II) $1.80 for each participant, for the fifth and sixth plan years,

(III) $2.20 for each participant, for the seventh and eighth plan years, and

(IV) $2.60 for each participant, for the ninth plan year, and for each succeeding plan year.

(B) The corporation may prescribe by regulation the extent to which the rate described in subparagraph (A)(i) applies more than once for any plan year to an individual participating in more than one plan maintained by the same employer, and the corporation may prescribe regulations under which the rate described in subparagraph (A)(iii) will not apply to the same participant in any multiemployer plan more than once for any plan year.

(C)(i) If the sum of—

(I) the amounts in any fund for basic benefits guaranteed for multiemployer plans, and

(II) the value of any assets held by the corporation for payment of basic benefits guaranteed for multiemployer plans,

is for any calendar year less than 2 times the amount of basic benefits guaranteed by the corporation under this subchapter for multiemployer plans which were paid out of any such fund or assets during the preceding calendar year, the annual premium rates under subparagraph (A) shall be increased to the next highest premium level necessary to insure that such sum will be at least 2 times greater than such amount during the following calendar year.

(ii) If the board of directors of the corporation determines that an increase in the premium rates under subparagraph (A) is necessary to provide assistance to plans which are receiving assistance under section 1431 of this title and to plans the board finds are reasonably likely to require such assistance, the board may order such increase in the premium rates.

(iii) The maximum annual premium rate which may be established under this subparagraph is $2.60 for each participant.

(iv) The provisions of this subparagraph shall not apply if the annual premium rate is increased to a level in excess of $2.60 per participant under any other provisions of this subchapter.

(D)(i) Not later than 120 days before the date on which an increase under subparagraph (C)(ii) is to become effective, the corporation shall publish in the Federal Register a notice of the determination described in subparagraph (C)(ii), the basis for the determination, the amount of the increase in the premium, and the anticipated increase in premium income that would result from the increase in the premium rate. The notice shall invite public comment, and shall provide for a public hearing if one is requested. Any such hearing shall be commenced not later than 60 days before the date on which the increase is to become effective.

(ii) The board of directors shall review the hearing record established under clause (i) and shall, not later than 30 days before the date on which the increase is to become effective, determine (after consideration of the comments received) whether the amount of the increase should be changed and shall publish its determination in the Federal Register.

(E)(i) The additional premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year.

(ii) The amount determined under this clause for any plan year shall be an amount equal to $9.00 for each $1,000 (or fraction thereof) of unfunded vested benefits under the plan as of the close of the preceding plan year.

(iii) For purposes of clause (ii)—

(I) Except as provided in subclause (II) or (III), the term ''unfunded vested benefits'' means the amount which would be the unfunded current liability (within the meaning of section 1082(d)(8)(A) of this title) if only vested benefits were taken into account.

(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to the applicable percentage of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins. For purposes of this subclause, the applicable percentage is 80 percent for plan years beginning before July 1, 1997, 85 percent for plan years beginning after June 30, 1997, and before the 1st plan year to which the

first tables prescribed under section 1082(d)(7)(C)(ii)(II) of this title apply, and 100 percent for such 1st plan year and subsequent plan years.

(III) In the case of any plan year for which the applicable percentage under subclause (II) is 100 percent, the value of the plan's assets used in determining unfunded current liability under subclause (I) shall be their fair market value.

(iv) No premium shall be determined under this subparagraph for any plan year if, as of the close of the preceding plan year, contributions to the plan for the preceding plan year were not less than the full funding limitation for the preceding plan year under section 412(c)(7) of title 26.

(4) The corporation may prescribe, subject to the enactment of a joint resolution in accordance with this section or section 1322a(f) of this title, alternative schedules of premium rates, and bases for the application of those rates, for basic benefits guaranteed by it under sections 1322 and 1322a of this title based, in whole or in part, on the risks insured by the corporation in each plan.

(5)(A) In carrying out its authority under paragraph (1) to establish schedules of premium rates, and bases for the application of those rates, for nonbasic benefits guaranteed under sections 1322 and 1322a of this title the premium rates charged by the corporation for any period for nonbasic benefits guaranteed shall—

(i) be uniform by category of nonbasic benefits guaranteed,

(ii) be based on the risks insured in each category, and

(iii) reflect the experience of the corporation (including experience which may be reasonably anticipated) in guaranteeing such benefits.

(B) Notwithstanding subparagraph (A), premium rates charged to any multiemployer plan by the corporation for any period for supplemental guarantees under section 1322a(g)(2) of this title may reflect any reasonable considerations which the corporation determines to be appropriate.

(6)(A) In carrying out its authority under paragraph (1) to establish premium rates and bases for basic benefits guaranteed under section 1322 of this title with respect to single-employer plans, the corporation shall establish such rates and bases in coverage schedules in accordance with the provisions of this paragraph.

(B) The corporation may establish annual premiums for single-employer plans composed of the sum of—

(i) a charge based on a rate applicable to the excess, if any, of the present value of the basic benefits of the plan which are guaranteed over the value of the assets of the plan, not in excess of 0.1 percent, and

(ii) an additional charge based on a rate applicable to the present value of the basic benefits of the plan which are guaranteed.

The rate for the additional charge referred to in clause (ii) shall be set by the corporation for every year at a level which the corporation estimates will yield total revenue approximately equal to the total revenue to be derived by the corporation from the charges referred to in clause (i) of this subparagraph.

(C) The corporation may establish annual premiums for single-employer plans based on—

(i) the number of participants in a plan, but such premium rates shall not exceed the rates described in paragraph (3),

(ii) unfunded basic benefits guaranteed under this subchapter, but such premium rates shall not exceed the limitations applicable to charges referred to in subparagraph (B)(i), or

(iii) total guaranteed basic benefits, but such premium rates shall not exceed the rates for additional charges referred to in subparagraph (B)(ii).

If the corporation uses two or more of the rate bases described in this subparagraph, the premium rates shall be designed to produce approximately equal amounts of aggregate premium revenue from each of the rate bases used.

(D) For purposes of this paragraph, the corporation shall by regulation define the terms ''value of assets'' and ''present value of the benefits of the plan which are guaranteed'' in a manner consistent with the purposes of this subchapter and the provisions of this section.

(b) Revised schedule; Congressional procedures applicable

(1) In order to place a revised schedule (other than a schedule described in subsection (a)(2)(C), (D), or (E) of this section) in effect, the corporation shall transmit the proposed schedule, its proposed effective date, and the reasons for its proposal to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(2) The succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3). They shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any rule of that House.

(3) For the purpose of the succeeding paragraphs of this subsection, ''resolution'' means only a joint resolution, the matter after the resolving clause of which is as follows: ''The proposed revised schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on ____ is hereby approved.'', the blank space therein being filled with the date on which the corporation's message proposing the rate was delivered.

(4) A resolution shall be referred to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(5) If a committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move to discharge the committee from further consideration of that resolution, or to discharge the committee from further consideration of any other resolution with respect to the proposed adjustment which has been referred to the committee. The motion to discharge may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposed rate), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same proposed rate.

(6) When a committee has reported, or has been discharged from further consideration of a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(7) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution and motions to proceed to the consideration of other business shall be decided without debate. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(c) Rates for plans for basic benefits

(1) Except as provided in subsection (a)(3) of this section, and subject to paragraph (2), the rate for all plans for basic benefits guaranteed under this subchapter with respect to plan years ending after September 2, 1974, is—

(A) in the case of each plan which was not a multiemployer plan in a plan year—

(i) with respect to each plan year beginning before January 1, 1978, an amount equal to $1 for each individual who was a participant in such plan during the plan year,

(ii) with respect to each plan year beginning after December 31, 1977, and before January 1, 1986, an amount equal to $2.60 for each individual who was a participant in such plan during the plan year, and[1]

(iii) with respect to each plan year beginning after December 31, 1985, and before January 1, 1988, an amount equal to $8.50 for each individual who was a participant in such plan during the plan year, and

(iv) with respect to each plan year beginning after December 31, 1987, and before January 1, 1991, an amount equal to $16 for each individual who was a participant in such plan during the plan year, and

(B) in the case of each plan which was a multiemployer plan in a plan year, an amount equal to 50 cents for each individual who was a participant in such plan during the plan year.

(2) The rate applicable under this subsection for the plan year preceding September 1, 1975, is the product of—

(A) the rate described in the preceding sentence; and

(B) a fraction—

(i) the numerator of which is the number of calendar months in the plan year which ends after September 2, 1974, and before the date on which the new plan year commences, and

(ii) the denominator of which is 12.

(Pub. L. 93–406, title IV, § 4006, Sept. 2, 1974, 88 Stat. 1010; Pub. L. 96–364, title I, § 105, Sept. 26, 1980, 94 Stat. 1264; Pub. L. 99–272, title XI, § 11005(a)–(c)(3), Apr. 7, 1986, 100 Stat. 240–242; Pub. L. 100–203, title IX, § 9331(a), (b), (e), Dec. 22, 1987, 101 Stat. 1330–367, 1330–368; Pub. L. 101–239, title VII, § 7881(h), Dec. 19, 1989, 103 Stat. 2442; Pub. L. 101–508, title XII, § 12021(a), (b), Nov. 5, 1990, 104 Stat. 1388–573; Pub. L. 103–465, title VII, § 774(a)(1), (b)(1), (2), Dec. 8, 1994, 108 Stat. 5045, 5046.)

REFERENCES IN TEXT

The plan year within which the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980 falls, referred to in subsec. (a)(3)(A)(ii), refers to the plan year within which the date of the enactment of Pub. L. 96–364 falls, such enactment being approved Sept. 26, 1980.

AMENDMENTS

1994—Subsec. (a)(3)(E)(iii). Pub. L. 103–465, § 774(b)(1), (2), in subcl. (I), inserted ''or (III)'' after ''subclause (II)'', in subcl. (II), substituted ''equal to the applicable percentage'' for ''equal to 80 percent'' and inserted at end ''For purposes of this subclause, the applicable percentage is 80 percent for plan years beginning before July 1, 1997, 85 percent for plan years beginning after June 30, 1997, and before the 1st plan year to which the first tables prescribed under section 1082(d)(7)(C)(ii)(II) of this title apply, and 100 percent for such 1st plan year and subsequent plan years.'', and added subcl. (III).

Subsec. (a)(3)(E)(iv), (v). Pub. L. 103–465, § 774(a)(1), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows:

''(iv)(I) Except as provided in this clause, the aggregate increase in the premium payable with respect to any participant by reason of this subparagraph shall not exceed $53.

''(II) If an employer made contributions to a plan during 1 or more of the 5 plan years preceding the 1st plan

[1] So in original. The word ''and'' probably should not appear.

year to which this subparagraph applies in an amount not less than the maximum amount allowable as a deduction with respect to such contributions under section 404 of title 26, the dollar amount in effect under subclause (I) for the 1st 5 plan years to which this subparagraph applies shall be reduced by $3 for each plan year for which such contributions were made in such amount.''

1990—Subsec. (a)(3)(A)(i). Pub. L. 101–508, §12021(a)(1), substituted ''for plan years beginning after December 31, 1990, an amount equal to the sum of $19'' for ''for plan years beginning after December 31, 1987, an amount equal to the sum of $16''.

Subsec. (a)(3)(E)(ii). Pub. L. 101–508, §12021(b)(1), substituted ''$9.00'' for ''$6.00''.

Subsec. (a)(3)(E)(iv)(I). Pub. L. 101–508, §12021(b)(2), substituted ''$53'' for ''$34''.

Subsec. (c)(1)(A)(iv). Pub. L. 101–508, §12021(a)(2), added cl. (iv).

1989—Subsec. (a)(3)(E)(v). Pub. L. 101–239, §7881(h)(1), added cl. (v).

Subsec. (c)(1)(A)(iii). Pub. L. 101–239, §7881(h)(2), realigned margin.

1987—Subsec. (a)(3)(A)(i). Pub. L. 100–203, §9331(a), substituted ''for plan years beginning after December 31, 1987, an amount equal to the sum of $16 plus the additional premium (if any) determined under subparagraph (E)'' for ''for plan years beginning after December 31, 1985, an amount equal to $8.50''.

Subsec. (a)(3)(E). Pub. L. 100–203, §9331(b), added subpar. (E).

Subsec. (c)(1)(A). Pub. L. 100–203, §9331(e), struck out ''and'' at end of cl. (i), inserted ''and before January 1, 1986,'' in cl. (ii), and added cl. (iii).

1986—Subsec. (a)(1). Pub. L. 99–272, §11005(b)(1), struck out provision that in establishing annual premiums with respect to plans, other than multiemployer plans, pars. (5) and (6) of this subsection, as in effect before Sept. 26, 1980, would continue to apply.

Subsec. (a)(2). Pub. L. 99–272, §11005(c)(1), substituted ''a joint resolution approving such revised schedule is enacted'' for ''the Congress approves such revised schedule by a concurrent resolution''.

Subsec. (a)(3)(A)(i). Pub. L. 99–272, §11005(a)(1), substituted ''December 31, 1985, an amount equal to $8.50'' for ''December 31, 1977, an amount equal to $2.60''.

Subsec. (a)(4). Pub. L. 99–272, §11005(c)(2), substituted ''the enactment of a joint resolution'' for ''approval by the Congress''.

Subsec. (a)(6). Pub. L. 99–272, §11005(b)(2), added par. (6).

Subsec. (b)(3). Pub. L. 99–272, §11005(c)(3), substituted ''joint'' for ''concurrent'' and ''The'' for ''That the Congress favors the'' and inserted ''is hereby approved''.

Subsec. (c)(1)(A). Pub. L. 99–272, §11005(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''in the case of each plan which was not a multiemployer plan in a plan year, an amount equal to $1 for each individual who was a participant in such plan during the plan year, and''.

1980—Subsec. (a). Pub. L. 96–364, §105(a), substituted provisions setting forth authority of corporation to prescribe schedules of premium rates and bases for the application of such rates and provisions respecting contents, coverages, alternate schedules, etc., of schedules and application bases, for provisions setting forth authority of corporation to prescribe insurance premium rates and coverage schedules for the application of such rates and provisions respecting contents, coverages, rates, etc., of schedules and premium rates.

Subsec. (b). Pub. L. 96–364, §105(b), in par. (1) substituted ''(C), (D), or (E)'' for ''(B) or (C)'', ''revised schedule'' for ''revised coverage schedule'', and ''Human Resources'' for ''Public Welfare'', in par. (3) substituted ''revised schedule'' for ''revised coverage schedule'', and in par. (4) substituted ''Human Resources'' for ''Public Welfare''.

Subsec. (c). Pub. L. 96–364, §105(c), added subsec. (c).

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 774(a)(2) of Pub. L. 103–465 provided that:

''(A) IN GENERAL.—The amendments made by this subsection [amending this section] shall be effective for plan years beginning on or after July 1, 1994.

''(B) TRANSITION RULE.—In the case of plan years beginning on or after July 1, 1994, and before July 1, 1996, the additional premium payable with respect to any participant by reason of the amendments made by this section shall not exceed the sum of—

''(i) $53, and

''(ii) the product derived by multiplying—

''(I) the excess (if any) of the amount determined under clause (i) of section 4006(a)(3)(E) of the Employee Retirement Income Security Act of 1974 [subsec. (a)(3)(E) of this section], over $53, by

''(II) the applicable percentage.

For purposes of this subparagraph, the applicable percentage shall be the percentage specified in the following table:

For the plan year beginning:		The applicable percentage is:
on or after	but before	
July 1, 1994	July 1, 1995	20 percent
July 1, 1995	July 1, 1996	60 percent.''

Section 774(b)(3) of Pub. L. 103–465 provided that: ''The amendments made by this subsection [amending this section] shall apply to plan years beginning after the date of the enactment of this Act [Dec. 8, 1994].

EFFECTIVE DATE OF 1990 AMENDMENT

Section 12021(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to plan years beginning after Dec. 31, 1987, see section 9331(f)(1) of Pub. L. 100–203, set out as a note under section 1305 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 11005(d) of Pub. L. 99–272 provided that:

''(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1322a of this title] shall be effective for plan years commencing after December 31, 1985.

''(2) SPECIAL RULE.—The amendments made by subsection (b) [amending this section] shall be effective as of the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980 [Sept. 26, 1980].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

TRANSITIONAL RULE

Section 774(c) of Pub. L. 103–465 provided that: ''In the case of a regulated public utility described in section 7701(a)(33)(A)(i) of the Internal Revenue Code of 1986 [26 U.S.C. 7701(a)(33)(A)(i)], the amendments made by this

section [amending this section] shall not apply to plan years beginning before the earlier of—

''(1) January 1, 1998, or

''(2) the date the regulated public utility begins to collect from utility customers rates that reflect the costs incurred or projected to be incurred for additional premiums under section 4006(a)(3)(E) of the Employee Retirement Income Security Act of 1974 [subsec. (a)(3)(E) of this section] pursuant to final and nonappealable determinations by all public utility commissions (or other authorities having jurisdiction over the rates and terms of service by the regulated public utility) that the costs are just and reasonable and recoverable from customers of the regulated public utility.''

Section 11005(e) of Pub. L. 99–272 provided that:

''(1) NOTICE OF PREMIUM INCREASE.—Not later than 30 days after the date of the enactment of this Act [Apr. 7, 1986], the Pension Benefit Guaranty Corporation shall send a notice to the plan administrator of each single-employer plan affected by the premium increase established by the amendment made by subsection (a)(1) [amending this section]. Such notice shall describe such increase and the requirements of this subsection.

''(2) DUE DATE FOR UNPAID PREMIUMS.—With respect to any plan year beginning during the period beginning on January 1, 1986, and ending 30 days after the date of the enactment of this Act, any unpaid amount of such premium increase shall be due and payable no later than the earlier of 60 days after the date of the enactment of this Act or 30 days after the date on which the notice required by paragraph (1) is sent, except that in no event shall the amount of the premium increase established under the amendment made by subsection (a)(1) be due and payable for a plan year earlier than the date on which premiums for the plan would have been due for such plan year had this Act [probably means the Single-Employee Pension Plan Amendments Act of 1986, title XI of Pub. L. 99–272, see Short Title of 1986 Amendment note set out under section 1001 of this title] not been enacted.

''(3) ENFORCEMENT.—For purposes of enforcement, the requirements of paragraphs (1) and (2) shall be considered to be requirements of sections 4006 and 4007 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306 and 1307).''

SINGLE-EMPLOYER PENSION PLAN TERMINATION INSURANCE PREMIUM STUDY

Section 11017(a) of Pub. L. 99–272 directed Pension Benefit Guaranty Corporation to conduct a study of, and submit to an advisory council not later than one year after Apr. 7, 1986, a report on the premiums established under the single-employer pension plan termination insurance program under this subchapter, including (1) the long-term stability of the program, (2) alternatives with respect to proposals for changes in the premium levels under such program, (3) methods currently used in projecting future costs, (4) alternative methods of projecting such future costs, (5) methods currently used in determining premiums needed to allocate and adequately fund such future costs, along with any alternative methods of making such premium determinations, and (6) alternative premium bases upon which some or all of such projected future costs would be allocated on an exposure-related or risk-related computation; and further provided for submission of the advisory council's report to Congress 180 days after submission of the Corporation's report to the advisory council, as well as the cooperation and consultation with other Federal agencies in compilation of reports.

STUDIES AND REPORTS RESPECTING GRADUATED PREMIUM RATE SCHEDULES AND UNION MANDATED WITHDRAWALS FROM MULTIEMPLOYER PENSION PLANS

Section 412(a) of Pub. L. 96–364 directed Pension Benefit Guaranty Corporation to conduct a separate study with respect to advantages and disadvantages of establishing a graduated premium rate schedule under this section which is based on risk, and necessity of adopting special rules in cases of union-mandated withdrawal from multiemployer pension plans, and to report to Congress the results of the studies conducted, including its recommendations with respect thereto.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1082, 1302, 1305, 1310, 1311, 1322a, 1343 of this title; title 26 section 412.

§ 1307. Payment of premiums

(a) Premiums payable when due; accrual; waiver or reduction

The designated payor of each plan shall pay the premiums imposed by the corporation under this subchapter with respect to that plan when they are due. Premiums under this subchapter are payable at the time, and on an estimated, advance, or other basis, as determined by the corporation. Premiums imposed by this subchapter on September 2, 1974 (applicable to that portion of any plan year during which such date occurs) are due within 30 days after such date. Premiums imposed by this subchapter on the first plan year commencing after September 2, 1974, are due within 30 days after such plan year commences. Premiums shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure, or until a trustee is appointed pursuant to section 1342 of this title, whichever is earlier. The corporation may waive or reduce premiums for a multiemployer plan for any plan year during which such plan receives financial assistance from the corporation under section 1431 of this title, except that any amount so waived or reduced shall be treated as financial assistance under such section.

(b) Late payment charge; waiver

If any basic benefit premium is not paid when it is due the corporation is authorized to assess a late payment charge of not more than 100 percent of the premium payment which was not timely paid. The preceding sentence shall not apply to any payment of premium made within 60 days after the date on which payment is due, if before such date, the designated payor obtains a waiver from the corporation based upon a showing of substantial hardship arising from the timely payment of the premium. The corporation is authorized to grant a waiver under this subsection upon application made by the designated payor, but the corporation may not grant a waiver if it appears that the designated payor will be unable to pay the premium within 60 days after the date on which it is due. If any premium is not paid by the last date prescribed for a payment, interest on the amount of such premium at the rate imposed under section 6601(a) of title 26 (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) shall be paid for the period from such last date to the date paid.

(c) Civil action to recover premium penalty and interest

If any designated payor fails to pay a premium when due, the corporation is authorized to bring a civil action in any district court of the United States within the jurisdiction of which the plan

assets are located, the plan is administered, or in which a defendant resides or is found for the recovery of the amount of the premium penalty, and interest, and process may be served in any other district. The district courts of the United States shall have jurisdiction over actions brought under this subsection by the corporation without regard to the amount in controversy.

(d) Basic benefits guarantee not stopped by designated payor's failure to pay premiums when due

The corporation shall not cease to guarantee basic benefits on account of the failure of a designated payor to pay any premium when due.

(e) Designated payor

(1) For purposes of this section, the term ''designated payor'' means—

(A) the contributing sponsor or plan administrator in the case of a single-employer plan, and

(B) the plan administrator in the case of a multiemployer plan.

(2) If the contributing sponsor of any single-employer plan is a member of a controlled group, each member of such group shall be jointly and severally liable for any premiums required to be paid by such contributing sponsor. For purposes of the preceding sentence, the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 of title 26.

(Pub. L. 93–406, title IV, §4007, Sept. 2, 1974, 88 Stat. 1013; Pub. L. 96–364, title IV, §§402(a)(3), 403(b), Sept. 26, 1980, 94 Stat. 1298, 1300; Pub. L. 100–203, title IX, §9331(c), Dec. 22, 1987, 101 Stat. 1330–368; Pub. L. 101–239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1987—Subsecs. (a) to (d). Pub. L. 100–203, §9331(c)(1), substituted ''designated payor'' for ''plan administrator'' wherever appearing.

Subsec. (e). Pub. L. 100–203, §9331(c)(2), added subsec. (e).

1980—Subsec. (a). Pub. L. 96–364 inserted provisions relating to waiver or reduction of premiums, and struck out provisions relating to payment of premiums under statutory requirements respecting contingent liability coverage.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to plan years beginning after Dec. 31, 1987, see section 9331(f)(1) of Pub. L. 100–203, set out as a note under section 1305 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1303 of this title.

§ 1308. Annual report by the corporation

As soon as practicable after the close of each fiscal year the corporation shall transmit to the President and the Congress a report relative to the conduct of its business under this subchapter for that fiscal year. The report shall include financial statements setting forth the finances of the corporation at the end of such fiscal year and the result of its operations (including the source and application of its funds) for the fiscal year and shall include an actuarial evaluation of the expected operations and status of the funds established under section 1305 of this title for the next five years (including a detailed statement of the actuarial assumptions and methods used in making such evaluation).

(Pub. L. 93–406, title IV, §4008, Sept. 2, 1974, 88 Stat. 1014.)

§ 1309. Portability assistance

The corporation shall provide advice and assistance to individuals with respect to evaluating the economic desirability of establishing individual retirement accounts or other forms of individual retirement savings for which a deduction is allowable under section 219 of title 26 and with respect to evaluating the desirability, in particular cases, of transferring amounts representing an employee's interest in a qualified plan to such an account upon the employee's separation from service with an employer.

(Pub. L. 93–406, title IV, §4009, Sept. 2, 1974, 88 Stat. 1014; Pub. L. 101–239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

§ 1310. Authority to require certain information

(a) Information required

Each person described in subsection (b) of this section shall provide the corporation annually, on or before a date specified by the corporation in regulations, with—

(1) such records, documents, or other information that the corporation specifies in regulations as necessary to determine the liabilities and assets of plans covered by this subchapter; and

(2) copies of such person's audited (or, if unavailable, unaudited) financial statements, and such other financial information as the corporation may prescribe in regulations.

(b) Persons required to provide information

The persons covered by subsection (a) of this section are each contributing sponsor, and each

member of a contributing sponsor's controlled group, of a single-employer plan covered by this subchapter, if—

(1) the aggregate unfunded vested benefits at the end of the preceding plan year (as determined under section 1306(a)(3)(E)(iii) of this title) of plans maintained by the contributing sponsor and the members of its controlled group exceed $50,000,000 (disregarding plans with no unfunded vested benefits);

(2) the conditions for imposition of a lien described in section 1082(f)(1)(A) and (B) of this title or section 412(n)(1)(A) and (B) of title 26 have been met with respect to any plan maintained by the contributing sponsor or any member of its controlled group; or

(3) minimum funding waivers in excess of $1,000,000 have been granted with respect to any plan maintained by the contributing sponsor or any member of its controlled group, and any portion thereof is still outstanding.

(c) Information exempt from disclosure requirements

Any information or documentary material submitted to the corporation pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

(Pub. L. 93–406, title IV, § 4010, as added Pub. L. 103–465, title VII, § 772(a), Dec. 8, 1994, 108 Stat. 5044.)

EFFECTIVE DATE

Section 772(c) of Pub. L. 103–465 provided that: ''The amendments made by this section [enacting this section] shall be effective on the date of enactment of this Act [Dec. 8, 1994].''

§ 1311. Notice to participants

(a) In general

The plan administrator of a plan subject to the additional premium under section 1306(a)(3)(E) of this title shall provide, in a form and manner and at such time as prescribed in regulations of the corporation, notice to plan participants and beneficiaries of the plan's funding status and the limits on the corporation's guaranty should the plan terminate while underfunded. Such notice shall be written in a manner so as to be understood by the average plan participant.

(b) Exception

Subsection (a) of this section shall not apply to any plan to which section 1082(d) of this title does not apply for the plan year by reason of paragraph (9) thereof.

(Pub. L. 93–406, title IV, § 4011, as added Pub. L. 103–465, title VII, § 775(a), Dec. 8, 1994, 108 Stat. 5046.)

EFFECTIVE DATE

Section 775(c) of Pub. L. 103–465 provided that: ''The amendment made by this section [enacting this section] shall be effective for plan years beginning after the date of enactment of this Act [Dec. 8, 1994].''

SUBTITLE B—COVERAGE

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1361, 1371 of this title.

§ 1321. Coverage

(a) Plans covered

Except as provided in subsection (b) of this section, this subchapter applies to any plan (including a successor plan) which, for a plan year—

(1) is an employee pension benefit plan (as defined in paragraph (2) of section 1002 of this title) established or maintained—

(A) by an employer engaged in commerce or in any industry or activity affecting commerce, or

(B) by any employee organization, or organization representing employees, engaged in commerce or in any industry or activity affecting commerce, or

(C) by both,

which has, in practice, met the requirements of part I of subchapter D of chapter 1 of title 26 (as in effect for the preceding 5 plan years of the plan) applicable to the plans described in paragraph (2) for the preceding 5 plan years; or

(2) is, or has been determined by the Secretary of the Treasury to be, a plan described in section 401(a) of title 26, or which meets, or has been determined by the Secretary of the Treasury to meet, the requirements of section 404(a)(2) of title 26.

For purposes of this subchapter, a successor plan is considered to be a continuation of a predecessor plan. For this purpose, unless otherwise specifically indicated in this subchapter, a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided.

(b) Plans not covered

This section does not apply to any plan—

(1) which is an individual account plan, as defined in paragraph (34) of section 1002 of this title,

(2) established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or to which the Railroad Retirement Act of 1935 or 1937 [45 U.S.C. 231 et seq.] applies and which is financed by contributions required under that Act,

(3) which is a church plan as defined in section 414(e) of title 26, unless that plan has made an election under section 410(d) of title 26, and has notified the corporation in accordance with procedures prescribed by the corporation, that it wishes to have the provisions of this part apply to it,

(4)(A) established and maintained by a society, order, or association described in section 501(c)(8) or (9) of title 26, if no part of the contributions to or under the plan is made by employers of participants in the plan, or

(B) of which a trust described in section 501(c)(18) of title 26 is a part;

(5) which has not at any time after September 2, 1974, provided for employer contributions;

(6) which is unfunded and which is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(7) which is established and maintained outside of the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens;

(8) which is maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of title 26 on plans to which that section applies, without regard to whether the plan is funded, and, to the extent that a separable part of a plan (as determined by the corporation) maintained by an employer is maintained for such purpose, that part shall be treated for purposes of this subchapter, as a separate plan which is an excess benefit plan;

(9) which is established and maintained exclusively for substantial owners as defined in section 1322(b)(6)[1] of this title;

(10) of an international organization which is exempt from taxation under the International Organizations Immunities Act [22 U.S.C. 288 et seq.];

(11) maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(12) which is a defined benefit plan, to the extent that it is treated as an individual account plan under paragraph (35)(B) of section 1002 of this title; or

(13) established and maintained by a professional service employer which does not at any time after September 2, 1974, have more than 25 active participants in the plan.

(c) Definitions

(1) For purposes of subsection (b)(1) of this section, the term ''individual account plan'' does not include a plan under which a fixed benefit is promised if the employer or his representative participated in the determination of that benefit.

(2) For purposes of this paragraph and for purposes of subsection (b)(13) of this section.

(A) the term ''professional service employer'' means any proprietorship, partnership, corporation, or other association or organization (i) owned or controlled by professional individuals or by executors or administrators of professional individuals, (ii) the principal business of which is the performance of professional services, and

(B) the term ''professional individuals'' includes but is not limited to, physicians, dentists, chiropractors, osteopaths, optometrists, other licensed practitioners of the healing arts, attorneys at law, public accountants, public engineers, architects, draftsmen, actuaries, psychologists, social or physical scientists, and performing artists.

(3) In the case of a plan established and maintained by more than one professional service employer, the plan shall not be treated as a plan described in subsection (b)(13) of this section if, at any time after September 2, 1974, the plan has more than 25 active participants.

(Pub. L. 93–406, title IV, § 4021, Sept. 2, 1974, 88 Stat. 1014; Pub. L. 96–364, title IV, § 402(a)(4), Sept. 26, 1980, 94 Stat. 1298; Pub. L. 101–239, title VII, §§ 7891(a)(1), 7894(g)(3)(A), Dec. 19, 1989, 103 Stat. 2445, 2451.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1935 or 1937, referred to in subsec. (b)(2), means act Aug. 29, 1935, ch. 812, 49 Stat. 867, known as the Railroad Retirement Act of 1935. The Railroad Retirement Act of 1935 was amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and was known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

Paragraph (6) of section 1322(b) of this title, referred to in subsec. (b)(9), was redesignated as par. (5) by Pub. L. 96–364, title IV, § 403(c)(4), Sept. 26, 1980, 94 Stat. 1301.

The International Organizations Immunities Act, referred to in subsec. (b)(10), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§ 288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 7894(g)(3)(A), substituted ''this subchapter applies'' for ''this section applies'' in introductory provisions.

Subsecs. (a)(1), (2), (b)(3), (4)(A), (8). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1980—Subsec. (a). Pub. L. 96–364 inserted ''unless otherwise specifically indicated in this subchapter,'' after ''For this purpose,''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7891(a)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

Amendment by section 7894(g)(3)(A) of Pub. L. 101–239 effective, except as otherwise provided, as if originally included in the provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, to which such amendment relates, see section 7894(i) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1023, 1054, 1081, 1082, 1103, 1114, 1322, 1322a, 1323, 1341, 1341a, 1343, 1344, 1365, 1461 of this title; title 26 sections 401, 412, 4972.

[1] See References in Text note below.

§ 1322. Single-employer plan benefits guaranteed

(a) Nonforfeitable benefits

Subject to the limitations contained in subsection (b) of this section, the corporation shall guarantee, in accordance with this section, the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under a single-employer plan which terminates at a time when this subchapter applies to it.

(b) Exceptions

(1) Except to the extent provided in paragraph (7)—

(A) no benefits provided by a plan which has been in effect for less than 60 months at the time the plan terminates shall be guaranteed under this section, and

(B) any increase in the amount of benefits under a plan resulting from a plan amendment which was made, or became effective, whichever is later, within 60 months before the date on which the plan terminates shall be disregarded.

(2) For purposes of this subsection, the time a successor plan (within the meaning of section 1321(a) of this title) has been in effect includes the time a previously established plan (within the meaning of section 1321(a) of this title) was in effect. For purposes of determining what benefits are guaranteed under this section in the case of a plan to which section 1321 of this title does not apply on September 3, 1974, the 60-month period referred to in paragraph (1) shall be computed beginning on the first date on which such section does apply to the plan.

(3) The amount of monthly benefits described in subsection (a) of this section provided by a plan, which are guaranteed under this section with respect to a participant, shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income from that employer was greater than during any other such period with that employer determined by dividing 1/12 of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) $750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act [42 U.S.C. 430]) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974.

The provisions of this paragraph do not apply to non-basic benefits. The maximum guaranteed monthly benefit shall not be reduced solely on account of the age of a participant in the case of a benefit payable by reason of disability that occurred on or before the termination date, if the participant demonstrates to the satisfaction of the corporation that the Social Security Administration has determined that the participant satisfies the definition of disability under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq.; 1381 et seq.], and the regulations thereunder. If a benefit payable by reason of disability is converted to an early or normal retirement benefit for reasons other than a change in the health of the participant, such early or normal retirement benefit shall be treated as a continuation of the benefit payable by reason of disability and this subparagraph shall continue to apply.

(4)(A) The actuarial value of a benefit, for purposes of this subsection, shall be determined in accordance with regulations prescribed by the corporation.

(B) For purposes of paragraph (3)—

(i) the term ''gross income'' means ''earned income'' within the meaning of section 911(b) of title 26 (determined without regard to any community property laws),

(ii) in the case of a participant in a plan under which contributions are made by more than one employer, amounts received as gross income from any employer under that plan shall be aggregated with amounts received from any other employer under that plan during the same period, and

(iii) any non-basic benefit shall be disregarded.

(5)(A) For purposes of this subchapter, the term ''substantial owner'' means an individual who—

(i) owns the entire interest in an unincorporated trade or business,

(ii) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

(iii) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii) the constructive ownership rules of section 1563(e) of title 26 shall apply (determined without regard to section 1563(e)(3)(C)). For purposes of this subchapter an individual is also treated as a substantial owner with respect to a plan if, at any time within the 60 months preceding the date on which the determination is made, he was a substantial owner under the plan.

(B) In the case of a participant in a plan under which benefits have not been increased by reason of any plan amendments and who is covered by the plan as a substantial owner, the amount of benefits guaranteed under this section shall not exceed the product of—

(i) a fraction (not to exceed 1) the numerator of which is the number of years the substantial owner was an active participant in the plan, and the denominator of which is 30, and

(ii) the amount of the substantial owner's monthly benefits guaranteed under subsection (a) of this section (as limited under paragraph (3) of this subsection).

(C) In the case of a participant in a plan, other than a plan described in subparagraph (B), who is covered by the plan as a substantial owner, the amount of the benefit guaranteed under this

section shall, under regulations prescribed by the corporation, treat each benefit increase attributable to a plan amendment as if it were provided under a new plan. The benefits guaranteed under this section with respect to all such amendments shall not exceed the amount which would be determined under subparagraph (B) if subparagraph (B) applied.

(6)(A) No benefits accrued under a plan after the date on which the Secretary of the Treasury issues notice that he has determined that any trust which is a part of a plan does not meet the requirements of section 401(a) of title 26, or that the plan does not meet the requirements of section 404(a)(2) of title 26, are guaranteed under this section unless such determination is erroneous. This subparagraph does not apply if the Secretary subsequently issues a notice that such trust meets the requirements of section 401(a) of title 26 or that the plan meets the requirements of section 404(a)(2) of title 26 and if the Secretary determines that the trust or plan has taken action necessary to meet such requirements during the period between the issuance of the notice referred to in the preceding sentence and the issuance of the notice referred to in this sentence.

(B) No benefits accrued under a plan after the date on which an amendment of the plan is adopted which causes the Secretary of the Treasury to determine that any trust under the plan has ceased to meet the requirements of section 401(a) of title 26 or that the plan has ceased to meet the requirements of section 404(a)(2) of title 26, are guaranteed under this section unless such determination is erroneous. This subparagraph shall not apply if the amendment is revoked as of the date it was first effective or amended to comply with such requirements.

(7) Benefits described in paragraph (1) are guaranteed only to the extent of the greater of—

(A) 20 percent of the amount which, but for the fact that the plan or amendment has not been in effect for 60 months or more, would be guaranteed under this section, or

(B) $20 per month,

multiplied by the number of years (but not more than 5) the plan or amendment, as the case may be, has been in effect. In determining how many years a plan or amendment has been in effect for purposes of this paragraph, the first 12 months beginning with the date on which the plan or amendment is made or first becomes effective (whichever is later) constitutes one year, and each consecutive period of 12 months thereafter constitutes an additional year. This paragraph does not apply to benefits payable under a plan unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this subchapter.

(c) Payment by corporation to participants and beneficiaries of recovery percentage of outstanding amount of benefit liabilities

(1) In addition to benefits paid under the preceding provisions of this section with respect to a terminated plan, the corporation shall pay the portion of the amount determined under paragraph (2) which is allocated with respect to each participant under section 1344(a) of this title. Such payment shall be made to such participant or to such participant's beneficiaries (including alternate payees, within the meaning of section 1056(d)(3)(K) of this title).

(2) The amount determined under this paragraph is an amount equal to the product derived by multiplying—

(A) the outstanding amount of benefit liabilities under the plan (including interest calculated from the termination date), by

(B) the applicable recovery ratio.

(3)(A) Except as provided in subparagraph (C), for purposes of this subsection, the term ''recovery ratio'' means the average ratio, with respect to prior plan terminations described in subparagraph (B), of—

(i) the value of the recovery of the corporation under section 1362, 1363, or 1364 of this title in connection with such prior terminations, to

(ii) the amount of unfunded benefit liabilities under such plans as of the termination date in connection with such prior terminations.

(B) A plan termination described in this subparagraph is a termination with respect to which—

(i) the corporation has determined the value of recoveries under section 1362, 1363, or 1364 of this title, and

(ii) notices of intent to terminate were provided after December 17, 1987, and during the 5-Federal fiscal year period ending with the fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate with respect to the plan termination for which the recovery ratio is being determined.

(C) In the case of a terminated plan with respect to which the outstanding amount of benefit liabilities exceeds $20,000,000, for purposes of this section, the term ''recovery ratio'' means, with respect to the termination of such plan, the ratio of—

(i) the value of the recoveries of the corporation under section 1362, 1363, or 1364 of this title in connection with such plan, to

(ii) the amount of unfunded benefit liabilities under such plan as of the termination date.

(4) Determinations under this subsection shall be made by the corporation. Such determinations shall be binding unless shown by clear and convincing evidence to be unreasonable.

(d) Authorization to guarantee other classes of benefits

The corporation is authorized to guarantee the payment of such other classes of benefits and to establish the terms and conditions under which such other classes of benefits are guaranteed as it determines to be appropriate.

(e) Nonforfeitability of preretirement survivor annuity

For purposes of subsection (a) of this section, a qualified preretirement survivor annuity (as defined in section 1055(e)(1) of this title) with respect to a participant under a terminated single-employer plan shall not be treated as forfeitable

solely because the participant has not died as of the termination date.

(f) Effective date of plan amendments

For purposes of this section, the effective date of a plan amendment described in section 1054(i)(1) of this title shall be the effective date of the plan of reorganization of the employer described in section 1054(i)(1) of this title or, if later, the effective date stated in such amendment.

(Pub. L. 93–406, title IV, § 4022, Sept. 2, 1974, 88 Stat. 1016; Pub. L. 96–364, title IV, § 403(c), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99–272, title XI, § 11016(c)(8), (9), Apr. 7, 1986, 100 Stat. 274; Pub. L. 100–203, title IX, § 9312(b)(3)(A), Dec. 22, 1987, 101 Stat. 1330–362; Pub. L. 101–239, title VII, §§ 7881(f)(4), (5), (11), 7891(a)(1), 7894(g)(1), (3)(B), Dec. 19, 1989, 103 Stat. 2440, 2441, 2445, 2451; Pub. L. 103–465, title VII, §§ 766(c), 777(a), Dec. 8, 1994, 108 Stat. 5037, 5049.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II, and XVI of the Act are classified generally to subchapters II (§ 401 et seq.) and XVI (§ 1381 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103–465, § 777(a), inserted at end ''The maximum guaranteed monthly benefit shall not be reduced solely on account of the age of a participant in the case of a benefit payable by reason of disability that occurred on or before the termination date, if the participant demonstrates to the satisfaction of the corporation that the Social Security Administration has determined that the participant satisfies the definition of disability under title II or XVI of the Social Security Act, and the regulations thereunder. If a benefit payable by reason of disability is converted to an early or normal retirement benefit for reasons other than a change in the health of the participant, such early or normal retirement benefit shall be treated as a continuation of the benefit payable by reason of disability and this subparagraph shall continue to apply.''

Subsec. (f). Pub. L. 103–465, § 766(c), added subsec. (f).

1989—Subsec. (a). Pub. L. 101–239, § 7894(g)(3)(B), substituted ''this subchapter'' for ''section 1321 of this title''.

Subsec. (b)(2). Pub. L. 101–239, § 7894(g)(1), substituted ''60-month'' for ''60 month''.

Subsec. (b)(4)(B)(i), (5)(A), (6). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (c)(1). Pub. L. 101–239, § 7881(f)(11), substituted ''under section 1344(a) of this title. Such payment shall be made to such participant'' for ''under section 1344(a) of this title, to such participant''.

Pub. L. 101–239, § 7881(f)(4), struck out ''(in the case of a deceased participant)'' before ''to such participant's beneficiaries''.

Subsec. (c)(3)(B)(ii). Pub. L. 101–239, § 7881(f)(5), inserted before period at end '', and during the 5-Federal fiscal year period ending with the fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate with respect to the plan termination for which the recovery ratio is being determined''.

1987—Subsecs. (c) to (e). Pub. L. 100–203 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (b)(7). Pub. L. 99–272, § 11016(c)(8), in provisions following subpar. (B) substituted ''12 months beginning with'' for ''12 months following''.

Subsec. (d). Pub. L. 99–272, § 11016(c)(9), added subsec. (d).

1980—Subsec. (a). Pub. L. 96–364, § 403(c)(2), inserted '', in accordance with this section,'' after ''guarantee'' and ''single-employer'' before ''plan which'', and struck out ''the terms of'' after ''under''.

Subsec. (b). Pub. L. 96–364, § 403(c)(3), (4), in par. (1) substituted ''(7)'' for ''(8)'', struck out par. (5) relating to receipt of a life annuity commencing at age 65, and redesignated pars. (6) to (8) as (5) to (7), respectively.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 766(c) of Pub. L. 103–465 applicable to plan amendments adopted on or after Dec. 8, 1994, see section 766(d) of Pub. L. 103–465, set out as a note under section 401 of Title 26, Internal Revenue Code.

Section 777(b) of Pub. L. 103–465 provided that: ''The amendment made by this section [amending this section] shall be effective for plan terminations under section 4041(c) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1341(c)] with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act [29 U.S.C. 1342], or under section 4042 of such Act with respect to which proceedings are instituted by the corporation, on or after the date of enactment of this Act [Dec. 8, 1994].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(4), (5), (11) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

Amendment by section 7894(g)(1), (3)(B) of Pub. L. 101–239 effective, except as otherwise provided, as if originally included in the provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, to which such amendment relates, see section 7894(i) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

TRANSITIONAL RULE REGARDING AMENDMENTS BY SECTION 9312 OF PUB. L. 100–203

Section 9312(b)(3)(B) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VII, § 7881(f)(1), (6), Dec. 19, 1989, 103 Stat. 2440, provided that:

''(i) IN GENERAL.—In the case of any plan termination to which the amendments made by this section [amend-

ing sections 1301, 1305, 1322, 1341, 1342, 1349, 1362, 1364, and 1368 of this title and repealing section 1349 of this title] apply and with respect to which notices of intent to terminate were provided on or before December 17, 1990—

''(I) subparagraph (A) of section 4022(c)(3) of ERISA [29 U.S.C. 1322(c)(3)(A)] (as amended by this paragraph) shall not apply, and

''(II) subparagraph (C) of section 4022(c)(3) of ERISA (as so amended) shall apply irrespective of the outstanding amount of benefit liabilities under the plan.

''(ii) [Repealed. Pub. L. 101–239, title VII, § 7881(f)(6), Dec. 19, 1989, 103 Stat. 2440.]''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1301, 1305, 1306, 1321, 1322a, 1322b, 1341, 1343, 1344, 1346, 1350, 1361, 1412, 1461 of this title; title 26 section 404; title 42 section 430.

§ 1322a. Multiemployer plan benefits guaranteed

(a) Benefits of covered plans subject to guarantee

The corporation shall guarantee, in accordance with this section, the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under a multiemployer plan—

(1) to which this subchapter applies, and

(2) which is insolvent under section 1426(b) or 1441(d)(2) of this title.

(b) Benefits or benefit increases not eligible for guarantee

(1)(A) For purposes of this section, a benefit or benefit increase which has been in effect under a plan for less than 60 months is not eligible for the corporation's guarantee. For purposes of this paragraph, any month of any plan year during which the plan was insolvent or terminated (within the meaning of section 1341a(a)(2) of this title) shall not be taken into account.

(B) For purposes of this section, a benefit or benefit increase which has been in effect under a plan for less than 60 months before the first day of the plan year for which an amendment reducing the benefit or the benefit increase is taken into account under section 1425(a)(2) of this title in determining the minimum contribution requirement for the plan year under section 1423(b) of this title is not eligible for the corporation's guarantee.

(2) For purposes of this section—

(A) the date on which a benefit or a benefit increase under a plan is first in effect is the later of—

(i) the date on which the documents establishing or increasing the benefit were executed, or

(ii) the effective date of the benefit or benefit increase;

(B) the period of time for which a benefit or a benefit increase has been in effect under a successor plan includes the period of time for which the benefit or benefit increase was in effect under a previously established plan; and

(C) in the case of a plan to which section 1321 of this title did not apply on September 3, 1974, the time periods referred to in this section are computed beginning on the date on which section 1321 of this title first applies to the plan.

(c) Determinations respecting amount of guarantee

(1) Except as provided in subsection (g) of this section, the monthly benefit of a participant or a beneficiary which is guaranteed under this section by the corporation with respect to a plan is the product of—

(A) 100 percent of the accrual rate up to $5, plus 75 percent of the lesser of—

(i) $15, or

(ii) the accrual rate, if any, in excess of $5, and

(B) the number of the participant's years of credited service.

(2) Except as provided in paragraph (6) of this subsection and in subsection (g) of this section, in applying paragraph (1) with respect to a plan described in paragraph (5)(A), the term ''65 percent'' shall be substituted in paragraph (1)(A) for the term ''75 percent''.

(3) For purposes of this section, the accrual rate is—

(A) the monthly benefit of the participant or beneficiary which is described in subsection (a) of this section and which is eligible for the corporation's guarantee under subsection (b) of this section, except that such benefit shall be—

(i) no greater than the monthly benefit which would be payable under the plan at normal retirement age in the form of a single life annuity, and

(ii) determined without regard to any reduction under section 411(a)(3)(E) of title 26; divided by

(B) the participant's years of credited service.

(4) For purposes of this subsection—

(A) a year of credited service is a year in which the participant completed—

(i) a full year of participation in the plan, or

(ii) any period of service before participation which is credited for purposes of benefit accrual as the equivalent of a full year of participation;

(B) any year for which the participant is credited for purposes of benefit accrual with a fraction of the equivalent of a full year of participation shall be counted as such a fraction of a year of credited service; and

(C) years of credited service shall be determined by including service which may otherwise be disregarded by the plan under section 411(a)(3)(E) of title 26.

(5)(A) A plan is described in this subparagraph if—

(i) the first plan year—

(I) in which the plan is insolvent under section 1426(b) or 1441(d)(2) of this title, and

(II) for which benefits are required to be suspended under section 1426 of this title, or reduced or suspended under section 1441 of this title, until they do not exceed the levels provided in this subsection,

begins before the year 2000; and

(ii) the plan sponsor has not established to the satisfaction of the corporation that, dur-

ing the period of 10 consecutive plan years (or of such lesser number of plan years for which the plan was maintained) immediately preceding the first plan year to which the minimum funding standards of section 412 of title 26 apply, the total amount of the contributions required under the plan for each plan year was at least equal to the sum of—

(I) the normal cost for that plan year, and

(II) the interest for the plan year (determined under the plan) on the unfunded past service liability for that plan year, determined as of the beginning of that plan year.

(B) A plan shall not be considered to be described in subparagraph (A) if—

(i) it is established to the satisfaction of the corporation that—

(I) the total amount of the contributions received under the plan for the plan years for which the actuarial valuations (performed during the period described in subparagraph (A)(ii)) were performed was at least equal to the sum described in subparagraph (A)(ii); or

(II) the rates of contribution to the plan under the collective bargaining agreements negotiated when the findings of such valuations were available were reasonably expected to provide such contributions;

(ii) the number of actuarial valuations performed during the period described in subparagraph (A)(ii) is—

(I) at least 2, in any case in which such period consists of more than 6 plan years, and

(II) at least 1, in any case in which such period consists of 6 or fewer plan years; and

(iii) if the proposition described in clause (i)(I) is to be established, the plan sponsor certifies that to the best of the plan sponsor's knowledge there is no information available which establishes that the total amount of the contributions received under the plan for any plan year during the period described in subparagraph (A)(ii) for which no valuation was performed is less than the sum described in subparagraph (A)(ii).

(6) Notwithstanding paragraph (2), in the case of a plan described in paragraph (5)(A), if for any period of 3 consecutive plan years beginning with the first plan year to which the minimum funding standards of section 412 of title 26 apply, the value of the assets of the plan for each such plan year is an amount equal to at least 8 times the benefit payments for such plan year—

(A) paragraph (2) shall not apply to such plan; and

(B) the benefit of a participant or beneficiary guaranteed by the corporation with respect to the plan shall be an amount determined under paragraph (1).

(d) Amount of guarantee of reduced benefit

In the case of a benefit which has been reduced under section 411(a)(3)(E) of title 26, the corporation shall guarantee the lesser of—

(1) the reduced benefit, or

(2) the amount determined under subsection (c) of this section.

(e) Ineligibility of benefits for guarantee

The corporation shall not guarantee benefits under a multiemployer plan which, under section 1322(b)(6) of this title, would not be guaranteed under a single-employer plan.

(f) Study, report, etc., respecting premium increase in existing basic-benefit guarantee levels; Congressional procedures applicable for revision of schedules

(1) No later than 5 years after September 26, 1980, and at least every fifth year thereafter, the corporation shall—

(A) conduct a study to determine—

(i) the premiums needed to maintain the basic-benefit guarantee levels for multiemployer plans described in subsection (c) of this section, and

(ii) whether the basic-benefit guarantee levels for multiemployer plans may be increased without increasing the basic-benefit premiums for multiemployer plans under this subchapter; and

(B) report such determinations to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(2)(A) If the last report described in paragraph (1) indicates that a premium increase is necessary to support the existing basic-benefit guarantee levels for multiemployer plans, the corporation shall transmit to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate by March 31 of any calendar year in which congressional action under this subsection is requested—

(i) a revised schedule of basic-benefit guarantees for multiemployer plans which would be necessary in the absence of an increase in premiums approved in accordance with section 1306(b) of this title,

(ii) a revised schedule of basic-benefit premiums for multiemployer plans which is necessary to support the existing basic-benefit guarantees for such plans, and

(iii) a revised schedule of basic-benefit guarantees for multiemployer plans for which the schedule of premiums necessary is higher than the existing premium schedule for such plans but lower than the revised schedule of premiums for such plans specified in clause (ii), together with such schedule of premiums.

(B) The revised schedule of increased premiums referred to in subparagraph (A)(ii) or (A)(iii) shall go into effect as approved by the enactment of a joint resolution.

(C) If an increase in premiums is not so enacted, the revised guarantee schedule described in subparagraph (A)(i) shall go into effect on the first day of the second calendar year following the year in which such revised guarantee schedule was submitted to the Congress.

(3)(A) If the last report described in paragraph (1) indicates that basic-benefit guarantees for multiemployer plans can be increased without increasing the basic-benefit premiums for multiemployer plans under this subchapter, the corporation shall submit to the Committee on

Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate by March 31 of the calendar year in which congressional action under this paragraph is requested—

(i) a revised schedule of increases in the basic-benefit guarantees which can be supported by the existing schedule of basic-benefit premiums for multiemployer plans, and

(ii) a revised schedule of basic-benefit premiums sufficient to support the existing basic-benefit guarantees.

(B) The revised schedules referred to in subparagraph (A)(i) or subparagraph (A)(ii) shall go into effect as approved by the enactment of a joint resolution.

(4)(A) The succeeding subparagraphs of this paragraph are enacted by the Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of joint resolutions (as defined in subparagraph (B)). Such subparagraphs shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any rule of that House.

(B) For purposes of this subsection, ''joint resolution'' means only a joint resolution, the matter after the resolving clause of which is as follows: ''The proposed schedule described in trans- mitted to the Congress by the Pension Benefit Guaranty Corporation on is hereby approved.'', the first blank space therein being filled with ''section 4022A(f)(2)(A)(ii) of the Employee Retirement Income Security Act of 1974'', ''section 4022A(f)(2)(A)(iii) of the Employee Retirement Income Security Act of 1974'', ''section 4022A(f)(3)(A)(i) of the Employee Retirement Income Security Act of 1974'', or ''section 4022A(f)(3)(A)(ii) of the Employee Retirement Income Security Act of 1974'' (whichever is applicable), and the second blank space therein being filled with the date on which the corporation's message proposing the revision was submitted.

(C) The procedure for disposition of a joint resolution shall be the procedure described in section 1306(b)(4) through (7) of this title.

(g) Guarantee of payment of other classes of benefits and establishment of terms and conditions of guarantee; promulgation of regulations for establishment of supplemental program to guarantee benefits otherwise ineligible; status of benefits; applicability of revised schedule of premiums

(1) The corporation may guarantee the payment of such other classes of benefits under multiemployer plans, and establish the terms and conditions under which those other classes of benefits are guaranteed, as it determines to be appropriate.

(2)(A) The corporation shall prescribe regulations to establish a supplemental program to guarantee benefits under multiemployer plans which would be guaranteed under this section but for the limitations in subsection (c) of this section. Such regulations shall be proposed by the corporation no later than the end of the 18th calendar month following September 26, 1980. The regulations shall make coverage under the supplemental program available no later than January 1, 1983. Any election to participate in the supplemental program shall be on a voluntary basis, and a plan electing such coverage shall continue to pay the premiums required under section 1306(a)(2)(B) of this title to the revolving fund used pursuant to section 1305 of this title in connection with benefits otherwise guaranteed under this section. Any such election shall be irrevocable, except to the extent otherwise provided by regulations prescribed by the corporation.

(B) The regulations prescribed under this paragraph shall provide—

(i) that a plan must elect coverage under the supplemental program within the time permitted by the regulations;

(ii) unless the corporation determines otherwise, that a plan may not elect supplemental coverage unless the value of the assets of the plan as of the end of the plan year preceding the plan year in which the election must be made is an amount equal to 15 times the total amount of the benefit payments made under the plan for that year; and

(iii) such other reasonable terms and conditions for supplemental coverage, including funding standards and any other reasonable limitations with respect to plans or benefits covered or to means of program financing, as the corporation determines are necessary and appropriate for a feasible supplemental program consistent with the purposes of this subchapter.

(3) Any benefits guaranteed under this subsection shall be considered nonbasic benefits for purposes of this subchapter.

(4)(A) No revised schedule of premiums under this subsection, after the initial schedule, shall go into effect unless—

(i) the revised schedule is submitted to the Congress, and

(ii) a joint resolution described in subparagraph (B) is not enacted before the close of the 60th legislative day after such schedule is submitted to the Congress.

(B) For purposes of subparagraph (A), a joint resolution described in this subparagraph is a joint resolution the matter after the resolving clause of which is as follows: ''The revised premium schedule transmitted to the Congress by the Pension Benefit Guaranty Corporation under section 4022A(g)(4) of the Employee Retirement Income Security Act of 1974 on is hereby disapproved.'', the blank space therein being filled with the date on which the revised schedule was submitted.

(C) For purposes of subparagraph (A), the term ''legislative day'' means any calendar day other than a day on which either House is not in session because of a sine die adjournment or an adjournment of more than 3 days to a day certain.

(D) The procedure for disposition of a joint resolution described in subparagraph (B) shall be

the procedure described in paragraphs (4) through (7) of section 1306(b) of this title.

(5) Regulations prescribed by the corporation to carry out the provisions of this subsection, may, to the extent provided therein, supersede the requirements of sections 1426, 1431, and 1441 of this title, and the requirements of section 418E of title 26, but only with respect to benefits guaranteed under this subsection.

(h) Applicability to nonforfeitable benefits accrued as of July 30, 1980; manner and extent of guarantee

(1) Except as provided in paragraph (3), subsections (b) and (c) of this section shall not apply with respect to the nonforfeitable benefits accrued as of July 29, 1980, with respect to a participant or beneficiary under a multiemployer plan—

(1) who is in pay status on July 29, 1980, or

(2) who is within 36 months of the normal retirement age and has a nonforfeitable right to a pension as of that date.

(2) The benefits described in paragraph (1) shall be guaranteed by the corporation in the same manner and to the same extent as benefits are guaranteed by the corporation under section 1322 of this title (without regard to this section).

(3) This subsection does not apply with respect to a plan for plan years following a plan year—

(A) in which the plan has terminated within the meaning of section 1341a(a)(2) of this title, or

(B) in which it is determined by the corporation that substantially all the employers have withdrawn from the plan pursuant to an agreement or arrangement to withdraw.

(Pub. L. 93–406, title IV, § 4022A, as added Pub. L. 93–364, title I, § 102, Sept. 26, 1980, 94 Stat. 1210; amended Pub. L. 99–272, title XI, § 11005(c)(4)–(12), Apr. 7, 1986, 100 Stat. 242; Pub. L. 101–239, title VII, §§ 7891(a)(1), 7893(b), 7894(g)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2445, 2447, 2451.)

REFERENCES IN TEXT

Section 4022A(f)(2)(A)(ii), (iii), (3)(A)(i), and (ii) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(4)(B), is classified to subsec. (f)(2)(A)(ii), (iii), (3)(A)(i) and (ii) of this section.

Section 4022A(g)(4) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (g)(4)(B), is classified to subsec. (g)(4) of this section.

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–239, § 7894(g)(3)(C)(i), substituted ''this subchapter'' for ''section 1321 of this title''.

Subsecs. (c)(3)(A)(ii), (4)(C), (5)(A)(ii), (6), (d), (g)(5). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (f)(2)(B). Pub. L. 101–239, § 7893(b), substituted ''the enactment'' for ''the the enactment''.

1986—Subsec. (f)(2)(B). Pub. L. 99–272, § 11005(c)(4), substituted ''the enactment of a joint resolution'' for ''Congress by concurrent resolution''.

Subsec. (f)(2)(C). Pub. L. 99–272, § 11005(c)(5), substituted ''so enacted'' for ''approved''.

Subsec. (f)(3)(B). Pub. L. 99–272, § 11005(c)(6), substituted ''enactment of a joint resolution'' for ''Congress by concurrent resolution''.

Subsec. (f)(4)(A). Pub. L. 99–272, § 11005(c)(7), substituted ''joint'' for ''concurrent''.

Subsec. (f)(4)(B). Pub. L. 99–272, § 11005(c)(8), substituted ''joint'' for ''concurrent'' in two places and ''The'' for ''That the Congress favors the'' and inserted ''is hereby approved''.

Subsec. (f)(4)(C). Pub. L. 99–272, § 11005(c)(9), substituted ''joint'' for ''concurrent''.

Subsec. (g)(4)(A)(ii). Pub. L. 99–272, § 11005(c)(10), substituted ''joint'' for ''concurrent'' and ''enacted'' for ''adopted''.

Subsec. (g)(4)(B). Pub. L. 99–272, § 11005(c)(11), substituted ''joint'' for ''concurrent'' in two places and ''The'' for ''That the Congress disapproves the'' and inserted ''is hereby disapproved''.

Subsec. (g)(4)(D). Pub. L. 99–272, § 11005(c)(12), substituted ''joint'' for ''concurrent''.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7891(a)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

Amendment by section 7893(b) of Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101–239, set out as a note under section 1002 of this title.

Section 7894(g)(3)(C)(ii) of Pub. L. 101–239 provided that: ''The amendment made by clause (i) [amending this section] shall take effect as if originally included in section 102 of the Multiemployer Pension Plan Amendments Act of 1980 [Pub. L. 96–364].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective for plan years commencing after Dec. 31, 1985, see section 11005(d)(1) of Pub. L. 99–272, set out as a note under section 1306 of this title.

EFFECTIVE DATE

Section effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1301, 1305, 1306, 1322b, 1346, 1361, 1411, 1413, 1424, 1425, 1426, 1441, 1461 of this title; title 26 sections 418C, 418D, 418E.

§ 1322b. Aggregate limit on benefits guaranteed; criteria applicable

(a) Notwithstanding sections 1322 and 1322a of this title, no person shall receive from the corporation pursuant to a guarantee by the corporation of basic benefits with respect to a participant under all multiemployer and single employer plans an amount, or amounts, with an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the amount determined under section 1322(b)(3)(B) of this title as of the date of the last plan termination.

(b) For purposes of this section—

(1) the receipt of benefits under a multiemployer plan receiving financial assistance from the corporation shall be considered the receipt of amounts from the corporation pursuant to a guarantee by the corporation of basic benefits

except to the extent provided in regulations prescribed by the corporation, and

(2) the date on which a multiemployer plan, whether or not terminated, begins receiving financial assistance from the corporation shall be considered a date of plan termination.

(Pub. L. 93–406, title IV, § 4022B, as added Pub. L. 96–364, title I, § 102, Sept. 26, 1980, 94 Stat. 1215.)

EFFECTIVE DATE

Section effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1344, 1346 of this title.

§ 1323. Plan fiduciaries

Notwithstanding any other provision of this chapter, a fiduciary of a plan to which section 1321 of this title applies is not in violation of the fiduciary's duties as a result of any act or of any withholding of action required by this subchapter.

(Pub. L. 93–406, title IV, § 4023, as added Pub. L. 96–364, title IV, § 402(a)(5), Sept. 26, 1980, 94 Stat. 1298.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of the title and Tables.

PRIOR PROVISIONS

A prior section 1323, Pub. L. 93–406, title IV, § 4023, Sept. 2, 1974, 88 Stat. 1019, related to contingent liability coverage, prior to repeal by Pub. L. 96–364, title I, § 107, Sept. 26, 1980, 94 Stat. 1267.

EFFECTIVE DATE

Section effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SUBTITLE C—TERMINATIONS

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1361, 1371 of this title.

§ 1341. Termination of single-employer plans

(a) General rules governing single-employer plan terminations

(1) Exclusive means of plan termination

Except in the case of a termination for which proceedings are otherwise instituted by the corporation as provided in section 1342 of this title, a single-employer plan may be terminated only in a standard termination under subsection (b) of this section or a distress termination under subsection (c) of this section.

(2) 60-day notice of intent to terminate

Not less than 60 days before the proposed termination date of a standard termination under subsection (b) of this section or a distress termination under subsection (c) of this section, the plan administrator shall provide to each affected party (other than the corporation in the case of a standard termination) a written notice of intent to terminate stating that such termination is intended and the proposed termination date. The written notice shall include any related additional information required in regulations of the corporation.

(3) Adherence to collective bargaining agreements

The corporation shall not proceed with a termination of a plan under this section if the termination would violate the terms and conditions of an existing collective bargaining agreement. Nothing in the preceding sentence shall be construed as limiting the authority of the corporation to institute proceedings to involuntarily terminate a plan under section 1342 of this title.

(b) Standard termination of single-employer plans

(1) General requirements

A single-employer plan may terminate under a standard termination only if—

(A) the plan administrator provides the 60-day advance notice of intent to terminate to affected parties required under subsection (a)(2) of this section,

(B) the requirements of subparagraphs (A) and (B) of paragraph (2) are met,

(C) the corporation does not issue a notice of noncompliance under subparagraph (C) of paragraph (2), and

(D) when the final distribution of assets occurs, the plan is sufficient for benefit liabilities (determined as of the termination date).

(2) Termination procedure

(A) Notice to the corporation

As soon as practicable after the date on which the notice of intent to terminate is provided pursuant to subsection (a)(2) of this section, the plan administrator shall send a notice to the corporation setting forth—

(i) certification by an enrolled actuary—

(I) of the projected amount of the assets of the plan (as of a proposed date of final distribution of assets),

(II) of the actuarial present value (as of such date) of the benefit liabilities (determined as of the proposed termination date) under the plan, and

(III) that the plan is projected to be sufficient (as of such proposed date of final distribution) for such benefit liabilities,

(ii) such information as the corporation may prescribe in regulations as necessary to enable the corporation to make determinations under subparagraph (C), and

(iii) certification by the plan administrator that—

(I) the information on which the enrolled actuary based the certification under clause (i) is accurate and complete, and

(II) the information provided to the corporation under clause (ii) is accurate and complete.

Clause (i) and clause (iii)(I) shall not apply to a plan described in section 412(i) of title 26.

(B) Notice to participants and beneficiaries of benefit commitments [1]

No later than the date on which a notice is sent by the plan administrator under subparagraph (A), the plan administrator shall send a notice to each person who is a participant or beneficiary under the plan—

(i) specifying the amount of the benefit liabilities (if any) attributable to such person as of the proposed termination date and the benefit form on the basis of which such amount is determined, and

(ii) including the following information used in determining such benefit liabilities:

(I) the length of service,

(II) the age of the participant or beneficiary,

(III) wages,

(IV) the assumptions, including the interest rate, and

(V) such other information as the corporation may require.

Such notice shall be written in such manner as is likely to be understood by the participant or beneficiary and as may be prescribed in regulations of the corporation.

(C) Notice from the corporation of noncompliance

(i) In general

Within 60 days after receipt of the notice under subparagraph (A), the corporation shall issue a notice of noncompliance to the plan administrator if—

(I) it determines, based on the notice sent under paragraph (2)(A) of subsection (b) of this section, that there is reason to believe that the plan is not sufficient for benefit liabilities,

(II) it otherwise determines, on the basis of information provided by affected parties or otherwise obtained by the corporation, that there is reason to believe that the plan is not sufficient for benefit liabilities, or

(III) it determines that any other requirement of subparagraph (A) or (B) of this paragraph or of subsection (a)(2) of this section has not been met, unless it further determines that the issuance of such notice would be inconsistent with the interests of participants and beneficiaries.

(ii) Extension

The corporation and the plan administrator may agree to extend the 60-day period referred to in clause (i) by a written agreement signed by the corporation and the plan administrator before the expiration of the 60-day period. The 60-day period shall be extended as provided in the agreement and may be further extended by subsequent written agreements signed by the corporation and the plan administrator made before the expiration of a previously agreed upon extension of the 60-day period. Any extension may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator.

(D) Final distribution of assets in absence of notice of noncompliance

The plan administrator shall commence the final distribution of assets pursuant to the standard termination of the plan as soon as practicable after the expiration of the 60-day (or extended) period referred to in subparagraph (C), but such final distribution may occur only if—

(i) the plan administrator has not received during such period a notice of noncompliance from the corporation under subparagraph (C), and

(ii) when such final distribution occurs, the plan is sufficient for benefit liabilities (determined as of the termination date).

(3) Methods of final distribution of assets

(A) In general

In connection with any final distribution of assets pursuant to the standard termination of the plan under this subsection, the plan administrator shall distribute the assets in accordance with section 1344 of this title. In distributing such assets, the plan administrator shall—

(i) purchase irrevocable commitments from an insurer to provide all benefit liabilities under the plan, or

(ii) in accordance with the provisions of the plan and any applicable regulations, otherwise fully provide all benefit liabilities under the plan. A transfer of assets to the corporation in accordance with section 1350 of this title on behalf of a missing participant shall satisfy this subparagraph with respect to such participant.

(B) Certification to the corporation of final distribution of assets

Within 30 days after the final distribution of assets is completed pursuant to the standard termination of the plan under this subsection, the plan administrator shall send a notice to the corporation certifying that the assets of the plan have been distributed in accordance with the provisions of subparagraph (A) so as to pay all benefit liabilities under the plan.

(4) Continuing authority

Nothing in this section shall be construed to preclude the continued exercise by the corporation, after the termination date of a plan terminated in a standard termination under this subsection, of its authority under section 1303 of this title with respect to matters relating to the termination. A certification under paragraph (3)(B) shall not affect the corporation's obligations under section 1322 of this title.

(c) Distress termination of single-employer plans

(1) In general

A single-employer plan may terminate under a distress termination only if—

[1] So in original. Probably should be ''benefit liabilities''.

(A) the plan administrator provides the 60-day advance notice of intent to terminate to affected parties required under subsection (a)(2) of this section,

(B) the requirements of subparagraph (A) of paragraph (2) are met, and

(C) the corporation determines that the requirements of subparagraph (B) of paragraph (2) are met.

(2) Termination requirements

(A) Information submitted to the corporation

As soon as practicable after the date on which the notice of intent to terminate is provided pursuant to subsection (a)(2) of this section, the plan administrator shall provide the corporation, in such form as may be prescribed by the corporation in regulations, the following information:

(i) such information as the corporation may prescribe by regulation as necessary to make determinations under subparagraph (B) and paragraph (3);

(ii) unless the corporation determines the information is not necessary for purposes of paragraph (3)(A) or section 1362 of this title, certification by an enrolled actuary of—

(I) the amount (as of the proposed termination date and, if applicable, the proposed distribution date) of the current value of the assets of the plan,

(II) the actuarial present value (as of such dates) of the benefit liabilities under the plan,

(III) whether the plan is sufficient for benefit liabilities as of such dates,

(IV) the actuarial present value (as of such dates) of benefits under the plan guaranteed under section 1322 of this title, and

(V) whether the plan is sufficient for guaranteed benefits as of such dates;

(iii) in any case in which the plan is not sufficient for benefit liabilities as of such date—

(I) the name and address of each participant and beneficiary under the plan as of such date, and

(II) such other information as shall be prescribed by the corporation by regulation as necessary to enable the corporation to be able to make payments to participants and beneficiaries as required under section 1322(c) of this title; and

(iv) certification by the plan administrator that—

(I) the information on which the enrolled actuary based the certifications under clause (ii) is accurate and complete, and

(II) the information provided to the corporation under clauses (i) and (iii) is accurate and complete.

Clause (ii) and clause (iv)(I) shall not apply to a plan described in section 412(i) of title 26.

(B) Determination by the corporation of necessary distress criteria

Upon receipt of the notice of intent to terminate required under subsection (a)(2) of this section and the information required under subparagraph (A), the corporation shall determine whether the requirements of this subparagraph are met as provided in clause (i), (ii), or (iii). The requirements of this subparagraph are met if each person who is (as of the proposed termination date) a contributing sponsor of such plan or a member of such sponsor's controlled group meets the requirements of any of the following clauses:

(i) Liquidation in bankruptcy or insolvency proceedings

The requirements of this clause are met by a person if—

(I) such person has filed or has had filed against such person, as of the proposed termination date, a petition seeking liquidation in a case under title 11 or under any similar Federal law or law of a State or political subdivision of a State (or a case described in clause (ii) filed by or against such person has been converted, as of such date, to a case in which liquidation is sought), and

(II) such case has not, as of the proposed termination date, been dismissed.

(ii) Reorganization in bankruptcy or insolvency proceedings

The requirements of this clause are met by a person if—

(I) such person has filed, or has had filed against such person, as of the proposed termination date, a petition seeking reorganization in a case under title 11 or under any similar law of a State or political subdivision of a State (or a case described in clause (i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought),

(II) such case has not, as of the proposed termination date, been dismissed,

(III) such person timely submits to the corporation any request for the approval of the bankruptcy court (or other appropriate court in a case under such similar law of a State or political subdivision) of the plan termination, and

(IV) the bankruptcy court (or such other appropriate court) determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination.

(iii) Termination required to enable payment of debts while staying in business or to avoid unreasonably burdensome pension costs caused by declining workforce

The requirements of this clause are met by a person if such person demonstrates to the satisfaction of the corporation that—

(I) unless a distress termination occurs, such person will be unable to pay such person's debts when due and will be unable to continue in business, or

(II) the costs of providing pension coverage have become unreasonably burdensome to such person, solely as a result of a decline of such person's workforce covered as participants under all single-employer plans of which such person is a contributing sponsor.

(C) Notification of determinations by the corporation

The corporation shall notify the plan administrator as soon as practicable of its determinations made pursuant to subparagraph (B).

(3) Termination procedure

(A) Determinations by the corporation relating to plan sufficiency for guaranteed benefits and for benefit liabilities

If the corporation determines that the requirements for a distress termination set forth in paragraphs (1) and (2) are met, the corporation shall—

(i) determine that the plan is sufficient for guaranteed benefits (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation,

(ii) determine that the plan is sufficient for benefit liabilities (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation, and

(iii) notify the plan administrator of the determinations made pursuant to this subparagraph as soon as practicable.

(B) Implementation of termination

After the corporation notifies the plan administrator of its determinations under subparagraph (A), the termination of the plan shall be carried out as soon as practicable, as provided in clause (i), (ii), or (iii).

(i) Cases of sufficiency for benefit liabilities

In any case in which the corporation determines that the plan is sufficient for benefit liabilities, the plan administrator shall proceed to distribute the plan's assets, and make certification to the corporation with respect to such distribution, in the manner described in subsection (b)(3) of this section, and shall take such other actions as may be appropriate to carry out the termination of the plan.

(ii) Cases of sufficiency for guaranteed benefits without a finding of sufficiency for benefit liabilities

In any case in which the corporation determines that the plan is sufficient for guaranteed benefits, but further determines that it is unable to determine that the plan is sufficient for benefit liabilities on the basis of the information made available to it, the plan administrator shall proceed to distribute the plan's assets in the manner described in subsection (b)(3) of this section, make certification to the corporation that the distribution has occurred, and take such actions as may be appropriate to carry out the termination of the plan.

(iii) Cases without any finding of sufficiency

In any case in which the corporation determines that it is unable to determine that the plan is sufficient for guaranteed benefits on the basis of the information made available to it, the corporation shall commence proceedings in accordance with section 1342 of this title.

(C) Finding after authorized commencement of termination that plan is unable to pay benefits

(i) Finding with respect to benefit liabilities which are not guaranteed benefits

If, after the plan administrator has begun to terminate the plan as authorized under subparagraph (B)(i), the plan administrator finds that the plan is unable, or will be unable, to pay benefit liabilities which are not benefits guaranteed by the corporation under section 1322 of this title, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter.

(ii) Finding with respect to guaranteed benefits

If, after the plan administrator has begun to terminate the plan as authorized by subparagraph (B)(i) or (ii), the plan administrator finds that the plan is unable, or will be unable, to pay all benefits under the plan which are guaranteed by the corporation under section 1322 of this title, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation concurs in the finding of the plan administrator (or the corporation itself makes such a finding), the corporation shall institute appropriate proceedings under section 1342 of this title.

(D) Administration of the plan during interim period

(i) In general

The plan administrator shall—

(I) meet the requirements of clause (ii) for the period commencing on the date on which the plan administrator provides a notice of distress termination to the corporation under subsection (a)(2) of this section and ending on the date on which the plan administrator receives notification from the corporation of its determinations under subparagraph (A), and

(II) meet the requirements of clause (ii) commencing on the date on which the plan administrator or the corporation makes a finding under subparagraph (C)(ii).

(ii) Requirements

The requirements of this clause are met by the plan administrator if the plan administrator—

(I) refrains from distributing assets or taking any other actions to carry out the proposed termination under this subsection,

(II) pays benefits attributable to employer contributions, other than death benefits, only in the form of an annuity,

(III) does not use plan assets to purchase irrevocable commitments to provide benefits from an insurer, and

(IV) continues to pay all benefit liabilities under the plan, but, commencing on the proposed termination date, limits the payment of benefits under the plan to those benefits which are guaranteed by the corporation under section 1322 of this title or to which assets are required to be allocated under section 1344 of this title.

In the event the plan administrator is later determined not to have met the requirements for distress termination, any benefits which are not paid solely by reason of compliance with subclause (IV) shall be due and payable immediately (together with interest, at a reasonable rate, in accordance with regulations of the corporation).

(d) Sufficiency

For purposes of this section—

(1) Sufficiency for benefit liabilities

A single-employer plan is sufficient for benefit liabilities if there is no amount of unfunded benefit liabilities under the plan.

(2) Sufficiency for guaranteed benefits

A single-employer plan is sufficient for guaranteed benefits if there is no amount of unfunded guaranteed benefits under the plan.

(e) Limitation on the conversion of a defined benefit plan to a defined contribution plan

The adoption of an amendment to a plan which causes the plan to become a plan described in section 1321(b)(1) of this title constitutes a termination of the plan. Such an amendment may take effect only after the plan satisfies the requirements for standard termination under subsection (b) of this section or distress termination under subsection (c) of this section.

(Pub. L. 93–406, title IV, §4041, Sept. 2, 1974, 88 Stat. 1020; Pub. L. 96–364, title IV, §403(d), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99–272, title XI, §§11007, 11008(a), (b), 11009, Apr. 7, 1986, 100 Stat. 244, 247, 248; Pub. L. 100–203, title IX, §§9312(c)(1), (2), 9313(a)(1)–(2)(E), (b)(1)–(5), 9314(a), Dec. 22, 1987, 101 Stat. 1330–363 to 1330–366; Pub. L. 101–239, title VII, §§7881(f)(7), (g)(1)–(6), 7893(c), (d), Dec. 19, 1989, 103 Stat. 2440, 2441, 2447; Pub. L. 103–465, title VII, §§776(b)(3), 778(a)(1), (b)(1), Dec. 8, 1994, 108 Stat. 5048–5050.)

REFERENCES IN TEXT

Chapter 11, referred to in subsec. (c)(2)(B)(ii)(IV), probably means chapter 11 of Title 11, Bankruptcy.

AMENDMENTS

1994—Subsec. (b)(2)(C)(i)(I). Pub. L. 103–465, §778(a)(1)(A), added subcl. (I) and struck out former subcl. (I) which read as follows: ''It has reason to believe that any requirement of subsection (a)(2) of this section or subparagraph (A) or (B) has not been met, or''.

Subsec. (b)(2)(C)(i)(III). Pub. L. 103–465, §778(a)(1)(B), (C), added subcl. (III).

Subsec. (b)(3)(A)(ii). Pub. L. 103–465, §776(b)(3), inserted at end ''A transfer of assets to the corporation in accordance with section 1350 of this title on behalf of a missing participant shall satisfy this subparagraph with respect to such participant.''

Subsec. (c)(2)(B)(i)(I). Pub. L. 103–465, §778(b)(1), inserted ''Federal law or'' after ''under any similar''.

1989—Subsec. (b)(2)(A). Pub. L. 101–239, §7881(g)(6), realigned margin of last sentence.

Subsec. (b)(2)(B). Pub. L. 101–239, §7893(c), realigned margin of last sentence.

Subsec. (b)(3)(B). Pub. L. 101–239, §7881(g)(4), inserted period at end.

Subsec. (c)(2)(A)(ii). Pub. L. 101–239, §7881(g)(3), in introductory provisions, inserted ''unless the corporation determines the information is not necessary for purposes of paragraph (3)(A) or section 1362 of this title,'' before ''certification'', in subcl. (I), inserted ''and, if applicable, the proposed distribution date'' after ''termination date'', and in subcls. (II) to (V), substituted ''dates'' for ''date''.

Subsec. (c)(2)(A)(iii)(II). Pub. L. 101–239, §7881(f)(7)(A), (B), struck out ''(or its designee under section 1349(b) of this title)'' before ''to be able'' and substituted ''section 1322(c) of this title'' for ''section 1349 of this title''.

Subsec. (c)(2)(B). Pub. L. 101–239, §7881(g)(2), substituted ''(as of the proposed termination date)'' for ''(as of the termination date)''.

Subsec. (c)(2)(B)(i), (ii). Pub. L. 101–239, §7881(g)(5), made clarifying amendment to directory language of Pub. L. 100–203, §9313(b)(3), see 1987 Amendment note below.

Subsec. (c)(3)(C)(i). Pub. L. 101–239, §7881(f)(7)(C), struck out at end ''If the corporation concurs in the finding of the plan administrator (or the corporation itself makes such a finding) the corporation shall take the actions set forth in subparagraph (B)(ii)(II) relating to the trust established for purposes of section 1349 of this title.''

Subsec. (c)(3)(D). Pub. L. 101–239, §7893(d)(1), realigned margins.

Subsec. (c)(3)(D)(ii)(I). Pub. L. 101–239, §7893(d)(2), substituted ''under this subsection'' for ''of this subsection''.

Subsec. (d)(1). Pub. L. 101–239, §7881(g)(1), substituted ''sufficient for benefit liabilities'' for ''sufficient for benefit commitments''.

1987—Subsec. (b)(1)(D). Pub. L. 100–203, §9313(a)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''when the final distribution of assets occurs, the plan is sufficient for benefit commitments (determined as of the termination date).''

Subsec. (b)(2)(A). Pub. L. 100–203, §9314(a)(1)(B), inserted at end ''Clause (i) and clause (iii)(I) shall not apply to a plan described in section 412(i) of title 26.''

Subsec. (b)(2)(A)(i). Pub. L. 100–203, §9313(a)(2)(A), substituted ''benefit liabilities'' for ''benefit commitments'' in subcls. (II) and (III).

Subsec. (b)(2)(A)(iii). Pub. L. 100–203, §9314(a)(1)(A), added cl. (iii) and struck out former cl. (iii) which read as follows: ''certification by the plan administrator that the information on which the enrolled actuary based the certification under clause (i) and the information provided to the corporation under clause (ii) are accurate and complete.''

Subsec. (b)(2)(B). Pub. L. 100–203, §9313(a)(2)(B), substituted ''the amount of the benefit liabilities (if any) attributable to such person'' for ''the amount of such person's benefit commitments (if any)'' in cl. (i), and ''such benefit liabilities'' for ''such benefit commitments'' in cl. (ii).

Subsec. (b)(2)(C)(i)(II), (D)(ii). Pub. L. 100–203, §9313(a)(2)(A), substituted ''benefit liabilities'' for ''benefit commitments''.

Subsec. (b)(3)(A)(i). Pub. L. 100–203, § 9313(a)(2)(C)(i), added cl. (i) and struck out former cl. (i) which read as follows: ''purchase irrevocable commitments from an insurer to provide the benefit liabilities under the plan and all other benefits (if any) under the plan to which assets are required to be allocated under section 1344 of this title, or''.

Pub. L. 100–203, § 9313(a)(2)(A), substituted ''benefit liabilities'' for ''benefit commitments''.

Subsec. (b)(3)(A)(ii). Pub. L. 100–203, § 9313(a)(2)(C)(i), added cl. (ii) and struck out former cl. (ii) which read as follows: ''in accordance with the provisions of the plan and any applicable regulations of the corporation, otherwise fully provide the benefit liabilities under the plan and all other benefits (if any) under the plan to which assets are required to be allocated under section 1344 of this title.''

Pub. L. 100–203, § 9313(a)(2)(A), substituted ''benefit liabilities'' for ''benefit commitments''.

Subsec. (b)(3)(B). Pub. L. 100–203, § 9313(a)(2)(C)(ii), substituted ''so as to pay all benefit liabilities under the plan'' for ''so as to pay the benefit liabilities under the plan and all other benefits under the plan to which assets are required to be allocated under section 1344 of this title.''

Pub. L. 100–203, § 9313(a)(2)(A), substituted ''benefit liabilities'' for ''benefit commitments''.

Subsec. (c)(2)(A). Pub. L. 100–203, § 9314(a)(1)(B), inserted at end ''Clause (ii) and clause (iv)(I) shall not apply to a plan described in section 412(i) of title 26.''

Subsec. (c)(2)(A)(ii). Pub. L. 100–203, § 9313(a)(2)(D), substituted ''benefit liabilities'' for ''benefit commitments'' in subcls. (II) and (III).

Subsec. (c)(2)(A)(iii). Pub. L. 100–203, § 9313(a)(2)(D), substituted ''benefit liabilities'' for ''benefit commitments'' in introductory provision.

Subsec. (c)(2)(A)(iv). Pub. L. 100–203, § 9314(a)(2)(A), added cl. (iv) and struck out former cl. (iv) which read as follows: ''certification by the plan administrator that the information on which the enrolled actuary based the certifications under clause (ii) and the information provided to the corporation under clauses (i) and (iii) are accurate and complete.''

Subsec. (c)(2)(B). Pub. L. 100–203, § 9313(b)(1)(A), substituted ''a member'' for ''a substantial member'' in introductory provisions.

Subsec. (c)(2)(B)(i). Pub. L. 100–203, § 9313(b)(3), as amended by Pub. L. 101–239, § 7881(g)(5), substituted ''proposed termination date'' for ''termination date'' in subcls. (I) and (II).

Pub. L. 100–203, § 9313(b)(4), inserted ''(or a case described in clause (ii) filed by or against such person has been converted, as of such date, to a case in which liquidation is sought)'' in subcl. (I).

Subsec. (c)(2)(B)(ii)(I). Pub. L. 100–203, § 9313(b)(3), as amended by Pub. L. 101–239, § 7881(g)(5), substituted ''proposed termination date'' for ''termination date''.

Subsec. (c)(2)(B)(ii)(II). Pub. L. 100–203 § 9313(b)(5)(A), struck out ''and'' at end.

Pub. L. 100–203, § 9313(b)(3), as amended by Pub. L. 101–239, § 7881(g)(5), substituted ''proposed termination date'' for ''termination date''.

Subsec. (c)(2)(B)(ii)(III). Pub. L. 100–203, § 9313(b)(5)(C), added subcl. (III). Former subcl. (III) redesignated (IV).

Subsec. (c)(2)(B)(ii)(IV). Pub. L. 100–203, § 9313(b)(2), (5)(B), (D), redesignated former subcl. (III) as (IV) and substituted ''(or such other appropriate court) determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination'' for ''(or other appropriate court in a case under such similar law of a State or political subdivision) approves the termination''.

Subsec. (c)(2)(C), (D). Pub. L. 100–203, § 9313(b)(1)(B), redesignated former subpar. (D) as (C) and struck out former subpar. (C) which read as follows: ''For purposes of subparagraph (B), the term 'substantial member' of a controlled group means a person whose assets comprise 5 percent or more of the total assets of the controlled group as a whole.''

Subsec. (c)(3)(A). Pub. L. 100–203, § 9313(a)(2)(D), substituted ''benefit liabilities'' for ''benefit commitments'' in heading and in cl. (ii).

Subsec. (c)(3)(B)(i). Pub. L. 100–203, § 9313(a)(2)(D), substituted in heading and text ''benefit liabilities'' for ''benefit commitments''.

Subsec. (c)(3)(B)(ii). Pub. L. 100–203, § 9313(a)(2)(D), substituted in heading and text ''benefit liabilities'' for ''benefit commitments''.

Pub. L. 100–203, § 9312(c)(1), struck out former subcl. (I) designation and substituted comma for dash before ''the plan administrator'', substituted period for '', and'' after ''termination of the plan'', and struck out former subcl. (II) which read as follows: ''the corporation shall establish a separate trust in connection with the plan for purposes of section 1349 of this title.''

Subsec. (c)(3)(B)(iii). Pub. L. 100–203, § 9312(c)(2), struck out former subcl. (I) designation and substituted comma for dash before ''the corporation shall commence'', substituted period for '', and'' after ''section 1342 of this title'', and struck out former subcl. (II) which read as follows: ''the corporation shall establish a separate trust in connection with the plan for purposes of section 1349 of this title unless the corporation determines that all benefit commitments under the plan are benefits guaranteed by the corporation under section 1322 of this title.''

Subsec. (c)(3)(C)(i). Pub. L. 100–203, § 9313(a)(2)(D), substituted in heading and text ''benefit liabilities'' for ''benefit commitments''.

Subsec. (c)(3)(D)(ii)(IV). Pub. L. 100–203, § 9313(a)(2)(D), substituted ''benefit liabilities'' for ''benefit commitments''.

Subsec. (d)(1). Pub. L. 100–203, § 9313(a)(2)(E), substituted in text, ''no amount of unfunded benefit liabilities'' for ''no amount of unfunded benefit commitments'' and in heading, ''benefit liabilities'' for ''benefit commitments''.

1986—Subsec. (a). Pub. L. 99–272, § 11007(a), added subsec. (a) relating to general rules governing single-employer plan terminations and struck out former subsec. (a) relating to filing of notice that the plan is to be terminated.

Subsec. (b). Pub. L. 99–272, §§ 11007(a), 11008(a), added subsec. (b) relating to standard termination of single-employer plans and struck out former subsec. (b) relating to notice of sufficiency of plan assets.

Subsec. (c). Pub. L. 99–272, §§ 11007(a), 11009(a), added subsec. (c) relating to distress termination of single-employer plans and struck out former subsec. (c) relating to a finding and notice of inability to determine that the assets of a plan are sufficient.

Subsec. (d). Pub. L. 99–272, § 11007(b), amended subsec. (d) generally, substituting provisions relating to sufficiency for benefit commitments and for guaranteed benefits, for provisions relating to an extension of the 90-day period upon written agreement.

Subsec. (e). Pub. L. 99–272, § 11009(b), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to notification and appropriate proceedings upon a finding after authorized commencement of termination that the plan is unable to pay basic benefits when due.

Subsec. (f). Pub. L. 99–272, § 11009(b)(2), redesignated subsec. (f) as (e).

Pub. L. 99–272, § 11008(b), amended subsec. (f) generally, substituting provisions relating to limitation on the conversion of a defined benefit plan to a defined contribution plan, for provisions relating to amendment of a plan with respect to which basic benefits are guaranteed.

1980—Subsec. (a). Pub. L. 96–364, § 403(d)(2), inserted ''single-employer'' after ''termination of a''.

Subsec. (g). Pub. L. 96–364, § 403(d)(3), struck out subsec. (g) which related to petition to the appropriate court for appointment of a trustee.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 776(b)(3) of Pub. L. 103–465 effective with respect to distributions that occur in plan

years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103–465, set out as a note under section 1056 of this title.

Section 778(a)(2) of Pub. L. 103–465 provided that: ''The amendments made by this subsection [amending this section] shall apply to any plan termination under section 4041(b) of the Employee Retirement Income Security Act of 1974 [subsec. (b) of this section] with respect to which the Pension Benefit Guaranty Corporation has not, as of the date of enactment of this Act [Dec. 8, 1994], issued a notice of noncompliance that has become final, or otherwise issued a final determination that the plan termination is nullified.''

Section 778(b)(2) of Pub. L. 103–465 provided that: ''The amendment made by this subsection [amending this section] shall be effective as if included in the Single-Employer Pension Plan Amendments Act of 1986 [Pub. L. 99–272, title XI].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(7), (g)(1)–(6) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 7893(c), (d) of Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9312(c)(1), (2) of Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 of this title.

Amendment by section 9313(a)(1)–(2)(E), (b)(1)–(5) of Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, see section 9313(c) of Pub. L. 100–203, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 11019 of title XI of Pub. L. 99–272 provided that:

''(a) IN GENERAL.—Except as otherwise provided in this title, the amendments made by this title [see Short Title of 1986 Amendment note set out under section 1001 of this title] shall be effective as of January 1, 1986, except that such amendments shall not apply with respect to terminations for which—

''(1) notices of intent to terminate were filed with the Pension Benefit Guaranty Corporation under section 4041 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1341] before such date, or

''(2) proceedings were commenced under section 4042 of such Act [29 U.S.C. 1342] before such date.

''(b) TRANSITIONAL RULES.—

''(1) IN GENERAL.—In the case of a single-employer plan termination for which a notice of intent to terminate was filed with the Pension Benefit Guaranty Corporation under section 4041 of the Employee Retirement Income Security Act of 1974 (as in effect before the amendments made by this title) [29 U.S.C. 1341] on or after January 1, 1986, but before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this title [see Short Title of 1986 Amendment note set out under section 1001 of this title] shall apply with respect to such termination, as modified by paragraphs (2) and (3).

''(2) DEEMED COMPLIANCE WITH NOTICE REQUIREMENTS.—The requirements of subsections (a)(2), (b)(1)(A), and (c)(1)(A) of section 4041 of the Employee Retirement Income Security Act of 1974 (as amended by this title) [29 U.S.C. 1341] shall be considered to have been met with respect to a termination described in paragraph (1) if—

''(A) the plan administrator provided notice to the participants in the plan regarding the termination in compliance with applicable regulations of the Pension Benefit Guaranty Corporation as in effect on the date of the notice, and

''(B) the notice of intent to terminate provided to the Pension Benefit Guaranty Corporation in connection with the termination was filed with the Corporation not less than 10 days before the proposed date of termination specified in the notice.

For purposes of section 4041 of such Act (as amended by this title), the proposed date of termination specified in the notice of intent to terminate referred to in subparagraph (B) shall be considered the proposed termination date.

''(3) SPECIAL TERMINATION PROCEDURES.—

''(A) IN GENERAL.—This paragraph shall apply with respect to any termination described in paragraph (1) if, within 90 days after the date of enactment of this Act [Apr. 7, 1986], the plan administrator notifies the Corporation in writing—

''(i) that the plan administrator wishes the termination to proceed as a standard termination under section 4041(b) of the Employee Retirement Income Security Act of 1974 (as amended by this title) [29 U.S.C. 1341(b)] in accordance with subparagraph (B),

''(ii) that the plan administrator wishes the termination to proceed as a distress termination under section 4041(c) of such Act (as amended by this title) in accordance with subparagraph (C), or

''(iii) that the plan administrator wishes to stop the termination proceedings in accordance with subparagraph (D).

''(B) TERMINATIONS PROCEEDING AS STANDARD TERMINATION.—

''(i) TERMINATIONS FOR WHICH SUFFICIENCY NOTICES HAVE NOT BEEN ISSUED.—

''(I) IN GENERAL.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(i) and with respect to which a notice of sufficiency has not been issued by the Corporation before the date of the enactment of this Act, if, during the 90-day period commencing on the date of the notice required in subclause (II), all benefit commitments under the plan have been satisfied, the termination shall be treated as a standard termination under section 4041(b) of such Act (as amended by this title).

''(II) SPECIAL NOTICE REGARDING SUFFICIENCY FOR TERMINATIONS FOR WHICH NOTICES OF SUFFICIENCY HAVE NOT BEEN ISSUED AS OF DATE OF ENACTMENT.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(i) and with respect to which a notice of sufficiency has not been issued by the Corporation before the date of the enactment of this Act, the Corporation shall make the determinations described in section 4041(c)(3)(A)(i) and (ii) (as amended by this title) and notify the plan administrator of such determinations as provided in section 4041(c)(3)(A)(iii) (as amended by this title).

''(ii) TERMINATIONS FOR WHICH NOTICES OF SUFFICIENCY HAVE BEEN ISSUED.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(i)

and with respect to which a notice of sufficiency has been issued by the Corporation before the date of the enactment of this Act, clause (i)(I) shall apply, except that the 90-day period referred to in clause (i)(I) shall begin on the date of the enactment of this Act.

''(C) TERMINATIONS PROCEEDING AS DISTRESS TERMINATION.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(ii), if the requirements of section 4041(c)(2)(B) of such Act (as amended by this title) are met, the termination shall be treated as a distress termination under section 4041(c) of such Act (as amended by this title).

''(D) TERMINATION OF PROCEEDINGS BY PLAN ADMINISTRATOR.—

''(i) IN GENERAL.—Except as provided in clause (ii), in the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(iii), the termination shall not take effect.

''(ii) TERMINATIONS WITH RESPECT TO WHICH FINAL DISTRIBUTION OF ASSETS HAS COMMENCED.—Clause (i) shall not apply with respect to a termination with respect to which the final distribution of assets has commenced before the date of the enactment of this Act unless, within 90 days after the date of the enactment of this Act, the plan has been restored in accordance with procedures issued by the Corporation pursuant to subsection (c).

''(E) AUTHORITY OF CORPORATION TO EXTEND 90-DAY PERIODS TO PERMIT STANDARD TERMINATION.—The Corporation may, on a case-by-case basis in accordance with subsection (c), provide for extensions of the applicable 90-day period referred to in clause (i) or (ii) of subparagraph (B) if it is demonstrated to the satisfaction of the Corporation that—

''(i) the plan could not otherwise, pursuant to the preceding provisions of this paragraph, terminate in a termination treated as a standard termination under section 4041(b) of the Employee Retirement Income Security Act of 1974 (as amended by this title), and

''(ii) the extension would result in a greater likelihood that benefit commitments under the plan would be paid in full,

except that any such period may not be so extended beyond one year after the date of the enactment of this Act.

''(c) AUTHORITY TO PRESCRIBE TEMPORARY PROCEDURES.—The Pension Benefit Guaranty Corporation may prescribe temporary procedures for purposes of carrying out the amendments made by this title [see Short Title of 1986 Amendment note set out under section 1001 of this title] during the 180-day period beginning on the date described in subsection (a).''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

60-DAY EXTENSION BY PENSION BENEFIT GUARANTY CORPORATION FOR NOTICE OF NONCOMPLIANCE

Section 11008(c) of Pub. L. 99–272 provided that: ''In the case of a standard termination of a plan under section 4041(b) of the Employee Retirement Income Security Act of 1974 (as amended by this section) [29 U.S.C. 1341(b)] with respect to which a notice of intent to terminate is filed before 120 days after the date of the enactment of this Act [Apr. 7, 1986], the Pension Benefit Guaranty Corporation may, without the consent of the plan administrator, extend the 60-day period under section 4041(b)(2)(C)(i) of such Act (as so amended) for a period not to exceed 60 days.''

SPECIAL TEMPORARY RULE FOR TERMINATION OF SINGLE-EMPLOYER PLAN

Section 11008(d) of Pub. L. 99–272 provided that:

''(1) REQUIREMENTS TO BE MET BEFORE FINAL DISTRIBUTION OF ASSETS.—In the case of the termination of a single-employer plan described in paragraph (2) with respect to which the amount payable to the employer pursuant to section 4044(d) [29 U.S.C. 1344(d)] exceeds $1,000,000 (determined as of the proposed date of final distribution of assets), the final distribution of assets pursuant to such termination may not occur unless the Pension Benefit Guaranty Corporation—

''(A) determines that the assets of the plan are sufficient for benefit commitments (within the meaning of section 4041(d)(1) of the Employee Retirement Income Security Act of 1974 (as amended by section 11007) [29 U.S.C. 1341(d)(1)]) under the plan, and

''(B) issues to the plan administrator a written notice setting forth the determination described in subparagraph (A).

''(2) PLANS TO WHICH SUBSECTION APPLIES.—A single-employer plan is described in this paragraph if—

''(A) the plan administrator has filed a notice of intent to terminate with the Pension Benefit Guaranty Corporation, and—

''(i) the filing was made before January 1, 1986, and the Corporation has not issued a notice of sufficiency for such plan before the date of the enactment of this Act [Apr. 7, 1986], or

''(ii) the filing is made on or after January 1, 1986, and before 60 days after the date of the enactment of this Act and the Corporation has not issued a notice of sufficiency for such plan before the date of the enactment of this Act, and

''(B) of the persons who are (as of the termination date) participants in the plan, the lesser of 10 percent or 200 have filed complaints with the Corporation regarding such termination—

''(i) in the case of plans described in subparagraph (A)(i), before 15 days after the date of the enactment of this Act, or

''(ii) in any other case, before the later of 15 days after the date of the enactment of this Act or 45 days after the date of the filing of such notice.

''(3) CONSIDERATION OF COMPLAINTS.—The Corporation shall consider and respond to such complaints not later than 90 days after the date on which the Corporation makes the determination described in paragraph (1)(A). The Corporation may hold informal hearings to expedite consideration of such complaints. Any such hearing shall be exempt from the requirements of chapter 5 of title 5, United States Code.

''(4) DELAY ON ISSUANCE OF NOTICE.—

''(A) GENERAL RULE.—Except as provided in subparagraph (B), the Corporation shall not issue any notice described in paragraph (1)(B) until 90 days after the date on which the Corporation makes the determination described in paragraph (1)(A).

''(B) EXCEPTION IN CASES OF SUBSTANTIAL BUSINESS HARDSHIP.—Except in the case of an acquisition, takeover, or leveraged buyout, the preceding provisions of this subsection shall not apply if the contributing sponsor demonstrates to the satisfaction of the Corporation that the contributing sponsor is experiencing substantial business hardship. For purposes of this subparagraph, a contributing sponsor shall be considered as experiencing substantial business hardship if the contributing sponsor has been operating, and can demonstrate that the contributing sponsor will continue to operate, at an economic loss.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1342, 1348, 1350, 1362, 1363, 1364, 1370 of this title; title 26 sections 404, 418, 4972.

§ 1341a. Termination of multiemployer plans

(a) Determinative factors

Termination of a multiemployer plan under this section occurs as a result of—

(1) the adoption after September 26, 1980, of a plan amendment which provides that participants will receive no credit for any purpose under the plan for service with any employer after the date specified by such amendment;

(2) the withdrawal of every employer from the plan, within the meaning of section 1383 of this title, or the cessation of the obligation of all employers to contribute under the plan; or

(3) the adoption of an amendment to the plan which causes the plan to become a plan described in section 1321(b)(1) of this title.

(b) Date of termination

(1) The date on which a plan terminates under paragraph (1) or (3) of subsection (a) of this section is the later of—

(A) the date on which the amendment is adopted, or

(B) the date on which the amendment takes effect.

(2) The date on which a plan terminates under paragraph (2) of subsection (a) of this section is the earlier of—

(A) the date on which the last employer withdraws, or

(B) the first day of the first plan year for which no employer contributions were required under the plan.

(c) Duties of plan sponsor of amended plan

Except as provided in subsection (f)(1) of this section, the plan sponsor of a plan which terminates under paragraph (2) of subsection (a) of this section shall—

(1) limit the payment of benefits to benefits which are nonforfeitable under the plan as of the date of the termination, and

(2) pay benefits attributable to employer contributions, other than death benefits, only in the form of an annuity, unless the plan assets are distributed in full satisfaction of all nonforfeitable benefits under the plan.

(d) Duties of plan sponsor of nonoperative plan

The plan sponsor of a plan which terminates under paragraph (2) of subsection (a) of this section shall reduce benefits and suspend benefit payments in accordance with section 1441 of this title.

(e) Amount of contribution of employer under amended plan for each plan year subsequent to plan termination date

In the case of a plan which terminates under paragraph (1) or (3) of subsection (a) of this section, the rate of an employer's contributions under the plan for each plan year beginning on or after the plan termination date shall equal or exceed the highest rate of employer contributions at which the employer had an obligation to contribute under the plan in the 5 preceding plan years ending on or before the plan termination date, unless the corporation approves a reduction in the rate based on a finding that the plan is or soon will be fully funded.

(f) Payment of benefits; reporting requirements for terminated plans and rules and standards for administration of such plans

(1) The plan sponsor of a terminated plan may authorize the payment other than in the form of an annuity of a participant's entire nonforfeitable benefit attributable to employer contributions, other than a death benefit, if the value of the entire nonforfeitable benefit does not exceed $1,750. The corporation may authorize the payment of benefits under the terms of a terminated plan other than nonforfeitable benefits, or the payment other than in the form of an annuity of benefits having a value greater than $1,750, if the corporation determines that such payment is not adverse to the interest of the plan's participants and beneficiaries generally and does not unreasonably increase the corporation's risk of loss with respect to the plan.

(2) The corporation may prescribe reporting requirements for terminated plans, and rules and standards for the administration of such plans, which the corporation considers appropriate to protect the interests of plan participants and beneficiaries or to prevent unreasonable loss to the corporation.

(Pub. L. 93–406, title IV, § 4041A, as added Pub. L. 96–364, title I, § 103, Sept. 26, 1980, 94 Stat. 1216.)

EFFECTIVE DATE

Section effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1081, 1322a, 1342, 1348, 1383, 1396, 1412, 1413, 1421, 1441, 1461 of this title; title 26 sections 412, 418.

§ 1342. Institution of termination proceedings by the corporation

(a) Authority to institute proceedings to terminate a plan

The corporation may institute proceedings under this section to terminate a plan whenever it determines that—

(1) the plan has not met the minimum funding standard required under section 412 of title 26, or has been notified by the Secretary of the Treasury that a notice of deficiency under section 6212 of title 26 has been mailed with respect to the tax imposed under section 4971(a) of title 26,

(2) the plan will be unable to pay benefits when due,

(3) the reportable event described in section 1343(c)(7) of this title has occurred, or

(4) the possible long-run loss of the corporation with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.

The corporation shall as soon as practicable institute proceedings under this section to terminate a single-employer plan whenever the corporation determines that the plan does not have assets available to pay benefits which are currently due under the terms of the plan. The corporation may prescribe a simplified procedure to follow in terminating small plans as long as that procedure includes substantial safeguards for the rights of the participants and beneficiaries under the plans, and for the employers who maintain such plans (including the requirement for a court decree under subsection (c) of this section). Notwithstanding any other provision of this subchapter, the corporation is au-

thorized to pool assets of terminated plans for purposes of administration, investment, payment of liabilities of all such terminated plans, and such other purposes as it determines to be appropriate in the administration of this subchapter.

(b) Appointment of trustee

(1) Whenever the corporation makes a determination under subsection (a) of this section with respect to a plan or is required under subsection (a) of this section to institute proceedings under this section, it may, upon notice to the plan, apply to the appropriate United States district court for the appointment of a trustee to administer the plan with respect to which the determination is made pending the issuance of a decree under subsection (c) of this section ordering the termination of the plan. If within 3 business days after the filing of an application under this subsection, or such other period as the court may order, the administrator of the plan consents to the appointment of a trustee, or fails to show why a trustee should not be appointed, the court may grant the application and appoint a trustee to administer the plan in accordance with its terms until the corporation determines that the plan should be terminated or that termination is unnecessary. The corporation may request that it be appointed as trustee of a plan in any case.

(2) Notwithstanding any other provision of this subchapter—

(A) upon the petition of a plan administrator or the corporation, the appropriate United States district court may appoint a trustee in accordance with the provisions of this section if the interests of the plan participants would be better served by the appointment of the trustee, and

(B) upon the petition of the corporation, the appropriate United States district court shall appoint a trustee proposed by the corporation for a multiemployer plan which is in reorganization or to which section 1341a(d) of this title applies, unless such appointment would be adverse to the interests of the plan participants and beneficiaries in the aggregate.

(3) The corporation and plan administrator may agree to the appointment of a trustee without proceeding in accordance with the requirements of paragraphs (1) and (2).

(c) Adjudication that plan must be terminated

If the corporation is required under subsection (a) of this section to commence proceedings under this section with respect to a plan or, after issuing a notice under this section to a plan administrator, has determined that the plan should be terminated, it may, upon notice to the plan administrator, apply to the appropriate United States district court for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the liability of the fund. If the trustee appointed under subsection (b) of this section disagrees with the determination of the corporation under the preceding sentence he may intervene in the proceeding relating to the application for the decree, or make application for such decree himself. Upon granting a decree for which the corporation or trustee has applied under this subsection the court shall authorize the trustee appointed under subsection (b) of this section (or appoint a trustee if one has not been appointed under such subsection and authorize him) to terminate the plan in accordance with the provisions of this subtitle. If the corporation and the plan administrator agree that a plan should be terminated and agree to the appointment of a trustee without proceeding in accordance with the requirements of this subsection (other than this sentence) the trustee shall have the power described in subsection (d)(1) of this section and, in addition to any other duties imposed on the trustee under law or by agreement between the corporation and the plan administrator, the trustee is subject to the duties described in subsection (d)(3) of this section. Whenever a trustee appointed under this subchapter is operating a plan with discretion as to the date upon which final distribution of the assets is to be commenced, the trustee shall notify the corporation at least 10 days before the date on which he proposes to commence such distribution.

(3)[1] In the case of a proceeding initiated under this section, the plan administrator shall provide the corporation, upon the request of the corporation, the information described in clauses (ii), (iii), and (iv) of section 1341(c)(2)(A) of this title.

(d) Powers of trustee

(1)(A) A trustee appointed under subsection (b) of this section shall have the power—

(i) to do any act authorized by the plan or this subchapter to be done by the plan administrator or any trustee of the plan;

(ii) to require the transfer of all (or any part) of the assets and records of the plan to himself as trustee;

(iii) to invest any assets of the plan which he holds in accordance with the provisions of the plan, regulations of the corporation, and applicable rules of law;

(iv) to limit payment of benefits under the plan to basic benefits or to continue payment of some or all of the benefits which were being paid prior to his appointment;

(v) in the case of a multiemployer plan, to reduce benefits or suspend benefit payments under the plan, give appropriate notices, amend the plan, and perform other acts required or authorized by subtitle (E) of this subchapter to be performed by the plan sponsor or administrator;

(vi) to do such other acts as he deems necessary to continue operation of the plan without increasing the potential liability of the corporation, if such acts may be done under the provisions of the plan; and

(vii) to require the plan sponsor, the plan administrator, any contributing or withdrawn employer, and any employee organization representing plan participants to furnish any information with respect to the plan which the trustee may reasonably need in order to administer the plan.

[1] So in original. No pars. (1) and (2) have been designated.

If the court to which application is made under subsection (c) of this section dismisses the application with prejudice, or if the corporation fails to apply for a decree under subsection (c) of this section, within 30 days after the date on which the trustee is appointed under subsection (b) of this section, the trustee shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of such 30-day period, and shall not be liable to the plan or any other person for his acts as trustee except for willful misconduct, or for conduct in violation of the provisions of part 4 of subtitle B of subchapter I of this chapter (except as provided in subsection (d)(1)(A)(v) of this section). The 30-day period referred to in this subparagraph may be extended as provided by agreement between the plan administrator and the corporation or by court order obtained by the corporation.

(B) If the court to which an application is made under subsection (c) of this section issues the decree requested in such application, in addition to the powers described in subparagraph (A), the trustee shall have the power—

(i) to pay benefits under the plan in accordance with the requirements of this subchapter;

(ii) to collect for the plan any amounts due the plan, including but not limited to the power to collect from the persons obligated to meet the requirements of section 1082 of this title or the terms of the plan;

(iii) to receive any payment made by the corporation to the plan under this subchapter;

(iv) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan;

(v) to issue, publish, or file such notices, statements, and reports as may be required by the corporation or any order of the court;

(vi) to liquidate the plan assets;

(vii) to recover payments under section 1345(a) of this title; and

(viii) to do such other acts as may be necessary to comply with this subchapter or any order of the court and to protect the interests of plan participants and beneficiaries.

(2) As soon as practicable after his appointment, the trustee shall give notice to interested parties of the institution of proceedings under this subchapter to determine whether the plan should be terminated or to terminate the plan, whichever is applicable. For purposes of this paragraph, the term ''interested party'' means—

(A) the plan administrator,

(B) each participant in the plan and each beneficiary of a deceased participant,

(C) each employer who may be subject to liability under section 1362, 1363, or 1364 of this title,

(D) each employer who is or may be liable to the plan under section[2] part 1 of subtitle E of this subchapter,

(E) each employer who has an obligation to contribute, within the meaning of section 1392(a) of this title, under a multiemployer plan, and

(F) each employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer described in subparagraph (C), (D), or (E).

(3) Except to the extent inconsistent with the provisions of this chapter, or as may be otherwise ordered by the court, a trustee appointed under this section shall be subject to the same duties as those of a trustee under section 704 of title 11, and shall be, with respect to the plan, a fiduciary within the meaning of paragraph (21) of section 1002 of this title and under section 4975(e) of title 26 (except to the extent that the provisions of this subchapter are inconsistent with the requirements applicable under part 4 of subtitle B of subchapter I of this chapter and of such section 4975).

(e) Filing of application notwithstanding pendency of other proceedings

An application by the corporation under this section may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

(f) Exclusive jurisdiction; stay of other proceedings

Upon the filing of an application for the appointment of a trustee or the issuance of a decree under this section, the court to which an application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of the United States having jurisdiction over cases under chapter 11 of title 11. Pending an adjudication under subsection (c) of this section such court shall stay, and upon appointment by it of a trustee, as provided in this section such court shall continue the stay of, any pending mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan or its property and any other suit against any receiver, conservator, or trustee of the plan or its property. Pending such adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the plan or any other suit against the plan.

(g) Venue

An action under this subsection may be brought in the judicial district where the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

(h) Compensation of trustee and professional service personnel appointed or retained by trustee

(1) The amount of compensation paid to each trustee appointed under the provisions of this subchapter shall require the prior approval of the corporation, and, in the case of a trustee appointed by a court, the consent of that court.

(2) Trustees shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel in accordance with regulations prescribed by the corporation.

[2] So in original.

(Pub. L. 93–406, title IV, § 4042, Sept. 2, 1974, 88 Stat. 1021; Pub. L. 95–598, title III, § 321(a), Nov. 6, 1978, 92 Stat. 2678; Pub. L. 96–364, title IV, § 402(a)(6), Sept. 26, 1980, 94 Stat. 1298; Pub. L. 99–272, title XI, §§ 11010, 11016(c)(10), (11), Apr. 7, 1986, 100 Stat. 253, 274; Pub. L. 100–203, title IX, §§ 9312(c)(3), 9314(b), 9314(b), Dec. 22, 1987, 101 Stat. 1330–363, 1330–366, 1330–367; Pub. L. 101–239, title VII, §§ 7881(g)(7), 7891(a)(1), 7893(e), Dec. 19, 1989, 103 Stat. 2441, 2445, 2447; Pub. L. 103–465, title VII, § 771(e)(2), Dec. 8, 1994, 108 Stat. 5043.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(3), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103–465 substituted ''1343(c)(7)'' for ''1343(b)(7)''.

1989—Subsec. (a). Pub. L. 101–239, § 7893(e), inserted period after ''terms of the plan'' at end of second sentence.

Pub. L. 101–239, § 7881(g)(7), made technical correction to directory language of Pub. L. 100–203, § 9314(b), see 1987 Amendment note below.

Subsecs. (a)(1), (d)(3). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1987—Subsec. (a). Pub. L. 100–203, § 9314(b), as amended by Pub. L. 101–239, § 7881(g)(7), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The corporation is authorized to pool the assets of terminated plans for purposes of administration and such other purposes, not inconsistent with its duties to the plan participants and the employer maintaining the plan under this subchapter, as it determines to be required for the efficient administration of this subchapter.'' Another section 9314(b) of Pub. L. 100–203 amended subsec. (c) of this section, see below.

Subsec. (c)(3). Pub. L. 100–203, § 9314(b), added par. (3). Another section 9314(b) of Pub. L. 100–203 amended subsec. (a) of this section, see above.

Subsec. (i). Pub. L. 100–203, § 9312(c)(3), struck out subsec. (i) which read as follows: ''In any case in which a plan is terminated under this section in a termination proceeding initiated by the corporation pursuant to subsection (a) of this section, the corporation shall establish a separate trust in connection with the plan for purposes of section 1349 of this title, unless the corporation determines that all benefit commitments under the plan are benefits guaranteed by the corporation under section 1322 of this title or that there is no amount of unfunded benefit commitments under the plan.''

1986—Pub. L. 99–272, § 11010(c), substituted ''Institution of termination proceedings by the corporation'' for ''Termination by corporation'' in section catchline.

Subsec. (a). Pub. L. 99–272, § 11010(a)(1)(B), in provision following par. (4) inserted provision that the corporation as soon as practicable institute proceedings under this section to terminate a single-employer plan whenever the corporation determines that the plan does not have assets available to pay benefits currently due under the terms of the plan.

Subsec. (a)(2). Pub. L. 99–272, § 11010(a)(1)(A), substituted ''will be'' for ''is''.

Subsec. (b)(1). Pub. L. 99–272, § 11010(a)(2)(A), inserted ''or is required under subsection (a) of this section to institute proceedings under this section,''.

Subsec. (c). Pub. L. 99–272, § 11010(a)(2)(B), substituted ''is required under subsection (a) of this section to commence proceedings under this section with respect to a plan or, after issuing a notice under this section to a plan administrator,'' for ''has issued a notice under this section to a plan administrator and (whether or not a trustee has been appointed under subsection (b) of this section)''.

Subsec. (d)(1)(B)(ii). Pub. L. 99–272, § 11016(c)(10), inserted '', including but not limited to the power to collect from the persons obligated to meet the requirements of section 1082 of this title or the terms of the plan''.

Subsec. (d)(3). Pub. L. 99–272, § 11016(c)(11), substituted ''those of a trustee under section 704 of title 11'' for ''a trustee appointed under section 75 of title 11''.

Subsec. (i). Pub. L. 99–272, § 11010(b), added subsec. (i).

1980—Subsec. (a). Pub. L. 96–364, § 402(a)(6)(A), substituted ''terminated plans'' for ''such small plans''.

Subsec. (b). Pub. L. 96–364, § 402(a)(6)(B), redesignated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (c). Pub. L. 96–364, § 402(a)(6)(C), (D), substituted ''unreasonable'' for ''further'' wherever appearing, and ''of the participants or'' for ''of the participants and''.

Subsec. (d)(1)(A). Pub. L. 96–364, § 402(a)(6)(E), added cls. (v) and (vii) and redesignated former cl. (v) as (vi).

Subsec. (d)(1)(B). Pub. L. 96–364, § 402(a)(6)(F), (G), in cl. (i) substituted ''requirements of this subchapter'' for ''allocation requirements of section 1344 of this title'', and in cl. (iv) struck out exception respecting adverse party status of corporation.

Subsec. (d)(2)(D) to (F). Pub. L. 96–364, § 402(a)(6)(H)–(J), added subpars. (D) to (F).

1978—Subsec. (f). Pub. L. 95–598 substituted ''of a court of the United States having jurisdiction over cases under chapter 11 of title 11'' for ''of a court of bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act'' in first sentence and struck out ''bankruptcy,'' before ''mortgage foreclosure'' in second sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 771(f) of Pub. L. 103–465 provided that: ''The amendments made by this section [amending this section and section 1343 of this title] shall be effective for events occurring 60 days or more after the date of enactment of this Act [Dec. 8, 1994].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(g)(7) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

Amendment by section 7893(e) of Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9312(c)(3) of Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under this section after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1103, 1104, 1303, 1305, 1307, 1341, 1344, 1347, 1348, 1350, 1362, 1363, 1364, 1370, 1413 of this title.

§ 1343. Reportable events

(a) Notification that event has occurred

Within 30 days after the plan administrator or the contributing sponsor knows or has reason to know that a reportable event described in subsection (c) of this section has occurred, he shall notify the corporation that such event has occurred, unless a notice otherwise required under this subsection has already been provided with respect to such event. The corporation is authorized to waive the requirement of the preceding sentence with respect to any or all reportable events with respect to any plan, and to require the notification to be made by including the event in the annual report made by the plan.

(b) Notification that event is about to occur

(1) The requirements of this subsection shall be applicable to a contributing sponsor if, as of the close of the preceding plan year—

(A) the aggregate unfunded vested benefits (as determined under section 1306(a)(3)(E)(iii) of this title) of plans subject to this subchapter which are maintained by such sponsor and members of such sponsor's controlled groups (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and

(B) the funded vested benefit percentage for such plans is less than 90 percent.

For purposes of subparagraph (B), the funded vested benefit percentage means the percentage which the aggregate value of the assets of such plans bears to the aggregate vested benefits of such plans (determined in accordance with section 1306(a)(3)(E)(iii) of this title).

(2) This subsection shall not apply to an event if the contributing sponsor, or the member of the contributing sponsor's controlled group to which the event relates, is—

(A) a person subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m, 78*o*(d)], or

(B) a subsidiary (as defined for purposes of such Act [15 U.S.C. 78a et seq.]) of a person subject to such reporting requirements.

(3) No later than 30 days prior to the effective date of an event described in paragraph (9), (10), (11), (12), or (13) of subsection (c) of this section, a contributing sponsor to which the requirements of this subsection apply shall notify the corporation that the event is about to occur.

(4) The corporation may waive the requirement of this subsection with respect to any or all reportable events with respect to any contributing sponsor.

(c) Enumeration of reportable events

For purposes of this section a reportable event occurs—

(1) when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 1321(a)(2) of this title, or when the Secretary of Labor determines the plan is not in compliance with subchapter I of this chapter;

(2) when an amendment of the plan is adopted if, under the amendment, the benefit payable with respect to any participant may be decreased;

(3) when the number of active participants is less than 80 percent of the number of such participants at the beginning of the plan year, or is less than 75 percent of the number of such participants at the beginning of the previous plan year;

(4) when the Secretary of the Treasury determines that there has been a termination or partial termination of the plan within the meaning of section 411(d)(3) of title 26, but the occurrence of such a termination or partial termination does not, by itself, constitute or require a termination of a plan under this subchapter;

(5) when the plan fails to meet the minimum funding standards under section 412 of title 26 (without regard to whether the plan is a plan described in section 1321(a)(2) of this title) or under section 1082 of this title;

(6) when the plan is unable to pay benefits thereunder when due;

(7) when there is a distribution under the plan to a participant who is a substantial owner as defined in section 1322(b)(6)[1] of this title if—

(A) such distribution has a value of $10,000 or more;

(B) such distribution is not made by reason of the death of the participant; and

(C) immediately after the distribution, the plan has nonforfeitable benefits which are not funded;

(8) when a plan merges, consolidates, or transfers its assets under section 1058 of this title, or when an alternative method of compliance is prescribed by the Secretary of Labor under section 1030 of this title;

(9) when, as a result of an event, a person ceases to be a member of the controlled group;

(10) when a contributing sponsor or a member of a contributing sponsor's controlled group liquidates in a case under title 11, or under any similar Federal law or law of a State or political subdivision of a State;

(11) when a contributing sponsor or a member of a contributing sponsor's controlled group declares an extraordinary dividend (as defined in section 1059(c) of title 26) or redeems, in any 12-month period, an aggregate of 10 percent or more of the total combined voting power of all classes of stock entitled to

[1] See References in Text note below.

vote, or an aggregate of 10 percent or more of the total value of shares of all classes of stock, of a contributing sponsor and all members of its controlled group;

(12) when, in any 12-month period, an aggregate of 3 percent or more of the benefit liabilities of a plan covered by this subchapter and maintained by a contributing sponsor or a member of its controlled group are transferred to a person that is not a member of the controlled group or to a plan or plans maintained by a person or persons that are not such a contributing sponsor or a member of its controlled group; or

(13) when any other event occurs that may be indicative of a need to terminate the plan and that is prescribed by the corporation in regulations.

For purposes of paragraph (7), all distributions to a participant within any 24-month period are treated as a single distribution.

(d) Notification to corporation by Secretary of the Treasury

The Secretary of the Treasury shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (4), or (5) of subsection (c) of this section occurs, or

(2) whenever any other event occurs which the Secretary of the Treasury believes indicates that the plan may not be sound.

(e) Notification to corporation by Secretary of Labor

The Secretary of Labor shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (5), or (8) of subsection (c) of this section occurs, or

(2) whenever any other event occurs which the Secretary of Labor believes indicates that the plan may not be sound.

(f) Disclosure exemption

Any information or documentary material submitted to the corporation pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

(Pub. L. 93–406, title IV, § 4043, Sept. 2, 1974, 88 Stat. 1024; Pub. L. 101–239, title VII, § 7891(a), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 103–465, title VII, § 771(a)–(e)(1), Dec. 8, 1994, 108 Stat. 5042, 5043.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (b)(2)(B), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Paragraph (6) of section 1322(b) of this title, referred to in subsec. (c)(7), was redesignated as par. (5) by Pub. L. 96–364, title IV, § 403(c)(4), Sept. 26, 1980, 94 Stat. 1301.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–465, § 771(a), (e)(1), in first sentence, inserted ''or the contributing sponsor'' after ''administrator'', substituted ''subsection (c)'' for ''subsection (b)'', and inserted before period at end '', unless a notice otherwise required under this subsection has already been provided with respect to such event'', and struck out last sentence which read as follows: ''Whenever an employer making contributions under a plan to which section 1321 of this title applies knows or has reason to know that a reportable event has occurred he shall notify the plan administrator immediately.''

Subsec. (b). Pub. L. 103–465, § 771(b), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 103–465, § 771(b), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(8) to (13). Pub. L. 103–465, § 771(c), struck out ''or'' at end of par. (8), added pars. (9) to (13), and struck out former par. (9) which read as follows: ''when any other event occurs which the corporation determines may be indicative of a need to terminate the plan.''.

Subsecs. (d), (e). Pub. L. 103–465, § 771(b), (e)(1), redesignated subsecs. (c) and (d) as (d) and (e), respectively, and substituted ''subsection (c)'' for ''subsection (b)'' in par. (1) of each subsec.

Subsec. (f). Pub. L. 103–465, § 771(d), added subsec. (f).

1989—Subsec. (b)(4). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective for events occurring 60 days or more after Dec. 8, 1994, see section 771(f) of Pub. L. 103–465, set out as a note under section 1342 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1342, 1345, 1365 of this title.

§ 1344. Allocation of assets

(a) Order of priority of participants and beneficiaries

In the case of the termination of a single-employer plan, the plan administrator shall allocate the assets of the plan (available to provide benefits) among the participants and beneficiaries of the plan in the following order:

(1) First, to that portion of each individual's accrued benefit which is derived from the participant's contributions to the plan which were not mandatory contributions.

(2) Second, to that portion of each individual's accrued benefit which is derived from the participant's mandatory contributions.

(3) Third, in the case of benefits payable as an annuity—

(A) in the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the plan, to each such benefit, based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least,

(B) in the case of a participant's or beneficiary's benefit (other than a benefit de-

scribed in subparagraph (A)) which would have been in pay status as of the beginning of such 3-year period if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of annuity under the plan) as of the beginning of such period, to each such benefit based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

For purposes of subparagraph (A), the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

(4) Fourth—

(A) to all other benefits (if any) of individuals under the plan guaranteed under this subchapter (determined without regard to section 1322b(a) of this title), and

(B) to the additional benefits (if any) which would be determined under subparagraph (A) if section 1322(b)(5) of this title did not apply.

For purposes of this paragraph, section 1321 of this title shall be applied without regard to subsection (c) thereof.

(5) Fifth, to all other nonforfeitable benefits under the plan.

(6) Sixth, to all other benefits under the plan.

(b) Adjustment of allocations; reallocations; mandatory contributions; establishment of subclasses and categories

For purposes of subsection (a) of this section—

(1) The amount allocated under any paragraph of subsection (a) of this section with respect to any benefit shall be properly adjusted for any allocation of assets with respect to that benefit under a prior paragraph of subsection (a) of this section.

(2) If the assets available for allocation under any paragraph of subsection (a) of this section (other than paragraphs (5) and (6)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in that paragraph.

(3) This paragraph applies if the assets available for allocation under paragraph (5) of subsection (a) of this section are not sufficient to satisfy in full the benefits of individuals described in that paragraph.

(A) If this paragraph applies, except as provided in subparagraph (B), the assets shall be allocated to the benefits of individuals described in such paragraph (5) on the basis of the benefits of individuals which would have been described in such paragraph (5) under the plan as in effect at the beginning of the 5-year period ending on the date of plan termination.

(B) If the assets available for allocation under subparagraph (A) are sufficient to satisfy in full the benefits described in such subparagraph (without regard to this subparagraph), then for purposes of subparagraph (A), benefits of individuals described in such subparagraph shall be determined on the basis of the plan as amended by the most recent plan amendment effective during such 5-year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in subparagraph (A) and any assets remaining to be allocated under such subparagraph shall be allocated under subparagraph (A) on the basis of the plan as amended by the next succeeding plan amendment effective during such period.

(4) If the Secretary of the Treasury determines that the allocation made pursuant to this section (without regard to this paragraph) results in discrimination prohibited by section 401(a)(4) of title 26 then, if required to prevent the disqualification of the plan (or any trust under the plan) under section 401(a) or 403(a) of title 26, the assets allocated under subsections (a)(4)(B), (a)(5), and (a)(6) of this section shall be reallocated to the extent necessary to avoid such discrimination.

(5) The term ''mandatory contributions'' means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions. For this purpose, the total amount of mandatory contributions of a participant is the amount of such contributions reduced (but not below zero) by the sum of the amounts paid or distributed to him under the plan before its termination.

(6) A plan may establish subclasses and categories within the classes described in paragraphs (1) through (6) of subsection (a) of this section in accordance with regulations prescribed by the corporation.

(c) Increase or decrease in value of assets

Any increase or decrease in the value of the assets of a single-employer plan occurring during the period beginning on the later of (1) the date a trustee is appointed under section 1342(b) of this title or (2) the date on which the plan is terminated is to be allocated between the plan and the corporation in the manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the corporation and the plan administrator in any other case. Any increase or decrease in the value of the assets of a single-employer plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the corporation.

(d) Distribution of residual assets; restrictions on reversions pursuant to recently amended plans; assets attributable to employee contributions; calculation of remaining assets

(1) Subject to paragraph (3), any residual assets of a single-employer plan may be distributed to the employer if—

(A) all liabilities of the plan to participants and their beneficiaries have been satisfied,

(B) the distribution does not contravene any provision of law, and

(C) the plan provides for such a distribution in these circumstances.

(2)(A) In determining the extent to which a plan provides for the distribution of plan assets to the employer for purposes of paragraph (1)(C), any such provision, and any amendment increasing the amount which may be distributed to the employer, shall not be treated as effective before the end of the fifth calendar year following the date of the adoption of such provision or amendment.

(B) A distribution to the employer from a plan shall not be treated as failing to satisfy the requirements of this paragraph if the plan has been in effect for fewer than 5 years and the plan has provided for such a distribution since the effective date of the plan.

(C) Except as otherwise provided in regulations of the Secretary of the Treasury, in any case in which a transaction described in section 1058 of this title occurs, subparagraph (A) shall continue to apply separately with respect to the amount of any assets transferred in such transaction.

(D) For purposes of this subsection, the term ''employer'' includes any member of the controlled group of which the employer is a member. For purposes of the preceding sentence, the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m) or (*o*) of section 414 of title 26.

(3)(A) Before any distribution from a plan pursuant to paragraph (1), if any assets of the plan attributable to employee contributions remain after satisfaction of all liabilities described in subsection (a) of this section, such remaining assets shall be equitably distributed to the participants who made such contributions or their beneficiaries (including alternate payees, within the meaning of section 1056(d)(3)(K) of this title).

(B) For purposes of subparagraph (A), the portion of the remaining assets which are attributable to employee contributions shall be an amount equal to the product derived by multiplying—

(i) the market value of the total remaining assets, by

(ii) a fraction—

(I) the numerator of which is the present value of all portions of the accrued benefits with respect to participants which are derived from participants' mandatory contributions (referred to in subsection (a)(2) of this section), and

(II) the denominator of which is the present value of all benefits with respect to which assets are allocated under paragraphs (2) through (6) of subsection (a) of this section.

(C) For purposes of this paragraph, each person who is, as of the termination date—

(i) a participant under the plan, or

(ii) an individual who has received, during the 3-year period ending with the termination date, a distribution from the plan of such individual's entire nonforfeitable benefit in the form of a single sum distribution in accordance with section 1053(e) of this title or in the form of irrevocable commitments purchased by the plan from an insurer to provide such nonforfeitable benefit,

shall be treated as a participant with respect to the termination, if all or part of the nonforfeitable benefit with respect to such person is or was attributable to participants' mandatory contributions (referred to in subsection (a)(2) of this section).

(4) Nothing in this subsection shall be construed to limit the requirements of section 4980(d) of title 26 (as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990) or section 1104(d) of this title with respect to any distribution of residual assets of a single-employer plan to the employer.

(Pub. L. 93–406, title IV, § 4044, Sept. 2, 1974, 88 Stat. 1025; Pub. L. 96–364, title IV, § 402(a)(7), Sept. 26, 1980, 94 Stat. 1299; Pub. L. 99–272, title XI, § 11016(c)(12), (13), Apr. 7, 1986, 100 Stat. 274; Pub. L. 100–203, title IX, § 9311(a)(1), (b), (c), Dec. 22, 1987, 101 Stat. 1330–359, 1330–360; Pub. L. 101–239, title VII, §§ 7881(e)(3), 7891(a)(1), 7894(g)(2), Dec. 19, 1989, 103 Stat. 2440, 2445, 2451; Pub. L. 101–508, title XII, § 12002(b)(2)(B), Nov. 5, 1990, 104 Stat. 1388–566.)

REFERENCES IN TEXT

The enactment of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (d)(4), is the enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

AMENDMENTS

1990—Subsec. (d)(4). Pub. L. 101–508 added par. (4).

1989—Subsec. (a)(1). Pub. L. 101–239, § 7894(g)(2), substituted ''accrued'' for ''accured''.

Subsec. (b)(4). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (d)(3). Pub. L. 101–239, § 7881(e)(3), made technical correction to directory language of Pub. L. 100–203, § 9311(b)(2), see 1987 Amendment note below.

1987—Subsec. (b)(4). Pub. L. 100–203, § 9311(c), struck out reference to section 405(a) of title 26.

Subsec. (d)(1). Pub. L. 100–203, § 9311(b)(1), substituted ''Subject to paragraph (3), any'' for ''Any''.

Subsec. (d)(2). Pub. L. 100–203, § 9311(a)(1)(B), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 100–203, § 9311(b)(2), as amended by Pub. L. 101–239, § 7881(e)(3), added par. (3), and struck out former par. (3) which read as follows: ''Notwithstanding the provisions of paragraph (1), if any assets of the plan attributable to employee contributions, remain after all liabilities of the plan to participants and their beneficiaries have been satisfied, such assets shall be equitably distributed to the employees who made such contributions (or their beneficiaries) in accordance with their rate of contributions.''

Pub. L. 100–203, § 9311(a)(1)(A), redesignated former par. (2) as (3).

1986—Subsec. (a). Pub. L. 99–272, § 11016(c)(12), in provision preceding par. (1) struck out ''defined benefit'' after ''single-employer''.

Subsec. (a)(4)(A). Pub. L. 99–272, § 11016(c)(13)(A), substituted ''section 1322b(a)'' for ''section 1322(b)(5)''.

Subsec. (a)(4)(B). Pub. L. 99–272, § 11016(c)(13)(B), substituted ''section 1322(b)(5)'' for ''section 1322(b)(6)''.

1980—Subsec. (a). Pub. L. 96–364, § 402(a)(7)(A), inserted ''single-employer'' before ''defined benefit''.

Subsec. (c). Pub. L. 96–364, § 402(a)(7)(B), inserted ''single-employer'' before ''plan occurring'' wherever appearing.

Subsec. (d)(1). Pub. L. 96–364, § 402(a)(7)(C), inserted ''single-employer'' after ''assets of a''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to reversions occurring after Sept. 30, 1990, but not applicable

to any reversion after Sept. 30, 1990, if (1) in the case of plans subject to subchapter III of this chapter, notice of intent to terminate under such subchapter was provided to participants (or if no participants, to Pension Benefit Guaranty Corporation) before Oct. 1, 1990, (2) in the case of plans subject to subchapter I of this chapter (and not subchapter III), notice of intent to reduce future accruals under section 1054(h) of this title was provided to participants in connection with termination before Oct. 1, 1990, (3) in the case of plans not subject to subchapter I or III of this chapter, a request for a determination letter with respect to termination was filed with Secretary of the Treasury or Secretary's delegate before Oct. 1, 1990, or (4) in the case of plans not subject to subchapter I or III of this chapter and having only one participant, a resolution terminating the plan was adopted by employer before Oct. 1, 1990, see section 12003 of Pub. L. 101–508, set out as a note under section 4980 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(e)(3) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

Amendment by section 7894(g)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if originally included in the provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, to which such amendment relates, see section 7894(i) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9311(d) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VII, §7881(e)(2), Dec. 19, 1989, 103 Stat. 2439, provided that: ''The amendments made by this section [amending this section] shall apply with respect to—

''(1) plan terminations under section 4041 of ERISA [29 U.S.C. 1341] with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987, and

''(2) plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of ERISA [29 U.S.C. 1342] after December 17, 1987.

Except as provided in subsection (a)(2) [set out below], the amendments made by subsection (a) [amending this section] shall apply to any provision of the plan or plan amendment adopted after December 17, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

TRANSITIONAL RULE RELATING TO RESTRICTIONS ON EMPLOYER REVERSIONS UPON PLAN TERMINATION PURSUANT TO RECENTLY AMENDED PLANS

Section 9311(a)(2) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VII, §7881(e)(1), (4), Dec. 19, 1989, 103 Stat. 2439, 2440, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply, in the case of plans which, as of December 17, 1987, have no provision relating to the distribution of residual plan assets upon termination, only with respect to plan amendments providing for the distribution of plan assets to the employer which are adopted after December 17, 1988.''

SPECIAL TEMPORARY RULE FOR TERMINATION OF SINGLE-EMPLOYER PLAN

For special temporary rule relating to requirements to be met before the final distribution of assets in the case of the termination of certain single-employer plans with respect to which the amount payable to the employer pursuant to subsec. (d) of this section exceeds $1,000,000, see section 11008(d) of Pub. L. 99–272, set out as a note under section 1341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1103, 1104, 1108, 1301, 1305, 1322, 1341, 1346 of this title; title 26 section 4975.

§ 1345. Recapture of payments

(a) Authorization to recover benefits

Except as provided in subsection (c) of this section, the trustee is authorized to recover for the benefit of a plan from a participant the recoverable amount (as defined in subsection (b) of this section) of all payments from the plan to him which commenced within the 3-year period immediately preceding the time the plan is terminated.

(b) Recoverable amount

For purposes of subsection (a) of this section the recoverable amount is the excess of the amount determined under paragraph (1) over the amount determined under paragraph (2).

(1) The amount determined under this paragraph is the sum of the amount of the actual payments received by the participant within the 3-year period.

(2) The amount determined under this paragraph is the sum of—

(A) the sum of the amount such participant would have received during each consecutive 12-month period within the 3 years if the participant received the benefit in the form described in paragraph (3),

(B) the sum for each of the consecutive 12-month periods of the lesser of—

(i) the excess, if any, of $10,000 over the benefit in the form described in paragraph (3), or

(ii) the excess of the actual payment, if any, over the benefit in the form described in paragraph (3), and

(C) the present value at the time of termination of the participant's future benefits guaranteed under this subchapter as if the benefits commenced in the form described in paragraph (3).

(3) The form of benefit for purposes of this subsection shall be the monthly benefit the participant would have received during the consecutive 12-month period, if he had elected at the time of the first payment made during the 3-year period, to receive his interest in the plan as a monthly benefit in the form of a life annuity commencing at the time of such first payment.

(c) Payments made on or after death or disability of participant; waiver of recovery in case of hardship

(1) In the event of a distribution described in section 1343(b)(7)[1] of this title the 3-year period referred to in subsection (b) of this section shall not end sooner than the date on which the corporation is notified of the distribution.

(2) The trustee shall not recover any payment made from a plan after or on account of the death of a participant, or to a participant who is disabled (within the meaning of section 72(m)(7) of title 26).

(3) The corporation is authorized to waive, in whole or in part, the recovery of any amount which the trustee is authorized to recover for the benefit of a plan under this section in any case in which it determines that substantial economic hardship would result to the participant or his beneficiaries from whom such amount is recoverable.

(Pub. L. 93–406, title IV, § 4045, Sept. 2, 1974, 88 Stat. 1027; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

REFERENCES IN TEXT

Section 1343(b)(7) of this title, referred to in subsec. (c)(1), was redesignated section 1343(c)(7) of this title by Pub. L. 103–465, title VII, § 771(b), Dec. 8, 1994, 108 Stat. 5042.

AMENDMENTS

1989—Subsec. (c)(2). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1342 of this title; title 26 section 6511.

§ 1346. Reports to trustee

The corporation and the plan administrator of any plan to be terminated under this subtitle shall furnish to the trustee such information as the corporation or the plan administrator has and, to the extent practicable, can obtain regarding—

(1) the amount of benefits payable with respect to each participant under a plan to be terminated,

(2) the amount of basic benefits guaranteed under section 1322 or 1322a of this title which are payable with respect to each participant in the plan,

(3) the present value, as of the time of termination, of the aggregate amount of basic benefits payable under section 1322 or 1322a of this title (determined without regard to section 1322b of this title),

(4) the fair market value of the assets of the plan at the time of termination,

(5) the computations under section 1344 of this title, and all actuarial assumptions under which the items described in paragraphs (1) through (4) were computed, and

(6) any other information with respect to the plan the trustee may require in order to terminate the plan.

(Pub. L. 93–406, title IV, § 4046, Sept. 2, 1974, 88 Stat. 1028; Pub. L. 96–364, title IV, § 403(e), Sept. 26, 1980, 94 Stat. 1301.)

AMENDMENTS

1980—Par. (2). Pub. L. 96–364, § 403(e)(1), inserted ''basic'' before ''benefits'' and ''or 1322a'' after ''1322''.

Par. (3). Pub. L. 96–364, § 403(e), inserted ''basic'' before ''benefits'' and ''or 1322a'' after ''1322'', and substituted ''1322b'' for ''1322(b)(5)''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

§ 1347. Restoration of plans

Whenever the corporation determines that a plan which is to be terminated under section 1341 or 1342 of this title, or which is in the process of being terminated under section 1341 or 1342 of this title, should not be terminated under section 1341 or 1342 of this title as a result of such circumstances as the corporation determines to be relevant, the corporation is authorized to cease any activities undertaken to terminate the plan, and to take whatever action is necessary and within its power to restore the plan to its status prior to the determination that the plan was to be terminated under section 1341 or 1342 of this title. In the case of a plan which has been terminated under section 1341 or 1342 of this title the corporation is authorized in any such case in which the corporation determines such action to be appropriate and consistent with its duties under this subchapter, to take such action as may be necessary to restore the plan to its pretermination status, including, but not limited to, the transfer to the employer or a plan administrator of control of part or all of the remaining assets and liabilities of the plan.

(Pub. L. 93–406, title IV, § 4047, Sept. 2, 1974, 88 Stat. 1028; Pub. L. 99–272, title XI, § 11016(a)(3), Apr. 7, 1986, 100 Stat. 268; Pub. L. 101–239, title VII, § 7893(g)(1), Dec. 19, 1989, 103 Stat. 2447.)

AMENDMENTS

1989—Pub. L. 101–239 struck out ''under this subtitle'' before ''should not be terminated''.

1986—Pub. L. 99–272 inserted ''under section 1341 or 1342 of this title'' after ''terminated'' in four places and substituted ''section 1341 or 1342 of this title the corporation'' for ''section 1342 of this title the corporation''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

[1] See References in Text note below.

§ 1348. Termination date

(a) For purposes of this subchapter the termination date of a single-employer plan is—

(1) in the case of a plan terminated in a standard termination in accordance with the provisions of section 1341(b) of this title, the termination date proposed in the notice provided under section 1341(a)(2) of this title,

(2) in the case of a plan terminated in a distress termination in accordance with the provisions of section 1341(c) of this title, the date established by the plan administrator and agreed to by the corporation,

(3) in the case of a plan terminated in accordance with the provisions of section 1342 of this title, the date established by the corporation and agreed to by the plan administrator, or

(4) in the case of a plan terminated under section 1341(c) or 1342 of this title in any case in which no agreement is reached between the plan administrator and the corporation (or the trustee), the date established by the court.

(b) For purposes of this subchapter, the date of termination of a multiemployer plan is—

(1) in the case of a plan terminated in accordance with the provisions of section 1341a of this title, the date determined under subsection (b) of that section; or

(2) in the case of a plan terminated in accordance with the provisions of section 1342 of this title the date agreed to between the plan administrator and the corporation (or the trustee appointed under section 1342(b)(2) of this title, if any), or, if no agreement is reached, the date established by the court.

(Pub. L. 93–406, title IV, §4048, Sept. 2, 1974, 88 Stat. 1028; Pub. L. 96–364, title IV, §402(a)(8), Sept. 26, 1980, 94 Stat. 1299; Pub. L. 99–272, title XI, §11016(a)(4), Apr. 7, 1986, 100 Stat. 268.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–272 in provisions preceding par. (1) substituted ''termination date'' for ''date of termination'', redesignated pars. (1) to (3) as (2) to (4), respectively, added par. (1), in par. (2), as so redesignated, inserted ''in a distress termination'' after ''terminated'' and substituted ''section 1341(c)'' for ''section 1341'', and in par. (4), as so redesignated, substituted ''under section 1341(c) or 1342 of this title'' for ''in accordance with the provisions of either section''.

1980—Subsec. (a). Pub. L. 96–364, §402(a)(8)(A), (B), designated existing provisions as subsec. (a), and inserted applicability to a single-employer plan.

Subsec. (b). Pub. L. 96–364, §402(a)(8)(C), added subsec. (b).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1461 of this title; title 26 section 411.

§ 1349. Repealed. Pub. L. 100–203, title IX, § 9312(a), Dec. 22, 1987, 101 Stat. 1330–361

Section, Pub. L. 93–406, title IV, §4049, as added Pub. L. 99–272, title XI, §11012(a), Apr. 7, 1986, 100 Stat. 258; amended Pub. L. 99–514, title XVIII, §1879(u)(2), Oct. 22, 1986, 100 Stat. 2913; Pub. L. 100–203, title IX, §9312(d)(2), Dec. 22, 1987, 101 Stat. 1330–364, related to distribution of liability payments to participants and beneficiaries.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as an Effective Date of 1987 Amendment note under section 1301 of this title.

§ 1350. Missing participants

(a) General rule

(1) Payment to the corporation

A plan administrator satisfies section 1341(b)(3)(A) of this title in the case of a missing participant only if the plan administrator—

(A) transfers the participant's designated benefit to the corporation or purchases an irrevocable commitment from an insurer in accordance with clause (i) of section 1341(b)(3)(A) of this title, and

(B) provides the corporation such information and certifications with respect to such designated benefits or irrevocable commitments as the corporation shall specify.

(2) Treatment of transferred assets

A transfer to the corporation under this section shall be treated as a transfer of assets from a terminated plan to the corporation as trustee, and shall be held with assets of terminated plans for which the corporation is trustee under section 1342 of this title, subject to the rules set forth in that section.

(3) Payment by the corporation

After a missing participant whose designated benefit was transferred to the corporation is located—

(A) in any case in which the plan could have distributed the benefit of the missing participant in a single sum without participant or spousal consent under section 1055(g) of this title, the corporation shall pay the participant or beneficiary a single sum benefit equal to the designated benefit paid the corporation plus interest as specified by the corporation, and

(B) in any other case, the corporation shall pay a benefit based on the designated benefit and the assumptions prescribed by the corporation at the time that the corporation received the designated benefit.

The corporation shall make payments under subparagraph (B) available in the same forms and at the same times as a guaranteed benefit under section 1322 of this title would be available to be paid, except that the corporation may make a benefit available in the form of a

single sum if the plan provided a single sum benefit (other than a single sum described in subsection (b)(2)(A) of this section).

(b) Definitions

For purposes of this section—

(1) Missing participant

The term ''missing participant'' means a participant or beneficiary under a terminating plan whom the plan administrator cannot locate after a diligent search.

(2) Designated benefit

The term ''designated benefit'' means the single sum benefit the participant would receive—

(A) under the plan's assumptions, in the case of a distribution that can be made without participant or spousal consent under section 1055(g) of this title;

(B) under the assumptions of the corporation in effect on the date that the designated benefit is transferred to the corporation, in the case of a plan that does not pay any single sums other than those described in subparagraph (A); or

(C) under the assumptions of the corporation or of the plan, whichever provides the higher single sum, in the case of a plan that pays a single sum other than those described in subparagraph (A).

(c) Regulatory authority

The corporation shall prescribe such regulations as are necessary to carry out the purposes of this section, including rules relating to what will be considered a diligent search, the amount payable to the corporation, and the amount to be paid by the corporation.

(Pub. L. 93–406, title IV, § 4050, as added Pub. L. 103–465, title VII, § 776(a), Dec. 8, 1994, 108 Stat. 5047.)

EFFECTIVE DATE

Section effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103–465, set out as an Effective Date of 1994 Amendment note under section 1056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1056, 1303, 1305, 1341 of this title; title 26 section 401.

SUBTITLE D—LIABILITY

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1305, 1461 of this title.

§ 1361. Amounts payable by corporation

The corporation shall pay benefits under a single-employer plan terminated under this subchapter subject to the limitations and requirements of subtitle B of this subchapter. The corporation shall provide financial assistance to pay benefits under a multiemployer plan which is insolvent under section 1426 or 1441(d)(2)(A) of this title, subject to the limitations and requirements of subtitles B, C, and E of this subchapter. Amounts guaranteed by the corporation under sections 1322 and 1322a of this title shall be paid by the corporation only out of the appropriate fund. The corporation shall make payments under the supplemental program to reimburse multiemployer plans for uncollectible withdrawal liability only out of the fund established under section 1305(e) of this title.

(Pub. L. 93–406, title IV, § 4061, Sept. 2, 1974, 88 Stat. 1029; Pub. L. 96–364, title IV, § 403(f), Sept. 26, 1980, 94 Stat. 1301.)

AMENDMENTS

1980—Pub. L. 96–364 substituted provisions relating to payment of benefits under a single-employer plan terminated under this subchapter subject to limitations and requirements of subtitle B of this subchapter for provisions relating to payment of benefits under a plan terminated under this subchapter subject to limitations and requirements of subtitle B of this subchapter.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

§ 1362. Liability for termination of single-employer plans under a distress termination or a termination by corporation

(a) In general

In any case in which a single-employer plan is terminated in a distress termination under section 1341(c) of this title or a termination otherwise instituted by the corporation under section 1342 of this title, any person who is, on the termination date, a contributing sponsor of the plan or a member of such a contributing sponsor's controlled group shall incur liability under this section. The liability under this section of all such persons shall be joint and several. The liability under this section consists of—

(1) liability to the corporation, to the extent provided in subsection (b) of this section, and

(2) liability to the trustee appointed under subsection (b) or (c) of section 1342 of this title, to the extent provided in subsection (c) of this section.

(b) Liability to corporation

(1) Amount of liability

(A) In general

Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) of this section shall be the total amount of the unfunded benefit liabilities (as of the termination date) to all participants and beneficiaries under the plan, together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation.

(B) Special rule in case of subsequent insufficiency

For purposes of subparagraph (A), in any case described in section 1341(c)(3)(C)(ii) of this title, actuarial present values shall be determined as of the date of the notice to the corporation (or the finding by the corporation) described in such section.

(2) Payment of liability

(A) In general

Except as provided in subparagraph (B), the liability to the corporation under this

subsection shall be due and payable to the corporation as of the termination date, in cash or securities acceptable to the corporation.

(B) Special rule

Payment of so much of the liability under paragraph (1)(A) as exceeds 30 percent of the collective net worth of all persons described in subsection (a) of this section (including interest) shall be made under commercially reasonable terms prescribed by the corporation. The parties involved shall make a reasonable effort to reach agreement on such commercially reasonable terms. Any such terms prescribed by the corporation shall provide for deferral of 50 percent of any amount of liability otherwise payable for any year under this subparagraph if a person subject to such liability demonstrates to the satisfaction of the corporation that no person subject to such liability has any individual pre-tax profits for such person's fiscal year ending during such year.

(3) Alternative arrangements

The corporation and any person liable under this section may agree to alternative arrangements for the satisfaction of liability to the corporation under this subsection.

(c) Liability to section 1342 trustee

A person described in subsection (a) of this section shall be subject to liability under this subsection to the trustee appointed under subsection (b) or (c) of section 1342 of this title. The liability of such person under this subsection shall consist of—

(1) the outstanding balance of the accumulated funding deficiencies (within the meaning of section 1082(a)(2) of this title and section 412(a) of title 26) of the plan (if any) (which, for purposes of this subparagraph, shall include the amount of any increase in such accumulated funding deficiencies of the plan which would result if all pending applications for waivers of the minimum funding standard under section 1083 of this title or section 412(d) of title 26 and for extensions of the amortization period under section 1084 of this title or section 412(e) of title 26 with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year),

(2) the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date under section 1083 of this title or section 412(d) of title 26 (if any), and

(3) the outstanding balance of the amount of decreases in the minimum funding standard allowed before such date under section 1084 of this title or section 412(e) of title 26 (if any),

together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation. The liability under this subsection shall be due and payable to such trustee as of the termination date, in cash or securities acceptable to such trustee.

(d) Definitions

(1) Collective net worth of persons subject to liability

(A) In general

The collective net worth of persons subject to liability in connection with a plan termination consists of the sum of the individual net worths of all persons who—

(i) have individual net worths which are greater than zero, and

(ii) are (as of the termination date) contributing sponsors of the terminated plan or members of their controlled groups.

(B) Determination of net worth

For purposes of this paragraph, the net worth of a person is—

(i) determined on whatever basis best reflects, in the determination of the corporation, the current status of the person's operations and prospects at the time chosen for determining the net worth of the person, and

(ii) increased by the amount of any transfers of assets made by the person which are determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under title 11 if the person were a debtor in a case under chapter 7 of such title.

(C) Timing of determination

For purposes of this paragraph, determinations of net worth shall be made as of a day chosen by the corporation (during the 120-day period ending with the termination date) and shall be computed without regard to any liability under this section.

(2) Pre-tax profits

The term ''pre-tax profits'' means—

(A) except as provided in subparagraph (B), for any fiscal year of any person, such person's consolidated net income (excluding any extraordinary charges to income and including any extraordinary credits to income) for such fiscal year, as shown on audited financial statements prepared in accordance with generally accepted accounting principles, or

(B) for any fiscal year of an organization described in section 501(c) of title 26, the excess of income over expenses (as such terms are defined for such organizations under generally accepted accounting principles),

before provision for or deduction of Federal or other income tax, any contribution to any single-employer plan of which such person is a contributing sponsor at any time during the period beginning on the termination date and ending with the end of such fiscal year, and any amounts required to be paid for such fiscal year under this section. The corporation may by regulation require such information to be filed on such forms as may be necessary to determine the existence and amount of such pre-tax profits.

(e) Treatment of substantial cessation of operations

If an employer ceases operations at a facility in any location and, as a result of such cessation

of operations, more than 20 percent of the total number of his employees who are participants under a plan established and maintained by him are separated from employment, the employer shall be treated with respect to that plan as if he were a substantial employer under a plan under which more than one employer makes contributions and the provisions of sections 1363, 1364, and 1365 of this title shall apply.

(Pub. L. 93–406, title IV, § 4062, Sept. 2, 1974, 88 Stat. 1029; Pub. L. 95–598, title III, § 321(b), Nov. 6, 1978, 92 Stat. 2678; Pub. L. 96–364, title IV, § 403(g), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99–272, title XI, § 11011(a), (b), Apr. 7, 1986, 100 Stat. 253, 257; Pub. L. 100–203, title IX, § 9312(b)(1), (2)(A), (B)(ii), Dec. 22, 1987, 101 Stat. 1330–361; Pub. L. 101–239, title VII, §§ 7881(f)(2), (10)(A), (B), 7891(a)(1), Dec. 19, 1989, 103 Stat. 2440, 2441, 2445.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 7881(f)(2), inserted ''and'' at end of par. (1), redesignated par. (3) as (2), substituted ''subsection (c)'' for ''subsection (d)'', and struck out former par. (2) which read as follows: ''liability to the trust established pursuant to section 1341(c)(3)(B)(ii) or (iii) of this title or section 1342(i) of this title, to the extent provided in subsection (c) of this section, and''.

Subsec. (b)(2)(B). Pub. L. 101–239, § 7881(f)(10)(A), substituted ''so much of the liability under paragraph (1)(A) as exceeds 30 percent of the collective net worth of all persons described in subsection (a) of this section (including interest)'' for ''the liability under paragraph (1)(A)(ii)''.

Subsecs. (c)(1), (d)(2)(B). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (d)(3). Pub. L. 101–239, § 7881(f)(10)(B), amended Pub. L. 100–203, § 9312(b)(2)(B)(ii), see 1987 Amendment note below.

1987—Subsec. (b)(1)(A). Pub. L. 100–203, § 9312(b)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) of this section shall consist of the sum of—

''(i) the lesser of—

''(I) the total amount of unfunded guaranteed benefits (as of the termination date) of all participants and beneficiaries under the plan, or

''(II) 30 percent of the collective net worth of all persons described in subsection (a) of this section, and

''(ii) the excess (if any) of—

''(I) 75 percent of the amount described in clause (i)(I), over

''(II) the amount described in clause (i)(II),

together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation.''

Subsec. (c). Pub. L. 100–203, § 9312(b)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to liability to section 1349 trust.

Subsec. (d). Pub. L. 100–203, § 9312(b)(1)(B), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(3). Pub. L. 100–203, § 9312(b)(2)(B)(ii), as amended by Pub. L. 101–239, § 7881(f)(10)(B), struck out par. (3) which read as follows: ''The liability payment years in connection with a terminated plan consist of the consecutive one-year periods following the last plan year preceding the termination date, excluding the first such year in any case in which the first such year ends less than 180 days after the termination date.''

Subsecs. (e), (f). Pub. L. 100–203, § 9312(b)(1)(B), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1986—Pub. L. 99–272, § 11011(a)(2), substituted ''Liability for termination of single-employer plans under a distress termination or a termination by the corporation'' for ''Liability of employer'' in section catchline.

Subsec. (a). Pub. L. 99–272, § 11011(a)(2), added subsec. (a) specifying persons liable and the nature and extent of liability and struck out former subsec. (a) specifying employers covered.

Subsec. (b). Pub. L. 99–272, § 11011(a)(2), added subsec. (b) relating to liability to corporation and struck out former subsec. (b) relating to amount of liability.

Subsec. (c). Pub. L. 99–272, § 11011(a)(2), added subsec. (c) relating to liability to section 1349 trust and struck out former subsec. (c) relating to method of determining net worth of employer.

Subsec. (d). Pub. L. 99–272, § 11011(a)(2), added subsec. (d) relating to liability to section 1342 trustee and struck out former subsec. (d) relating to corporate reorganizations.

Subsec. (e). Pub. L. 99–272, § 11011(a), added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 99–272, § 11011(a)(1), (b), redesignated former subsec. (e) as (f), and substituted in heading ''Treatment of substantial cessation of operations'' for ''Cessation of operations at one facility''.

1980—Subsec. (a). Pub. L. 96–364 substituted ''single-employee plan'' for ''plan (other than a multiemployer plan)''.

1978—Subsec. (c)(2). Pub. L. 95–598 substituted ''title 11'' and ''a debtor in a case under chapter 7 of such title'' for ''the Bankruptcy Act'' and ''the subject of a proceeding under that Act'', respectively.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(2), (10)(A), (B) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SPECIAL DELAYED PAYMENT RULE

Section 11012(d) of Pub. L. 99–272 provided that: ''In the case of a distress termination under section 4041(c)

of the Employee Retirement Income Security Act of 1974 (as amended by section 11009) [29 U.S.C. 1341(c)] pursuant to a notice of intent to terminate filed before January 1, 1987, no payment of liability otherwise payable as provided in section 4062(c)(2)(B) of such Act [29 U.S.C. 1362(c)(2)(B)] (as amended by this section [Act]) shall be required to be made before January 1, 1989.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1322, 1341, 1342, 1363, 1364, 1367, 1368, 1370, 1398, 1412 of this title; title 26 section 404.

§ 1363. Liability of substantial employer for withdrawal from single-employer plans under multiple controlled groups

(a) Single-employer plans with two or more contributing sponsors

Except as provided in subsection (d) of this section, the plan administrator of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control—

(1) shall notify the corporation of the withdrawal during a plan year of a substantial employer for such plan year from the plan, within 60 days after such withdrawal, and

(2) request that the corporation determine the liability of all persons with respect to the withdrawal of the substantial employer.

The corporation shall, as soon as practicable thereafter, determine whether there is liability resulting from the withdrawal of the substantial employer and notify the liable persons of such liability.

(b) Computation of liability

Except as provided in subsection (c) of this section, any one or more contributing sponsors who withdraw, during a plan year for which they constitute a substantial employer, from a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control, shall, upon notification of such contributing sponsors by the corporation as provided by subsection (a) of this section, be liable, together with the members of their controlled groups, to the corporation in accordance with the provisions of section 1362 of this title and this section. The amount of liability shall be computed on the basis of an amount determined by the corporation to be the amount described in section 1362 of this title for the entire plan, as if the plan had been terminated by the corporation on the date of the withdrawal referred to in subsection (a)(1) of this section multiplied by a fraction—

(1) the numerator of which is the total amount required to be contributed to the plan by such contributing sponsors for the last 5 years ending prior to the withdrawal, and

(2) the denominator of which is the total amount required to be contributed to the plan by all contributing sponsors for such last 5 years.

In addition to and in lieu of the manner prescribed in the preceding sentence, the corporation may also determine such liability on any other equitable basis prescribed by the corporation in regulations. Any amount collected by the corporation under this subsection shall be held in escrow subject to disposition in accordance with the provisions of paragraphs (2) and (3) of subsection (c) of this section.

(c) Bond in lieu of payment of liability; 5-year termination period

(1) In lieu of payment of a contributing sponsor's liability under this section, the contributing sponsor may be required to furnish a bond to the corporation in an amount not exceeding 150 percent of his liability to insure payment of his liability under this section. The bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury under sections 9304–9308 of title 31. Any such bond shall be in a form or of a type approved by the Secretary including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(2) If the plan is not terminated under section 1341(c) or 1342 of this title within the 5-year period commencing on the day of withdrawal, the liability is abated and any payment held in escrow shall be refunded without interest (or the bond cancelled) in accordance with bylaws or rules prescribed by the corporation.

(3) If the plan terminates under section 1341(c) or 1342 of this title within the 5-year period commencing on the day of withdrawal, the corporation shall—

(A) demand payment or realize on the bond and hold such amount in escrow for the benefit of the plan;

(B) treat any escrowed payments under this section as if they were plan assets and apply them in a manner consistent with this subtitle; and

(C) refund any amount to the contributing sponsor which is not required to meet any obligation of the corporation with respect to the plan.

(d) Alternate appropriate procedure

The provisions of this subsection apply in the case of a withdrawal described in subsection (a) of this section, and the provisions of subsections (b) and (c) of this section shall not apply, if the corporation determines that the procedure provided for under this subsection is consistent with the purposes of this section and section 1364 of this title and is more appropriate in the particular case. Upon a showing by the plan administrator of the plan that the withdrawal from the plan by one or more contributing sponsors has resulted, or will result, in a significant reduction in the amount of aggregate contributions to or under the plan, the corporation may—

(1) require the plan fund to be equitable allocated between those participants no longer working in covered service under the plan as a result of the withdrawal, and those participants who remain in covered service under the plan;

(2) treat that portion of the plan funds allocable under paragraph (1) to participants no longer in covered service as a plan terminated under section 1342 of this title; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a separate plan.

(e) Indemnity agreement

The corporation is authorized to waive the application of the provisions of subsections (b), (c), and (d) of this section whenever it determines that there is an indemnity agreement in effect among contributing sponsors under the plan which is adequate to satisfy the purposes of this section and of section 1364 of this title.

(Pub. L. 93–406, title IV, § 4063, Sept. 2, 1974, 88 Stat. 1030; Pub. L. 96–364, title IV, § 403(h), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99–272, title XI, § 11016(a)(5)(A), Apr. 7, 1986, 100 Stat. 268.)

CODIFICATION

In subsec. (c)(1), ''sections 9304–9308 of title 31'' substituted for ''sections 6 through 13 of title 6, United States Code'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Pub. L. 99–272, § 11016(a)(5)(A)(vi), inserted ''from single-employer plans under multiple controlled groups'' in section catchline.

Subsec. (a). Pub. L. 99–272, § 11016(a)(5)(A)(i), in introductory par., substituted ''single-employer plan which has two or more contributing sponsors at least two of whom are not under common control'' for ''plan under which more than one employer makes contributions (other than a multiemployer plan)'', in par. (1), substituted ''withdrawal during a plan year of a substantial employer for such plan year'' for ''withdrawal of a substantial employer'', in par. (2), substituted ''of all persons with respect to the withdrawal of the substantial employer'' for ''of such employer under this subtitle with respect to such withdrawal'', and in concluding provision substituted ''whether there is liability resulting from the withdrawal of the substantial employer'' for ''whether such employer is liable for any amount under this subtitle with respect to the withdrawal'' and ''notify the liable persons'' for ''notify such employer''.

Subsec. (b). Pub. L. 99–272, § 11016(a)(5)(A)(ii), in introductory par., substituted ''any one or more contributing sponsors who withdraw, during a plan year for which they constitute a substantial employer, from a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control, shall, upon notification of such contributing sponsors by the corporation as provided by subsection (a) of this section, be liable, together with the members of their controlled groups,'' for ''an employer who withdraws from a plan to which section 1321 of this title applies, during a plan year for which he was a substantial employer, and who is notified by the corporation as provided by subsection (a) of this section, shall be liable'', ''amount of liability'' for ''amount of such employer's liability'', and ''the withdrawal referred to in subsection (a)(1) of this section'' for ''the employer's withdrawal'', in par. (1), substituted ''such contributing sponsors'' for ''such employer'', in par. (2), substituted ''all contributing sponsors'' for ''all employers'', and in concluding provision substituted ''such liability'' for ''the liability of each such employer''.

Subsec. (c)(1). Pub. L. 99–272, § 11016(a)(5)(A)(iii)(I), substituted ''of a contributing sponsor's liability under this section, the contributing sponsor'' for ''of his liability under this section the employer''.

Subsec. (c)(2). Pub. L. 99–272, § 11016(a)(5)(A)(iii)(II), inserted ''under section 1341(c) or 1342 of this title'' and substituted ''liability is'' for ''liability of such employer is'' and ''(or the bond cancelled)'' for ''to the employer (or his bond cancelled)''.

Subsec. (c)(3). Pub. L. 99–272, § 11016(a)(5)(A)(iii)(III), in introductory par., inserted ''under section 1341(c) or 1342 of this title'' and, in subpar. (C), substituted ''contributing sponsor'' for ''employer''.

Subsec. (d). Pub. L. 99–272, § 11016(a)(5)(A)(iv), in introductory par., substituted ''of the plan that the withdrawal from the plan by one or more contributing sponsors'' for ''of a plan (other than a multiemployer plan) that the withdrawal from the plan by any employer or employers'' and struck out ''by employers'' after ''contributions to or under the plan'', in par. (1), substituted ''the withdrawal'' for ''their employer's withdrawal'', and in par. (2), substituted ''plan terminated under section 1342 of this title'' for ''termination''.

Subsec. (e). Pub. L. 99–272, § 11016(a)(5)(A)(v), struck out ''to any employer or plan administrator'' before ''whenever it determines'' and substituted ''contributing sponsors'' for ''all other employers''.

1980—Subsecs. (a), (d). Pub. L. 96–364 inserted provisions excepting a multiemployer plan.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1322, 1342, 1362, 1365, 1367, 1368, 1370, 1461 of this title; title 26 section 404.

§ 1364. Liability on termination of single-employer plans under multiple controlled groups

(a) This section applies to all contributing sponsors of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control at the time such plan is terminated under section 1341(c) or 1342 of this title, or who, at any time within the 5 plan years preceding the date of termination, made contributions under the plan.

(b) The corporation shall determine the liability with respect to each contributing sponsor and each member of its controlled group in a manner consistent with section 1362 of this title, except that the amount of liability determined under section 1362(b)(1) of this title with respect to the entire plan shall be allocated to each controlled group by multiplying such amount by a fraction—

(1) the numerator of which is the amount required to be contributed to the plan for the last 5 plan years ending prior to the termination date by persons in such controlled group as contributing sponsors, and

(2) the denominator of which is the total amount required to be contributed to the plan for such last 5 plan years by all persons as contributing sponsors,

and section 1368(a) of this title shall be applied separately with respect to each controlled group. The corporation may also determine the liability of each such contributing sponsor and member of its controlled group on any other equitable basis prescribed by the corporation in regulations.

(Pub. L. 93–406, title IV, § 4064, Sept. 2, 1974, 88 Stat. 1031; Pub. L. 96–364, title IV, § 403(i), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99–272, title XI, § 11016(a)(5)(B), Apr. 7, 1986, 100 Stat. 270; Pub. L. 100–203, title IX, § 9312(b)(2)(C)(i), Dec. 22, 1987,

101 Stat. 1330–361; Pub. L. 101–239, title VII, § 7881(f)(3)(A), Dec. 19, 1989, 103 Stat. 2440.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted ''section 1368(a)'' for ''clauses (i)(II) and (ii) of section 1362(b)(1)(A)''.

1987—Subsec. (b). Pub. L. 100–203 amended first sentence generally. Prior to amendment, first sentence read as follows: ''The corporation shall determine the liability with respect to each contributing sponsor and each member of its controlled group in a manner consistent with section 1362 of this title, except that—

''(1) the amount of the liability determined under section 1362(b)(1) of this title with respect to the entire plan—

''(A) shall be determined without regard to clauses (i)(II) and (ii) of section 1362(b)(1)(A) of this title, and

''(B) shall be allocated to each controlled group by multiplying such amount by a fraction—

''(i) the numerator of which is the amount required to be contributed to the plan for the last 5 plan years ending prior to the termination date by persons in such controlled group as contributing sponsors, and

''(ii) the denominator of which is the total amount required to be contributed to the plan for such last 5 plan years by all persons as contributing sponsors,

and clauses (i)(II) and (ii) of section 1362(b)(1)(A) of this title shall be applied separately with respect to each such controlled group, and

''(2) the amount of the liability determined under section 1362(c)(1) of this title with respect to the entire plan shall be allocated to each controlled group by multiplying such amount by the fraction described in paragraph (1)(B) in connection with such controlled group.''

1986—Pub. L. 99–272, § 11016(a)(5)(B)(iii), substituted ''on termination of single-employer plans under multiple controlled groups'' for ''of employers on termination of plan maintained by more than one employer'' in section catchline.

Subsec. (a). Pub. L. 99–272, § 11016(a)(5)(B)(i), substituted ''all contributing sponsors of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control'' for ''all employers who maintain a plan under which more than one employer makes contributions (other than a multiemployer plan)'' and inserted ''under section 1341(c) or 1342 of this title'' after ''terminated''.

Subsec. (b). Pub. L. 99–272, § 11016(a)(5)(B)(ii), amended subsec. (b) generally, substituting reference to each contributing sponsor and each member of its controlled group for reference to each employer of a plan maintained by more than one employer and inserted provisions that liability determined under section 1362(b)(1) of this title with respect to the entire plan be determined without regard to cls. (i)(II) and (ii) of section 1362(b)(1)(A) of this title and that the amount of liability determined under section 1362(c)(1) of this title with respect to the entire plan be allocated to each controlled group by multiplying such amount by the fraction described in par. (1)(B) in connection with such controlled group.

1980—Subsec. (a). Pub. L. 96–364 inserted provisions excepting a multiemployer plan.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1322, 1342, 1362, 1363, 1367, 1368, 1370, 1412 of this title; title 26 section 404.

§ 1365. Annual report of plan administrator

For each plan year for which section 1321 of this title applies to a plan, the plan administrator shall file with the corporation, on a form prescribed by the corporation, an annual report which identifies the plan and plan administrator and which includes—

(1) a copy of each notification required under section 1363 of this title with respect to such year,

(2) a statement disclosing whether any reportable event (described in section 1343(b)[1] of this title) occurred during the plan year except to the extent the corporation waives such requirement, and

(3) in the case of a multiemployer plan, information with respect to such plan which the corporation determines is necessary for the enforcement of subtitle E of this subchapter and requires by regulation, which may include—

(A) a statement certified by the plan's enrolled actuary of—

(i) the value of all vested benefits under the plan as of the end of the plan year, and

(ii) the value of the plan's assets as of the end of the plan year;

(B) a statement certified by the plan sponsor of each claim for outstanding withdrawal liability (within the meaning of section 1301(a)(12) of this title) and its value as of the end of that plan year and as of the end of the preceding plan year; and

(C) the number of employers having an obligation to contribute to the plan and the number of employers required to make withdrawal liability payments.

The report shall be filed within 6 months after the close of the plan year to which it relates. The corporation shall cooperate with the Secretary of the Treasury and the Secretary of Labor in an endeavor to coordinate the timing and content, and possibly obtain the combination, of reports under this section with reports required to be made by plan administrators to such Secretaries.

[1] See References in Text note below.

(Pub. L. 93–406, title IV, § 4065, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 96–364, title I, § 106, Sept. 26, 1980, 94 Stat. 1266.)

REFERENCES IN TEXT

Section 1343(b) of this title, referred to in par. (2), was redesignated section 1343(c) of this title and a new section 1343(b) was added by Pub. L. 103–465, title VII, § 771(b), Dec. 8, 1994, 108 Stat. 5042.

AMENDMENTS

1980—Pub. L. 96–364 inserted provisions in par. (2) respecting waiver by corporation and added par. (3).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1362 of this title.

§ 1366. Annual notification to substantial employers

The plan administrator of each single-employer plan which has at least two contributing sponsors at least two of whom are not under common control shall notify, within 6 months after the close of each plan year, any contributing sponsor of the plan who is described in section 1301(a)(2) of this title that such contributing sponsor (alone or together with members of such contributing sponsor's controlled group) constitutes a substantial employer for that year.

(Pub. L. 93–406, title IV, § 4066, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 96–364, title IV, § 403(j), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99–272, title XI, § 11016(a)(5)(C), Apr. 7, 1986, 100 Stat. 271; Pub. L. 101–239, title VII, § 7893(g)(2), Dec. 19, 1989, 103 Stat. 2447.)

AMENDMENTS

1989—Pub. L. 101–239 inserted ''any'' before ''contributing sponsor of the plan''.

1986—Pub. L. 99–272 substituted ''each single-employer plan which has at least two contributing sponsors at least two of whom are not under common control'' for ''each plan under which contributions are made by more than one employer (other than a multiemployer plan)'', ''contributing sponsor of the plan'' for ''any employer making contributions under that plan'', and ''that such contributing sponsor (alone or together with members of such contributing sponsor's controlled group) constitutes a substantial employer'' for ''that he is a substantial employer''.

1980—Pub. L. 96–364 inserted provisions excepting a multiemployer plan.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

§ 1367. Recovery of liability for plan termination

The corporation is authorized to make arrangements with contributing sponsors and members of their controlled groups who are or may become liable under section 1362, 1363, or 1364 of this title for payment of their liability, including arrangements for deferred payment of amounts of liability to the corporation accruing as of the termination date on such terms and for such periods as the corporation deems equitable and appropriate.

(Pub. L. 93–406, title IV, § 4067, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 99–272, title XI, § 11016(a)(6)(A), Apr. 7, 1986, 100 Stat. 271; Pub. L. 100–203, title IX, § 9313(b)(6), Dec. 22, 1987, 101 Stat. 1330–366; Pub. L. 101–239, title VII, § 7893(g)(3), Dec. 19, 1989, 103 Stat. 2448.)

AMENDMENTS

1989—Pub. L. 101–239 amended directory language of Pub. L. 99–272, § 11016(a)(6)(A)(ii), see 1986 Amendment note below.

1987—Pub. L. 100–203 inserted ''or may become'' after ''who are''.

1986—Pub. L. 99–272, § 11016(a)(6)(A)(i), (iii), substituted ''of liability'' for ''of employer liability'' in section catchline and inserted ''of amounts of liability to the corporation accruing as of the termination date'' in text.

Pub. L. 99–272, § 11016(a)(6)(A)(ii), as amended by Pub. L. 101–239, substituted ''contributing sponsors and members of their controlled groups'' for ''employers''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, see section 9313(c) of Pub. L. 100–203, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

§ 1368. Lien for liability

(a) Creation of lien

If any person liable to the corporation under section 1362, 1363, or 1364 of this title neglects or refuses to pay, after demand, the amount of such liability (including interest), there shall be a lien in favor of the corporation in the amount of such liability (including interest) upon all property and rights to property, whether real or personal, belonging to such person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 1362(a) of this title [1]

(b) Term of lien

The lien imposed by subsection (a) of this section arises on the date of termination of a plan,

[1] So in original. Probably should be followed by a period.

and continues until the liability imposed under section 1362, 1363, or 1364 of this title is satisfied or becomes unenforceable by reason of lapse of time.

(c) Priority

(1) Except as otherwise provided under this section, the priority of a lien imposed under subsection (a) of this section shall be determined in the same manner as under section 6323 of title 26 (as in effect on April 7, 1986). Such section 6323 shall be applied for purposes of this section by disregarding subsection (g)(4) and by substituting—

(A) ''lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1368]'' for ''lien imposed by section 6321'' each place it appears in subsections (a), (b), (c)(1), (c)(4)(B), (d), (e), and (h)(5);

(B) ''the corporation'' for ''the Secretary'' in subsections (a) and (b)(9)(C);

(C) ''the payment of the amount on which the section 4068(a) lien is based'' for ''the collection of any tax under this title'' in subsection (b)(3);

(D) ''a person whose property is subject to the lien'' for ''the taxpayer'' in subsections (b)(8), (c)(2)(A)(i) (the first place it appears), (c)(2)(A)(ii), (c)(2)(B), (c)(4)(B), and (c)(4)(C) (in the matter preceding clause (i));

(E) ''such person'' for ''the taxpayer'' in subsections (c)(2)(A)(i) (the second place it appears) and (c)(4)(C)(ii);

(F) ''payment of the loan value of the amount on which the lien is based is made to the corporation'' for ''satisfaction of a levy pursuant to section 6332(b)'' in subsection (b)(9)(C);

(G) ''section 4068(a) lien'' for ''tax lien'' each place it appears in subsections (c)(1), (c)(2)(A), (c)(2)(B), (c)(3)(B)(iii), (c)(4)(B), (d), and (h)(5); and

(H) ''the date on which the lien is first filed'' for ''the date of the assessment of the tax'' in subsection (g)(3)(A).

(2) In a case under title 11 or in insolvency proceedings, the lien imposed under subsection (a) of this section shall be treated in the same manner as a tax due and owing to the United States for purposes of title 11 or section 3713 of title 31.

(3) For purposes of applying section 6323(a) of title 26 to determine the priority between the lien imposed under subsection (a) of this section and a Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(4) For purposes of this subsection, notice of the lien imposed by subsection (a) of this section shall be filed in the same manner as under section 6323(f) and (g) of title 26.

(d) Civil action; limitation period

(1) In any case where there has been a refusal or neglect to pay the liability imposed under section 1362, 1363, or 1364 of this title, the corporation may bring civil action in a district court of the United States to enforce the lien of the corporation under this section with respect to such liability or to subject any property, of whatever nature, of the liable person, or in which he has any right, title, or interest to the payment of such liability.

(2) The liability imposed by section 1362, 1363, or 1364 of this title may be collected by a proceeding in court if the proceeding is commenced within 6 years after the date upon which the plan was terminated or prior to the expiration of any period for collection agreed upon in writing by the corporation and the liable person before the expiration of such 6-year period. The period of limitations provided under this paragraph shall be suspended for the period the assets of the liable person are in the control or custody of any court of the United States, or of any State, or of the District of Columbia, and for 6 months thereafter, and for any period during which the liable person is outside the United States if such period of absence is for a continuous period of at least 6 months.

(e) Release or subordination

If the corporation determines that release of the lien or subordination of the lien to any other creditor of the liable person would not adversely affect the collection of the liability imposed under section 1362, 1363, or 1364 of this title, or that the amount realizable by the corporation from the property to which the lien attaches will ultimately be increased by such release or subordination, and that the ultimate collection of the liability will be facilitated by such release or subordination, the corporation may issue a certificate of release or subordination of the lien with respect to such property, or any part thereof.

(f) Definitions

For purposes of this section—

(1) The collective net worth of persons subject to liability in connection with a plan termination shall be determined as provided in section 1362(d)(1) of this title.

(2) The term ''pre-tax profits'' has the meaning provided in section 1362(d)(2) of this title.

(Pub. L. 93–406, title IV, §4068, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 95–598, title III, §321(c), Nov. 6, 1978, 92 Stat. 2678; Pub. L. 99–272, title XI, §11016(a)(6)(B), (c)(14), Apr. 7, 1986, 100 Stat. 271, 275; Pub. L. 100–203, title IX, §9312(b)(2)(B)(i), (C)(ii), Dec. 22, 1987, 101 Stat. 1330–361, 1330–362; Pub. L. 101–239, title VII, §§7881(f)(3)(B), (10)(C), (12), 7891(a)(1), 7894(g)(4)(A), Dec. 19, 1989, 103 Stat. 2440, 2441, 2445, 2451.)

CODIFICATION

A former subsec. (f) of this section was originally subsec. (e) of section 1362 of this title and was redesignated as subsec. (f) of this section by Pub. L. 100–203, §9312(b)(2)(B)(ii). Subsequently, Pub. L. 100–203, §9312(b)(2)(B)(ii), was amended generally by Pub. L. 101–239, §7881(f)(10)(B), and, as so amended, no longer contains language redesignating subsec. (e) of section 1362 as subsec. (f) of this section. As a result of that amendment, the transfer of subsec. (e) of section 1362 to subsec. (f) of this section was rescinded.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, §7881(f)(12), struck out ''to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 1362(a) of this title'' after ''the amount of such liability'' and substituted ''in the amount of such liability (including interest) upon all property and

rights to property, whether real or personal, belonging to such person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 1362(a) of this title'' for ''to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 1362(a) of this title upon all property and rights to property, whether real or personal, belonging to such person.''

Pub. L. 101–239, § 7881(f)(3)(B), struck out at end ''The preceding provisions of this subsection shall be applied in a manner consistent with the provisions of section 1364(d) of this title relating to treatment of multiple controlled groups.''

Subsec. (c). Pub. L. 101–239, § 7891(a)(1), in pars. (1), (3), and (4), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (c)(2). Pub. L. 101–239, § 7894(g)(4)(A), substituted ''section 3713 of title 31'' for ''section 3466 of the Revised Statutes (31 U.S.C. 191)''.

Subsec. (f). Pub. L. 101–239, § 7881(f)(10)(C), added subsec. (f).

1987—Subsec. (a). Pub. L. 100–203, § 9312(b)(2)(B)(i), substituted ''to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 1362(a) of this title'' for ''to the extent of an amount equal to the unpaid amount described in section 1362(b)(1)(A)(i) of this title'' in two places.

Pub. L. 100–203, § 9312(b)(2)(C)(ii), inserted at end ''The preceding provisions of this subsection shall be applied in a manner consistent with the provisions of section 1364(d) of this title relating to treatment of multiple controlled groups.''

1986—Pub. L. 99–272, § 11016(a)(6)(B)(i), struck out ''of employer'' after ''liability'' in section catchline.

Subsec. (a). Pub. L. 99–272, § 11016(a)(6)(B)(ii), substituted ''person liable'' for ''employer or employers liable'', ''neglects or refuses'' for ''neglect or refuse'', and ''such person'' for ''such employer or employers'' and inserted ''to the extent of an amount equal to the unpaid amount described in section 1362(b)(1)(A)(i) of this title'' in two places.

Subsec. (c)(1). Pub. L. 99–272, § 11016(a)(6)(B)(vi), substituted par. (1) for former par. (1) which read as follows: ''Except as otherwise provided under this section, the priority of the lien imposed under subsection (a) of this section shall be determined in the same manner as under section 6323 of title 26. Such section 6323 shall be applied by substituting 'lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974' for 'lien imposed by section 6321'; 'corporation' for 'Secretary or his delegate'; 'employer liability lien' for 'tax lien'; 'employer' for 'taxpayer'; 'lien arising under section 4068(a) of the Employee Retirement Income Security Act of 1974' for 'assessment of the tax'; and 'payment of the loan value is made to the corporation' for 'satisfaction of a levy pursuant to section 6332(b)'; each place such terms appear.''

Subsec. (d)(1), (2). Pub. L. 99–272, § 11016(a)(6)(B)(iii), (iv), substituted ''liable person'' for ''employer'' wherever appearing.

Subsec. (e). Pub. L. 99–272, § 11016(a)(6)(B)(v), (c)(14), struck out '', with the consent of the board of directors,'' after ''corporation determines'' and substituted ''liable person'' for ''employer or employers''.

1978—Subsec. (c)(2). Pub. L. 95–598 substituted ''a case under title 11 or in'' and ''title 11'' for ''the case of bankruptcy or'' and ''the Bankruptcy Act''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(3)(B), (10)(C), (12) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

Section 7894(g)(4)(B) of Pub. L. 101–239 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if originally included in section 3 of Public Law 97–258.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1082, 1364, 1413 of this title; title 26 section 412.

§ 1369. Treatment of transactions to evade liability; effect of corporate reorganization

(a) Treatment of transactions to evade liability

If a principal purpose of any person in entering into any transaction is to evade liability to which such person would be subject under this subtitle and the transaction becomes effective within five years before the termination date of the termination on which such liability would be based, then such person and the members of such person's controlled group (determined as of the termination date) shall be subject to liability under this subtitle in connection with such termination as if such person were a contributing sponsor of the terminated plan as of the termination date. This subsection shall not cause any person to be liable under this subtitle in connection with such plan termination for any increases or improvements in the benefits provided under the plan which are adopted after the date on which the transaction referred to in the preceding sentence becomes effective.

(b) Effect of corporate reorganization

For purposes of this subtitle, the following rules apply in the case of certain corporate reorganizations:

(1) Change of identity, form, etc.

If a person ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the person to whom this subtitle applies.

(2) Liquidation into parent corporation

If a person ceases to exist by reason of liquidation into a parent corporation, the parent

corporation shall be treated as the person to whom this subtitle applies.

(3) Merger, consolidation, or division

If a person ceases to exist by reason of a merger, consolidation, or division, the successor corporation or corporations shall be treated as the person to whom this subtitle applies.

(Pub. L. 93–406, title IV, § 4069, as added Pub. L. 99–272, title XI, § 11013(a), Apr. 7, 1986, 100 Stat. 260.)

EFFECTIVE DATE

Section 11013(b) of Pub. L. 99–272 provided that: ''Section 4069(a) of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)) [subsec. (a) of this section] shall apply with respect to transactions becoming effective on or after January 1, 1986.''

Section effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as an Effective Date of 1986 Amendment note under section 1341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1370, 1398 of this title.

§ 1370. Enforcement authority relating to terminations of single-employer plans

(a) In general

Any person who is with respect to a single-employer plan a fiduciary, contributing sponsor, member of a contributing sponsor's controlled group, participant, or beneficiary, and is adversely affected by an act or practice of any party (other than the corporation) in violation of any provision of section 1341, 1342, 1362, 1363, 1364, or 1369 of this title, or who is an employee organization representing such a participant or beneficiary so adversely affected for purposes of collective bargaining with respect to such plan, may bring an action—

(1) to enjoin such act or practice, or

(2) to obtain other appropriate equitable relief (A) to redress such violation or (B) to enforce such provision.

(b) Status of plan as party to action and with respect to legal process

A single-employer plan may be sued under this section as an entity. Service of summons, subpoena, or other legal process of a court upon a trustee or an administrator of a single-employer plan in such trustee's or administrator's capacity as such shall constitute service upon the plan. If a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon any contributing sponsor of the plan shall constitute such service. Any money judgment under this section against a single-employer plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in such person's individual capacity.

(c) Jurisdiction and venue

The district courts of the United States shall have exclusive jurisdiction of civil actions under this section. Such actions may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found. The district courts of the United States shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(d) Right of corporation to intervene

A copy of the complaint or notice of appeal in any action under this section shall be served upon the corporation by certified mail. The corporation shall have the right in its discretion to intervene in any action.

(e) Awards of costs and expenses

(1) General rule

In any action brought under this section, the court in its discretion may award all or a portion of the costs and expenses incurred in connection with such action, including reasonable attorney's fees, to any party who prevails or substantially prevails in such action.

(2) Exemption for plans

Notwithstanding the preceding provisions of this subsection, no plan shall be required in any action to pay any costs and expenses (including attorney's fees).

(f) Limitation on actions

(1) In general

Except as provided in paragraph (3), an action under this section may not be brought after the later of—

(A) 6 years after the date on which the cause of action arose, or

(B) 3 years after the applicable date specified in paragraph (2).

(2) Applicable date

(A) General rule

Except as provided in subparagraph (B), the applicable date specified in this paragraph is the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

(B) Special rule for plaintiffs who are fiduciaries

In the case of a plaintiff who is a fiduciary bringing the action in the exercise of fiduciary duties, the applicable date specified in this paragraph is the date on which the plaintiff became a fiduciary with respect to the plan if such date is later than the date described in subparagraph (A).

(3) Cases of fraud or concealment

In the case of fraud or concealment, the period described in paragraph (1)(B) shall be extended to 6 years after the applicable date specified in paragraph (2).

(Pub. L. 93–406, title IV, § 4070, as added Pub. L. 99–272, title XI, § 11014(a), Apr. 7, 1986, 100 Stat. 261; amended Pub. L. 101–239, title VII, § 7881(f)(8), Dec. 19, 1989, 103 Stat. 2440.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239 struck out ''1349,'' after ''section 1341, 1342,''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as an Effective Date of 1986 Amendment note under section 1341 of this title.

§ 1371. Penalty for failure to timely provide required information

The corporation may assess a penalty, payable to the corporation, against any person who fails to provide any notice or other material information required under this subtitle, subtitle A, B, or C of this subchapter, as[1] section 1082(f)(4) or 1085b(e) of this title, or any regulations prescribed under any such subtitle or such section, within the applicable time limit specified therein. Such penalty shall not exceed $1,000 for each day for which such failure continues.

(Pub. L. 93–406, title IV, §4071, as added Pub. L. 100–203, title IX, §9314(c)(1), Dec. 22, 1987, 101 Stat. 1330–367; amended Pub. L. 101–239, title VII, §7881(g)(8), (i)(3)(B), Dec. 19, 1989, 103 Stat. 2442.)

AMENDMENTS

1989—Pub. L. 101–239, §7881(i)(3)(B), substituted '', subtitle A, B, or C of this subchapter, as section 1082(f)(4) or 1085b(e) of this title'' for ''or subtitle A, B, or C'' and inserted ''or such section'' after ''such subtitle''.

Pub. L. 101–239, §7881(g)(8), made clarifying amendment to directory language of Pub. L. 100–203, §9314(c)(1), resulting in no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

SUBTITLE E—SPECIAL PROVISIONS FOR MULTIEMPLOYER PLANS

AMENDMENTS

1980—Pub. L. 96–364, title I, §104, Sept. 26, 1980, 94 Stat. 1217, added subtitle heading. Former subtitle E heading ''Effective Date; Special Rules'' was struck out. See subtitle F of this subchapter.

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1301, 1342, 1361, 1365 of this title; title 26 section 9721.

PART 1—EMPLOYER WITHDRAWALS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1082, 1103, 1108, 1301, 1303, 1342, 1415, 1424, 1461 of this title; title 26 sections 404, 412, 413, 418C, 4975.

§ 1381. Withdrawal liability established; criteria and definitions

(a) If an employer withdraws from a multiemployer plan in a complete withdrawal or a partial withdrawal, then the employer is liable to the plan in the amount determined under this part to be the withdrawal liability.

(b) For purposes of subsection (a) of this section—

(1) The withdrawal liability of an employer to a plan is the amount determined under section 1391 of this title to be the allocable amount of unfunded vested benefits, adjusted—

(A) first, by any de minimis reduction applicable under section 1389 of this title,

(B) next, in the case of a partial withdrawal, in accordance with section 1386 of this title,

(C) then, to the extent necessary to reflect the limitation on annual payments under section 1399(c)(1)(B) of this title, and

(D) finally, in accordance with section 1405 of this title.

(2) The term ''complete withdrawal'' means a complete withdrawal described in section 1383 of this title.

(3) The term ''partial withdrawal'' means a partial withdrawal described in section 1385 of this title.

(Pub. L. 93–406, title IV, §4201, as added Pub. L. 96–364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1217.)

PRIOR PROVISIONS

A prior section 1381, Pub. L. 93–406, title IV, §4402, formerly §4082, Sept. 2, 1974, 88 Stat. 1034; S.Res. 4, Feb. 4, 1977; Pub. L. 95–214, §1, Dec. 19, 1977, 91 Stat. 1501; S.Res. 30, Mar. 7, 1979; Pub. L. 96–24, June 19, 1979, 93 Stat. 70; Pub. L. 96–239, §1, Apr. 30, 1980, 94 Stat. 341; Pub. L. 96–293, §1, June 30, 1980, 94 Stat. 610, renumbered §4402 and amended Pub. L. 96–364, title I, §108(a)-(c)(1), Sept. 26, 1980, 94 Stat. 1267, relating to the effective dates and special rules for this subchapter, was transferred to section 1461 of this title.

EFFECTIVE DATE

Part effective Sept. 26, 1980, see section 1461(e)(2) of this title.

ELIMINATION OF RETROACTIVE APPLICATION OF AMENDMENTS MADE BY MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980, PUB. L. 96–364

Pub. L. 98–369, div. A, title V, §558(a), (c), (d), July 18, 1984, 98 Stat. 899, provided that:

''(a) IN GENERAL.—

''(1) LIABILITY.—Any withdrawal liability incurred by an employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.) as a result of the complete or partial withdrawal of such employer from a multiemployer plan before September 26, 1980, shall be void.

''(2) REFUNDS.—Any amounts paid by an employer to a plan sponsor as a result of such withdrawal liability shall be refunded by the plan sponsor to the employer with interest (in accordance with section 401(a)(2) [26 U.S.C. 401(a)(2)]), less a reasonable amount for administrative expenses incurred by the plan sponsor (other than legal expenses incurred with respect to the plan) in calculating, assessing, and refunding such amounts.

''(c) NO INCREASE IN LIABILITY.—The amendments made by this section [amending sections 1391, 1397, 1399, 1415 and 1461 of this title and provisions set out as a note under section 1385 of this title] shall not be construed to increase the liability incurred by any employer pursuant to part 1 of subtitle E of title IV of the

[1] So in original. Probably should be ''or''.

Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.), as in effect immediately before the amendments made by subsection (b) [amending sections 1391, 1397, 1399, 1415, and 1461 of this title and provisions set out as a note under section 1385 of this title], as a result of the complete or partial withdrawal of such employer from a multiemployer plan prior to September 26, 1980.

''(d) SPECIAL RULE FOR CERTAIN BINDING AGREEMENTS.—In the case of an employer who, on September 26, 1980, has a binding agreement to withdraw from a multiemployer plan, subsection (a)(1) shall be applied by substituting 'December 31, 1980' for 'September 26, 1980'.''

APPLICABILITY TO CERTAIN EMPLOYERS WITHDRAWN BEFORE SEPT. 26, 1980, FROM MULTIEMPLOYER PLAN COVERING EMPLOYEES IN SEAGOING INDUSTRY; EFFECTIVE DATE, COVERAGE, ETC.

Section 108(c)(4) of Pub. L. 96–364 provided that: ''In the case of an employer who withdrew before the date of enactment of this Act [Sept. 26, 1980] from a multiemployer plan covering employees in the seagoing industry (as determined by the corporation), sections 4201 through 4219 of the Employee Retirement Income Security Act of 1974, as added by this Act, [section 1381 through 1399 of this title], are effective as of May 3, 1979. For the purpose of applying section 4217 [section 1397 of this title] for purposes of the preceding sentence, the date 'May 2, 1979,' shall be substituted for 'April 28, 1980,' and the date 'May 3, 1979' shall be substituted for 'April 29, 1980'. For purposes of this paragraph, terms which are used in title IV of the Employee Retirement Income Security Act of 1974 [this subchapter], or in regulations prescribed under that title, and which are used in the preceding sentence have the same meaning as when used in that Act [see Short Title note set out under sections 1001 of this title] or those regulations. For purposes of this paragraph, the term 'employer' includes only a substantial employer covering employees in the seagoing industry (as so determined) in connection with ports on the West Coast of the United States, but does not include an employer who withdrew from a plan because of a change in the collective bargaining representative.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1415, 1422 of this title.

§ 1382. Determination and collection of liability; notification of employer

When an employer withdraws from a multiemployer plan, the plan sponsor, in accordance with this part, shall—

(1) determine the amount of the employer's withdrawal liability,

(2) notify the employer of the amount of the withdrawal liability, and

(3) collect the amount of the withdrawal liability from the employer.

(Pub. L. 93–406, title IV, § 4202, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1218.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1383. Complete withdrawal

(a) Determinative factors

For purposes of this part, a complete withdrawal from a multiemployer plan occurs when an employer—

(1) permanently ceases to have an obligation to contribute under the plan, or

(2) permanently ceases all covered operations under the plan.

(b) Building and construction industry

(1) Notwithstanding subsection (a) of this section, in the case of an employer that has an obligation to contribute under a plan for work performed in the building and construction industry, a complete withdrawal occurs only as described in paragraph (2), if—

(A) substantially all the employees with respect to whom the employer has an obligation to contribute under the plan perform work in the building and construction industry, and

(B) the plan—

(i) primarily covers employees in the building and construction industry, or

(ii) is amended to provide that this subsection applies to employers described in this paragraph.

(2) A withdrawal occurs under this paragraph if—

(A) an employer ceases to have an obligation to contribute under the plan, and

(B) the employer—

(i) continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or

(ii) resumes such work within 5 years after the date on which the obligation to contribute under the plan ceases, and does not renew the obligation at the time of the resumption.

(3) In the case of a plan terminated by mass withdrawal (within the meaning of section 1341a(a)(2) of this title), paragraph (2) shall be applied by substituting ''3 years'' for ''5 years'' in subparagraph (B)(ii).

(c) Entertainment industry

(1) Notwithstanding subsection (a) of this section, in the case of an employer that has an obligation to contribute under a plan for work performed in the entertainment industry, primarily on a temporary or project-by-project basis, if the plan primarily covers employees in the entertainment industry, a complete withdrawal occurs only as described in subsection (b)(2) of this section applied by substituting ''plan'' for ''collective bargaining agreement'' in subparagraph (B)(i) thereof.

(2) For purposes of this subsection, the term ''entertainment industry'' means—

(A) theater, motion picture (except to the extent provided in regulations prescribed by the corporation), radio, television, sound or visual recording, music, and dance, and

(B) such other entertainment activities as the corporation may determine to be appropriate.

(3) The corporation may by regulation exclude a group or class of employers described in the preceding sentence from the application of this subsection if the corporation determines that such exclusion is necessary—

(A) to protect the interest of the plan's participants and beneficiaries, or

(B) to prevent a significant risk of loss to the corporation with respect to the plan.

(4) A plan may be amended to provide that this subsection shall not apply to a group or class of employers under the plan.

(d) Other determinative factors

(1) Notwithstanding subsection (a) of this section, in the case of an employer who—

(A) has an obligation to contribute under a plan described in paragraph (2) primarily for work described in such paragraph, and

(B) does not continue to perform work within the jurisdiction of the plan,

a complete withdrawal occurs only as described in paragraph (3).

(2) A plan is described in this paragraph if substantially all of the contributions required under the plan are made by employers primarily engaged in the long and short haul trucking industry, the household goods moving industry, or the public warehousing industry.

(3) A withdrawal occurs under this paragraph if—

(A) an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan, and

(B) either—

(i) the corporation determines that the plan has suffered substantial damage to its contribution base as a result of such cessation, or

(ii) the employer fails to furnish a bond issued by a corporate surety company that is an acceptable surety for purposes of section 1112 of this title, or an amount held in escrow by a bank or similar financial institution satisfactory to the plan, in an amount equal to 50 percent of the withdrawal liability of the employer.

(4) If, after an employer furnishes a bond or escrow to a plan under paragraph (3)(B)(ii), the corporation determines that the cessation of the employer's obligation to contribute under the plan (considered together with any cessations by other employers), or cessation of covered operations under the plan, has resulted in substantial damage to the contribution base of the plan, the employer shall be treated as having withdrawn from the plan on the date on which the obligation to contribute or covered operations ceased, and such bond or escrow shall be paid to the plan. The corporation shall not make a determination under this paragraph more than 60 months after the date on which such obligation to contribute or covered operations ceased.

(5) If the corporation determines that the employer has no further liability under the plan either—

(A) because it determines that the contribution base of the plan has not suffered substantial damage as a result of the cessation of the employer's obligation to contribute or cessation of covered operations (considered together with any cessation of contribution obligation, or of covered operations, with respect to other employers), or

(B) because it may not make a determination under paragraph (4) because of the last sentence thereof,

then the bond shall be cancelled or the escrow refunded.

(6) Nothing in this subsection shall be construed as a limitation on the amount of the withdrawal liability of any employer.

(e) Date of complete withdrawal

For purposes of this part, the date of a complete withdrawal is the date of the cessation of the obligation to contribute or the cessation of covered operations.

(f) Special liability withdrawal rules for industries other than construction and entertainment industries; procedures applicable to amend plans

(1) The corporation may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules similar to the rules described in subsections (b) and (c) of this section.

(2) Regulations under paragraph (1) shall permit use of special withdrawal liability rules—

(A) only in industries (or portions thereof) in which, as determined by the corporation, the characteristics that would make use of such rules appropriate are clearly shown, and

(B) only if the corporation determines, in each instance in which special withdrawal liability rules are permitted, that use of such rules will not pose a significant risk to the corporation under this subchapter.

(Pub. L. 93–406, title IV, § 4203, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1218.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1341a, 1381, 1388, 1391, 1401 of this title; title 26 section 411.

§ 1384. Sale of assets

(a) Complete or partial withdrawal not occurring as a result of sale and subsequent cessation of covered operations or cessation of obligation to contribute to covered operations; continuation of liability of seller

(1) A complete or partial withdrawal of an employer (hereinafter in this section referred to as the ''seller'') under this section does not occur solely because, as a result of a bona fide, arm's-length sale of assets to an unrelated party (hereinafter in this section referred to as the ''purchaser''), the seller ceases covered operations or ceases to have an obligation to contribute for such operations, if—

(A) the purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller had an obligation to contribute to the plan;

(B) the purchaser provides to the plan for a period of 5 plan years commencing with the first plan year beginning after the sale of assets, a bond issued by a corporate surety company that is an acceptable surety for purposes of section 1112 of this title, or an amount held in escrow by a bank or similar financial institution satisfactory to the plan, in an amount equal to the greater of—

(i) the average annual contribution required to be made by the seller with respect to the operations under the plan for the 3

plan years preceding the plan year in which the sale of the employer's assets occurs, or

(ii) the annual contribution that the seller was required to make with respect to the operations under the plan for the last plan year before the plan year in which the sale of the assets occurs,

which bond or escrow shall be paid to the plan if the purchaser withdraws from the plan, or fails to make a contribution to the plan when due, at any time during the first 5 plan years beginning after the sale; and

(C) the contract for sale provides that, if the purchaser withdraws in a complete withdrawal, or a partial withdrawal with respect to operations, during such first 5 plan years, the seller is secondarily liable for any withdrawal liability it would have had to the plan with respect to the operations (but for this section) if the liability of the purchaser with respect to the plan is not paid.

(2) If the purchaser—

(A) withdraws before the last day of the fifth plan year beginning after the sale, and

(B) fails to make any withdrawal liability payment when due,

then the seller shall pay to the plan an amount equal to the payment that would have been due from the seller but for this section.

(3)(A) If all, or substantially all, of the seller's assets are distributed, or if the seller is liquidated before the end of the 5 plan year period described in paragraph (1)(C), then the seller shall provide a bond or amount in escrow equal to the present value of the withdrawal liability the seller would have had but for this subsection.

(B) If only a portion of the seller's assets are distributed during such period, then a bond or escrow shall be required, in accordance with regulations prescribed by the corporation, in a manner consistent with subparagraph (A).

(4) The liability of the party furnishing a bond or escrow under this subsection shall be reduced, upon payment of the bond or escrow to the plan, by the amount thereof.

(b) Liability of purchaser

(1) For the purposes of this part, the liability of the purchaser shall be determined as if the purchaser had been required to contribute to the plan in the year of the sale and the 4 plan years preceding the sale the amount the seller was required to contribute for such operations for such 5 plan years.

(2) If the plan is in reorganization in the plan year in which the sale of assets occurs, the purchaser shall furnish a bond or escrow in an amount equal to 200 percent of the amount described in subsection (a)(1)(B) of this section.

(c) Variances or exemptions from continuation of liability of seller; procedures applicable

The corporation may by regulation vary the standards in subparagraphs (B) and (C) of subsection (a)(1) of this section if the variance would more effectively or equitably carry out the purposes of this subchapter. Before it promulgates such regulations, the corporation may grant individual or class variances or exemptions from the requirements of such subparagraphs if the particular case warrants it. Before granting such an individual or class variance or exemption, the corporation—

(1) shall publish notice in the Federal Register of the pendency of the variance or exemption,

(2) shall require that adequate notice be given to interested persons, and

(3) shall afford interested persons an opportunity to present their views.

(d) "Unrelated party" defined

For purposes of this section, the term ''unrelated party'' means a purchaser or seller who does not bear a relationship to the seller or purchaser, as the case may be, that is described in section 267(b) of title 26, or that is described in regulations prescribed by the corporation applying principles similar to the principles of such section.

(Pub. L. 93–406, title IV, § 4204, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1220; amended Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (d). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1391, 1401, 1405 of this title.

§ 1385. Partial withdrawals

(a) Determinative factors

Except as otherwise provided in this section, there is a partial withdrawal by an employer from a plan on the last day of a plan year if for such plan year—

(1) there is a 70-percent contribution decline, or

(2) there is a partial cessation of the employer's contribution obligation.

(b) Criteria applicable

For purposes of subsection (a) of this section—

(1)(A) There is a 70-percent contribution decline for any plan year if during each plan year in the 3-year testing period the employer's contribution base units do not exceed 30 percent of the employer's contribution base units for the high base year.

(B) For purposes of subparagraph (A)—

(i) The term ''3-year testing period'' means the period consisting of the plan year and the immediately preceding 2 plan years.

(ii) The number of contribution base units for the high base year is the average number of such units for the 2 plan years for which the employer's contribution base units were the highest within the 5 plan years immediately preceding the beginning of the 3-year testing period.

(2)(A) There is a partial cessation of the employer's contribution obligation for the plan year if, during such year—

(i) the employer permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan but continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location, or

(ii) an employer permanently ceases to have an obligation to contribute under the plan with respect to work performed at one or more but fewer than all of its facilities, but continues to perform work at the facility of the type for which the obligation to contribute ceased.

(B) For purposes of subparagraph (A), a cessation of obligations under a collective bargaining agreement shall not be considered to have occurred solely because, with respect to the same plan, one agreement that requires contributions to the plan has been substituted for another agreement.

(c) Retail food industry

(1) In the case of a plan in which a majority of the covered employees are employed in the retail food industry, the plan may be amended to provide that this section shall be applied with respect to such plan—

(A) by substituting ''35 percent'' for ''70 percent'' in subsections (a) and (b) of this section, and

(B) by substituting ''65 percent'' for ''30 percent'' in subsection (b) of this section.

(2) Any amendment adopted under paragraph (1) shall provide rules for the equitable reduction of withdrawal liability in any case in which the number of the plan's contribution base units, in the 2 plan years following the plan year of withdrawal of the employer, is higher than such number immediately after the withdrawal.

(3) Section 1388 of this title shall not apply to a plan which has been amended under paragraph (1).

(d) Continuation of liability of employer for partial withdrawal under amended plan

In the case of a plan described in section 404(c) of title 26, or a continuation thereof, the plan may be amended to provide rules setting forth other conditions consistent with the purposes of this chapter under which an employer has liability for partial withdrawal.

(Pub. L. 93–406, title IV, § 4205, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1221; amended Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

1989—Subsec. (d). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

APPLICABILITY TO CERTAIN EMPLOYERS ENGAGED IN TRADE OR BUSINESS OF SHIPPING BULK CARGOES IN GREAT LAKES MARITIME INDUSTRY

Section 108(c)(2) of Pub. L. 96–364 provided that:

''(A) For the purpose of applying section 4205 of the Employee Retirement Income Security Act of 1974 [this section] in the case of an employer described in subparagraph (B)—

''(i) 'more than 75 percent' shall be substituted for '70 percent' in subsections (a) and (b) of such section.

''(ii) '25 percent or less' shall be substituted for '30 percent' in subsection (b) of such section, and

''(iii) the number of contribution units for the high base year shall be the average annual number of such units for calendar years 1970 and 1971.

''(B) An employer is described in this subparagraph if—

''(i) the employer is engaged in the trade or business of shipping bulk cargoes in the Great Lakes Maritime Industry, and whose fleet consists of vessels the gross registered tonnage of which was at least 7,800, as stated in the American Bureau of Shipping Record, and

''(ii) whose fleet during any 5 years from the period 1970 through and including 1979 has experienced a 33 percent or more increase in the contribution units as measured from the average annual contribution units for the calendar years 1970 and 1971.''

APPLICABILITY TO SPECIFIED PLAN YEAR, CESSATION OF CONTRIBUTION OBLIGATIONS, AND CONTRIBUTION BASE UNITS OF EMPLOYER

Section 108(d) of Pub. L. 96–364, as amended by Pub. L. 98–369, div. A, title V, § 558(b)(2), July 18, 1984, 98 Stat. 899, provided that: ''For purposes of section 4205 of the Employee Retirement Income Security Act of 1974 [this section]—

''(1) subsection (a)(1) of such section shall not apply to any plan year beginning before September 26, 1982,

''(2) subsection (a)(2) of such section shall not apply with respect to any cessation of contribution obligations occurring before September 26, 1980, and

''(3) in applying subsection (b) of such section, the employer's contribution base units for any plan year ending before September 26, 1980, shall be deemed to be equal to the employer's contribution base units for the last plan year ending before such date.''

LIABILITY OF CERTAIN EMPLOYERS ANNOUNCING PUBLICLY BEFORE DECEMBER 13, 1979, TOTAL CESSATION OF COVERED OPERATIONS AT A FACILITY IN A STATE; AMOUNT, COVERAGE, DETERMINATIVE FACTORS, ETC.

Section 108(e) of Pub. L. 96–364 provided that:

''(1) In the case of a partial withdrawal under section 4205 of the Employee Retirement Income Security Act of 1974 [this section], an employer who—

''(A) before December 13, 1979, had publicly announced the total cessation of covered operations at a facility in a State (and such cessation occurred within 12 months after the announcement),

''(B) had not been obligated to make contributions to the plan on behalf of the employees at such facility for more than 8 years before the discontinuance of contributions, and

''(C) after the discontinuance of contributions does not within 1 year after the date of the partial with-

drawal perform work in the same State of the type for which contributions were previously required,

shall be liable under such section with respect to such partial withdrawal in an amount not greater than the amount determined under paragraph (2).

''(2) The amount determined under this paragraph is the excess (if any) of—

''(A) the present value (on the withdrawal date) of the benefits under the plan which—

''(i) were vested on the withdrawal date (or, if earlier, at the time of separation from service with the employer at the facility),

''(ii) were accrued by employees who on December 13, 1979 (or, if earlier, at the time of separation from service with the employer at the facility), were employed at the facility, and

''(iii) are attributable to service with the withdrawing employer, over

''(B)(i) the sum of—

''(I) all employer contributions to the plan on behalf of employees at the facility before the withdrawal date,

''(II) interest (to the withdrawal date) on amounts described in subclause (I), and

''(III) $100,000, reduced by

''(ii) the sum of—

''(I) the benefits paid under the plan on or before the withdrawal date with respect to former employees who separated from employment at the facility, and

''(II) interest (to the withdrawal date) on amounts described in subclause (I).

''(3) For purposes of paragraph (2)—

''(A) actuarial assumptions shall be those used in the last actuarial report completed before December 13, 1979,

''(B) the term 'withdrawal date' means the date on which the employer ceased work at the facility of the type for which contributions were previously required, and

''(C) the term 'facility' means the facility referred to in paragraph (1).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1381, 1386, 1388, 1399, 1401 of this title; title 26 section 411.

§ 1386. Adjustment for partial withdrawal; determination of amount; reduction for partial withdrawal liability; procedures applicable

(a) The amount of an employer's liability for a partial withdrawal, before the application of sections 1399(c)(1) and 1405 of this title, is equal to the product of—

(1) the amount determined under section 1391 of this title, and adjusted under section 1389 of this title if appropriate, determined as if the employer had withdrawn from the plan in a complete withdrawal—

(A) on the date of the partial withdrawal, or

(B) in the case of a partial withdrawal described in section 1385(a)(1) of this title (relating to 70-percent contribution decline), on the last day of the first plan year in the 3-year testing period,

multiplied by

(2) a fraction which is 1 minus a fraction—

(A) the numerator of which is the employer's contribution base units for the plan year following the plan year in which the partial withdrawal occurs, and

(B) the denominator of which is the average of the employer's contribution base units for—

(i) except as provided in clause (ii), the 5 plan years immediately preceding the plan year in which the partial withdrawal occurs, or

(ii) in the case of a partial withdrawal described in section 1385(a)(1) of this title (relating to 70-percent contribution decline), the 5 plan years immediately preceding the beginning of the 3-year testing period.

(b)(1) In the case of an employer that has withdrawal liability for a partial withdrawal from a plan, any withdrawal liability of that employer for a partial or complete withdrawal from that plan in a subsequent plan year shall be reduced by the amount of any partial withdrawal liability (reduced by any abatement or reduction of such liability) of the employer with respect to the plan for a previous plan year.

(2) The corporation shall prescribe such regulations as may be necessary to provide for proper adjustments in the reduction provided by paragraph (1) for—

(A) changes in unfunded vested benefits arising after the close of the prior year for which partial withdrawal liability was determined,

(B) changes in contribution base units occurring after the close of the prior year for which partial withdrawal liability was determined, and

(C) any other factors for which it determines adjustment to be appropriate,

so that the liability for any complete or partial withdrawal in any subsequent year (after the application of the reduction) properly reflects the employer's share of liability with respect to the plan.

(Pub. L. 93–406, title IV, § 4206, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1222.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1381, 1388, 1399, 1401 of this title.

§ 1387. Reduction or waiver of complete withdrawal liability; procedures and standards applicable

(a) The corporation shall provide by regulation for the reduction or waiver of liability for a complete withdrawal in the event that an employer who has withdrawn from a plan subsequently resumes covered operations under the plan or renews an obligation to contribute under the plan, to the extent that the corporation determines that reduction or waiver of withdrawal liability is consistent with the purposes of this chapter.

(b) The corporation shall prescribe by regulation a procedure and standards for the amendment of plans to provide alternative rules for the reduction or waiver of liability for a complete withdrawal in the event that an employer who has withdrawn from the plan subsequently resumes covered operations or renews an obligation to contribute under the plan. The rules may apply only to the extent that the rules are consistent with the purposes of this chapter.

(Pub. L. 93–406, title IV, § 4207, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1223.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code see Short Title note set out under section 1001 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1388. Reduction of partial withdrawal liability

(a) Obligation of employer for payments for partial withdrawal for plan years beginning after the second consecutive plan year following the partial withdrawal year; criteria applicable; furnishing of bond in lieu of payment of partial withdrawal liability

(1) If, for any 2 consecutive plan years following the plan year in which an employer has partially withdrawn from a plan under section 1385(a)(1) of this title (referred to elsewhere in this section as the ''partial withdrawal year''), the number of contribution base units with respect to which the employer has an obligation to contribute under the plan for each such year is not less than 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the high base year (within the meaning of section 1385(b)(1)(B)(ii) of this title), then the employer shall have no obligation to make payments with respect to such partial withdrawal (other than delinquent payments) for plan years beginning after the second consecutive plan year following the partial withdrawal year.

(2)(A) For any plan year for which the number of contribution base units with respect to which an employer who has partially withdrawn under section 1385(a)(1) of this title has an obligation to contribute under the plan equals or exceeds the number of units for the highest year determined under paragraph (1) without regard to ''90 percent of'', the employer may furnish (in lieu of payment of the partial withdrawal liability determined under section 1386 of this title) a bond to the plan in the amount determined by the plan sponsor (not exceeding 50 percent of the annual payment otherwise required).

(B) If the plan sponsor determines under paragraph (1) that the employer has no further liability to the plan for the partial withdrawal, then the bond shall be cancelled.

(C) If the plan sponsor determines under paragraph (1) that the employer continues to have liability to the plan for the partial withdrawal, then—

(i) the bond shall be paid to the plan,

(ii) the employer shall immediately be liable for the outstanding amount of liability due with respect to the plan year for which the bond was posted, and

(iii) the employer shall continue to make the partial withdrawal liability payments as they are due.

(b) Obligation of employer for payments for partial withdrawal for plan years beginning after the second consecutive plan year; other criteria applicable

If—

(1) for any 2 consecutive plan years following a partial withdrawal under section 1385(a)(1) of this title, the number of contribution base units with respect to which the employer has an obligation to contribute for each such year exceeds 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute for the high base year (within the meaning of section 1385(b)(1)(B)(ii) of this title,[1] and

(2) the total number of contribution base units with respect to which all employers under the plan have obligations to contribute in each of such 2 consecutive years is not less than 90 percent of the total number of contribution base units for which all employers had obligations to contribute in the partial withdrawal plan year;

then, the employer shall have no obligation to make payments with respect to such partial withdrawal (other than delinquent payments) for plan years beginning after the second such consecutive plan year.

(c) Pro rata reduction of amount of partial withdrawal liability payment of employer for plan year following partial withdrawal year

In any case in which, in any plan year following a partial withdrawal under section 1385(a)(1) of this title, the number of contribution base units with respect to which the employer has an obligation to contribute for such year equals or exceeds 110 percent (or such other percentage as the plan may provide by amendment and which is not prohibited under regulations prescribed by the corporation) of the number of contribution base units with respect to which the employer had an obligation to contribute in the partial withdrawal year, then the amount of the employer's partial withdrawal liability payment for such year shall be reduced pro rata, in accordance with regulations prescribed by the corporation.

(d) Building and construction industry; entertainment industry

(1) An employer to whom section 1383(b)[2] of this title (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.

(2) An employer to whom section 1383(c)[2] of this title (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by the corporation by regulation.

(e) Reduction or elimination of partial withdrawal liability under any conditions; criteria; procedures applicable

(1) The corporation may prescribe regulations providing for the reduction or elimination of partial withdrawal liability under any conditions with respect to which the corporation de-

[1] So in original. Probably should be ''title),''.

[2] See References in Text note below.

termines that reduction or elimination of partial withdrawal liability is consistent with the purposes of this chapter.

(2) Under such regulations, reduction of withdrawal liability shall be provided only with respect to subsequent changes in the employer's contributions for the same operations, or under the same collective bargaining agreement, that gave rise to the partial withdrawal, and changes in the employer's contribution base units with respect to other facilities or other collective bargaining agreements shall not be taken into account.

(3) The corporation shall prescribe by regulation a procedure by which a plan may by amendment adopt rules for the reduction or elimination of partial withdrawal liability under any other conditions, subject to the approval of the corporation based on its determination that adoption of such rules by the plan is consistent with the purposes of this chapter.

(Pub. L. 93–406, title IV, §4208, as added Pub. L. 96–364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1224.)

REFERENCES IN TEXT

''Section 1383(b) of this title'' and ''section 1383(c) of this title'', referred to in subsec. (d), were in the original ''section 4202(b)'' and ''section 4202(c)'', respectively, meaning section 4202(b) and section 4202(c) of the Employee Retirement Income Security Act of 1974 and were editorially translated as the probable intent of Congress in view of section 4202 of the Employee Retirement Income Security Act of 1974, which is classified to section 1382 of this title, not having subsection designations and the subject matter of section 4203 of the Act which is classified to section 1383 of this title.

This chapter, referred to in subsec. (e)(1), (3), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1385, 1401, 1403 of this title.

§ 1389. De minimis rule

(a) Reduction of unfunded vested benefits allocable to employer withdrawn from plan

Except in the case of a plan amended under subsection (b) of this section, the amount of the unfunded vested benefits allocable under section 1391 of this title to an employer who withdraws from a plan shall be reduced by the smaller of—

(1) ¾ of 1 percent of the plan's unfunded vested obligations (determined as of the end of the plan year ending before the date of withdrawal), or

(2) $50,000,

reduced by the amount, if any, by which the unfunded vested benefits allowable to the employer, determined without regard to this subsection, exceeds $100,000.

(b) Amendment of plan for reduction of amount of unfunded vested benefits allocable to employer withdrawn from plan

A plan may be amended to provide for the reduction of the amount determined under section 1391 of this title by not more than the greater of—

(1) the amount determined under subsection (a) of this section, or

(2) the lesser of—

(A) the amount determined under subsection (a)(1) of this section, or

(B) $100,000,

reduced by the amount, if any, by which the amount determined under section 1391 of this title for the employer, determined without regard to this subsection, exceeds $150,000.

(c) Nonapplicability

This section does not apply—

(1) to an employer who withdraws in a plan year in which substantially all employers withdraw from the plan, or

(2) in any case in which substantially all employers withdraw from the plan during a period of one or more plan years pursuant to an agreement or arrangement to withdraw, to an employer who withdraws pursuant to such agreement or arrangement.

(d) Presumption of employer withdrawal from plan pursuant to agreement or arrangement applicable in action or proceeding to determine or collect withdrawal liability

In any action or proceeding to determine or collect withdrawal liability, if substantially all employers have withdrawn from a plan within a period of 3 plan years, an employer who has withdrawn from such plan during such period shall be presumed to have withdrawn from the plan pursuant to an agreement or arrangement, unless the employer proves otherwise by a preponderance of the evidence.

(Pub. L. 93–406, title IV, §4209, as added Pub. L. 96–364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1225.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1381, 1386, 1391, 1394, 1399, 1401, 1403 of this title.

§ 1390. Nonapplicability of withdrawal liability for certain temporary contribution obligation periods; exception

(a) An employer who withdraws from a plan in complete or partial withdrawal is not liable to the plan if the employer—

(1) first had an obligation to contribute to the plan after September 26, 1980,

(2) had an obligation to contribute to the plan for no more than the lesser of—

(A) 6 consecutive plan years preceding the date on which the employer withdraws, or

(B) the number of years required for vesting under the plan,

(3) was required to make contributions to the plan for each such plan year in an amount equal to less than 2 percent of the sum of all employer contributions made to the plan for each such year, and

(4) has never avoided withdrawal liability because of the application of this section with respect to the plan.

(b) Subsection (a) of this section shall apply to an employer with respect to a plan only if—

(1) the plan is not a plan which primarily covers employees in the building and construction industry;

(2) the plan is amended to provide that subsection (a) of this section applies;

(3) the plan provides, or is amended to provide, that the reduction under section 411(a)(3)(E) of title 26 applies with respect to the employees of the employer; and

(4) the ratio of the assets of the plan for the plan year preceding the first plan year for which the employer was required to contribute to the plan to the benefit payments made during that plan year was at least 8 to 1.

(Pub. L. 93–406, title IV, § 4210, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1226; amended Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (b)(3). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1391. Methods for computing withdrawal liability

(a) Determination of amount of unfunded vested benefits allocable to employer withdrawn from plan

The amount of the unfunded vested benefits allocable to an employer that withdraws from a plan shall be determined in accordance with subsection (b), (c), or (d) of this section.

(b) Factors determining computation of amount of unfunded vested benefits allocable to employer withdrawn from plan

(1) Except as provided in subsections (c) and (d) of this section, the amount of unfunded vested benefits allocable to an employer that withdraws is the sum of—

(A) the employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, as determined under paragraph (2),

(B) the employer's proportional share, if any, of the unamortized amount of the plan's unfunded vested benefits at the end of the plan year ending before September 26, 1980, as determined under paragraph (3); and

(C) the employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits (if any) as determined under paragraph (4).

If the sum of the amounts determined with respect to an employer under paragraphs (2), (3), and (4) is negative, the unfunded vested benefits allocable to the employer shall be zero.

(2)(A) An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, is the sum of the employer's proportional shares of the unamortized amount of the change in unfunded vested benefits for each plan year in which the employer has an obligation to contribute under the plan ending—

(i) after such date, and

(ii) before the plan year in which the withdrawal of the employer occurs.

(B) The change in a plan's unfunded vested benefits for a plan year is the amount by which—

(i) the unfunded vested benefits at the end of the plan year; exceeds

(ii) the sum of—

(I) the unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, and

(II) the sum of the unamortized amounts of the change in unfunded vested benefits for each plan year ending after September 25, 1980, and preceding the plan year for which the change is determined.

(C) The unamortized amount of the change in a plan's unfunded vested benefits with respect to a plan year is the change in unfunded vested benefits for the plan year, reduced by 5 percent of such change for each succeeding plan year.

(D) The unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, is the amount of the unfunded vested benefits as of the end of that plan year reduced by 5 percent of such amount for each succeeding plan year.

(E) An employer's proportional share of the unamortized amount of a change in unfunded vested benefits is the product of—

(i) the unamortized amount of such change (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

(ii) a fraction—

(I) the numerator of which is the sum of the contributions required to be made under the plan by the employer for the year in which such change arose and for the 4 preceding plan years, and

(II) the denominator of which is the sum for the plan year in which such change arose and the 4 preceding plan years of all contributions made by employers who had an obligation to contribute under the plan for the plan year in which such change arose reduced by the contributions made in such years by employers who had withdrawn from the plan in the year in which the change arose.

(3) An employer's proportional share of the unamortized amount of the plan's unfunded vested benefits for the last plan year ending before September 26, 1980, is the product of—

(A) such unamortized amount; multiplied by—

(B) a fraction—

(i) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the most recent

5 plan years ending before September 26, 1980, and

(ii) the denominator of which is the sum of all contributions made for the most recent 5 plan years ending before September 26, 1980, by all employers—

(I) who had an obligation to contribute under the plan for the first plan year ending on or after such date, and

(II) who had not withdrawn from the plan before such date.

(4)(A) An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits is the sum of the employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits for each plan year ending before the plan year in which the employer withdrew from the plan.

(B) Except as otherwise provided in regulations prescribed by the corporation, the reallocated unfunded vested benefits for a plan year is the sum of—

(i) any amount which the plan sponsor determines in that plan year to be uncollectible for reasons arising out of cases or proceedings under title 11, or similar proceedings.[1]

(ii) any amount which the plan sponsor determines in that plan year will not be assessed as a result of the operation of section 1389, 1399(c)(1)(B), or 1405 of this title against an employer to whom a notice described in section 1399 of this title has been sent, and

(iii) any amount which the plan sponsor determines to be uncollectible or unassessable in that plan year for other reasons under standards not inconsistent with regulations prescribed by the corporation.

(C) The unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the reallocated unfunded vested benefits for the plan year, reduced by 5 percent of such reallocated unfunded vested benefits for each succeeding plan year.

(D) An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the product of—

(i) the unamortized amount of the reallocated unfunded vested benefits (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

(ii) the fraction defined in paragraph (2)(E)(ii).

(c) Amendment of multiemployer plan for determination respecting amount of unfunded vested benefits allocable to employer withdrawn from plan; factors determining computation of amount

(1) A multiemployer plan, other than a plan which primarily covers employees in the building and construction industry, may be amended to provide that the amount of unfunded vested benefits allocable to an employer that withdraws from the plan is an amount determined under paragraph (2), (3), (4), or (5) of this subsection, rather than under subsection (b) or (d) of this section. A plan described in section 1383(b)(1)(B)(i) of this title (relating to the building and construction industry) may be amended, to the extent provided in regulations prescribed by the corporation, to provide that the amount of the unfunded vested benefits allocable to an employer not described in section 1383(b)(1)(A) of this title shall be determined in a manner different from that provided in subsection (b) of this section.

(2)(A) The amount of the unfunded vested benefits allocable to any employer under this paragraph is the sum of the amounts determined under subparagraphs (B) and (C).

(B) The amount determined under this subparagraph is the product of—

(i) the plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning with the first plan year ending on or after such date; multiplied by

(ii) a fraction—

(I) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the last 5 plan years ending before September 26, 1980, and

(II) the denominator of which is the sum of all contributions made for the last 5 plan years ending before September 26, 1980, by all employers who had an obligation to contribute under the plan for the first plan year ending after September 25, 1980, and who had not withdrawn from the plan before such date.

(C) The amount determined under this subparagraph is the product of—

(i) an amount equal to—

(I) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less

(II) the sum of the value as of such date of all outstanding claims for withdrawal liability which can reasonably be expected to be collected, with respect to employers withdrawing before such plan year, and that portion of the amount determined under subparagraph (B)(i) which is allocable to employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws and who also had an obligation to contribute under the plan for the first plan year ending after September 25, 1980; multiplied by

(ii) a fraction—

(I) the numerator of which is the total amount required to be contributed under the plan by the employer for the last 5 plan years ending before the date on which the employer withdraws, and

(II) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the date on which the employer withdraws, increased by the amount of any employer contributions owed with respect to earlier periods which were collected in those

[1] So in original. The period probably should be a comma.

plan years, and decreased by any amount contributed by an employer who withdrew from the plan under this part during those plan years.

(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this subchapter, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

(3) The amount of the unfunded vested benefits allocable to an employer under this paragraph is the product of—

(A) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less the value as of the end of such year of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from employers withdrawing before such year; multiplied by

(B) a fraction—

(i) the numerator of which is the total amount required to be contributed by the employer under the plan for the last 5 plan years ending before the withdrawal, and

(ii) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the withdrawal, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed to the plan during those plan years by employers who withdrew from the plan under this section during those plan years.

(4)(A) The amount of the unfunded vested benefits allocable to an employer under this paragraph is equal to the sum of—

(i) the plan's unfunded vested benefits which are attributable to participants' service with the employer (determined as of the end of the plan year preceding the plan year in which the employer withdraws), and

(ii) the employer's proportional share of any unfunded vested benefits which are not attributable to service with the employer or other employers who are obligated to contribute under the plan in the plan year preceding the plan year in which the employer withdraws (determined as of the end of the plan year preceding the plan year in which the employer withdraws).

(B) The plan's unfunded vested benefits which are attributable to participants' service with the employer is the amount equal to the value of nonforfeitable benefits under the plan which are attributable to participants' service with such employer (determined under plan rules not inconsistent with regulations of the corporation) decreased by the share of plan assets determined under subparagraph (C) which is allocated to the employer as provided under subparagraph (D).

(C) The value of plan assets determined under this subparagraph is the value of plan assets allocated to nonforfeitable benefits which are attributable to service with the employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws, which is determined by multiplying—

(i) the value of the plan assets as of the end of the plan year preceding the plan year in which the employer withdraws, by

(ii) a fraction—

(I) the numerator of which is the value of nonforfeitable benefits which are attributable to service with such employers, and

(II) the denominator of which is the value of all nonforfeitable benefits under the plan

as of the end of the plan year.

(D) The share of plan assets, determined under subparagraph (C), which is allocated to the employer shall be determined in accordance with one of the following methods which shall be adopted by the plan by amendment:

(i) by multiplying the value of plan assets determined under subparagraph (C) by a fraction—

(I) the numerator of which is the value of the nonforfeitable benefits which are attributable to service with the employer, and

(II) the denominator of which is the value of the nonforfeitable benefits which are attributable to service with all employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws;

(ii) by multiplying the value of plan assets determined under subparagraph (C) by a fraction—

(I) the numerator of which is the sum of all contributions (accumulated with interest) which have been made to the plan by the employer for the plan year preceding the plan year in which the employer withdraws and all preceding plan years; and

(II) the denominator of which is the sum of all contributions (accumulated with interest) which have been made to the plan (for the plan year preceding the plan year in which the employer withdraws and all preceding plan years) by all employers who have an obligation to contribute to the plan for the plan year preceding the plan year in which the employer withdraws; or

(iii) by multiplying the value of plan assets under subparagraph (C) by a fraction—

(I) the numerator of which is the amount determined under clause (ii)(I) of this subparagraph, less the sum of benefit payments (accumulated with interest) made to participants (and their beneficiaries) for the plan years described in such clause (ii)(I) which are attributable to service with the employer; and

(II) the denominator of which is the amount determined under clause (ii)(II) of this subparagraph, reduced by the sum of benefit payments (accumulated with interest) made to participants (and their beneficiaries) for the plan years described in such clause (ii)(II) which are attributable to service with respect to the employers described in such clause (ii)(II).

(E) The amount of the plan's unfunded vested benefits for a plan year preceding the plan year

in which an employer withdraws, which is not attributable to service with employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which such employer withdraws, is equal to—

(i) an amount equal to—

(I) the value of all nonforfeitable benefits under the plan at the end of such plan year, reduced by

(II) the value of nonforfeitable benefits under the plan at the end of such plan year which are attributable to participants' service with employers who have an obligation to contribute under the plan for such plan year; reduced by

(ii) an amount equal to—

(I) the value of the plan assets as of the end of such plan year, reduced by

(II) the value of plan assets as of the end of such plan year as determined under subparagraph (C); reduced by

(iii) the value of all outstanding claims for withdrawal liability which can reasonably be expected to be collected with respect to employers withdrawing before the year preceding the plan year in which the employer withdraws.

(F) The employer's proportional share described in subparagraph (A)(ii) for a plan year is the amount determined under subparagraph (E) for the employer, but not in excess of an amount which bears the same ratio to the sum of the amounts determined under subparagraph (E) for all employers under the plan as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan.

(G) The corporation may prescribe by regulation other methods which a plan may adopt for allocating assets to determine the amount of the unfunded vested benefits attributable to service with the employer and to determine the employer's share of unfunded vested benefits not attributable to service with employers who have an obligation to contribute under the plan in the plan year in which the employer withdraws.

(5)(A) The corporation shall prescribe by regulation a procedure by which a plan may, by amendment, adopt any other alternative method for determining an employer's allocable share of unfunded vested benefits under this section, subject to the approval of the corporation based on its determination that adoption of the method by the plan would not significantly increase the risk of loss to plan participants and beneficiaries or to the corporation.

(B) The corporation may prescribe by regulation standard approaches for alternative methods, other than those set forth in the preceding paragraphs of this subsection, which a plan may adopt under subparagraph (A), for which the corporation may waive or modify the approval requirements of subparagraph (A). Any alternative method shall provide for the allocation of substantially all of a plan's unfunded vested benefits among employers who have an obligation to contribute under the plan.

(C) Unless the corporation by regulation provides otherwise, a plan may be amended to provide that a period of more than 5 but not more than 10 plan years may be used for determining the numerator and denominator of any fraction which is used under any method authorized under this section for determining an employer's allocable share of unfunded vested benefits under this section.

(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this subchapter, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

(d) Method of calculating allocable share of employer of unfunded vested benefits set forth in subsection (c)(3) of this section; applicability of certain statutory provisions

(1) The method of calculating an employer's allocable share of unfunded vested benefits set forth in subsection (c)(3) of this section shall be the method for calculating an employer's allocable share of unfunded vested benefits under a plan to which section 404(c) of title 26, or a continuation of such a plan, applies, unless the plan is amended to adopt another method authorized under subsection (b) or (c) of this section.

(2) Sections 1384, 1389, 1399(c)(1)(B), and 1405 of this title shall not apply with respect to the withdrawal of an employer from a plan described in paragraph (1) unless the plan is amended to provide that any of such sections apply.

(e) Reduction of liability of withdrawn employer in case of transfer of liabilities to another plan incident to withdrawal or partial withdrawal of employer

In the case of a transfer of liabilities to another plan incident to an employer's withdrawal or partial withdrawal, the withdrawn employer's liability under this part shall be reduced in an amount equal to the value, as of the end of the last plan year ending on or before the date of the withdrawal, of the transferred unfunded vested benefits.

(f) Computations applicable in case of withdrawal following merger of multiemployer plans

In the case of a withdrawal following a merger of multiemployer plans, subsection (b), (c), or (d) of this section shall be applied in accordance with regulations prescribed by the corporation; except that, if a withdrawal occurs in the first plan year beginning after a merger of multiemployer plans, the determination under this section shall be made as if each of the multiemployer plans had remained separate plans.

(Pub. L. 93–406, title IV, §4211, as added Pub. L. 96–364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1226; amended Pub. L. 98–369, div. A, title V, §558(b)(1)(A), (B), July 18, 1984, 98 Stat. 899; Pub. L. 101–239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (d)(1). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1984—Subsec. (b). Pub. L. 98–369, §558(b)(1)(A), (B), substituted ''September 25, 1980'' for ''April 28, 1980'' in

pars. (1)(A) and (2)(A), (B)(ii)(II), and ''September 26, 1980'' for ''April 29, 1980'' in pars. (1)(B) and (2)(B)(ii)(I), (D), and in par. (3) in provisions preceding subpar. (A) and in subpar. (B)(i), (ii).

Subsec. (c)(2). Pub. L. 98–369, § 558(b)(1)(A), (B), substituted ''September 25, 1980'' for ''April 28, 1980'' in subpars. (B)(ii)(II) and (C)(i)(II) and ''September 26, 1980'' for ''April 29, 1980'' in subpar. (B)(i), (ii)(I), (II).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1381, 1386, 1389, 1394, 1399, 1400, 1401, 1415 of this title.

§ 1392. Obligation to contribute

(a) "Obligation to contribute" defined

For purposes of this part, the term ''obligation to contribute'' means an obligation to contribute arising—

(1) under one or more collective bargaining (or related) agreements, or

(2) as a result of a duty under applicable labor-management relations law, but

does not include an obligation to pay withdrawal liability under this section or to pay delinquent contributions.

(b) Payments of withdrawal liability not considered contributions

Payments of withdrawal liability under this part shall not be considered contributions for purposes of this part.

(c) Transactions to evade or avoid liability

If a principal purpose of any transaction is to evade or avoid liability under this part, this part shall be applied (and liability shall be determined and collected) without regard to such transaction.

(Pub. L. 93–406, title IV, § 4212, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1233.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1342, 1401, 1425 of this title; title 26 sections 418A, 418D.

§ 1393. Actuarial assumptions

(a) Use by plan actuary in determining unfunded vested benefits of a plan for computing withdrawal liability of employer

The corporation may prescribe by regulation actuarial assumptions which may be used by a plan actuary in determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part. Withdrawal liability under this part shall be determined by each plan on the basis of—

(1) actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan, or

(2) actuarial assumptions and methods set forth in the corporation's regulations for purposes of determining an employer's withdrawal liability.

(b) Factors determinative of unfunded vested benefits of plan for computing withdrawal liability of employer

In determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part, the plan actuary may—

(1) rely on the most recent complete actuarial valuation used for purposes of section 412 of title 26 and reasonable estimates for the interim years of the unfunded vested benefits, and

(2) in the absence of complete data, rely on the data available or on data secured by a sampling which can reasonably be expected to be representative of the status of the entire plan.

(c) Determination of amount of unfunded vested benefits

For purposes of this part, the term ''unfunded vested benefits'' means with respect to a plan, an amount equal to—

(A) the value of nonforfeitable benefits under the plan, less

(B) the value of the assets of the plan.

(Pub. L. 93–406, title IV, § 4213, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1233; amended Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (b)(1). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1394. Application of plan amendments; exception

(a) No plan rule or amendment adopted after January 31, 1981, under section 1389 or 1391(c) of this title may be applied without the employer's consent with respect to liability for a withdrawal or partial withdrawal which occurred before the date on which the rule or amendment was adopted.

(b) All plan rules and amendments authorized under this part shall operate and be applied uniformly with respect to each employer, except that special provisions may be made to take into account the creditworthiness of an employer. The plan sponsor shall give notice to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan of any plan rules or amendments adopted pursuant to this section.

(Pub. L. 93–406, title IV, § 4214, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1234.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1395. Plan notification to corporation of potentially significant withdrawals

The corporation may, by regulation, require the plan sponsor of a multiemployer plan to provide notice to the corporation when the withdrawal from the plan by any employer has resulted, or will result, in a significant reduction in the amount of aggregate contributions under the plan made by employers.

(Pub. L. 93–406, title IV, § 4215, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1234.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1396. Special rules for plans under section 404(c) of title 26

(a) Amount of withdrawal liability; determinative factors

In the case of a plan described in subsection (b) of this section—

(1) if an employer withdraws prior to a termination described in section 1341a(a)(2) of this title, the amount of withdrawal liability to be paid in any year by such employer shall be an amount equal to the greater of—

(A) the amount determined under section 1399(c)(1)(C)(i) of this title, or

(B) the product of—

(i) the number of contribution base units for which the employer would have been required to make contributions for the prior plan year if the employer had not withdrawn, multiplied by

(ii) the contribution rate for the plan year which would be required to meet the amortization schedules contained in section 1423(d)(3)(B)(ii) of this title (determined without regard to any limitation on such rate otherwise provided by this subchapter)

except that an employer shall not be required to pay an amount in excess of the withdrawal liability computed with interest; and

(2) the withdrawal liability of an employer who withdraws after December 31, 1983, as a result of a termination described in section 1341a(a)(2) of this title which is agreed to by the labor organization that appoints the employee representative on the joint board of trustees which sponsors the plan, shall be determined under subsection (c) of this section if—

(A) as a result of prior employer withdrawals in any plan year commencing after January 1, 1980, the number of contribution base units is reduced to less than 67 percent of the average number of such units for the calendar years 1974 through 1979; and

(B) at least 50 percent of the withdrawal liability attributable to the first 33 percent decline described in subparagraph (A) has been determined by the plan sponsor to be uncollectible within the meaning of regulations of the corporation of general applicability; and

(C) the rate of employer contributions under the plan for each plan year following the first plan year beginning after September 26, 1980 and preceding the termination date equals or exceeds the rate described in section 1423(d)(3) of this title.

(b) Covered plans

A plan is described in this subsection if—

(1) it is a plan described in section 404(c) of title 26 or a continuation thereof; and

(2) participation in the plan is substantially limited to individuals who retired prior to January 1, 1976.

(c) Amount of liability of employer; "a year of signatory service" defined

(1) The amount of an employer's liability under this paragraph is the product of—

(A) the amount of the employer's withdrawal liability determined without regard to this section, and

(B) the greater of 90 percent, or a fraction—

(i) the numerator of which is an amount equal to the portion of the plan's unfunded vested benefits that is attributable to plan participants who have a total of 10 or more years of signatory service, and

(ii) the denominator of which is an amount equal to the total unfunded vested benefits of the plan.

(2) For purposes of paragraph (1), the term ''a year of signatory service'' means a year during any portion of which a participant was employed for an employer who was obligated to contribute in that year, or who was subsequently obligated to contribute.

(Pub. L. 93–406, title IV, § 4216, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1234.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1423 of this title; title 26 section 418B.

§ 1397. Application of part in case of certain pre-1980 withdrawals; adjustment of covered plan

(a) For the purpose of determining the amount of unfunded vested benefits allocable to an employer for a partial or complete withdrawal from a plan which occurs after September 25, 1980, and for the purpose of determining whether there has been a partial withdrawal after such date, the amount of contributions, and the number of contribution base units, of such employer properly allocable—

(1) to work performed under a collective bargaining agreement for which there was a permanent cessation of the obligation to contribute before September 26, 1980, or

(2) to work performed at a facility at which all covered operations permanently ceased before September 26, 1980, or for which there was a permanent cessation of the obligation to contribute before that date,

shall not be taken into account.

(b) A plan may, in a manner not inconsistent with regulations, which shall be prescribed by the corporation, adjust the amount of unfunded

vested benefits allocable to other employers under a plan maintained by an employer described in subsection (a) of this section.

(Pub. L. 93–406, title IV, § 4217, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1235; amended Pub. L. 98–369, div. A, title V, § 558(b)(1)(A), (B), July 18, 1984, 98 Stat. 899.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369, § 558(b)(1)(A), (B), substituted ''September 25, 1980'' for ''April 28, 1980'' in provisions preceding par. (1) and ''September 26, 1980'' for ''April 29, 1980'' in pars. (1) and (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1398. Withdrawal not to occur because of change in business form or suspension of contributions during labor dispute

Notwithstanding any other provision of this part, an employer shall not be considered to have withdrawn from a plan solely because—

(1) an employer ceases to exist by reason of—

(A) a change in corporate structure described in section 1369(b) of this title, or

(B) a change to an unincorporated form of business enterprise,

if the change causes no interruption in employer contributions or obligations to contribute under the plan, or

(2) an employer suspends contributions under the plan during a labor dispute involving its employees.

For purposes of this part, a successor or parent corporation or other entity resulting from any such change shall be considered the original employer.

(Pub. L. 93–406, title IV, § 4218, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1236; amended Pub. L. 99–514, title XVIII, § 1879(u)(4), as added Pub. L. 101–239, title VII, § 7862(b)(1)(C), Dec. 19, 1989, 103 Stat. 2432; Pub. L. 101–239, title VII, § 7893(f), Dec. 19, 1989, 103 Stat. 2447.)

AMENDMENTS

1989—Par. (1)(A). Pub. L. 101–239, § 7893(f), made identical amendment to that of Pub. L. 99–514, § 1879(u)(4), as added by Pub. L. 101–239, § 7862(b)(1)(C), see below.

Pub. L. 101–239, § 7862(b)(1)(C), added Pub. L. 99–514, § 1879(u)(4), see 1986 Amendment note below.

1986—Par. (1)(A). Pub. L. 99–514, § 1879(u)(4), as added by Pub. L. 101–239, § 7862(b)(1)(C), substituted ''section 1369(b) of this title'' for ''section 1362(d) of this title''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7862(b)(1)(C) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 of Title 26, Internal Revenue Code.

Amendment by section 7893(f) of Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101–239, set out as a note under section 1002 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1399. Notice, collection, etc., of withdrawal liability

(a) Furnishing of information by employer to plan sponsor

An employer shall, within 30 days after a written request from the plan sponsor, furnish such information as the plan sponsor reasonably determines to be necessary to enable the plan sponsor to comply with the requirements of this part.

(b) Notification, demand for payment, and review upon complete or partial withdrawal by employer

(1) As soon as practicable after an employer's complete or partial withdrawal, the plan sponsor shall—

(A) notify the employer of—

(i) the amount of the liability, and

(ii) the schedule for liability payments, and

(B) demand payment in accordance with the schedule.

(2)(A) No later than 90 days after the employer receives the notice described in paragraph (1), the employer—

(i) may ask the plan sponsor to review any specific matter relating to the determination of the employer's liability and the schedule of payments,

(ii) may identify any inaccuracy in the determination of the amount of the unfunded vested benefits allocable to the employer, and

(iii) may furnish any additional relevant information to the plan sponsor.

(B) After a reasonable review of any matter raised, the plan sponsor shall notify the employer of—

(i) the plan sponsor's decision,

(ii) the basis for the decision, and

(iii) the reason for any change in the determination of the employer's liability or schedule of liability payments.

(c) Payment requirements; amount, etc.

(1)(A)(i) Except as provided in subparagraphs (B) and (D) of this paragraph and in paragraphs (4) and (5), an employer shall pay the amount determined under section 1391 of this title, adjusted if appropriate first under section 1389 of this title and then under section 1386 of this title over the period of years necessary to amortize the amount in level annual payments determined under subparagraph (C), calculated as if the first payment were made on the first day of the plan year following the plan year in which the withdrawal occurs and as if each subsequent payment were made on the first day of each subsequent plan year. Actual payment shall commence in accordance with paragraph (2).

(ii) The determination of the amortization period described in clause (i) shall be based on the assumptions used for the most recent actuarial valuation for the plan.

(B) In any case in which the amortization period described in subparagraph (A) exceeds 20 years, the employer's liability shall be limited to the first 20 annual payments determined under subparagraph (C).

(C)(i) Except as provided in subparagraph (E), the amount of each annual payment shall be the product of—

(I) the average annual number of contribution base units for the period of 3 consecutive plan years, during the period of 10 consecutive plan years ending before the plan year in which the withdrawal occurs, in which the number of contribution base units for which the employer had an obligation to contribute under the plan is the highest, and

(II) the highest contribution rate at which the employer had an obligation to contribute under the plan during the 10 plan years ending with the plan year in which the withdrawal occurs.

For purposes of the preceding sentence, a partial withdrawal described in section 1385(a)(1) of this title shall be deemed to occur on the last day of the first year of the 3-year testing period described in section 1385(b)(1)(B)(i) of this title.

(ii)(I) A plan may be amended to provide that for any plan year ending before 1986 the amount of each annual payment shall be (in lieu of the amount determined under clause (i)) the average of the required employer contributions under the plan for the period of 3 consecutive plan years (during the period of 10 consecutive plan years ending with the plan year preceding the plan year in which the withdrawal occurs) for which such required contributions were the highest.

(II) Subparagraph (B) shall not apply to any plan year to which this clause applies.

(III) This clause shall not apply in the case of any withdrawal described in subparagraph (D).

(IV) If under a plan this clause applies to any plan year but does not apply to the next plan year, this clause shall not apply to any plan year after such next plan year.

(V) For purposes of this clause, the term ''required contributions'' means, for any period, the amounts which the employer was obligated to contribute for such period (not taking into account any delinquent contribution for any other period).

(iii) A plan may be amended to provide that for the first plan year ending on or after September 26, 1980, the number ''5'' shall be substituted for the number ''10'' each place it appears in clause (i) or clause (ii) (whichever is appropriate). If the plan is so amended, the number ''5'' shall be increased by one for each succeeding plan year until the number ''10'' is reached.

(D) In any case in which a multiemployer plan terminates by the withdrawal of every employer from the plan, or in which substantially all the employers withdraw from a plan pursuant to an agreement or arrangement to withdraw from the plan—

(i) the liability of each such employer who has withdrawn shall be determined (or redetermined) under this paragraph without regard to subparagraph (B), and

(ii) notwithstanding any other provision of this part, the total unfunded vested benefits of the plan shall be fully allocated among all such employers in a manner not inconsistent with regulations which shall be prescribed by the corporation.

Withdrawal by an employer from a plan, during a period of 3 consecutive plan years within which substantially all the employers who have an obligation to contribute under the plan withdraw, shall be presumed to be a withdrawal pursuant to an agreement or arrangement, unless the employer proves otherwise by a preponderance of the evidence.

(E) In the case of a partial withdrawal described in section 1385(a) of this title, the amount of each annual payment shall be the product of—

(i) the amount determined under subparagraph (C) (determined without regard to this subparagraph), multiplied by

(ii) the fraction determined under section 1386(a)(2) of this title.

(2) Withdrawal liability shall be payable in accordance with the schedule set forth by the plan sponsor under subsection (b)(1) of this section beginning no later than 60 days after the date of the demand notwithstanding any request for review or appeal of determinations of the amount of such liability or of the schedule.

(3) Each annual payment determined under paragraph (1)(C) shall be payable in 4 equal installments due quarterly, or at other intervals specified by plan rules. If a payment is not made when due, interest on the payment shall accrue from the due date until the date on which the payment is made.

(4) The employer shall be entitled to prepay the outstanding amount of the unpaid annual withdrawal liability payments determined under paragraph (1)(C), plus accrued interest, if any, in whole or in part, without penalty. If the prepayment is made pursuant to a withdrawal which is later determined to be part of a withdrawal described in paragraph (1)(D), the withdrawal liability of the employer shall not be limited to the amount of the prepayment.

(5) In the event of a default, a plan sponsor may require immediate payment of the outstanding amount of an employer's withdrawal liability, plus accrued interest on the total outstanding liability from the due date of the first payment which was not timely made. For purposes of this section, the term ''default'' means—

(A) the failure of an employer to make, when due, any payment under this section, if the failure is not cured within 60 days after the employer receives written notification from the plan sponsor of such failure, and

(B) any other event defined in rules adopted by the plan which indicates a substantial likelihood that an employer will be unable to pay its withdrawal liability.

(6) Except as provided in paragraph (1)(A)(ii), interest under this subsection shall be charged at rates based on prevailing market rates for comparable obligations, in accordance with regulations prescribed by the corporation.

(7) A multiemployer plan may adopt rules for other terms and conditions for the satisfaction of an employer's withdrawal liability if such rules—

(A) are consistent with this chapter, and

(B) are not inconsistent with regulations of the corporation.

(8) In the case of a terminated multiemployer plan, an employer's obligation to make payments under this section ceases at the end of the plan year in which the assets of the plan (exclusive of withdrawal liability claims) are sufficient to meet all obligations of the plan, as determined by the corporation.

(d) Applicability of statutory prohibitions

The prohibitions provided in section 1106(a) of this title do not apply to any action required or permitted under this part.

(Pub. L. 93–406, title IV, § 4219, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1236; amended Pub. L. 98–369, div. A, title V, § 558(b)(1)(B), July 18, 1984, 98 Stat. 899.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(7)(A), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

1984—Subsec. (c)(1)(C)(iii). Pub. L. 98–369 substituted ''September 26, 1980'' for ''April 29, 1980''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1381, 1386, 1391, 1396, 1401, 1403, 1415 of this title.

§ 1400. Approval of amendments

(a) Amendment of covered multiemployer plan; procedures applicable

Except as provided in subsection (b) of this section, if an amendment to a multiemployer plan authorized by any preceding section of this part is adopted more than 36 months after the effective date of this section, the amendment shall be effective only if the corporation approves the amendment, or, within 90 days after the corporation receives notice and a copy of the amendment from the plan sponsor, fails to disapprove the amendment.

(b) Amendment respecting methods for computing withdrawal liability

An amendment permitted by section 1391(c)(5) of this title may be adopted only in accordance with that section.

(c) Criteria for disapproval by corporation

The corporation shall disapprove an amendment referred to in subsection (a) or (b) of this section only if the corporation determines that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the corporation.

(Pub. L. 93–406, title IV, § 4220, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1239.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsec. (a), see 1461(e)(2) of this title.

§ 1401. Resolution of disputes

(a) Arbitration proceedings; matters subject to arbitration, procedures applicable, etc.

(1) Any dispute between an employer and the plan sponsor of a multiemployer plan concerning a determination made under sections 1381 through 1399 of this title shall be resolved through arbitration. Either party may initiate the arbitration proceeding within a 60-day period after the earlier of—

(A) the date of notification to the employer under section 1399(b)(2)(B) of this title, or

(B) 120 days after the date of the employer's request under section 1399(b)(2)(A) of this title.

The parties may jointly initiate arbitration within the 180-day period after the date of the plan sponsor's demand under section 1399(b)(1) of this title.

(2) An arbitration proceeding under this section shall be conducted in accordance with fair and equitable procedures to be promulgated by the corporation. The plan sponsor may purchase insurance to cover potential liability of the arbitrator. If the parties have not provided for the costs of the arbitration, including arbitrator's fees, by agreement, the arbitrator shall assess such fees. The arbitrator may also award reasonable attorney's fees.

(3)(A) For purposes of any proceeding under this section, any determination made by a plan sponsor under sections 1381 through 1399 of this title and section 1405 of this title is presumed correct unless the party contesting the determination shows by a preponderance of the evidence that the determination was unreasonable or clearly erroneous.

(B) In the case of the determination of a plan's unfunded vested benefits for a plan year, the determination is presumed correct unless a party contesting the determination shows by a preponderance of evidence that—

(i) the actuarial assumptions and methods used in the determination were, in the aggregate, unreasonable (taking into account the experience of the plan and reasonable expectations), or

(ii) the plan's actuary made a significant error in applying the actuarial assumptions or methods.

(b) Alternative collection proceedings; civil action subsequent to arbitration award; conduct of arbitration proceedings

(1) If no arbitration proceeding has been initiated pursuant to subsection (a) of this section, the amounts demanded by the plan sponsor under section 1399(b)(1) of this title shall be due and owing on the schedule set forth by the plan sponsor. The plan sponsor may bring an action in a State or Federal court of competent jurisdiction for collection.

(2) Upon completion of the arbitration proceedings in favor of one of the parties, any party thereto may bring an action, no later than 30 days after the issuance of an arbitrator's award, in an appropriate United States district court in

accordance with section 1451 of this title to enforce, vacate, or modify the arbitrator's award.

(3) Any arbitration proceedings under this section shall, to the extent consistent with this subchapter, be conducted in the same manner, subject to the same limitations, carried out with the same powers (including subpena power), and enforced in United States courts as an arbitration proceeding carried out under title 9.

(c) Presumption respecting finding of fact by arbitrator

In any proceeding under subsection (b) of this section, there shall be a presumption, rebuttable only by a clear preponderance of the evidence, that the findings of fact made by the arbitrator were correct.

(d) Payments by employer prior and subsequent to determination by arbitrator; adjustments; failure of employer to make payments

Payments shall be made by an employer in accordance with the determinations made under this part until the arbitrator issues a final decision with respect to the determination submitted for arbitration, with any necessary adjustments in subsequent payments for overpayments or underpayments arising out of the decision of the arbitrator with respect to the determination. If the employer fails to make timely payment in accordance with such final decision, the employer shall be treated as being delinquent in the making of a contribution required under the plan (within the meaning of section 1145 of this title).

(e) Furnishing of information by plan sponsor to employer respecting computation of withdrawal liability of employer; fees

If any employer requests in writing that the plan sponsor make available to the employer general information necessary for the employer to compute its withdrawal liability with respect to the plan (other than information which is unique to that employer), the plan sponsor shall furnish the information to the employer without charge. If any employer requests in writing that the plan sponsor make an estimate of such employer's potential withdrawal liability with respect to the plan or to provide information unique to that employer, the plan sponsor may require the employer to pay the reasonable cost of making such estimate or providing such information.

(Pub. L. 93–406, title IV, §4221, as added Pub. L. 96–364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1239.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1451 of this title.

§ 1402. Reimbursements for uncollectible withdrawal liability

(a) Required supplemental program to reimburse for payments due from employers uncollectible as a result of employer involvement in bankruptcy case or proceedings; program participation, premiums, etc.

By May 1, 1982, the corporation shall establish by regulation a supplemental program to reimburse multiemployer plans for withdrawal liability payments which are due from employers and which are determined to be uncollectible for reasons arising out of cases or proceedings involving the employers under title 11, or similar cases or proceedings. Participation in the supplemental program shall be on a voluntary basis, and a plan which elects coverage under the program shall pay premiums to the corporation in accordance with a premium schedule which shall be prescribed from time to time by the corporation. The premium schedule shall contain such rates and bases for the application of such rates as the corporation considers to be appropriate.

(b) Discretionary supplemental program to reimburse for payments due from employers uncollectible for other appropriate reasons

The corporation may provide under the program for reimbursement of amounts of withdrawal liability determined to be uncollectible for any other reasons the corporation considers appropriate.

(c) Payment of cost of program

The cost of the program (including such administrative and legal costs as the corporation considers appropriate) may be paid only out of premiums collected under such program.

(d) Terms and conditions, limitations, etc., of supplemental program

The supplemental program may be offered to eligible plans on such terms and conditions, and with such limitations with respect to the payment of reimbursements (including the exclusion of de minimis amounts of uncollectible employer liability, and the reduction or elimination of reimbursements which cannot be paid from collected premiums) and such restrictions on withdrawal from the program, as the corporation considers necessary and appropriate.

(e) Arrangements by corporation with private insurers for implementation of program; election of coverage by participating plans with private insurers

The corporation may enter into arrangements with private insurers to carry out in whole or in part the program authorized by this section and may require plans which elect coverage under the program to elect coverage by those private insurers.

(Pub. L. 93–406, title IV, §4222, as added Pub. L. 96–364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1240.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1082, 1305, 1306, 1403 of this title; title 26 section 412.

§ 1403. Withdrawal liability payment fund

(a) Establishment of or participation in fund by plan sponsors

The plan sponsors of multiemployer plans may establish or participate in a withdrawal liability payment fund.

(b) Definitions

For purposes of this section, the term ''withdrawal liability payment fund'', and the term ''fund'', mean a trust which—

(1) is established and maintained under section 501(c)(22) of title 26,

(2) maintains agreements which cover a substantial portion of the participants who are in multiemployer plans which (under the rules of the trust instrument) are eligible to participate in the fund,

(3) is funded by amounts paid by the plans which participate in the fund, and

(4) is administered by a Board of Trustees, and in the administration of the fund there is equal representation of—

(A) trustees representing employers who are obligated to contribute to the plans participating in the fund, and

(B) trustees representing employees who are participants in plans which participate in the fund.

(c) Payments to plan; amount, criteria, etc.

(1) If an employer withdraws from a plan which participates in a withdrawal liability payment fund, then, to the extent provided in the trust, the fund shall pay to that plan—

(A) the employer's unattributable liability,

(B) the employer's withdrawal liability payments which would have been due but for section 1388, 1389, 1399, or 1405 of this title,

(C) the employer's withdrawal liability payments to the extent they are uncollectible.

(2) The fund may provide for the payment of the employer's attributable liability if the fund—

(A) provides for the payment of both the attributable and the unattributable liability of the employer in a single payment, and

(B) is subrogated to all rights of the plan against the employer.

(3) For purposes of this section, the term—

(A) ''attributable liability'' means the excess, if any, determined under the provisions of a plan not inconsistent with regulations of the corporation, of—

(i) the value of vested benefits accrued as a result of service with the employer, over

(ii) the value of plan assets attributed to the employer, and

(B) ''unattributable liability'' means the excess of withdrawal liability over attributable liability.

Such terms may be further defined, and the manner in which they shall be applied may be prescribed, by the corporation by regulation.

(4)(A) The trust of a fund shall be maintained for the exclusive purpose of paying—

(i) any amount described in paragraph (1) and paragraph (2), and

(ii) reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the fund.

(B) The amounts paid by a plan to a fund shall be deemed a reasonable expense of administering the plan under sections 1103(c)(1) and 1104(a)(1)(A)(ii) of this title, and the payments made by a fund to a participating plan shall be deemed services necessary for the operation of the plan within the meaning of section 1108(b)(2) of this title or within the meaning of section 4975(d)(2) of title 26.

(d) Application of payments by plan

(1) For purposes of this part—

(A) only amounts paid by the fund to a plan under subsection (c)(1)(A) of this section shall be credited to withdrawal liability otherwise payable by the employer, unless the plan otherwise provides, and

(B) any amounts paid by the fund under subsection (c) of this section to a plan shall be treated by the plan as a payment of withdrawal liability to such plan.

(2) For purposes of applying provisions relating to the funding standard accounts (and minimum contribution requirements), amounts paid from the plan to the fund shall be applied to reduce the amount treated as contributed to the plan.

(e) Subrogation of fund to rights of plan

The fund shall be subrogated to the rights of the plan against the employer that has withdrawn from the plan for amounts paid by a fund to a plan under—

(1) subsection (c)(1)(A) of this section, to the extent not credited under subsection (d)(1)(A) of this section, and

(2) subsection (c)(1)(C) of this section.

(f) Discharge of rights of fiduciary of fund; standards applicable, etc.

Notwithstanding any other provision of this chapter, a fiduciary of the fund shall discharge the fiduciary's duties with respect to the fund in accordance with the standards for fiduciaries prescribed by this chapter (to the extent not inconsistent with the purposes of this section), and in accordance with the documents and instruments governing the fund insofar as such documents and instruments are consistent with the provisions of this chapter (to the extent not inconsistent with the purposes of this section). The provisions of the preceding sentence shall supersede any and all State laws relating to fiduciaries insofar as they may now or hereafter relate to a fund to which this section applies.

(g) Prohibition on payments from fund to plan where certain labor negotiations involve employer withdrawn or partially withdrawn from plan and continuity of labor organization representing employees continues

No payments shall be made from a fund to a plan on the occasion of a withdrawal or partial withdrawal of an employer from such plan if the employees representing the withdrawn contribution base units continue, after such withdrawal, to be represented under section 159 of this title (or other applicable labor laws) in negotiations with such employer by the labor organization which represented such employees immediately preceding such withdrawal.

(h) Purchase of insurance by employer

Nothing in this section shall be construed to prohibit the purchase of insurance by an employer from any other person, to limit the circumstances under which such insurance would be payable, or to limit in any way the terms and conditions of such insurance.

(i) Promulgation of regulations for establishment and maintenance of fund

The corporation may provide by regulation rules not inconsistent with this section govern-

ing the establishment and maintenance of funds, but only to the extent necessary to carry out the purposes of this part (other than section 1402 of this title).

(Pub. L. 93–406, title IV, § 4223, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1241; amended Pub. L. 101–239, title VII, § 7891(a), Dec. 19, 1989, 103 Stat. 2445.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

1989—Subsecs. (b)(1), (c)(4)(B). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1082 of this title; title 26 sections 194A, 412, 501, 4975.

§ 1404. Alternative method of withdrawal liability payments

A multiemployer plan may adopt rules providing for other terms and conditions for the satisfaction of an employer's withdrawal liability if such rules are consistent with this chapter and with such regulations as may be prescribed by the corporation.

(Pub. L. 93–406, title IV, § 4224, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1242.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

§ 1405. Limitation on withdrawal liability

(a) Unfunded vested benefits allocable to employer in bona fide sale of assets of employer in arms-length transaction to unrelated party; maximum amount; determinative factors

(1) In the case of bona fide sale of all or substantially all of the employer's assets in an arm's-length transaction to an unrelated party (within the meaning of section 1384(d) of this title), the unfunded vested benefits allocable to an employer (after the application of all sections of this part having a lower number designation than this section), other than an employer undergoing reorganization under title 11 or similar provisions of State law, shall not exceed the greater of—

(A) a portion (determined under paragraph (2)) of the liquidation or dissolution value of the employer (determined after the sale or exchange of such assets), or

(B) the unfunded vested benefits attributable to employees of the employer.

(2) For purposes of paragraph (1), the portion shall be determined in accordance with the following table:

If the liquidation or dissolution value of the employer after the sale or exchange is—	The portion is—
Not more than $2,000,000.	30 percent of the amount.
More than $2,000,000, but not more than $4,000,000.	$600,000, plus 35 percent of the amount in excess of $2,000,000.
More than $4,000,000, but not more than $6,000,000.	$1,300,000, plus 40 percent of the amount in excess of $4,000,000.
More than $6,000,000, but not more than $7,000,000.	$2,100,000, plus 45 percent of the amount in excess of $6,000,000.
More than $7,000,000, but not more than $8,000,000.	$2,550,000, plus 50 percent of the amount in excess of $7,000,000.
More than $8,000,000, but not more than $9,000,000.	$3,050,000, plus 60 percent of the amount in excess of $8,000,000.
More than $9,000,000, but not more than $10,000,000.	$3,650,000, plus 70 percent of the amount in excess of $9,000,000.
More than $10,000,000	$4,350,000, plus 80 percent of the amount in excess of $10,000,000.

(b) Unfunded vested benefits allocable to insolvent employer undergoing liquidation or dissolution; maximum amount; determinative factors

In the case of an insolvent employer undergoing liquidation or dissolution, the unfunded vested benefits allocable to that employer shall not exceed an amount equal to the sum of—

(1) 50 percent of the unfunded vested benefits allocable to the employer (determined without regard to this section), and

(2) that portion of 50 percent of the unfunded vested benefits allocable to the employer (as determined under paragraph (1)) which does not exceed the liquidation or dissolution value of the employer determined—

(A) as of the commencement of liquidation or dissolution, and

(B) after reducing the liquidation or dissolution value of the employer by the amount determined under paragraph (1).

(c) Property not subject to enforcement of liability; precondition

To the extent that the withdrawal liability of an employer is attributable to his obligation to contribute to or under a plan as an individual (whether as a sole proprietor or as a member of a partnership), property which may be exempt from the estate under section 522 of title 11 or under similar provisions of law, shall not be subject to enforcement of such liability.

(d) Insolvency of employer; liquidation or dissolution value of employer

For purposes of this section—

(1) an employer is insolvent if the liabilities of the employer, including withdrawal liability under the plan (determined without regard to subsection (b) of this section), exceed the assets of the employer (determined as of the commencement of the liquidation or dissolution), and

(2) the liquidation or dissolution value of the employer shall be determined without regard to such withdrawal liability.

(e) One or more withdrawals of employer attributable to same sale, liquidation, or dissolution

In the case of one or more withdrawals of an employer attributable to the same sale, liquidation, or dissolution, under regulations prescribed by the corporation—

(1) all such withdrawals shall be treated as a single withdrawal for the purpose of applying this section, and

(2) the withdrawal liability of the employer to each plan shall be an amount which bears the same ratio to the present value of the withdrawal liability payments to all plans (after the application of the preceding provisions of this section) as the withdrawal liability of the employer to such plan (determined without regard to this section) bears to the withdrawal liability of the employer to all such plans (determined without regard to this section).

(Pub. L. 93–406, title IV, § 4225, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1243.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1381, 1386, 1391, 1401, 1403 of this title.

PART 2—MERGER OR TRANSFER OF PLAN ASSETS OR LIABILITIES

§ 1411. Mergers and transfers between multiemployer plans

(a) Authority of plan sponsor

Unless otherwise provided in regulations prescribed by the corporation, a plan sponsor may not cause a multiemployer plan to merge with one or more multiemployer plans, or engage in a transfer of assets and liabilities to or from another multiemployer plan, unless such merger or transfer satisfies the requirements of subsection (b) of this section.

(b) Criteria

A merger or transfer satisfies the requirements of this section if—

(1) in accordance with regulations of the corporation, the plan sponsor of a multiemployer plan notifies the corporation of a merger with or transfer of plan assets or liabilities to another multiemployer plan at least 120 days before the effective date of the merger or transfer;

(2) no participant's or beneficiary's accrued benefit will be lower immediately after the effective date of the merger or transfer than the benefit immediately before that date;

(3) the benefits of participants and beneficiaries are not reasonably expected to be subject to suspension under section 1426 of this title; and

(4) an actuarial valuation of the assets and liabilities of each of the affected plans has been performed during the plan year preceding the effective date of the merger or transfer, based upon the most recent data available as of the day before the start of that plan year, or other valuation of such assets and liabilities performed under such standards and procedures as the corporation may prescribe by regulation.

(c) Actions not deemed violation of section 1106(a) or (b)(2) of this title

The merger of multiemployer plans or the transfer of assets or liabilities between multiemployer plans, shall be deemed not to constitute a violation of the provisions of section 1106(a) of this title or section 1106(b)(2) of this title if the corporation determines that the merger or transfer otherwise satisfies the requirements of this section.

(d) Nature of plan to which liabilities are transferred

A plan to which liabilities are transferred under this section is a successor plan for purposes of section 1322a(b)(2)(B) of this title.

(Pub. L. 93–406, title IV, § 4231, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1244.)

EFFECTIVE DATE

Part effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1108, 1415 of this title; title 26 section 4975.

§ 1412. Transfers between a multiemployer plan and a single-employer plan

(a) General authority

A transfer of assets or liabilities between, or a merger of, a multiemployer plan and a single-employer plan shall satisfy the requirements of this section.

(b) Accrued benefit of participant or beneficiary not lower immediately after effective date of transfer or merger

No accrued benefit of a participant or beneficiary may be lower immediately after the effective date of a transfer or merger described in subsection (a) of this section than the benefit immediately before that date.

(c) Liability of multiemployer plan to corporation where single-employer plan terminates within 60 months after effective date of transfer; amount of liability, exemption, etc.

(1) Except as provided in paragraphs (2) and (3), a multiemployer plan which transfers liabilities to a single-employer plan shall be liable to the corporation if the single-employer plan terminates within 60 months after the effective date of the transfer. The amount of liability shall be the lesser of—

(A) the amount of the plan asset insufficiency of the terminated single-employer plan,

less 30 percent of the net worth of the employer who maintained the single-employer plan, determined in accordance with section 1362 or 1364 this title, or

(B) the value, on the effective date of the transfer, of the unfunded benefits transferred to the single-employer plan which are guaranteed under section 1322 of this title.

(2) A multiemployer plan shall be liable to the corporation as provided in paragraph (1) unless, within 180 days after the corporation receives an application (together with such information as the corporation may reasonably require for purposes of such application) from the multiemployer plan sponsor for a determination under this paragraph—

(A) the corporation determines that the interests of the plan participants and beneficiaries and of the corporation are adequately protected, or

(B) fails to make any determination regarding the adequacy with which such interests are protected with respect to such transfer of liabilities.

If, after the receipt of such application, the corporation requests from the plan sponsor additional information necessary for the determination, the running of the 180-day period shall be suspended from the date of such request until the receipt by the corporation of the additional information requested. The corporation may by regulation prescribe procedures and standards for the issuance of determinations under this paragraph. This paragraph shall not apply to any application submitted less than 180 days after September 26, 1980.

(3) A multiemployer plan shall not be liable to the corporation as provided in paragraph (1) in the case of a transfer from the multiemployer plan to a single-employer plan of liabilities which accrued under a single-employer plan which merged with the multiemployer plan, if, the value of liabilities transferred to the single-employer plan does not exceed the value of the liabilities for benefits which accrued before the merger, and the value of the assets transferred to the single-employer plan is substantially equal to the value of the assets which would have been in the single-employer plan if the employer had maintained and funded it as a separate plan under which no benefits accrued after the date of the merger.

(4) The corporation may make equitable arrangements with multiemployer plans which are liable under this subsection for satisfaction of their liability.

(d) Guarantee of benefits under single-employer plan

Benefits under a single-employer plan to which liabilities are transferred in accordance with this section are guaranteed under section 1322 of this title to the extent provided in that section as of the effective date of the transfer and the plan is a successor plan.

(e) Transfer of liabilities by multiemployer plan to single-employer plan

(1) Except as provided in paragraph (2), a multiemployer plan may not transfer liabilities to a single-employer plan unless the plan sponsor of the plan to which the liabilities would be transferred agrees to the transfer.

(2) In the case of a transfer described in subsection (c)(3) of this section, paragraph (1) of this subsection is satisfied by the advance agreement to the transfer by the employer who will be obligated to contribute to the single-employer plan.

(f) Additional requirements by corporation for protection of interests of plan participants, beneficiaries and corporation; approval by corporation of transfer of assets or liabilities to single-employer plan from plan in reorganization; covered transfers in connection with termination

(1) The corporation may prescribe by regulation such additional requirements with respect to the transfer of assets or liabilities as may be necessary to protect the interests of plan participants and beneficiaries and the corporation.

(2) Except as otherwise determined by the corporation, a transfer of assets or liabilities to a single-employer plan from a plan in reorganization under section 1421 of this title is not effective unless the corporation approves such transfer.

(3) No transfer to which this section applies, in connection with a termination described in section 1341a(a)(2) of this title shall be effective unless the transfer meets such requirements as may be established by the corporation to prevent an increase in the risk of loss to the corporation.

(Pub. L. 93–406, title IV, § 4232, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1245.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1414 of this title.

§ 1413. Partition

(a) Authority of corporation

The corporation may order the partition of a multiemployer plan in accordance with this section.

(b) Authority of plan sponsor upon application to corporation for partition order; procedures applicable to corporation

A plan sponsor may apply to the corporation for an order partitioning a plan. The corporation may not order the partition of a plan except upon notice to the plan sponsor and the participants and beneficiaries whose vested benefits will be affected by the partition of the plan, and upon finding that—

(1) a substantial reduction in the amount of aggregate contributions under the plan has resulted or will result from a case or proceeding under title 11 with respect to an employer;

(2) the plan is likely to become insolvent;

(3) contributions will have to be increased significantly in reorganization to meet the minimum contribution requirement and prevent insolvency; and

(4) partition would significantly reduce the likelihood that the plan will become insolvent.

(c) Authority of corporation notwithstanding pendency of partition proceeding

The corporation may order the partition of a plan notwithstanding the pendency of a proceeding described in subsection (b)(1) of this section.

(d) Scope of partition order

The corporation's partition order shall provide for a transfer of no more than the nonforfeitable benefits directly attributable to service with the employer referred to in subsection (b)(1) of this section and an equitable share of assets.

(e) Nature of plan created by partition

The plan created by the partition is—

(1) a successor plan to which section 1322a of this title applies, and

(2) a terminated multiemployer plan to which section 1341a(d) of this title applies, with respect to which only the employer described in subsection (b)(1) of this section has withdrawal liability, and to which section 1368 of this title applies.

(f) Authority of corporation to obtain decree partitioning plan and appointing trustee for terminated portion of partitioned plan

The corporation may proceed under section 1342(c) through (h) of this title for a decree partitioning a plan and appointing a trustee for the terminated portion of a partitioned plan. The court may order the partition of a plan upon making the findings described in subsection (b)(1) through (4) of this section, and subject to the conditions set forth in subsections (c) through (e) of this section.

(Pub. L. 93–406, title IV, § 4233, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1246.)

§ 1414. Asset transfer rules

(a) Applicability and scope

A transfer of assets from a multiemployer plan to another plan shall comply with asset-transfer rules which shall be adopted by the multiemployer plan and which—

(1) do not unreasonably restrict the transfer of plan assets in connection with the transfer of plan liabilities, and

(2) operate and are applied uniformly with respect to each proposed transfer, except that the rules may provide for reasonable variations taking into account the potential financial impact of a proposed transfer on the multiemployer plan.

Plan rules authorizing asset transfers consistent with the requirements of section 1412(c)(3) of this title shall be considered to satisfy the requirements of this subsection.

(b) Exemption of de minimis transfers

The corporation shall prescribe regulations which exempt de minimis transfers of assets from the requirements of this part.

(c) Written reciprocity agreements

This part shall not apply to transfers of assets pursuant to written reciprocity agreements, except to the extent provided in regulations prescribed by the corporation.

(Pub. L. 93–406, title IV, § 4234, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1247.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1415 of this title.

§ 1415. Transfers pursuant to change in bargaining representative

(a) Authority to transfer from old plan to new plan pursuant to employee participation in another multiemployer plan after certified change of representative

In any case in which an employer has completely or partially withdrawn from a multiemployer plan (hereafter in this section referred to as the ''old plan'') as a result of a certified change of collective bargaining representative occurring after September 25, 1980, if participants of the old plan who are employed by the employer will, as a result of that change, participate in another multiemployer plan (hereafter in this section referred to as the ''new plan''), the old plan shall transfer assets and liabilities to the new plan in accordance with this section.

(b) Notification by employer of plan sponsor of old plan; notification by plan sponsor of old plan of employer and plan sponsor of new plan; appeal by new plan to prevent transfer; further proceedings

(1) The employer shall notify the plan sponsor of the old plan of a change in multiemployer plan participation described in subsection (a) of this section no later than 30 days after the employer determines that the change will occur.

(2) The plan sponsor of the old plan shall—

(A) notify the employer of—

(i) the amount of the employer's withdrawal liability determined under part 1 of this subtitle with respect to the withdrawal,

(ii) the old plan's intent to transfer to the new plan the nonforfeitable benefits of the employees who are no longer working in covered service under the old plan as a result of the change of bargaining representative, and

(iii) the amount of assets and liabilities which are to be transferred to the new plan, and

(B) notify the plan sponsor of the new plan of the benefits, assets, and liabilities which will be transferred to the new plan.

(3) Within 60 days after receipt of the notice described in paragraph (2)(B), the new plan may file an appeal with the corporation to prevent the transfer. The transfer shall not be made if the corporation determines that the new plan would suffer substantial financial harm as a result of the transfer. Upon notification described in paragraph (2), if—

(A) the employer fails to object to the transfer within 60 days after receipt of the notice described in paragraph (2)(A), or

(B) the new plan either—

(i) fails to file such an appeal, or

(ii) the corporation, pursuant to such an appeal, fails to find that the new plan would suffer substantial financial harm as a result of the transfer described in the notice under paragraph (2)(B) within 180 days after the date on which the appeal is filed,

then the plan sponsor of the old plan shall transfer the appropriate amount of assets and liabilities to the new plan.

(c) Reduction of amount of withdrawal liability of employer upon transfer of appropriate amount of assets and liabilities by plan sponsor of old plan to new plan

If the plan sponsor of the old plan transfers the appropriate amount of assets and liabilities under this section to the new plan, then the amount of the employer's withdrawal liability (as determined under section 1381(b) of this title without regard to such transfer and this section) with respect to the old plan shall be reduced by the amount by which—

(1) the value of the unfunded vested benefits allocable to the employer which were transferred by the plan sponsor of the old plan to the new plan, exceeds

(2) the value of the assets transferred.

(d) Escrow payments by employer upon complete or partial withdrawal and prior to transfer

In any case in which there is a complete or partial withdrawal described in subsection (a) of this section, if—

(1) the new plan files an appeal with the corporation under subsection (b)(3) of this section, and

(2) the employer is required by section 1399 of this title to begin making payments of withdrawal liability before the earlier of—

(A) the date on which the corporation finds that the new plan would not suffer substantial financial harm as a result of the transfer, or

(B) the last day of the 180-day period beginning on the date on which the new plan files its appeal,

then the employer shall make such payments into an escrow held by a bank or similar financial institution satisfactory to the old plan. If the transfer is made, the amounts paid into the escrow shall be returned to the employer. If the transfer is not made, the amounts paid into the escrow shall be paid to the old plan and credited against the employer's withdrawal liability.

(e) Prohibition on transfer of assets to new plan by plan sponsor of old plan; exemptions

(1) Notwithstanding subsection (b) of this section, the plan sponsor shall not transfer any assets to the new plan if—

(A) the old plan is in reorganization (within the meaning of section 1421(a) of this title), or

(B) the transfer of assets would cause the old plan to go into reorganization (within the meaning of section 1421(a) of this title).

(2) In any case in which a transfer of assets from the old plan to the new plan is prohibited by paragraph (1), the plan sponsor of the old plan shall transfer—

(A) all nonforfeitable benefits described in subsection (b)(2) of this section, if the value of such benefits does not exceed the withdrawal liability of the employer with respect to such withdrawal, or

(B) such nonforfeitable benefits having a value equal to the withdrawal liability of the employer, if the value of such benefits exceeds the withdrawal liability of the employer.

(f) Agreement between plan sponsors of old plan and new plan to transfer in compliance with other statutory provisions; reduction of withdrawal liability of employer from old plan; amount of withdrawal liability of employer to new plan

(1) Notwithstanding subsections (b) and (e) of this section, the plan sponsors of the old plan and the new plan may agree to a transfer of assets and liabilities that complies with sections 1411 and 1414 of this title, rather than this section, except that the employer's liability with respect to the withdrawal from the old plan shall be reduced under subsection (c) of this section as if assets and liabilities had been transferred in accordance with this section.

(2) If the employer withdraws from the new plan within 240 months after the effective date of a transfer of assets and liabilities described in this section, the amount of the employer's withdrawal liability to the new plan shall be the greater of—

(A) the employer's withdrawal liability determined under part 1 of this subtitle with respect to the new plan, or

(B) the amount by which the employer's withdrawal liability to the old plan was reduced under subsection (c) of this section, reduced by 5 percent for each 12-month period following the effective date of the transfer and ending before the date of the withdrawal from the new plan.

(g) Definitions

For purposes of this section—

(1) ''appropriate amount of assets'' means the amount by which the value of the nonforfeitable benefits to be transferred exceeds the amount of the employer's withdrawal liability to the old plan (determined under part 1 of this subtitle without regard to section 1391(e) of this title), and

(2) ''certified change of collective bargaining representative'' means a change of collective bargaining representative certified under the Labor-Management Relations Act, 1947 [29 U.S.C. 141 et seq.], or the Railway Labor Act [45 U.S.C. 151 et seq.].

(Pub. L. 93–406, title IV, §4235, as added Pub. L. 96–364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1247; amended Pub. L. 98–369, div. A, title V, §558(b)(1)(A), July 18, 1984, 98 Stat. 899.)

REFERENCES IN TEXT

The Labor-Management Relations Act, 1947, referred to in subsec. (g)(2), is act June 23, 1947, ch. 120, 61 Stat. 136, as amended, which is classified principally to chapter 7 (§141 et seq.) of this title. For complete classification of this Act to the Code, see section 141 of this title and Tables.

The Railway Labor Act, referred to in subsec. (g)(2), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 substituted ''September 25, 1980'' for ''April 28, 1980''.

EFFECTIVE DATE

Section effective Sept. 26, 1980, see section 1461(e)(4) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1461 of this title.

PART 3—REORGANIZATION; MINIMUM CONTRIBUTION REQUIREMENT FOR MULTIEMPLOYER PLANS

§ 1421. Reorganization status

(a) Reorganization index of plan for plan year greater than zero

A multiemployer plan is in reorganization for a plan year if the plan's reorganization index for that year is greater than zero.

(b) Determination of reorganization index of plan for plan year; applicable factors, definitions, etc.

(1) A plan's reorganization index for any plan year is the excess of—

(A) the vested benefits charge for such year, over

(B) the net charge to the funding standard account for such year.

(2) For purposes of this part, the net charge to the funding standard account for any plan year is the excess (if any) of—

(A) the charges to the funding standard account for such year under section 412(b)(2) of title 26, over

(B) the credits to the funding standard account under section 412(b)(3)(B) of title 26.

(3) For purposes of this part, the vested benefits charge for any plan year is the amount which would be necessary to amortize the plan's unfunded vested benefits as of the end of the base plan year in equal annual installments—

(A) over 10 years, to the extent such benefits are attributable to persons in pay status, and

(B) over 25 years, to the extent such benefits are attributable to other participants.

(4)(A) The vested benefits charge for a plan year shall be based on an actuarial valuation of the plan as of the end of the base plan year, adjusted to reflect—

(i) any—

(I) decrease of 5 percent or more in the value of plan assets, or increase of 5 percent or more in the number of persons in pay status, during the period beginning on the first day of the plan year following the base plan year and ending on the adjustment date, or

(II) at the election of the plan sponsor, actuarial valuation of the plan as of the adjustment date or any later date not later than the last day of the plan year for which the determination is being made,

(ii) any change in benefits under the plan which is not otherwise taken into account under this subparagraph and which is pursuant to any amendment—

(I) adopted before the end of the plan year for which the determination is being made, and

(II) effective after the end of the base plan year and on or before the end of the plan year referred to in subclause (I), and

(iii) any other event (including an event described in subparagraph (B)(i)(I)) which, as determined in accordance with regulations prescribed by the Secretary, would substantially increase the plan's vested benefit charge.

(B)(i) In determining the vested benefits charge for a plan year following a plan year in which the plan was not in reorganization, any change in benefits which—

(I) results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits as a result of changes in a collective bargaining agreement, or

(II) results from any other change in a collective bargaining agreement,

shall not be taken into account except to the extent provided in regulations prescribed by the Secretary of the Treasury.

(ii) Except as otherwise determined by the Secretary of the Treasury, in determining the vested benefits charge for any plan year following any plan year in which the plan was in reorganization, any change in benefits—

(I) described in clause (i)(I), or

(II) described in clause (i)(II) as determined under regulations prescribed by the Secretary of the Treasury,

shall, for purposes of subparagraph (A)(ii), be treated as a change in benefits pursuant to an amendment to a plan.

(5)(A) For purposes of this part, the base plan year for any plan year is—

(i) if there is a relevant collective bargaining agreement, the last plan year ending at least 6 months before the relevant effective date, or

(ii) if there is no relevant collective bargaining agreement, the last plan year ending at least 12 months before the beginning of the plan year.

(B) For purposes of this part, a relevant collective bargaining agreement is a collective bargaining agreement—

(i) which is in effect for at least 6 months during the plan year, and

(ii) which has not been in effect for more than 36 months as of the end of the plan year.

(C) For purposes of this part, the relevant effective date is the earliest of the effective dates for the relevant collective bargaining agreements.

(D) For purposes of this part, the adjustment date is the date which is—

(i) 90 days before the relevant effective date, or

(ii) if there is no relevant effective date, 90 days before the beginning of the plan year.

(6) For purposes of this part, the term ''person in pay status'' means—

(A) a participant or beneficiary on the last day of the base plan year who, at any time during such year, was paid an early, late, normal, or disability retirement benefit (or a death benefit related to a retirement benefit), and

(B) to the extent provided in regulations prescribed by the Secretary of the Treasury, any other person who is entitled to such a benefit under the plan.

(7) For purposes of paragraph (3)—

(A) in determining the plan's unfunded vested benefits, plan assets shall first be allocated to the vested benefits attributable to persons in pay status, and

(B) the vested benefits charge shall be determined without regard to reductions in accrued benefits under section 1425 of this title which are first effective in the plan year.

(8) For purposes of this part, any outstanding claim for withdrawal liability shall not be considered a plan asset, except as otherwise provided in regulations prescribed by the Secretary of the Treasury.

(9) For purposes of this part, the term ''unfunded vested benefits'' means with respect to a plan, an amount (determined in accordance with regulations prescribed by the Secretary of the Treasury) equal to—

(A) the value of nonforfeitable benefits under the plan, less

(B) the value of assets of the plan.

(c) Payment of benefits to participants

Except as provided in regulations prescribed by the corporation, while a plan is in reorganization a benefit with respect to a participant (other than a death benefit) which is attributable to employer contributions and which has a value of more than $1,750 may not be paid in a form other than an annuity which (by itself or in combination with social security, railroad retirement, or workers' compensation benefits) provides substantially level payments over the life of the participant.

(d) Terminated multiemployer plans

Any multiemployer plan which terminates under section 1341a(a)(2) of this title shall not be considered in reorganization after the last day of the plan year in which the plan is treated as having terminated.

(Pub. L. 93–406, title IV, §4241, as added Pub. L. 96–364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1249; amended Pub. L. 101–239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (b)(2)(A). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE

Part, relating to multiemployer plan reorganization, effective, with respect to each plan, on the first day of the first plan year beginning on or after the earlier of the date on which the last collective-bargaining agreement providing for employer contributions under the plan, which was in effect on Sept. 26, 1980, expires, without regard to extensions agreed to after Sept. 26, 1980, or three years after Sept. 26, 1980, see section 1461(e)(3) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1202, 1301, 1412, 1415, 1423, 1426, 1461 of this title.

§ 1422. Notice of reorganization and funding requirements

(a)(1) If—

(A) a multiemployer plan is in reorganization for a plan year, and

(B) section 1423 of this title would require an increase in contributions for such plan year,

the plan sponsor shall notify the persons described in paragraph (2) that the plan is in reorganization and that, if contributions to the plan are not increased, accrued benefits under the plan may be reduced or an excise tax may be imposed (or both such reduction and imposition may occur).

(2) The persons described in this paragraph are—

(A) each employer who has an obligation to contribute under the plan (within the meaning of section 1381(h)(5) of this title), and

(B) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(3) The determination under paragraph (1)(B) shall be made without regard to the overburden credit provided by section 1424 of this title.

(b) The corporation may prescribe additional or alternative requirements for assuring, in the case of a plan with respect to which notice is required by subsection (a)(1) of this section, that the persons described in subsection (a)(2) of this section—

(1) receive appropriate notice that the plan is in reorganization,

(2) are adequately informed of the implications of reorganization status, and

(3) have reasonable access to information relevant to the plan's reorganization status.

(Pub. L. 93–406, title IV, §4242, as added Pub. L. 96–364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1251.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1202, 1426, 1461 of this title.

§ 1423. Minimum contribution requirement

(a) Maintenance of funding standard account; amount of accumulated funding deficiency

(1) For any plan year for which a plan is in reorganization—

(A) the plan shall continue to maintain its funding standard account while it is in reorganization, and

(B) the plan's accumulated funding deficiency under section 1082(a) of this title for such plan year shall be equal to the excess (if any) of—

(i) the sum of the minimum contribution requirement for such plan year (taking into account any overburden credit under section 1424(a) of this title) plus the plan's accumulated funding deficiency for the preceding plan year (determined under this section if the plan was in reorganization during such year or under section 1082(a) of this title if the plan was not in reorganization), over

(ii) amounts considered contributed by employers to or under the plan for the plan

year (increased by any amount waived under subsection (f) of this section for the plan year).

(2) For purposes of paragraph (1), withdrawal liability payments (whether or not received) which are due with respect to withdrawals before the end of the base plan year shall be considered amounts contributed by the employer to or under the plan if, as of the adjustment date, it was reasonable for the plan sponsor to anticipate that such payments would be made during the plan year.

(b) Determination of amount; applicable factors

(1) Except as otherwise provided in this section, for purposes of this part the minimum contribution requirement for a plan year in which a plan is in reorganization is an amount equal to the excess of—

(A) the sum of—

(i) the plan's vested benefits charge for the plan year, and

(ii) the increase in normal cost for the plan year determined under the entry age normal funding method which is attributable to plan amendments adopted while the plan was in reorganization, over

(B) the amount of the overburden credit (if any) determined under section 1424 of this title for the plan year.

(2) If the plan's current contribution base for the plan year is less than the plan's valuation contribution base for the plan year, the minimum contribution requirement for such plan year shall be equal to the product of the amount determined under paragraph (1) (after any adjustment required by this part other than this paragraph) and a fraction—

(A) the numerator of which is the plan's current contribution base for the plan year, and

(B) the denominator of which is the plan's valuation contribution base for the plan year.

(3)(A) If the vested benefits charge for a plan year of a plan in reorganization is less than the plan's cash-flow amount for the plan year, the plan's minimum contribution requirement for the plan year is the amount determined under paragraph (1) (determined before the application of paragraph (2)) after substituting the term ''cash-flow amount'' for the term ''vested benefits charge'' in paragraph (1)(A).

(B) For purposes of subparagraph (A), a plan's cash-flow amount for a plan year is an amount equal to—

(i) the amount of the benefits payable under the plan for the base plan year, plus the amount of the plan's administrative expenses for the base plan year, reduced by

(ii) the value of the available plan assets for the base plan year determined under regulations prescribed by the Secretary of the Treasury,

adjusted in a manner consistent with section 1421(b)(4) of this title.

(c) Current contribution base; valuation contribution base

(1) For purposes of this part, a plan's current contribution base for a plan year is the number of contribution base units with respect to which contributions are required to be made under the plan for that plan year, determined in accordance with regulations prescribed by the Secretary of the Treasury.

(2)(A) Except as provided in subparagraph (B), for purposes of this part a plan's valuation contribution base is the number of contribution base units for which contributions were received for the base plan year—

(i) adjusted to reflect declines in the contribution base which have occurred (or could reasonably be anticipated) as of the adjustment date for the plan year referred to in paragraph (1),

(ii) adjusted upward (in accordance with regulations prescribed by the Secretary of the Treasury) for any contribution base reduction in the base plan year caused by a strike or lockout or by unusual events, such as fire, earthquake, or severe weather conditions, and

(iii) adjusted (in accordance with regulations prescribed by the Secretary of the Treasury) for reductions in the contribution base resulting from transfers of liabilities.

(B) For any plan year—

(i) in which the plan is insolvent (within the meaning of section 1426(b)(1) of this title), and

(ii) beginning with the first plan year beginning after the expiration of all relevant collective bargaining agreements which were in effect in the plan year in which the plan became insolvent,

the plan's valuation contribution base is the greater of the number of contribution base units for which contributions were received for the first or second plan year preceding the first plan year in which the plan is insolvent, adjusted as provided in clause (ii) or (iii) of subparagraph (A).

(d) Maximum amount; amount of funding standard requirement; applicability to plan amendments increasing benefits

(1) Under regulations prescribed by the Secretary of the Treasury, the minimum contribution requirement applicable to any plan for any plan year which is determined under subsection (b) of this section (without regard to subsection (b)(2) of this section) shall not exceed an amount which is equal to the sum of—

(A) the greater of—

(i) the funding standard requirement for such plan year, or

(ii) 107 percent of—

(I) if the plan was not in reorganization in the preceding plan year, the funding standard requirement for such preceding plan year, or

(II) if the plan was in reorganization in the preceding plan year, the sum of the amount determined under this subparagraph for the preceding plan year and the amount (if any) determined under subparagraph (B) for the preceding plan year, plus

(B) if for the plan year a change in benefits is first required to be considered in computing the charges under section 412(b)(2)(A) or (B) of title 26, the sum of—

(i) the increase in normal cost for a plan year determined under the entry age normal

funding method due to increases in benefits described in section 1421(b)(4)(A)(ii) of this title (determined without regard to section 1421(b)(4)(B)(i) of this title), and

(ii) the amount necessary to amortize in equal annual installments the increase in the value of vested benefits under the plan due to increases in benefits described in clause (i) over—

(I) 10 years, to the extent such increase in value is attributable to persons in pay status, or

(II) 25 years, to the extent such increase in value is attributable to other participants.

(2) For purposes of paragraph (1), the funding standard requirement for any plan year is an amount equal to the net charge to the funding standard account for such plan year (as defined in section 1421(b)(2) of this title).

(3)(A) In the case of a plan described in section 1396(b) of this title, if a plan amendment which increases benefits is adopted after January 1, 1980—

(i) paragraph (1) shall apply only if the plan is a plan described in subparagraph (B), and

(ii) the amount under paragraph (1) shall be determined without regard to paragraph (1)(B).

(B) A plan is described in this subparagraph if—

(i) the rate of employer contributions under the plan for the first plan year beginning on or after the date on which an amendment increasing benefits is adopted, multiplied by the valuation contribution base for that plan year, equals or exceeds the sum of—

(I) the amount that would be necessary to amortize fully, in equal annual installments, by July 1, 1986, the unfunded vested benefits attributable to plan provisions in effect on July 1, 1977 (determined as of the last day of the base plan year); and

(II) the amount that would be necessary to amortize fully, in equal annual installments, over the period described in subparagraph (C), beginning with the first day of the first plan year beginning on or after the date on which the amendment is adopted, the unfunded vested benefits (determined as of the last day of the base plan year) attributable to each plan amendment after July 1, 1977; and

(ii) the rate of employer contributions for each subsequent plan year is not less than the lesser of—

(I) the rate which when multiplied by the valuation contribution base for that subsequent plan year produces the annual amount that would be necessary to complete the amortization schedule described in clause (i), or

(II) the rate for the plan year immediately preceding such subsequent plan year, plus 5 percent of such rate.

(C) The period determined under this subparagraph is the lesser of—

(i) 12 years, or

(ii) a period equal in length to the average of the remaining expected lives of all persons receiving benefits under the plan.

(4) Paragraph (1) shall not apply with respect to a plan, other than a plan described in paragraph (3), for the period of consecutive plan years in each of which the plan is in reorganization, beginning with a plan year in which occurs the earlier of the date of the adoption or the effective date of any amendment of the plan which increases benefits with respect to service performed before the plan year in which the adoption of the amendment occurred.

(e) Adjustment of vested benefits charge

In determining the minimum contribution requirement with respect to a plan for a plan year under subsection (b) of this section, the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under section 412(c)(8) of title 26.

(f) Waiver of accumulated funding deficiency

(1) The Secretary of the Treasury may waive any accumulated funding deficiency under this section in accordance with the provisions of section 1083(a) of this title.

(2) Any waiver under paragraph (1) shall not be treated as a waived funding deficiency (within the meaning of section 1083(c) of this title).

(g) Statutory methods applicable for determinations

For purposes of making any determination under this part, the requirements of section 1082(c)(3) of this title shall apply.

(Pub. L. 93–406, title IV, § 4243, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1252; amended Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsecs. (d)(1)(B), (e). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1082, 1202, 1322a, 1396, 1422, 1424, 1425, 1426, 1461 of this title.

§ 1424. Overburden credit against minimum contribution requirement

(a) Applicability of overburden credit to determinations

For purposes of determining the minimum contribution requirement under section 1423 of this title (before the application of section 1423(b)(2) or (d) of this title) the plan sponsor of a plan which is overburdened for the plan year shall apply an overburden credit against the plan's minimum contribution requirement for the plan year (determined without regard to section 1423(b)(2) or (d) of this title and without regard to this section).

(b) Determination of overburden status of plan

A plan is overburdened for a plan year if—

(1) the average number of pay status participants under the plan in the base plan year exceeds the average of the number of active participants in the base plan year and the 2 plan years preceding the base plan year, and

(2) the rate of employer contributions under the plan equals or exceeds the greater of—

(A) such rate for the preceding plan year, or

(B) such rate for the plan year preceding the first year in which the plan is in reorganization.

(c) Amount of overburden credit

The amount of the overburden credit for a plan year is the product of—

(1) one-half of the average guaranteed benefit paid for the base plan year, and

(2) the overburden factor for the plan year.

The amount of the overburden credit for a plan year shall not exceed the amount of the minimum contribution requirement for such year (determined without regard to this section).

(d) Amount of overburden factor

For purposes of this section, the overburden factor of a plan for the plan year is an amount equal to—

(1) the average number of pay status participants for the base plan year, reduced by

(2) the average of the number of active participants for the base plan year and for each of the 2 plan years preceding the base plan year.

(e) Definitions; determinative factors

For purposes of this section—

(1) The term ''pay status participant'' means, with respect to a plan, a participant receiving retirement benefits under the plan.

(2) The number of active participants for a plan year shall be the sum of—

(A) the number of active employees who are participants in the plan and on whose behalf contributions are required to be made during the plan year;

(B) the number of active employees who are not participants in the plan but who are in an employment unit covered by a collective bargaining agreement which requires the employees' employer to contribute to the plan, unless service in such employment unit was never covered under the plan or a predecessor thereof, and

(C) the total number of active employees attributed to employers who made payments to the plan for the plan year of withdrawal liability pursuant to part 1 of this subtitle, determined by dividing—

(i) the total amount of such payments, by

(ii) the amount equal to the total contributions received by the plan during the plan year divided by the average number of active employees who were participants in the plan during the plan year.

The Secretary of the Treasury shall by regulation provide alternative methods of determining active participants where (by reason of irregular employment, contributions on a unit basis, or otherwise) this paragraph does not yield a representative basis for determining the credit.

(3) The term ''average number'' means, with respect to pay status participants for a plan year, a number equal to one-half the sum of—

(A) the number with respect to the plan as of the beginning of the plan year, and

(B) the number with respect to the plan as of the end of the plan year.

(4) The average guaranteed benefit paid is 12 times the average monthly pension payment guaranteed under section 1322a(c)(1) of this title determined under the provisions of the plan in effect at the beginning of the first plan year in which the plan is in reorganization and without regard to section 1322a(c)(2) of this title.

(5) The first year in which the plan is in reorganization is the first of a period of 1 or more consecutive plan years in which the plan has been in reorganization not taking into account any plan years the plan was in reorganization prior to any period of 3 or more consecutive plan years in which the plan was not in reorganization.

(f) Eligibility of plan for overburden credit for plan year

(1) Notwithstanding any other provision of this section, a plan is not eligible for an overburden credit for a plan year if the Secretary of the Treasury finds that the plan's current contribution base for the plan year was reduced, without a corresponding reduction in the plan's unfunded vested benefits attributable to pay status participants, as a result of a change in an agreement providing for employer contributions under the plan.

(2) For purposes of paragraph (1), a complete or partial withdrawal of an employer (within the meaning of part 1 of this subtitle) does not impair a plan's eligibility for an overburden credit, unless the Secretary of the Treasury finds that a contribution base reduction described in paragraph (1) resulted from a transfer of liabilities to another plan in connection with the withdrawal.

(g) Overburden credit where 2 or more multiemployer plans merge

Notwithstanding any other provision of this section, if 2 or more multiemployer plans merge, the amount of the overburden credit which may be applied under this section with respect to the plan resulting from the merger for any of the 3 plan years ending after the effective date of the merger shall not exceed the sum of the used overburden credit for each of the merging plans for its last plan year ending before the effective date of the merger. For purposes of the preceding sentence, the used overburden credit is that portion of the credit which does not exceed the excess of the minimum contribution requirement (determined without regard to any overburden requirement under this section) over the employer contributions required under the plan.

(Pub. L. 93–406, title IV, § 4244, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1255.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1202, 1422, 1423, 1461 of this title.

§ 1425. Adjustments in accrued benefits

(a) Amendment of multiemployer plan in reorganization to reduce or eliminate accrued benefits attributable to employer contributions ineligible for guarantee of corporation; adjustment of vested benefits charge to reflect plan amendment

(1) Notwithstanding sections 1053 and 1054 of this title, a multiemployer plan in reorganization may be amended in accordance with this section, to reduce or eliminate accrued benefits attributable to employer contributions which, under section 1322a(b) of this title, are not eligible for the corporation's guarantee. The preceding sentence shall only apply to accrued benefits under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980.

(2) In determining the minimum contribution requirement with respect to a plan for a plan year under section 1423(b) of this title, the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under this section or section 412(c)(8) of title 26, but only if the amendment is adopted and effective no later than 2½ months after the end of the plan year, or within such extended period as the Secretary of the Treasury may prescribe by regulation under section 412(c)(10) of title 26.

(b) Reduction of accrued benefits; notice by plan sponsors to plan participants and beneficiaries

(1) Accrued benefits may not be reduced under this section unless—

(A) notice has been given, at least 6 months before the first day of the plan year in which the amendment reducing benefits is adopted, to—

(i) plan participants and beneficiaries,

(ii) each employer who has an obligation to contribute (within the meaning of section 1392(a) of this title) under the plan, and

(iii) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer,

that the plan is in reorganization and that, if contributions under the plan are not increased, accrued benefits under the plan will be reduced or an excise tax will be imposed on employers;

(B) in accordance with regulations prescribed by the Secretary of the Treasury—

(i) any category of accrued benefits is not reduced with respect to inactive participants to a greater extent proportionally than such category of accrued benefits is reduced with respect to active participants,

(ii) benefits attributable to employer contributions other than accrued benefits and the rate of future benefit accruals are reduced at least to an extent equal to the reduction in accrued benefits of inactive participants, and

(iii) in any case in which the accrued benefit of a participant or beneficiary is reduced by changing the benefit form or the requirements which the participant or beneficiary must satisfy to be entitled to the benefit, such reduction is not applicable to—

(I) any participant or beneficiary in pay status on the effective date of the amendment, or the beneficiary of such a participant, or

(II) any participant who has attained normal retirement age, or who is within 5 years of attaining normal retirement age, on the effective date of the amendment, or the beneficiary of any such participant; and

(C) the rate of employer contributions for the plan year in which the amendment becomes effective and for all succeeding plan years in which the plan is in reorganization equals or exceeds the greater of—

(i) the rate of employer contributions, calculated without regard to the amendment, for the plan year in which the amendment becomes effective, or

(ii) the rate of employer contributions for the plan year preceding the plan year in which the amendment becomes effective.

(2) The plan sponsors shall include in any notice required to be sent to plan participants and beneficiaries under paragraph (1) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(c) Recoupment by plan of excess benefit payment

A plan may not recoup a benefit payment which is in excess of the amount payable under the plan because of an amendment retroactively reducing accrued benefits under this section.

(d) Amendment of plan to increase or restore accrued benefits previously reduced or rate of future benefit accruals; conditions, applicable factors, etc.

(1)(A) A plan which has been amended to reduce accrued benefits under this section may be amended to increase or restore accrued benefits, or the rate of future benefit accruals, only if the plan is amended to restore levels of previously reduced accrued benefits of inactive participants and of participants who are within 5 years of attaining normal retirement age to at least the same extent as any such increase in accrued benefits or in the rate of future benefit accruals.

(B) For purposes of this subsection, in the case of a plan which has been amended under this section to reduce accrued benefits—

(i) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit increase to the extent that the benefit, or the accrual rate, is thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan before the effective date of the amendment reducing accrued benefits, and

(ii) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit restoration to the extent that the benefit, or the accrual rate, is not thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan immediately before the effective date of the amendment reducing accrued benefits.

(2) If a plan is amended to partially restore previously reduced accrued benefit levels, or the rate of future benefit accruals, the benefits of inactive participants shall be restored in at least the same proportions as other accrued benefits which are restored.

(3) No benefit increase under a plan may take effect in a plan year in which an amendment reducing accrued benefits under the plan, in accordance with this section, is adopted or first becomes effective.

(4) A plan is not required to make retroactive benefit payments with respect to that portion of an accrued benefit which was reduced and subsequently restored under this section.

(e) "Inactive participant" defined

For purposes of this section, ''inactive participant'' means a person not in covered service under the plan who is in pay status under the plan or who has a nonforfeitable benefit under the plan.

(f) Promulgation of rules; contents, etc.

The Secretary of the Treasury may prescribe rules under which, notwithstanding any other provision of this section, accrued benefit reductions or benefit increases for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors reflecting differences in negotiated levels of financial support for plan benefit obligations.

(Pub. L. 93–406, title IV, § 4244A, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1257; amended Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7891(f) of Pub. L. 101–239, set out as a note under section 1002 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1202, 1322a, 1421, 1441, 1461 of this title.

§ 1426. Insolvent plans

(a) Suspension of payments of benefits; conditions, amount, etc.

Notwithstanding sections 1053 and 1054 of this title, in any case in which benefit payments under an insolvent multiemployer plan exceed the resource benefit level, any such payments of benefits which are not basic benefits shall be suspended, in accordance with this section, to the extent necessary to reduce the sum of such payments and the payments of such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the corporation under section 1322a(g)(5) of this title.

(b) Determination of insolvency status for plan year; definitions

For purposes of this section, for a plan year—

(1) a multiemployer plan is insolvent if the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year, or if the plan is determined to be insolvent under subsection (d) of this section;

(2) ''resource benefit level'' means the level of monthly benefits determined under subsections (c)(1) and (3) and (d)(3) of this section to be the highest level which can be paid out of the plan's available resources;

(3) ''available resources'' means the plan's cash, marketable assets, contributions, withdrawal liability payments, and earnings, less reasonable administrative expenses and amounts owed for such plan year to the corporation under section 1431(b)(2) of this title; and

(4) ''insolvency year'' means a plan year in which a plan is insolvent.

(c) Determination by plan sponsor of plan in reorganization of resource benefit level of plan for each insolvency year; uniform application of suspension of benefits; adjustments of benefit payments

(1) The plan sponsor of a plan in reorganization shall determine in writing the plan's resource benefit level for each insolvency year, based on the plan sponsor's reasonable projection of the plan's available resources and the benefits payable under the plan.

(2) The suspension of benefit payments under this section shall, in accordance with regulations prescribed by the Secretary of the Treasury, apply in substantially uniform proportions to the benefits of all persons in pay status (within the meaning of section 1421(b)(6) of this title) under the plan, except that the Secretary of the Treasury may prescribe rules under which benefit suspensions for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors including differences in negotiated levels of financial support for plan benefit obligations.

(3) Notwithstanding paragraph (2), if a plan sponsor determines in writing a resource benefit level for a plan year which is below the level of basic benefits, the payment of all benefits other than basic benefits must be suspended for that plan year.

(4)(A) If, by the end of an insolvency year, the plan sponsor determines in writing that the plan's available resources in that insolvency year could have supported benefit payments above the resource benefit level for that insolvency year, the plan sponsor shall distribute the excess resources to the participants and beneficiaries who received benefit payments from the plan in that insolvency year, in accordance with regulations prescribed by the Secretary of the Treasury.

(B) For purposes of this paragraph, the term ''excess resources'' means available resources above the amount necessary to support the resource benefit level, but no greater than the amount necessary to pay benefits for the plan year at the benefit levels under the plan.

(5) If, by the end of an insolvency year, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level which were unpaid shall be distributed to the

participants and beneficiaries, in accordance with regulations prescribed by the Secretary of the Treasury, to the extent possible taking into account the plan's total available resources in that insolvency year.

(6) Except as provided in paragraph (4) or (5), a plan is not required to make retroactive benefit payments with respect to that portion of a benefit which was suspended under this section.

(d) Applicability and determinations respecting plan assets; time for determinations of resource benefit level and level of basic benefits

(1) As of the end of the first plan year in which a plan is in reorganization, and at least every 3 plan years thereafter (unless the plan is no longer in reorganization), the plan sponsor shall compare the value of plan assets (determined in accordance with section 1423(b)(3)(B)(ii) of this title) for that plan year with the total amount of benefit payments made under the plan for that plan year. Unless the plan sponsor determines that the value of plan assets exceeds 3 times the total amount of benefit payments, the plan sponsor shall determine whether the plan will be insolvent in any of the next 3 plan years.

(2) If, at any time, the plan sponsor of a plan in reorganization reasonably determines, taking into account the plan's recent and anticipated financial experience, that the plan's available resources are not sufficient to pay benefits under the plan when due for the next plan year, the plan sponsor shall make such determination available to interested parties.

(3) The plan sponsor of a plan in reorganization shall determine in writing for each insolvency year the resource benefit level and the level of basic benefits no later than 3 months before the insolvency year.

(e) Notice, etc., requirements of plan sponsor of plan in reorganization regarding insolvency and resource benefit levels

(1) If the plan sponsor of a plan in reorganization determines under subsection (d)(1) or (2) of this section that the plan may become insolvent (within the meaning of subsection (b)(1) of this section), the plan sponsor shall—

(A) notify the Secretary of the Treasury, the corporation, the parties described in section 1422(a)(2) of this title, and the plan participants and beneficiaries of that determination, and

(B) inform the parties described in section 1422(a)(2) of this title and the plan participants and beneficiaries that if insolvency occurs certain benefit payments will be suspended, but that basic benefits will continue to be paid.

(2) No later than 2 months before the first day of each insolvency year, the plan sponsor of a plan in reorganization shall notify the Secretary of the Treasury, the corporation, and the parties described in paragraph (1)(B) of the resource benefit level determined in writing for that insolvency year.

(3) In any case in which the plan sponsor anticipates that the resource benefit level for an insolvency year may not exceed the level of basic benefits, the plan sponsor shall notify the corporation.

(4) Notice required by this subsection shall be given in accordance with regulations prescribed by the corporation, except that notice to the Secretary of the Treasury shall be given in accordance with regulations prescribed by the Secretary of the Treasury.

(5) The corporation may prescribe a time other than the time prescribed by this section for the making of a determination or the filing of a notice under this section.

(f) Financial assistance from corporation; conditions and criteria applicable

(1) If the plan sponsor of an insolvent plan, for which the resource benefit level is above the level of basic benefits, anticipates that, for any month in an insolvency year, the plan will not have funds sufficient to pay basic benefits, the plan sponsor may apply for financial assistance from the corporation under section 1431 of this title.

(2) A plan sponsor who has determined a resource benefit level for an insolvency year which is below the level of basic benefits shall apply for financial assistance from the corporation under section 1431 of this title.

(Pub. L. 93–406, title IV, § 4245, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1259.)

WITHDRAWAL LIABILITY OF EMPLOYER FROM PLAN TERMINATING WHILE PLAN INSOLVENT WITHIN THIS SECTION: DETERMINATIONS, FACTORS, ETC.

Section 108(c)(3) of Pub. L. 96–364 provided that:

''(A) For the purpose of determining the withdrawal liability of an employer under title IV of the Employee Retirement Income Security Act of 1974 [this subchapter] from a plan that terminates while the plan is insolvent (within the meaning of section 4245 of such Act [this section]), the plan's unfunded vested benefits shall be reduced by an amount equal to the sum of all overburden credits that were applied in determining the plan's accumulated funding deficiency for all plan years preceding the first plan year in which the plan is insolvent, plus interest thereon.

''(B) The provisions of subparagraph (A) apply only if—

''(i) the plan would have been eligible for the overburden credit in the last plan year beginning before the date of the enactment of this Act [Sept. 26, 1980], if section 4243 of the Employee Retirement Income Security Act of 1974 [section 1423 of this title] had been in effect for that plan year, and

''(ii) the Pension Benefit Guaranty Corporation determines that the reduction of unfunded vested benefits under subparagraph (A) would not significantly increase the risk of loss to the corporation.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1202, 1322a, 1361, 1411, 1423, 1431, 1441, 1461 of this title.

PART 4—FINANCIAL ASSISTANCE

§ 1431. Assistance by corporation

(a) Authority; procedure applicable; amount

If, upon receipt of an application for financial assistance under section 1426(f) of this title or section 1441(d) of this title, the corporation verifies that the plan is or will be insolvent and unable to pay basic benefits when due, the corporation shall provide the plan financial assistance in an amount sufficient to enable the plan to pay basic benefits under the plan.

(b) Conditions; repayment terms

(1) Financial assistance shall be provided under such conditions as the corporation determines are equitable and are appropriate to prevent unreasonable loss to the corporation with respect to the plan.

(2) A plan which has received financial assistance shall repay the amount of such assistance to the corporation on reasonable terms consistent with regulations prescribed by the corporation.

(c) Assistance pending final determination of application

Pending determination of the amount described in subsection (a) of this section, the corporation may provide financial assistance in such amounts as it considers appropriate in order to avoid undue hardship to plan participants and beneficiaries.

(Pub. L. 93–406, title IV, § 4261, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1261.)

EFFECTIVE DATE

Part effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1306, 1307, 1322a, 1426 of this title; title 26 section 418E.

PART 5—BENEFITS AFTER TERMINATION

§ 1441. Benefits under certain terminated plans

(a) Amendment of plan by plan sponsor to reduce benefits, and suspension of benefit payments

Notwithstanding sections 1053 and 1054 of this title, the plan sponsor of a terminated multiemployer plan to which section 1341a(d) of this title applies shall amend the plan to reduce benefits, and shall suspend benefit payments, as required by this section.

(b) Determinations respecting value of nonforfeitable benefits under terminated plan and value of assets of plan

(1) The value of nonforfeitable benefits under a terminated plan referred to in subsection (a) of this section, and the value of the plan's assets, shall be determined in writing, in accordance with regulations prescribed by the corporation, as of the end of the plan year during which section 1341a(d) of this title becomes applicable to the plan, and each plan year thereafter.

(2) For purposes of this section, plan assets include outstanding claims for withdrawal liability (within the meaning of section 1301(a)(12) of this title).

(c) Amendment of plan by plan sponsor to reduce benefits for conservation of assets; factors applicable

(1) If, according to the determination made under subsection (b) of this section, the value of nonforfeitable benefits exceeds the value of the plan's assets, the plan sponsor shall amend the plan to reduce benefits under the plan to the extent necessary to ensure that the plan's assets are sufficient, as determined and certified in accordance with regulations prescribed by the corporation, to discharge when due all of the plan's obligations with respect to nonforfeitable benefits.

(2) Any plan amendment required by this subsection shall, in accordance with regulations prescribed by the Secretary of the Treasury—

(A) reduce benefits only to the extent necessary to comply with paragraph (1);

(B) reduce accrued benefits only to the extent that those benefits are not eligible for the corporation's guarantee under section 1322a(b) of this title;

(C) comply with the rules for and limitations on benefit reductions under a plan in reorganization, as prescribed in section 1425 of this title, except to the extent that the corporation prescribes other rules and limitations in regulations under this section; and

(D) take effect no later than 6 months after the end of the plan year for which it is determined that the value of nonforfeitable benefits exceeds the value of the plan's assets.

(d) Suspension of benefit payments; determinative factors; powers and duties of plan sponsor; retroactive benefit payments

(1) In any case in which benefit payments under a plan which is insolvent under paragraph (2)(A) exceed the resource benefit level, any such payments which are not basic benefits shall be suspended, in accordance with this subsection, to the extent necessary to reduce the sum of such payments and such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the corporation in connection with a supplemental guarantee program established under section 1322a(g)(2) of this title.

(2) For purposes of this subsection, for a plan year—

(A) a plan is insolvent if—

(i) the plan has been amended to reduce benefits to the extent permitted by subsection (c) of this section, and

(ii) the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year; and

(B) ''resource benefit level'' and ''available resources'' have the meanings set forth in paragraphs (2) and (3), respectively, of section 1426(b) of this title.

(3) The plan sponsor of a plan which is insolvent (within the meaning of paragraph (2)(A)) shall have the powers and duties of the plan sponsor of a plan in reorganization which is insolvent (within the meaning of section 1426(b)(1) of this title), except that regulations governing the plan sponsor's exercise of those powers and duties under this section shall be prescribed by the corporation, and the corporation shall prescribe by regulation notice requirements which assure that plan participants and beneficiaries receive adequate notice of benefit suspensions.

(4) A plan is not required to make retroactive benefit payments with respect to that portion of a benefit which was suspended under this subsection, except that the provisions of section 1426(c)(4) and (5) of this title shall apply in the case of plans which are insolvent under para-

graph (2)(A), in connection with the plan year during which such section 1341a(d) of this title first became applicable to the plan and every year thereafter, in the same manner and to the same extent as such provisions apply to insolvent plans in reorganization under section 1426 of this title, in connection with insolvency years under such section 1426 of this title.

(Pub. L. 93–406, title IV, §4281, as added Pub. L. 96–364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1261.)

EFFECTIVE DATE

Part effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1054, 1322a, 1341a, 1361, 1431 of this title; title 26 section 411.

PART 6—ENFORCEMENT

§ 1451. Civil actions

(a) Persons entitled to maintain actions

(1) A plan fiduciary, employer, plan participant, or beneficiary, who is adversely affected by the act or omission of any party under this subtitle with respect to a multiemployer plan, or an employee organization which represents such a plan participant or beneficiary for purposes of collective bargaining, may bring an action for appropriate legal or equitable relief, or both.

(2) Notwithstanding paragraph (1), this section does not authorize an action against the Secretary of the Treasury, the Secretary of Labor, or the corporation.

(b) Failure of employer to make withdrawal liability payment within prescribed time

In any action under this section to compel an employer to pay withdrawal liability, any failure of the employer to make any withdrawal liability payment within the time prescribed shall be treated in the same manner as a delinquent contribution (within the meaning of section 1145 of this title).

(c) Jurisdiction of Federal and State courts

The district courts of the United States shall have exclusive jurisdiction of an action under this section without regard to the amount in controversy, except that State courts of competent jurisdiction shall have concurrent jurisdiction over an action brought by a plan fiduciary to collect withdrawal liability.

(d) Venue and service of process

An action under this section may be brought in the district where the plan is administered or where a defendant resides or does business, and process may be served in any district where a defendant resides, does business, or may be found.

(e) Costs and expenses

In any action under this section, the court may award all or a portion of the costs and expenses incurred in connection with such action, including reasonable attorney's fees, to the prevailing party.

(f) Time limitations

An action under this section may not be brought after the later of—

(1) 6 years after the date on which the cause of action arose, or

(2) 3 years after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action; except that in the case of fraud or concealment, such action may be brought not later than 6 years after the date of discovery of the existence of such cause of action.

(g) Service of complaint on corporation; intervention by corporation

A copy of the complaint in any action under this section or section 1401 of this title shall be served upon the corporation by certified mail. The corporation may intervene in any such action.

(Pub. L. 93–406, title IV, §4301, as added Pub. L. 96–364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1263.)

EFFECTIVE DATE

Part effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1401 of this title; title 26 section 9721.

§ 1452. Penalty for failure to provide notice

Any person who fails, without reasonable cause, to provide a notice required under this subtitle or any implementing regulations shall be liable to the corporation in an amount up to $100 for each day for which such failure continues. The corporation may bring a civil action against any such person in the United States District Court for the District of Columbia or in any district court of the United States within the jurisdiction of which the plan assets are located, the plan is administered, or a defendant resides or does business, and process may be served in any district where a defendant resides, does business, or may be found.

(Pub. L. 93–406, title IV, §4302, as added Pub. L. 96–364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1263.)

§ 1453. Election of plan status

(a) Authority, time, and criteria

Within one year after September 26, 1980, a multiemployer plan may irrevocably elect, pursuant to procedures established by the corporation, that the plan shall not be treated as a multiemployer plan for any purpose under this chapter or the Internal Revenue Code of 1954, if for each of the last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980—

(1) the plan was not a multiemployer plan because the plan was not a plan described in section 1002(37)(A)(iii) of this title and section 414(f)(1)(C) of title 26 (as such provisions were in effect on the day before September 26, 1980); and

(2) the plan had been identified as a plan that was not a multiemployer plan in substantially all its filings with the corporation, the Secretary of Labor and the Secretary of the Treasury.

(b) Requirements

An election described in subsection (a) of this section shall be effective only if—

(1) the plan is amended to provide that it shall not be treated as a multiemployer plan for all purposes under this chapter and the Internal Revenue Code of 1954, and

(2) written notice of the amendment is provided to the corporation within 60 days after the amendment is adopted.

(c) Effective date

An election described in subsection (a) of this section shall be treated as being effective as of September 26, 1980.

(Pub. L. 93–406, title IV, § 4303, as added Pub. L. 96–364, title I, § 108(f), Sept. 26, 1980, 94 Stat. 1270.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Internal Revenue Code of 1954, referred to in subsecs. (a) and (b)(1), was redesignated the Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, and is classified to Title 26, Internal Revenue Code.

For the effective date of the Multiemployer Pension Plan Amendments Act of 1980, referred to in subsec. (a), see section 1461(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1002 of this title; title 26 section 414.

SUBTITLE F—TRANSITION RULES AND EFFECTIVE DATES

AMENDMENTS

1980—Pub. L. 96–364, title I, § 104(1), Sept. 26, 1980, 94 Stat. 1217, substituted ''Subtitle F—Transition Rules and Effective Dates'' for ''Subtitle E—Effective Date; Special Rules''.

§ 1461. Effective date; special rules

(a) The provisions of this subchapter take effect on September 2, 1974.

(b) Notwithstanding the provisions of subsection (a) of this section, the corporation shall pay benefits guaranteed under this subchapter with respect to any plan—

(1) which is not a multiemployer plan,

(2) which terminates after June 30, 1974, and before September 2, 1974,

(3) to which section 1321 of this title would apply if that section were effective beginning on July 1, 1974, and

(4) with respect to which a notice is filed with the Secretary of Labor and received by him not later than 10 days after September 2, 1974, except that, for reasonable cause shown, such notice may be filed with the Secretary of Labor and received by him not later than October 31, 1974, stating that the plan is a plan described in paragraphs (1), (2), and (3).

The corporation shall not pay benefits guaranteed under this subchapter with respect to a plan described in the preceding sentence unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this subchapter or for the purpose of avoiding the liability which might be imposed under subtitle D of this subchapter if the plan terminated on or after September 2, 1974. The provisions of subtitle D of this subchapter do not apply in the case of such a plan which terminates before September 2, 1974. For purposes of determining whether a plan is a plan described in paragraph (2), the provisions of section 1348 of this title shall not apply, but the corporation shall make the determination on the basis of the date on which benefits ceased to accrue or on any other reasonable basis consistent with the purposes of this subsection.

(c)(1) Except as provided in paragraphs (2), (3), and (4), the corporation shall not pay benefits guaranteed under this subchapter with respect to a multiemployer plan which terminates before August 1, 1980. Whenever the corporation exercises the authority granted under paragraph (2) or (3), the corporation shall notify the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives, and the Committee on Labor and Human Resources and the Committee on Finance of the Senate.

(2) The corporation may, in its discretion, pay benefits guaranteed under this subchapter with respect to a multiemployer plan which terminates after September 2, 1974 and before August 1, 1980, if—

(A) the plan was maintained during the 60 months immediately preceding the date on which the plan terminates, and

(B) the corporation determines that the payment by the corporation of benefits guaranteed under this subchapter with respect to that plan will not jeopardize the payments the corporation anticipates it may be required to make in connection with benefits guaranteed under this subchapter with respect to multiemployer plans which terminate after July 31, 1980.

(3) Notwithstanding any provision of section 1321 or 1322 of this title which would prevent such payments, the corporation, in carrying out its authority under paragraph (2), may pay benefits guaranteed under this subchapter with respect to a multiemployer plan described in paragraph (2) in any case in which those benefits would otherwise not be payable if—

(A) the plan has been in effect for at least 5 years,

(B) the plan has been in substantial compliance with the funding requirements for a qualified plan with respect to the employees and former employees in those employment units on the basis of which the participating employers have contributed to the plan for the preceding 5 years, and

(C) the participating employers and employee organization or organizations had no reasonable recourse other than termination.

(4) If the corporation determines, under paragraph (2) or (3), that it will pay benefits guaranteed under this subchapter with respect to a

multiemployer plan which terminates before August 1, 1980, the corporation—

(A) may establish requirements for the continuation of payments which commenced before January 2, 1974, with respect to retired participants under the plan,

(B) may not, notwithstanding any other provision of this subchapter, make payments with respect to any participant under such a plan who, on January 1, 1974, was receiving payment of retirement benefits, in excess of the amounts and rates payable with respect to such participant on that date,

(C) may not make any payments with respect to benefits guaranteed under this subchapter in connection with such a plan which are derived, directly or indirectly, from amounts borrowed under section 1305(c) of this title, and

(D) shall review from time to time payments made under the authority granted to it by paragraphs (2) and (3), and reduce or terminate such payments to the extent necessary to avoid jeopardizing the ability of the corporation to make payments of benefits guaranteed under this subchapter in connection with multiemployer plans which terminate after July 31, 1980, without increasing premium rates for such plans.

(d) Notwithstanding any other provision of this subchapter, guaranteed benefits payable by the corporation pursuant to its discretionary authority under this section shall continue to be paid at the level guaranteed under section 1322 of this title, without regard to any limitation on payment under subparagraph (C) or (D) of subsection (c)(4) of this section.

(e)(1) Except as provided in paragraphs (2), (3), and (4), the amendments to this chapter made by the Multiemployer Pension Plan Amendments Act of 1980 shall take effect on September 26, 1980.

(2)(A) Except as provided in this paragraph, part 1 of subtitle E of this subchapter, relating to withdrawal liability, takes effect on September 26, 1980.

(B) For purposes of determining withdrawal liability under part 1 of subtitle E of this subchapter, an employer who has withdrawn from a plan shall be considered to have withdrawn from a multiemployer plan if, at the time of the withdrawal, the plan was a multiemployer plan as defined in section 1301(a)(3) of this title as in effect at the time of the withdrawal.

(3) Sections 1421 through 1426 of this title, relating to multiemployer plan reorganization, shall take effect, with respect to each plan, on the first day of the first plan year beginning on or after the earlier of—

(A) the date on which the last collective bargaining agreement providing for employer contributions under the plan, which was in effect on September 26, 1980, expires, without regard to extensions agreed to on or after September 26, 1980, or

(B) 3 years after September 26, 1980.

(4) Section 1415 of this title shall take effect on September 26, 1980.

(f)(1) In the event that before September 26, 1980, the corporation has determined that—

(A) an employer has withdrawn from a multiemployer plan under section 1363 of this title, and

(B) the employer is liable to the corporation under such section,

the corporation shall retain the amount of liability paid to it or furnished in the form of a bond and shall pay such liability to the plan in the event the plan terminates in accordance with section 1341a(a)(2) of this title before the earlier of September 26, 1985, or the day after the 5-year period commencing on the date of such withdrawal.

(2) In any case in which the plan is not so terminated within the period described in paragraph (1), the liability of the employer is abated and any payment held in escrow shall be refunded without interest to the employer or the employer's bond shall be cancelled.

(g)(1) In any case in which an employer or employers withdrew from a multiemployer plan before the effective date of part 1 of subtitle E of this subchapter, the corporation may—

(A) apply section 1363(d) of this title, as in effect before the amendments made by the Multiemployer Pension Plan Amendments Act of 1980, to such plan,

(B) assess liability against the withdrawn employer with respect to the resulting terminated plan,

(C) guarantee benefits under the terminated plan under section 1322 of this title, as in effect before such amendments, and

(D) if necessary, enforce such action through suit brought under section 1303 of this title.

(2) The corporation shall use the revolving fund used by the corporation with respect to basic benefits guaranteed under section 1322a of this title in guaranteeing benefits under a terminated plan described in this subsection.

(h)(1) In the case of an employer who entered into a collective bargaining agreement—

(A) which was effective on January 12, 1979, and which remained in effect through May 15, 1982, and

(B) under which contributions to a multiemployer plan were to cease on January 12, 1982,

any withdrawal liability incurred by the employer pursuant to part 1 of subtitle E of this subchapter as a result of the complete or partial withdrawal of the employer from the multiemployer plan before January 16, 1982, shall be void.

(2) In any case in which—

(A) an employer engaged in the grocery wholesaling business—

(i) had ceased all covered operations under a multiemployer plan before June 30, 1981, and had relocated its operations to a new facility in another State, and

(ii) had notified a local union representative on May 14, 1980, that the employer had tentatively decided to discontinue operations and relocate to a new facility in another State, and

(B) all State and local approvals with respect to construction of and commencement of operations at the new facility had been obtained, a contract for construction had been

entered into, and construction of the new facility had begun before September 26, 1980,

any withdrawal liability incurred by the employer pursuant to part 1 of subtitle E of this subchapter as a result of the complete or partial withdrawal of the employer from the multiemployer plan before June 30, 1981, shall be void.

(i) The preceding provisions of this section shall not apply with respect to amendments made to this subchapter in provisions enacted after October 22, 1986.

(Pub. L. 93–406, title IV, § 4402, formerly § 4082, Sept. 2, 1974, 88 Stat. 1034; S. Res. 4, Feb. 4, 1977; Pub. L. 95–214, § 1, Dec. 19, 1977, 91 Stat. 1501; S. Res. 30, Mar. 7, 1979; Pub. L. 96–24, June 19, 1979, 93 Stat. 70; Pub. L. 96–239, Apr. 30, 1980, 94 Stat. 341; Pub. L. 96–293, § 1, June 30, 1980, 94 Stat. 610; renumbered and amended Pub. L. 96–364, title I, § 108(a)–(c)(1), Sept. 26, 1980, 94 Stat. 1267; Pub. L. 98–369, div. A, title V, § 558(b)(1)(B), (C), July 18, 1984, 98 Stat. 899; Pub. L. 99–514, title XVIII, § 1852(i), Oct. 22, 1986, 100 Stat. 2869; Pub. L. 101–239, title VII, §§ 7862(a), 7894(h)(5)(A), Dec. 19, 1989, 103 Stat. 2431, 2451.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e)(1), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Multiemployer Pension Plan Amendments Act of 1980, referred to in subsecs. (e)(1) and (g)(1)(A), is Pub. L. 96–364, Sept. 26, 1980, 94 Stat. 1208. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 1001 of this title and Tables.

For the effective date of part 1 of subtitle E of this subchapter, referred to in subsec. (g)(1), see subsec. (e)(2) of this section.

CODIFICATION

Section was formerly classified to section 1381 of this title.

AMENDMENTS

1989—Subsec. (h)(1). Pub. L. 101–239, § 7862(a), substituted ''before January 16, 1982'' for ''before January 12, 1982'' in concluding provisions.

Subsec. (i). Pub. L. 101–239, § 7894(h)(5)(A), added subsec. (i).

1986—Subsec. (h). Pub. L. 99–514 added subsec. (h).

1984—Subsec. (e)(2)(A), (4). Pub. L. 98–369, § 558(b)(1)(B), substituted ''September 26, 1980'' for ''April 29, 1980''.

Subsec. (f)(1). Pub. L. 98–369, § 558(b)(1)(C), substituted ''September 26, 1985'' for ''April 29, 1985''.

1980—Subsec. (c)(1). Pub. L. 96–293, § 1(1), substituted ''August 1, 1980'' for ''July 1, 1980''.

Pub. L. 96–239, § 1(1), substituted ''July 1, 1980'' for ''May 1, 1980''.

Subsec. (c)(2). Pub. L. 96–293, § 1(1), (2), substituted ''August 1, 1980'' for ''July 1, 1980'' in provisions preceding subpar. (A) and ''July 31, 1980'' for ''June 30, 1980'' in subpar. (B).

Pub. L. 96–239, § 1(1), (2), substituted ''July 1, 1980'' for ''May 1, 1980'' in provisions preceding subpar. (A) and ''June 30, 1980'' for ''April 30, 1980'' in subpar. (B).

Subsec. (c)(4). Pub. L. 96–293, § 1(1), (2), substituted ''August 1, 1980'' for ''July 1, 1980'' in provisions preceding subpar. (A) and ''July 31, 1980'' for ''June 30, 1980'' in subpar. (D).

Pub. L. 96–239, § 1(1), (2), substituted ''July 1, 1980'' for ''May 1, 1980'' in provisions preceding subpar. (A) and ''June 30, 1980'' for ''April 30, 1980'' in subpar. (D).

Subsec. (d). Pub. L. 96–364, § 108(b), added subsec. (d). Former subsec. (d), which related to report to Congressional committees respecting anticipated financial condition of program for mandatory coverage of multiemployer plans, was struck out.

Subsec. (e). Pub. L. 96–364, § 108(c)(1), added subsec. (e). Former subsec. (e), which related to annual insurance premium payable to Corporation for coverage of guaranteed basic benefits, was struck out.

Subsecs. (f), (g). Pub. L. 96–364, § 108(c)(1), added subsecs. (f) and (g).

1979—Subsec. (c)(1). Pub. L. 96–24, § 1(1), substituted ''May 1, 1980'' for ''July 1, 1979''.

Subsec. (c)(2). Pub. L. 96–24, § 1(1), (2), substituted ''May 1, 1980'' for ''July 1, 1979'' in provisions preceding subpar. (A) and ''April 30, 1980'' for ''June 30, 1979'' in subpar. (B).

Subsec. (c)(4). Pub. L. 96–24, § 1(1), (2), substituted ''May 1, 1980'' for ''July 1, 1979'' in provisions preceding subpar. (A) and ''April 30, 1980'' for ''June 30, 1979'' in subpar. (D).

1977—Subsec. (c)(1). Pub. L. 95–214, § 1(a)(1), substituted ''July 1, 1979'' for ''January 1, 1978''.

Subsec. (c)(2). Pub. L. 95–214, § 1(a)(2), substituted ''July 1, 1979'' for ''January 1, 1978'' in provisions preceding subpar. (A).

Subsec. (c)(2)(B). Pub. L. 95–214, § 1(a)(3), substituted ''June 30, 1979'' for ''December 31, 1977''.

Subsec. (c)(4). Pub. L. 95–214, § 1(a)(4), substituted ''July 1, 1979'' for ''January 1, 1978'' in provisions preceding subpar. (A).

Subsec. (c)(4)(D). Pub. L. 95–214, § 1(a)(5), substituted ''June 30, 1979'' for ''December 31, 1977''.

Subsecs. (d), (e). Pub. L. 95–214, § 1(b), added subsecs. (d) and (e).

CHANGE OF NAME

Committee on Education and Labor of House of Representatives treated as referring to Committee on Economic and Educational Opportunities of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

Committee on Human Resources of Senate changed to Committee on Labor and Human Resources of Senate, effective Mar. 7, 1979, by Senate Resolution No. 30, 96th Congress. See, also, Rule XXV of Standing Rules of Senate adopted Nov. 14, 1979.

Committee on Labor and Public Welfare of Senate abolished and replaced by Committee on Human Resources of Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of Senate, as amended by Senate Resolution No. 4 (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7862(a) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 of Title 26, Internal Revenue Code.

Section 7894(h)(5)(B) of Pub. L. 101–239 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if originally included in the Reform Act [Pub. L. 99–514].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of Title 26, Internal Revenue Code.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147

and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

ACTIONS TAKEN BEFORE REGULATIONS ARE PRESCRIBED

Section 405 of Pub. L. 96–364 provided that:

''(a) Except as otherwise provided in the amendments made by this Act [see Short Title of 1980 Amendment note set out under section 1001 of this title] and in subsection (b), if the way in which any such amendment will apply to a particular circumstance is to be set forth in regulations, any reasonable action during the period before such regulations take effect shall be treated as complying with such regulations for such period.

''(b) Subsection (a) shall not apply to any action which violates any instruction issued, or temporary rule prescribed, by the agency having jurisdiction but only if such instruction or rule was published, or furnished to the party taking the action, before such action was taken.''

CHAPTER 19—JOB TRAINING PARTNERSHIP

Sec.

Sec.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 49a, 49f, 49g, 795a, 2304 of this title; title 5 section 3502; title 7 section 2015; title 8 section 1255a; title 15 section 636; title 18 section 665; title 20 sections 1087vv, 1203a, 1206a, 1208aa, 1425, 2322, 2323, 2341a, 2343, 2392, 2396d, 2403, 2413, 2422, 6002, 6122, 6143, 6213, 6214, 6365, 6434, 6453, 6455, 7263; title 22 section 5855; title 26 sections 42, 6334; title 38 sections 4102A, 4213; title 42 sections 602, 607, 683, 685, 1437u, 1474, 3013, 3056, 3056a, 3056h, 4953, 4959, 6103, 6864, 6873, 7274h, 9806, 11302, 12637, 12655m, 12899c, 12899e, 13823; title 48 section 1911.

§ 1501. Statement of purpose

It is the purpose of this chapter to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the Nation.

(Pub. L. 97–300, §2, Oct. 13, 1982, 96 Stat. 1324; Pub. L. 102–367, title I, §101(b), Sept. 7, 1992, 106 Stat. 1022.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, known as the Job Training Partnership Act, which is classified generally to this chapter (§1501 et seq.). For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1992—Pub. L. 102–367 amended section generally. Prior to amendment, section read as follows: ''It is the purpose of this chapter to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment.''

EFFECTIVE DATE OF 1992 AMENDMENT; TRANSITION PROVISIONS

Section 701 of Pub. L. 102–367 provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, this Act [See Short Title of 1992 Amendment note below] and the amendments made by this Act shall take effect on July 1, 1993.

''(b) PERFORMANCE STANDARDS.—The Secretary of Labor shall issue revised performance standards under the amendments made by section 115 [amending sections 1516, 1661, and 1662a of this title] as soon as the Secretary determines sufficient data are available, but not later than July 1, 1994, except that with respect to the factor of retention in unsubsidized employment specified in section 106(b)(3)(B) of the Job Training Partnership Act [section 1516(b)(3)(B) of this title] (as amended by section 115), the requirement that such retention be for not less than 6 months shall take effect not later than July 1, 1995.

''(c) INTERIM TRAINING SERVICES FORMULA.—

''(1) LEVEL OF FUNDING.—If the amount appropriated to carry out parts A and C of title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq., 1641 et seq.] for fiscal year 1993 is less than the sum of—

''(A) $25,000,000; and

''(B) the amount appropriated to carry out part A of title II of such Act, as in effect on the day before the date of enactment of this Act [Sept. 7, 1992], for fiscal year 1992,

the amendment made by section 202 of this Act [enacting section 1602 of this title] shall not take effect on July 1, 1993 [Amendment by section 202 did not take effect July 1, 1993, because the appropriations referred to above for fiscal year 1993 were less than the sum referred to above.], and section 202 of the Job

Training Partnership Act [section 1602 of this title] shall be amended to read as follows: [For text, see section 1602 of this title.]

''(2) EFFECTIVE DATE.—Any amendment made by paragraph (1) shall take effect on July 1, 1993.

''(d) PERMANENT TRAINING SERVICES FORMULA.—

''(1) LEVEL OF FUNDING.—If section 202 of the Job Training Partnership Act [section 1602 of this title] is amended in accordance with subsection (c) and the amount appropriated to carry out parts A and C of title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq., 1641 et seq.] for a fiscal year is not less than the sum of—

''(A) $25,000,000; and

''(B) the amount appropriated to carry out part A of title II of such Act, as in effect on the day before the date of enactment of this Act [Sept. 7, 1992], for fiscal year 1992,

the amendment made by section 202 of this Act [enacting section 1602 of this title] shall take effect. [Amendment by section 202 did not take effect because the appropriations referred to above for fiscal year 1996 were less than the sum referred to above.]

''(2) EFFECTIVE DATE.—Any amendment made by paragraph (1) shall take effect on October 1 of the fiscal year described in paragraph (1).

''(e) SUMMER YOUTH PROGRAM TRANSFERS.—

''(1) IN GENERAL.—Section 205 [enacting section 1635 of this title] and the amendment made by such section 205 shall take effect on the date of enactment of this Act [Sept. 7, 1992].

''(2) TRANSITION.—A service delivery area may transfer up to 10 percent of the amounts allocated for such area for the summer of 1992 under part B of title II of the Job Training Partnership Act [29 U.S.C. 1630 et seq.] for program year 1992 to provide services to youth pursuant to the program under part A of such title [29 U.S.C. 1601 et seq.], to provide services to youth under such part A, if such transfer is approved by the Governor.

''(f) INTERIM TRAINING SERVICES FORMULA.—

''(1) LEVEL OF FUNDING.—If the amount appropriated to carry out parts A and C of title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq., 1641 et seq.] for fiscal year 1993 is less than the sum of—

''(A) $25,000,000; and

''(B) the amount appropriated to carry out part A of title II of such Act, as in effect on the day before the date of enactment of this Act [Sept. 7, 1992], for fiscal year 1992,

the amendment made by section 207 of this Act [enacting section 1642 of this title] shall not take effect on July 1, 1993 [Amendment by section 207 did not take effect July 1, 1993, because the appropriations referred to above for fiscal year 1993 were less than the sum referred to above.] and title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq.] shall be amended by inserting after section 261 of such Act [section 1641 of this title] the following: [For text, see section 1642 of this title.]

''(2) EFFECTIVE DATE.—Any amendment made by paragraph (1) shall take effect on July 1, 1993.

''(g) PERMANENT TRAINING SERVICES FORMULA.—

''(1) LEVEL OF FUNDING.—If title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq.] is amended in accordance with subsection (f) and the amount appropriated to carry out parts A and C of title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq., 1641 et seq.] for a fiscal year is not less than the sum of—

''(A) $25,000,000; and

''(B) the amount appropriated to carry out part A of title II of such Act, as in effect on the day before the date of enactment of this Act [Sept. 7, 1992], for fiscal year 1992,

the amendment made by section 207 of this Act [enacting section 1642 of this title] shall take effect. [Amendment by section 207 did not take effect because the appropriations referred to above for fiscal year 1996 were less than the sum referred to above.]

''(2) EFFECTIVE DATE.—Any amendment made by paragraph (1) shall take effect on October 1 of the fiscal year described in paragraph (1).

''(h) EVALUATION.—The Secretary of Labor shall evaluate the impact of programs under title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq.] on participant employment, earnings and welfare dependency in multiple sites, using the random assignment of individuals to groups receiving services under programs authorized under the Job Training Reform Amendments of 1992 [Pub. L. 102–367, see Short Title of 1992 Amendment note below] to groups not receiving such services.

''(i) RULES AND PROCEDURES.—

''(1) IN GENERAL.—The Secretary of Labor may establish such rules and procedures as may be necessary to provide for an orderly implementation of the amendments made by this Act [see Short Title of 1992 Amendment note below].

''(2) REVIEW.—The Secretary of Labor, the Governors, and the service delivery areas shall conduct a comprehensive review of the current policies, practices, procedures, and delivery systems relating to programs authorized under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] for the purpose of ensuring the effective implementation of the amendments made by this Act. Such review shall include consideration of the appropriateness of current service delivery area designations, the representativeness of current State and local councils, the adequacy of current administrative systems, the effectiveness of current outreach, service delivery, and coordination activities, and other relevant matters.

''(j) IMPLEMENTING REGULATIONS.—The Secretary of Labor shall issue final regulations relating to the implementation of the amendments made by this Act not later than December 18, 1992.''

CONSTRUCTION OF 1991 AMENDMENT

Pub. L. 102–235, §11, Dec. 12, 1991, 105 Stat. 1811, provided that:

''(a) For purposes of this legislation, nothing in this Act [see Short Title of 1991 Amendment note above] shall be construed to mean that Congress is taking a position on the issue of comparable worth.

''(b) Nothing in this Act shall be construed to require, sanction or authorize discrimination in violation of title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.] or any other Federal law prohibiting discrimination on the basis of race, color, religion, sex, national origin, handicap, or age. No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in any program under this Act because of race, color, religion, sex, national origin, age, handicap, political affiliation or belief. Failure to meet the goals in the Act shall not itself constitute a violation of title VII of the Civil Rights Act of 1964 or any other Federal law prohibiting discrimination on the basis of race, color, religion, sex, national origin, handicap, or age.''

SHORT TITLE OF 1992 AMENDMENT

Section 1 of Pub. L. 102–367 provided that: ''This Act [enacting sections 1519, 1601 to 1606, 1630 to 1635, 1641 to 1646, 1673, 1734, 1735, 1782 to 1784b, and 1792 to 1792b of this title, amending this section and sections 1502, 1503, 1505, 1511, 1512, 1514 to 1518, 1531 to 1535, 1551 to 1554, 1571, 1572, 1574 to 1577, 1580, 1583, 1652, 1661, 1661c, 1661d, 1662a, 1662c, 1662e, 1671, 1672, 1693, 1696 to 1698, 1703, 1703a, 1706, 1707, 1731 to 1733, 1737, 1752 to 1754, 1772, 1773, 1781, and 1791 to 1791h of this title, section 2014 of Title 7, Agriculture, and sections 1205a and 2322 of Title 20, Education, repealing sections 1591, 1601 to 1605, 1630 to 1634, and 1734 to 1736 of this title, omitting sections 1791i and 1791j of this title, and enacting provisions set out as notes under this section and sections 1602 and 1642 of this title] may be cited as the 'Job Training Reform Amendments of 1992'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–235, § 1, Dec. 12, 1991, 105 Stat. 1806, provided that: ''This Act [enacting section 1737 of this title, amending sections 1503, 1514, 1531 to 1533, and 1604 of this title, and enacting provisions set out as notes under this section and sections 1514 and 1737 of this title] may be cited as the 'Nontraditional Employment for Women Act'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–628, title VII, § 711, Nov. 7, 1988, 102 Stat. 3248, provided that: ''This subtitle [subtitle B (§§ 711–714) of title VII of Pub. L. 100–628, enacting sections 1583 and 1791 to 1791j of this title, amending sections 49, 49a, 49b, 49d, 49e to 49j, 49*l*, 49*l*–1, 1502, 1504, 1505, 1514, 1516, 1531, and 1602 of this title and section 602 of Title 42, The Public Health and Welfare, and amending provisions set out as a note under section 49 of this title] may be cited as the 'Jobs for Employable Dependent Individuals Act'.''

Pub. L. 100–418, title VI, § 6301, Aug. 23, 1988, 102 Stat. 1524, provided that ''This title'', meaning subtitle D (§§ 6301–6307) of title VI of Pub. L. 100–418, which enacted sections 565 and 1505 of this title, amended subchapter III of this chapter and sections 1502, 1516, 1532, and 1752 of this title, and enacted provisions set out as notes under section 1651 of this title, could be cited as the ''Economic Dislocation and Worker Adjustment Assistance Act'', prior to repeal by Pub. L. 103–382, title III, § 391(i), Oct. 20, 1994, 108 Stat. 4023.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–496, § 1, Oct. 16, 1986, 100 Stat. 1261, provided that: ''This Act [enacting sections 1582, 1630, and 1736 of this title and amending sections 1503, 1511, 1516, 1518, 1531, 1533, 1534, 1602, 1603, 1631 to 1634, 1651, 1652, 1707, and 1733 of this title] may be cited as the 'Job Training Partnership Act Amendments of 1986'.''

SHORT TITLE

Section 1 of Pub. L. 97–300 provided that: ''This Act [enacting this chapter and sections 49e, 49f, 49*l*, and 49*l*–1 of this title, amending sections 49, 49a, 49b, 49d, 49g, 49h, 49i, and 49j of this title, section 665 of Title 18, Crimes and Criminal Procedure, and sections 602, 632, and 633 of Title 42, The Public Health and Welfare, repealing chapter 17 (§ 801 et seq.) of this title, and enacting provisions set out as notes under sections 49 and 801 of this title] may be cited as the 'Job Training Partnership Act'.''

DECLARATION OF POLICY

Section 101(a) of Pub. L. 102–367 provided that: ''In recognition of the training needs of low-income adults and youth, the Congress declares it to be the policy of the United States to—

''(1) provide financial assistance to States and local service delivery areas to meet the training needs of such low-income adults and youth, and to assist such individuals in obtaining unsubsidized employment;

''(2) increase the funds available for programs under title II of the Job Training Partnership Act (29 U.S.C. 1601 et seq.) by not less than 10 percent of the baseline each fiscal year to provide for growth in the percentage of eligible adults and youth served above the 5 percent of the eligible population that is currently served; and

''(3) encourage the provision of longer, more comprehensive, education, training, and employment services to the eligible population, which also requires increased funding in order to maintain current service levels.''

CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE FOR 1991 AMENDMENTS

Pub. L. 102–235, § 2, Dec. 12, 1991, 105 Stat. 1806, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) over 7,000,000 families in the United States live in poverty, and over half of those families are single parent households headed by women;

''(2) women stand to improve their economic security and independence through the training and other services offered under the Job Training Partnership Act [29 U.S.C. 1501 et seq.];

''(3) women participating under the Job Training Partnership Act tend to be enrolled in programs for traditionally female occupations;

''(4) many of the Job Training Partnership Act programs that have low female enrollment levels are in fields of work that are nontraditional for women;

''(5) employment in traditionally male occupations leads to higher wages, improved job security, and better long-range opportunities than employment in traditionally female-dominated fields;

''(6) the long-term economic security of women is served by increasing nontraditional employment opportunities for women; and

''(7) older women reentering the work force may have special needs in obtaining training and placement in occupations providing economic security.

''(b) STATEMENT OF PURPOSE.—The purposes of this Act [see Short Title of 1991 Amendment note above] are—

''(1) to encourage efforts by the Federal, State, and local levels of government aimed at providing a wider range of opportunities for women under the Job Training Partnership Act [29 U.S.C. 1501 et seq.];

''(2) to provide incentives to establish programs that will train, place, and retain women in nontraditional fields; and

''(3) to facilitate coordination between the Job Training Partnership Act and the Carl D. Perkins Vocational and Applied Technology Education Act [20 U.S.C. 2301 et seq.] to maximize the effectiveness of resources available for training and placing women in nontraditional employment.''

§ 1502. Authorization of appropriations

(a)(1) There are authorized to be appropriated to carry out parts A and C of subchapter II of this chapter such sums as may be necessary for fiscal year 1993 and for each succeeding fiscal year. Of the sums appropriated to carry out parts A and C of subchapter II of this chapter for each such fiscal year, an amount not less than 40 percent of such sums shall be made available to carry out part A of such subchapter and an amount not less than 40 percent of such sums shall be made available to carry out part C of such subchapter.

(2) There are authorized to be appropriated to carry out part B of subchapter II of this chapter such sums as may be necessary for fiscal year 1993 and for each succeeding fiscal year.

(b) There are authorized to be appropriated to carry out subchapter III of this chapter (other than section 1662e thereof)—

(1) $980,000,000 for fiscal year 1989; and

(2) such sums as may be necessary for each succeeding fiscal year.

(c)(1) There are authorized to be appropriated to carry out parts A, C, D, E, F, and G of subchapter IV of this chapter for fiscal year 1993 and each succeeding fiscal year an amount equal to not more than 7 percent of the total amount appropriated to carry out this chapter for each such fiscal year.

(2) From the amount appropriated under paragraph (1) for any fiscal year, the Secretary—

(A) shall first reserve—

(i) an amount of not less than 3.3 percent of the amount available for parts A and C of

subchapter II of this chapter for such fiscal year to carry out section 1671 of this title; and

(ii) an amount of not less than 3.2 percent of the amount available for parts A and C of subchapter II of this chapter for such fiscal year to carry out section 1672 of this title; and

(B) after making such reservations, shall reserve—

(i) an amount equal to 7 percent of the amount appropriated under paragraph (1) to carry out part C of subchapter IV of this chapter;

(ii) $15,000,000 to carry out section 1733 of this title, of which—

(I) not less than 20 percent shall be used to carry out section 1733(b) of this title;

(II) not less than 20 percent shall be used to carry out section 1733(c) of this title; and

(III) $1,000,000 shall be used to carry out section 1733(d) of this title;

(iii) $6,000,000 to carry out subsections (e) and (f) of section 1752 of this title; and

(iv) $2,000,000 to carry out part F of subchapter IV of this chapter.

(3) There are authorized to be appropriated to carry out part H of subchapter IV of this chapter $100,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1997.

(4) There are authorized to be appropriated to carry out part I of subchapter IV of this chapter $5,000,000 for each of the fiscal years 1993 through 1997.

(5) There are authorized to be appropriated to carry out part J of subchapter IV of this chapter,[1] $15,000,000 for fiscal year 1993 and such sums as may be necessary for each succeeding fiscal year.

(d) There are authorized to be appropriated $618,000,000 for fiscal year 1983, and such sums as may be necessary for each succeeding fiscal year, to carry out part B of subchapter IV of this chapter.

(e) There are authorized to be appropriated for each of fiscal years 1990 through 1996 such sums as may be necessary to carry out subchapter V of this chapter.

(f) The authorizations of appropriations contained in this section are subject to the program year provisions of section 1571 of this title.

(Pub. L. 97–300, §3, Oct. 13, 1982, 96 Stat. 1324; Pub. L. 100–418, title VI, §6303, Aug. 23, 1988, 102 Stat. 1538; Pub. L. 100–628, title VII, §714(d), Nov. 7, 1988, 102 Stat. 3256; Pub. L. 101–549, title XI, §1101(b)(2), Nov. 15, 1990, 104 Stat. 2712; Pub. L. 102–367, title I, §102(a), Sept. 7, 1992, 106 Stat. 1023.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367, §102(a)(1), added subsec. (a) and struck out former subsec. (a) which read as follows:

''(1) There are authorized to be appropriated to carry out part A of subchapter II of this chapter and subchapter IV of this chapter (other than part B of such subchapter) such sums as may be necessary for fiscal year 1983 and for each succeeding fiscal year.

''(2) From the amount appropriated pursuant to paragraph (1) for any fiscal year, an amount equal to not more than 7 percent of the total amount appropriated pursuant to this section shall be available to carry out parts A, C, D, E, F, and G of subchapter IV of this chapter.

''(3) Of the amount so reserved under paragraph (2)—

''(A) 5 percent shall be available for part C of subchapter IV of this chapter, and

''(B) $2,000,000 shall be available for part F of subchapter IV of this chapter.''

Subsec. (b). Pub. L. 102–367, §102(a)(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''There are authorized to be appropriated to carry out part B of subchapter II of this chapter such sums as may be necessary for fiscal year 1983 and for each succeeding fiscal year.''

Subsec. (c). Pub. L. 102–367, §102(a)(3), added subsec. (c). Former subsec. (c) redesignated (b).

Subsec. (e). Pub. L. 102–367, §102(a)(4), substituted ''(e) There'' for ''(e)(1) Subject to paragraph (2), there'', substituted ''1996'' for ''1994'', and struck out pars. (2) and (3) which read as follows:

''(2) No funds appropriated pursuant to this chapter may be used to carry out such subchapter for any fiscal year unless funds appropriated to carry out part A of subchapter II of this chapter exceed any change in the consumer price index from the amounts appropriated for the previous fiscal year to carry out such part.

''(3) From amounts authorized to be appropriated for subchapter V of this chapter pursuant to paragraph (1), not more than $5,000,000 may be used for purposes of section 1791i of this title.''

1990—Subsec. (c). Pub. L. 101–549, §1101(b)(2), inserted ''(other than section 1662e thereof)'' after ''subchapter III of this chapter''.

1988—Subsec. (c). Pub. L. 100–418 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''There are authorized to be appropriated to carry out subchapter III of this chapter such sums as may be necessary for fiscal year 1983 and for each succeeding fiscal year.''

Subsecs. (e), (f). Pub. L. 100–628 added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1631, 1642, 1652, 1662e, 1733 of this title.

§ 1503. Definitions

For the purposes of this chapter, the following definitions apply:

(1) The term ''academic credit'' means credit for education, training, or work experience applicable toward a secondary school diploma, a postsecondary degree, or an accredited certificate of completion, consistent with applicable State law and regulation and the requirements of an accredited educational agency or institution in a State.

(2) The term ''administrative entity'' means the entity designated to administer a job training plan under section 1513(b)(1)(B) of this title.

(3) The term ''area of substantial unemployment'' means any area of sufficient size and scope to sustain programs under parts A and C of subchapter II of this chapter and which has

[1] So in original. The comma probably should not appear.

an average rate of unemployment of at least 6.5 percent for the most recent twelve months as determined by the Secretary. Determinations of areas of substantial unemployment shall be made once each fiscal year.

(4) The term ''chief elected official'' includes—

(A) in the case of a State, the Governor;

(B) in the District of Columbia, the mayor; and

(C) in the case of a service delivery area designated under section 1511(a)(4)(A)(iii) of this title, the governing body.

(5) The term ''community-based organizations'' means private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, 70,001, Jobs for Youth, the Association of Farmworker Opportunity Programs, the Center for Employment Training, literacy organizations, agencies or organizations serving older individuals, organizations that provide service opportunities, youth corps programs, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10)[1] of the Rehabilitation Act of 1973 [29 U.S.C. 706(10)]), agencies serving youth, agencies serving individuals with disabilities, including disabled veterans, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations), and organizations serving nonreservation Indians, as well as tribal governments and Native Alaskan groups.

(6) Except as otherwise provided therein, the term ''council'' means the private industry council established under section 1512 of this title.

(7) The term ''economic development agencies'' includes local planning and zoning commissions or boards, community development agencies, and other local agencies and institutions responsible for regulating, promoting, or assisting in local economic development.

(8) The term ''economically disadvantaged'' means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program; (B) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42,[2] or (ii) 70 percent of the lower living standard income level; (C) is receiving (or has been determined within the 6-month period prior to the application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; (D) qualifies as a homeless individual under subsections (a) and (c) of section 103 of the Stewart B. McKinney Homeless Assistance Act [42 U.S.C. 11302(a), (c)]; (E) is a foster child on behalf of whom State or local government payments are made; or (F) in cases permitted by regulations of the Secretary, is an individual with a disability whose own income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements.

(9) The term ''Governor'' means the chief executive of any State.

(10)(A) The term ''individual with a disability'' means any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment.

(B) The term ''individuals with disabilities'' means more than one individual with a disability.

(11) The term ''Hawaiian native'' means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

(12) The term ''institution of higher education'' means any institution of higher education as that term is defined in section 1201(a) of the Higher Education Act of 1965 [20 U.S.C. 1141(a)].

(13) The term ''labor market area'' means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such areas shall be identified in accordance with criteria used by the Bureau of Labor Statistics of the Department of Labor in defining such areas or similar criteria established by a Governor.

(14) The term ''local educational agency'' means such an agency as defined in section 521(22) of the Carl D. Perkins Vocational[3] Education Act [20 U.S.C. 2471(22)].

(15) The term ''low-income level'' means $7,000 with respect to income in 1969, and for any later year means that amount which bears the same relationship to $7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest $1,000.

(16) The term ''lower living standard income level'' means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary based on the most recent ''lower living family budget'' issued by the Secretary.

(17) The term ''offender'' means any adult or juvenile who is or has been subject to any stage of the criminal justice process for whom services under this chapter may be beneficial

[1] See References in Text note below.

[2] So in original. Probably should be ''42),''.

[3] So in original. Probably should be ''Vocational and Applied Technology''.

or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

(18) The term ''postsecondary institution'' means an institution of higher education as that term is defined in section 481(a)(1) of the Higher Education Act of 1965 [20 U.S.C. 1088(a)(1)].

(19) The term ''private sector'' means, for purposes of the State job training councils and private industry councils, persons who are owners, chief executives or chief operating officers of private for-profit employers and major nongovernmental employers, such as health and educational institutions or other executives of such employers who have substantial management or policy responsibility.

(20) The term ''public assistance'' means Federal, State, or local government cash payments for which eligibility is determined by a needs or income test.

(21) The term ''Secretary'' means the Secretary of Labor.

(22) The term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

(23) The term ''State educational agency'' means such an agency as defined in section 14101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 8801].

(24) The term ''supportive services'' means services which are necessary to enable an individual eligible for training under this chapter, but who cannot afford to pay for such services, to participate in a training program funded under this chapter. Such supportive services may include transportation, health care, financial assistance (except as a post-termination service), drug and alcohol abuse counseling and referral, individual and family counseling, special services, and materials for individuals with disabilities, job coaches, child care and dependent care, meals, temporary shelter, financial counseling, and other reasonable expenses required for participation in the training program and may be provided in-kind or through cash assistance.

(25) The term ''unemployed individuals'' means individuals who are without jobs and who want and are available for work. The determination of whether individuals are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining individuals as unemployed.

(26) The term ''unit of general local government'' means any general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers.

(27)(A) The term ''veteran'' means an individual who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(B) The term ''disabled veteran'' means (i) a veteran who is entitled to compensation under laws administered by the Secretary of Veterans Affairs, or (ii) an individual who was discharged or released from active duty because of service-connected disability.

(C) The term ''recently separated veteran'' means any veteran who applies for participation under any subchapter of this chapter within 48 months of the discharge or release from active military, naval, or air service.

(D) The term ''Vietnam era veteran'' means a veteran any part of whose active military service occurred between August 5, 1964, and May 7, 1975.

(28) The term ''vocational education'' has the meaning provided in section 521(41) of the Carl D. Perkins Vocational[4] Education Act [20 U.S.C. 2471(41)].

(29) The term ''displaced homemaker'' means an individual who has been providing unpaid services to family members in the home and who—

(A) has been dependent either—

(i) on public assistance and whose youngest child is within 2 years of losing eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

(ii) on the income of another family member but is no longer supported by that income; and

(B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(30) The term ''nontraditional employment'' as applied to women refers to occupations or fields of work where women comprise less than 25 percent of the individuals employed in such occupation or field of work.

(31) The term ''basic skills deficient'' means, with respect to an individual, that the individual has English reading or computing skills at or below the 8th grade level on a generally accepted standardized test or a comparable score on a criterion-referenced test.

(32) The term ''case management'' means the provision of a client-centered approach in the delivery of services, designed to—

(A) prepare and coordinate comprehensive employment plans, such as service strategies, for participants to ensure access to the necessary training and supportive services, using, where feasible, computer-based technologies; and

(B) provide job and career counseling during program participation and after job placement.

(33) The term ''citizenship skills'' means skills and qualities, such as teamwork, problem-solving ability, self-esteem, initiative, leadership, commitment to life-long learning, and an ethic of civic responsibility, that are characteristic of productive workers and good citizens.

(34) The term ''family'' means two or more persons related by blood, marriage, or decree of court, who are living in a single residence, and are included in one or more of the following categories:

[4] So in original. Probably should be ''Vocational and Applied Technology''.

(A) A husband, wife, and dependent children.

(B) A parent or guardian and dependent children.

(C) A husband and wife.

(35) The term ''hard-to-serve individual'' means an individual who is included in one or more of the categories described in section 1603(b) of this title or subsection (b) or (d) of section 1643 of this title.

(36) The term ''JOBS'' means the Job Opportunities and Basic Skills Training Program authorized under part F of title IV of the Social Security Act (42 U.S.C. 681 et seq.).

(37) The term ''participant'' means an individual who has been determined to be eligible to participate in and who is receiving services (except post-termination services authorized under sections 1604(c)(4) and 1644(d)(5) of this title and followup services authorized under section 1632(d) of this title) under a program authorized by this chapter. Participation shall be deemed to commence on the first day, following determination of eligibility, on which the participant began receiving subsidized employment, training, or other services provided under this chapter.

(38) The term ''school dropout'' means an individual who is no longer attending any school and who has not received a secondary school diploma or a certificate from a program of equivalency for such a diploma.

(39) The term ''termination'' means the separation of a participant who is no longer receiving services (except post-termination services authorized under sections 1604(c)(4) and 1644(d)(5) of this title and followup services authorized under section 1632(d) of this title) under a program authorized by this chapter.

(40) The term ''youth corps program'' means a program, such as a conservation corps or youth service program, that offers productive work with visible community benefits in a natural resource or human service setting and that gives participants a mix of work experience, basic and life skills, education, training, and supportive services.

(Pub. L. 97–300, §4, Oct. 13, 1982, 96 Stat. 1325; Pub. L. 98–524, §4(a)(1), Oct. 19, 1984, 98 Stat. 2487; Pub. L. 99–159, title VII, §713(b)(1), Nov. 22, 1985, 99 Stat. 907; Pub. L. 99–496, §§14(b)(1), 15(a), Oct. 16, 1986, 100 Stat. 1265; Pub. L. 100–77, title VII, §740(a), July 22, 1987, 101 Stat. 531; Pub. L. 102–54, §13(k)(2)(A), June 13, 1991, 105 Stat. 276; Pub. L. 102–235, §3, Dec. 12, 1991, 105 Stat. 1807; Pub. L. 102–367, title I, §103(a), (b)(1), title VII, §702(a)(1)–(3), Sept. 7, 1992, 106 Stat. 1024, 1026, 1111, 1112; Pub. L. 103–382, title III, §391(n)(1), Oct. 20, 1994, 108 Stat. 4023.)

REFERENCES IN TEXT

Section 7 of the Rehabilitation Act of 1973, referred to in par. (5), was subsequently amended, and section 7(10) no longer defines the term ''rehabilitation facility''. However, such term is defined elsewhere in that section.

The Food Stamp Act of 1977, referred to in par. (8)(C), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Social Security Act, referred to in pars. (29)(A)(i) and (36), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A and F of title IV of the Act are classified generally to parts A (§601 et seq.) and F (§681 et seq.), respectively, of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1994—Par. (23). Pub. L. 103–382 substituted ''section 14101'' for ''section 1471(23)''.

1992—Par. (3). Pub. L. 102–367, §103(a)(1), substituted ''programs under parts A and C'' for ''a program under part A''.

Par. (5). Pub. L. 102–367, §103(a)(2), (b)(1)(A), inserted ''the Association of Farmworker Opportunity Programs, the Center for Employment Training, literacy organizations, agencies or organizations serving older individuals, organizations that provide service opportunities, youth corps programs,'' after ''Jobs for Youth,'', substituted ''individuals with disabilities'' for ''the handicapped'', and struck out ''(including the National Urban Indian Council)'' after ''nonreservation Indians''.

Par. (8)(B)(i). Pub. L. 102–367, §103(a)(3)(A), substituted ''the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42'' for ''the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget''.

Par. (8)(C). Pub. L. 102–367, §103(a)(3)(B), inserted ''(or has been determined within the 6-month period prior to the application for the program involved to be eligible to receive)'' after ''is receiving''.

Par. (8)(D). Pub. L. 102–367, §103(a)(3)(C), inserted ''subsections (a) and (c) of'' after ''homeless individual under''.

Par. (8)(F). Pub. L. 102–367, §103(a)(3)(D), (b)(1)(B), amended subpar. (F) identically, substituting ''individual with a disability'' for ''adult handicapped individual''.

Par. (10). Pub. L. 102–367, §103(a)(4), designated existing provisions as subpar. (A), substituted ''individual with a disability'' for ''handicapped individual'', and added subpar. (B).

Par. (14). Pub. L. 102–367, §702(a)(1), substituted ''section 521(22)'' for ''section 521(19)''.

Par. (22). Pub. L. 102–367, §103(a)(5), substituted ''the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau'' for ''and the Trust Territory of the Pacific Islands''.

Par. (23). Pub. L. 102–367, §702(a)(2), substituted ''section 1471(23) of the Elementary and Secondary Education Act of 1965'' for ''section 1201(h) of the Higher Education Act of 1965''.

Par. (24). Pub. L. 102–367, §103(a)(6), inserted ''financial assistance (except as a post-termination service), drug and alcohol abuse counseling and referral, individual and family counseling,'' after ''health care,'', substituted ''materials for individuals with disabilities, job coaches'' for ''materials for the handicapped'', and inserted ''and dependent care'' after ''child care''.

Par. (27)(C). Pub. L. 102–367, §701(a)(3), realigned margins.

Par. (28). Pub. L. 102–367, §103(b)(1)(C), substituted ''section 521(41)'' for ''section 521(31)''.

Par. (29). Pub. L. 102–367, §103(a)(7), amended par. (29) generally. Prior to amendment, par. (29) read as follows: ''The term 'displaced homemaker' means an individual who—

''(A) was a full-time homemaker for a substantial number of years; and

''(B) derived the substantial share of his or her support from—

''(i) a spouse and no longer receives such support due to the death, divorce, permanent disability of, or permanent separation from the spouse; or

''(ii) public assistance on account of dependents in the home and no longer receives such support.''

Pars. (31) to (40). Pub. L. 102–367, §103(a)(8), added pars. (31) to (40).

1991—Par. (27)(B). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

Par. (30). Pub. L. 102–235 added par. (30).

1987—Par. (8). Pub. L. 100–77 added cl. (D) and redesignated former cls. (D) and (E) as (E) and (F), respectively.

1986—Par. (5). Pub. L. 99–496, §15(a)(1), inserted '', including disabled veterans'' after ''handicapped''.

Par. (27)(C), (D). Pub. L. 99–496, §15(a)(2), added subpars. (C) and (D).

Par. (29). Pub. L. 99–496, §14(b)(1), added par. (29).

1985—Par. (14). Pub. L. 99–159 made a clarifying amendment to Pub. L. 98–524, §4(a)(1)(A). See 1984 Amendment note below.

1984—Par. (14). Pub. L. 98–524, §4(a)(1)(A), as amended by Pub. L. 99–159, substituted ''section 521(19) of the Carl. D. Perkins Vocational Education Act'' for ''section 195(10) of the Vocational Education Act of 1963''.

Par. (23). Pub. L. 98–524, §4(a)(1)(B), substituted ''section 1201(h) of the Higher Education Act of 1965'' for ''section 195(11) of the Vocational Education Act of 1963''.

Par. (28). Pub. L. 98–524, §4(a)(1)(C), substituted ''section 521(31) of the Carl. D. Perkins Vocational Education Act'' for ''section 195(1) of the Vocational Education Act of 1963''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–159 effective July 1, 1985, see section 714(a) of Pub. L. 99–159, set out as a note under section 2311 of Title 20, Education.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98–524, set out as an Effective Date note under section 2301 of Title 20, Education.

CONSTRUCTION OF 1991 AMENDMENT

Amendment by Pub. L. 102–235 not to be construed to require, sanction, or authorize discrimination on the basis of race, color, religion, sex, national origin, handicap, or age, see section 11 of Pub. L. 102–235, set out as a note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1513, 1604, 1651, 2302, 2508 of this title; title 20 sections 2471, 5938, 6103; title 42 sections 685, 12773.

§ 1504. Enforcement of Military Selective Service Act

The Secretary shall insure that each individual participating in any program established under this chapter, or receiving any assistance or benefit under this chapter, has not violated section 3 of the Military Selective Service Act (50 U.S.C. App. 453) by not presenting and submitting to registration as required pursuant to such section. The Director of the Selective Service System shall cooperate with the Secretary in carrying out this section.

(Pub. L. 97–300, title VI, §604, formerly title V, §504, Oct. 13, 1982, 96 Stat. 1399; renumbered title VI, §604, Pub. L. 100–628, title VII, §712(a)(1), (2), Nov. 7, 1988, 102 Stat. 3248.)

§ 1505. State job bank systems

(a) Funding authorities; authorization of appropriations

(1) The Secretary shall carry out the purposes of this section with sums appropriated pursuant to paragraph (2) for any fiscal year.

(2) There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 1989 and such sums as may be necessary for each succeeding fiscal year.

(b) Availability of funds; purposes of systems

The Secretary shall make such sums available through the United States Employment Service for the development and implementation of job bank systems in each State. Such systems shall be designed to use computerized electronic data processing and telecommunications systems for such purposes as—

(1) identifying job openings and referring jobseekers to job openings, with continual updating of such information;

(2) providing information on occupational supply and demand; and

(3) utilization of such systems by career information delivery systems (including career counseling programs in schools).

(c) Software capability and compatibility of systems; development of systems

Wherever possible, computerized data systems developed with assistance under this section shall be capable of utilizing software compatible with other systems (including management information systems and unemployment insurance and other income maintenance programs) used in the administration of employment and training programs. In developing such systems, special consideration shall be given to the advice and recommendations of the State occupational information coordinating committees (established under section 2422(b) of title 20), and other users of such systems for the various purposes described in subsection (b) of this section.

(Pub. L. 97–300, title VI, §605, formerly title V, §505, as added Pub. L. 100–418, title VI, §6307(a), Aug. 23, 1988, 102 Stat. 1541; renumbered title VI, §505, Pub. L. 100–628, title VII, §712(a)(1), Nov. 7, 1988, 102 Stat. 3248; renumbered §605, Pub. L. 102–367, title VII, §702(a)(20), Sept. 7, 1992, 106 Stat. 1113.)

§ 1506. Educational assistance and training

(a) Use of fund

The Secretary of Labor shall provide for grants to States to provide educational assistance and training for United States workers. The Secretary shall consult with the Secretary of Education in making grants under this section.

(b) Allocation of funds

Within the purposes described in subsection (a) of this section, funds in the account used under this section shall be allocated among the States based on a formula, established jointly by the Secretaries of Labor and Education, that takes into consideration—

(1) the location of foreign workers admitted into the United States,

(2) the location of individuals in the United States requiring and desiring the educational assistance and training for which the funds can be applied, and

(3) the location of unemployed and underemployed United States workers.

(c) Disbursement to States

(1) Within the purposes and allocations established under this section, disbursements shall be made to the States, in accordance with grant applications submitted to and approved jointly by the Secretaries of Labor and Education, to be applied in a manner consistent with the guidelines established by such Secretaries in consultation with the States. In applying such grants, the States shall consider providing funding to joint labor-management trust funds and other such non-profit organizations which have demonstrated capability and experience in directly training and educating workers.

(2) Not more than 5 percent of the funds disbursed to any State under this section may be used for administrative expenses.

(d) Limitation on Federal overhead

The Secretaries shall provide that not more than 2 percent of the amount of funds disbursed to States under this section may be used by the Federal Government in the administration of this section.

(e) Annual report

The Secretary of Labor shall report annually to the Congress on the grants to States provided under this section.

(f) "State" defined

In this section, the term ''State'' has the meaning given such term in section 1101(a)(36) of title 8.

(Pub. L. 101–649, title VIII, §801, Nov. 29, 1990, 104 Stat. 5087.)

CODIFICATION

Section was enacted as part of the Immigration Act of 1990, and not as part of the Job Training Partnership Act which comprises this chapter.

SUBCHAPTER I—JOB TRAINING AND EMPLOYMENT ASSISTANCE SYSTEM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1634 of this title.

PART A—SERVICE DELIVERY SYSTEM

§ 1511. Establishment of service delivery areas

(a) Proposals; proposed designations; requests

(1) The Governor shall, after receiving the proposal of the State job training coordinating council, publish a proposed designation of service delivery areas for the State each of which—

(A) is comprised of the State or one or more units of general local government;

(B) will promote effective delivery of job training services; and

(C)(i) is consistent with labor market areas or standard metropolitan statistical areas, but this clause shall not be construed to require designation of an entire labor market area; or

(ii) is consistent with areas in which related services are provided under other State or Federal programs.

(2) The Council shall include in its proposal a written explanation of the reasons for designating each service delivery area.

(3) Units of general local government (and combinations thereof), business organizations, and other affected persons or organizations shall be given an opportunity to comment on the proposed designation of service delivery areas and to request revisions thereof.

(4)(A) The Governor shall approve any request to be a service delivery area from—

(i) any unit of general local government with a population of 200,000 or more;

(ii) any consortium of contiguous units of general local government with an aggregate population of 200,000 or more which serves a substantial part of one or more labor market areas; and

(iii) any concentrated employment program grantee for a rural area which served as a prime sponsor under the Comprehensive Employment and Training Act.

(B) The Governor may approve a request to be a service delivery area from any unit of general local government or consortium of contiguous units of general local government, without regard to population, which serves a substantial portion of a labor market area.

(C) If the Governor denies a request submitted under subparagraph (A) and the entity making such request alleges that the decision of the Governor is contrary to the provisions of this section, such entity may appeal the decision to the Secretary, who shall make a final decision within 30 days after such appeal is received.

(b) Final designation by Governor

The Governor shall make a final designation of service delivery areas within the State. Before making a final designation of service delivery areas for the State, the Governor shall review the comments submitted under subsection (a)(3) of this section and requests submitted under subsection (a)(4) of this section.

(c) Redesignations

(1) In accordance with subsection (a) of this section, the Governor may redesignate service delivery areas no more frequently than every two years, except as provided for in sections 1516(j)(4)(B) and 1574(b)(1)(B) of this title. Such redesignations shall be made not later than 4 months before the beginning of a program year.

(2) Subject to paragraph (1), the Governor shall make such a redesignation if a petition to do so is filed by an entity specified in subsection (a)(4)(A) of this section.

(3) The provisions of this subsection are subject to section 1515(c) of this title.

(Pub. L. 97–300, title I, §101, Oct. 13, 1982, 96 Stat. 1327; Pub. L. 99–496, §2, Oct. 16, 1986, 100 Stat. 1261; Pub. L. 102–367, title I, §111, Sept. 7, 1992, 106 Stat. 1026.)

REFERENCES IN TEXT

The Comprehensive Employment and Training Act, referred to in subsec. (a)(4)(A)(iii), is Pub. L. 93–203, Dec. 28, 1973, 87 Stat. 839, as amended, which was classi-