the plan may elect (in such manner and at such time as may be provided under regulations prescribed by the Secretary of the Treasury or his delegate) to fund the unfunded past service liability under the plan existing as of the date 12 months following the first date on which such section 412 first applies to the plan by charging the funding standard account with an equal annual percentage of the aggregate pay of all participants in the plan in lieu of the level dollar charges to such account required under clauses (i), (ii), and (iii) of [former] section 412(b)(2)(B) of such Code and section 302(b)(2)(B)(i), (ii), and (iii) of this Act [section 1082(b)(2)(B)(i), (ii), and (iii) of Title 29, Labor].

''(2) LIMITATION.—In the case of a plan which makes an election under paragraph (1), the aggregate of the charges required under such paragraph for a plan year shall not be less than the interest on the unfunded past service liabilities described in clauses (i), (ii), and (iii) of [former] section 412(b)(2)(B) of the Internal Revenue Code of 1986.''

§ 413. Collectively bargained plans, etc.

(a) Application of subsection (b)

Subsection (b) applies to—

(1) a plan maintained pursuant to an agreement which the Secretary of Labor finds to be a collective-bargaining agreement between employee representatives and one or more employers, and

(2) each trust which is a part of such plan.

(b) General rule

If this subsection applies to a plan, notwithstanding any other provision of this title—

(1) Participation

Section 410 shall be applied as if all employees of each of the employers who are parties to the collective-bargaining agreement and who are subject to the same benefit computation formula under the plan were employed by a single employer.

(2) Discrimination, etc.

Sections 401(a)(4) and 411(d)(3) shall be applied as if all participants who are subject to the same benefit computation formula and who are employed by employers who are parties to the collective bargaining agreement were employed by a single employer.

(3) Exclusive benefit

For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries, all plan participants shall be considered to be his employees.

(4) Vesting

Section 411 (other than subsection (d)(3)) shall be applied as if all employers who have been parties to the collective-bargaining agreement constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.

(5) Funding

The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.

(6) Liability for funding tax

For a plan year the liability under section 4971 of each employer who is a party to the collective bargaining agreement shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary—

(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

(B) then on the basis of their respective liabilities for contributions under the plan.

For purposes of this subsection and section 4971(e), an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall not be treated as a liability for contributions under the plan.

(7) Deduction limitations

Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who is a party to the agreement, for the portion of his taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a manner consistent with the manner in which actual employer contributions for such plan year are determined) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

(8) Employees of labor unions

For purposes of this subsection, employees of employee representatives shall be treated as employees of an employer described in subsection (a)(1) if such representatives meet the requirements of sections 401(a)(4) and 410 with respect to such employees.

(9) Plans covering a professional employee

Notwithstanding subsection (a), in the case of a plan (and trust forming part thereof) which covers any professional employee, paragraph (1) shall be applied by substituting ''section 410(a)'' for ''section 410'', and paragraph (2) shall not apply.

(c) Plans maintained by more than one employer

In the case of a plan maintained by more than one employer—

(1) Participation

Section 410(a) shall be applied as if all employees of each of the employers who maintain the plan were employed by a single employer.

(2) Exclusive benefit

For purposes of sections 401(a) and 408(c), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries all plan participants shall be considered to be his employees.

(3) Vesting

Section 411 shall be applied as if all employers who maintain the plan constituted a single employer, except that the application of any

rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.

(4) Funding

(A) In general

In the case of a plan established after December 31, 1988, each employer shall be treated as maintaining a separate plan for purposes of section 412 unless such plan uses a method for determining required contributions which provides that any employer contributes not less than the amount which would be required if such employer maintained a separate plan.

(B) Other plans

In the case of a plan not described in subparagraph (A), the requirements of section 412 shall be determined as if all participants in the plan were employed by a single employer unless the plan administrator elects not later than the close of the first plan year of the plan beginning after the date of enactment of the Technical and Miscellaneous Revenue Act of 1988 to have the provisions of subparagraph (A) apply. An election under the preceding sentence shall take effect for the plan year in which made and, once made, may be revoked only with the consent of the Secretary.

(5) Liability for funding tax

For a plan year the liability under section 4971 of each employer who maintains the plan shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary—

(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

(B) then on the basis of their respective liabilities for contributions under the plan.

(6) Deduction limitations

(A) In general

In the case of a plan established after December 31, 1988, each applicable limitation provided by section 404(a) shall be determined as if each employer were maintaining a separate plan.

(B) Other plans

(i) In general

In the case of a plan not described in subparagraph (A), each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer, except that if an election is made under paragraph (4)(B), subparagraph (A) shall apply to such plan.

(ii) Special rule

If this subparagraph applies, the amounts contributed to or under the plan by each employer who maintains the plan (for the portion of the taxable year included within a plan year) shall be considered not to exceed any such limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

(7) Allocations

(A) In general

Except as provided in subparagraph (B), allocations of amounts under paragraphs (4), (5), and (6) among the employers maintaining the plan shall not be inconsistent with regulations prescribed for this purpose by the Secretary.

(B) Assets and liabilities of plan

For purposes of applying paragraphs (4)(A) and (6)(A), the assets and liabilities of each plan shall be treated as the assets and liabilities which would be allocated to a plan maintained by the employer if the employer withdrew from the multiple employer plan.

(d) CSEC plans

Notwithstanding any other provision of this section, in the case of a CSEC plan—

(1) Funding

The requirements of section 412 shall be determined as if all participants in the plan were employed by a single employer.

(2) Application of provisions

Paragraphs (1), (2), (3), and (5) of subsection (c) shall apply.

(3) Deduction limitations

Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who maintains the plan (for the portion of the taxable year included within a plan year) shall be considered not to exceed such applicable limitation if the anticipated employer contributions for such plan year of all employers (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

(4) Allocations

Allocations of amounts under paragraph (3) and subsection (c)(5) among the employers maintaining the plan shall not be inconsistent with the regulations prescribed for this purpose by the Secretary.

(e) Application of qualification requirements for certain multiple employer plans with pooled plan providers

(1) In general

Except as provided in paragraph (2), if a defined contribution plan to which subsection (c) applies—

(A) is maintained by employers which have a common interest other than having adopted the plan, or

(B) in the case of a plan not described in subparagraph (A), has a pooled plan provider,

then the plan shall not be treated as failing to meet the requirements under this title applicable to a plan described in section 401(a) or to a plan that consists of individual retirement accounts described in section 408 (including by reason of subsection (c) thereof), whichever is applicable, merely because one or more employers of employees covered by the plan fail to take such actions as are required of such employers for the plan to meet such requirements.

(2) Limitations

(A) In general

Paragraph (1) shall not apply to any plan unless the terms of the plan provide that in the case of any employer in the plan failing to take the actions described in paragraph (1)—

(i) the assets of the plan attributable to employees of such employer (or beneficiaries of such employees) will be transferred to a plan maintained only by such employer (or its successor), to an eligible retirement plan as defined in section 402(c)(8)(B) for each individual whose account is transferred, or to any other arrangement that the Secretary determines is appropriate, unless the Secretary determines it is in the best interests of the employees of such employer (and the beneficiaries of such employees) to retain the assets in the plan, and

(ii) such employer (and not the plan with respect to which the failure occurred or any other employer in such plan) shall, except to the extent provided by the Secretary, be liable for any liabilities with respect to such plan attributable to employees of such employer (or beneficiaries of such employees).

(B) Failures by pooled plan providers

If the pooled plan provider of a plan described in paragraph (1)(B) does not perform substantially all of the administrative duties which are required of the provider under paragraph (3)(A)(i) for any plan year, the Secretary may provide that the determination as to whether the plan meets the requirements under this title applicable to a plan described in section 401(a) or to a plan that consists of individual retirement accounts described in section 408 (including by reason of subsection (c) thereof), whichever is applicable, shall be made in the same manner as would be made without regard to paragraph (1).

(3) Pooled plan provider

(A) In general

For purposes of this subsection, the term ''pooled plan provider'' means, with respect to any plan, a person who—

(i) is designated by the terms of the plan as a named fiduciary (within the meaning of section 402(a)(2) of the Employee Retirement Income Security Act of 1974), as the plan administrator, and as the person responsible to perform all administrative duties (including conducting proper testing with respect to the plan and the employees of each employer in the plan) which are reasonably necessary to ensure that—

(I) the plan meets any requirement applicable under the Employee Retirement Income Security Act of 1974 or this title to a plan described in section 401(a) or to a plan that consists of individual retirement accounts described in section 408 (including by reason of subsection (c) thereof), whichever is applicable, and

(II) each employer in the plan takes such actions as the Secretary or such person determines are necessary for the plan to meet the requirements described in subclause (I), including providing to such person any disclosures or other information which the Secretary may require or which such person otherwise determines are necessary to administer the plan or to allow the plan to meet such requirements,

(ii) registers as a pooled plan provider with the Secretary, and provides such other information to the Secretary as the Secretary may require, before beginning operations as a pooled plan provider,

(iii) acknowledges in writing that such person is a named fiduciary (within the meaning of section 402(a)(2) of the Employee Retirement Income Security Act of 1974), and the plan administrator, with respect to the plan, and

(iv) is responsible for ensuring that all persons who handle assets of, or who are fiduciaries of, the plan are bonded in accordance with section 412 of the Employee Retirement Income Security Act of 1974.

(B) Audits, examinations and investigations

The Secretary may perform audits, examinations, and investigations of pooled plan providers as may be necessary to enforce and carry out the purposes of this subsection.

(C) Aggregation rules

For purposes of this paragraph, in determining whether a person meets the requirements of this paragraph to be a pooled plan provider with respect to any plan, all persons who perform services for the plan and who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as one person.

(D) Treatment of employers as plan sponsors

Except with respect to the administrative duties of the pooled plan provider described in subparagraph (A)(i), each employer in a plan which has a pooled plan provider shall be treated as the plan sponsor with respect to the portion of the plan attributable to employees of such employer (or beneficiaries of such employees).

(4) Guidance

(A) In general

The Secretary shall issue such guidance as the Secretary determines appropriate to

carry out this subsection, including guidance—

(i) to identify the administrative duties and other actions required to be performed by a pooled plan provider under this subsection,

(ii) which describes the procedures to be taken to terminate a plan which fails to meet the requirements to be a plan described in paragraph (1), including the proper treatment of, and actions needed to be taken by, any employer in the plan and the assets and liabilities of the plan attributable to employees of such employer (or beneficiaries of such employees), and

(iii) identifying appropriate cases to which the rules of paragraph (2)(A) will apply to employers in the plan failing to take the actions described in paragraph (1).

The Secretary shall take into account under clause (iii) whether the failure of an employer or pooled plan provider to provide any disclosures or other information, or to take any other action, necessary to administer a plan or to allow a plan to meet requirements applicable to the plan under section 401(a) or 408, whichever is applicable, has continued over a period of time that demonstrates a lack of commitment to compliance.

(B) Good faith compliance with law before guidance

An employer or pooled plan provider shall not be treated as failing to meet a requirement of guidance issued by the Secretary under this paragraph if, before the issuance of such guidance, the employer or pooled plan provider complies in good faith with a reasonable interpretation of the provisions of this subsection to which such guidance relates.

(5) Model plan

The Secretary shall publish model plan language which meets the requirements of this subsection and of paragraphs (43) and (44) of section 3 of the Employee Retirement Income Security Act of 1974 and which may be adopted in order for a plan to be treated as a plan described in paragraph (1)(B).

(Added Pub. L. 93–406, title II, § 1014, Sept. 2, 1974, 88 Stat. 924; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–364, title II, § 208(d), Sept. 26, 1980, 94 Stat. 1290; Pub. L. 100–647, title I, § 1011(h)(10), title VI, § 6058(a)–(c), Nov. 10, 1988, 102 Stat. 3466, 3698, 3699; Pub. L. 101–508, title XI, § 11704(a)(4), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 113–97, title II, § 202(b), Apr. 7, 2014, 128 Stat. 1134; Pub. L. 115–141, div. U, title IV, § 401(a)(86), Mar. 23, 2018, 132 Stat. 1188; Pub. L. 116–94, div. O, title I, § 101(a)(1), (2), Dec. 20, 2019, 133 Stat. 3138, 3141.)

Editorial Notes

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (b)(6) and (e), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 is classified generally to part 1 (§ 1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29, Labor. Sections 3(43), (44), 402(a)(2), and 412 of the Act are classified to sections 1002(43), (44), 1102(a)(2), and 1112, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of enactment of the Technical and Miscellaneous Revenue Act of 1988, referred to in subsec. (c)(4)(B), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

AMENDMENTS

2019—Subsec. (c)(2). Pub. L. 116–94, § 101(a)(2), substituted ''sections 401(a) and 408(c)'' for ''section 401(a)''.

Subsec. (e). Pub. L. 116–94, § 101(a)(1), added subsec. (e).

2018—Subsec. (b)(6). Pub. L. 115–141, § 401(a)(86), substituted ''and section 4971(e)'' for ''and the last sentence of section 4971(a)'' in concluding provisions.

2014—Subsec. (d). Pub. L. 113–97 added subsec. (d).

1990—Subsec. (c)(7)(B). Pub. L. 101–508 substituted ''Assets'' for ''Asset'' in heading.

1988—Subsec. (b)(9). Pub. L. 100–647, § 1011(h)(10), added par. (9).

Subsec. (c). Pub. L. 100–647, § 6058(c), struck out at end ''Allocations of amounts under paragraphs (4), (5), and (6), among the employers maintaining the plan, shall not be inconsistent with regulations prescribed for this purpose by the Secretary.''

Subsec. (c)(4). Pub. L. 100–647, § 6058(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.''

Subsec. (c)(6). Pub. L. 100–647, § 6058(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who maintains the plan, for the portion of this taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.''

Subsec. (c)(7). Pub. L. 100–647, § 6058(c), added par. (7).

1980—Subsec. (b)(6). Pub. L. 96–364 inserted provisions relating to withdrawal liability of employer.

1976—Subsecs. (b), (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2019 AMENDMENT; CONSTRUCTION

Amendment by Pub. L. 116–94 applicable to plan years beginning after Dec. 31, 2020, and not to be construed as limiting the authority of the Secretary of the Treasury or the Secretary's delegate to provide for the proper treatment of a failure to meet any requirement applicable under the Internal Revenue Code of 1986 with respect to one employer (and its employees) in a multiple employer plan, see section 101(e) of Pub. L. 116–94, set out as an Effective Date of 2019 Amendment note under section 408 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113–97, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(h)(10) of Pub. L. 100–647 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 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Pub. L. 100–647, title VI, §6058(d), Nov. 10, 1988, 102 Stat. 3699, provided that: ''Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to plan years beginning after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 194A of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

MODIFICATION OF MODEL PLAN LANGUAGE, ETC.

Pub. L. 117–328, div. T, title I, §106(f), Dec. 29, 2022, 136 Stat. 5288, provided that:

''(1) PLAN NOTIFICATIONS.—The Secretary of the Treasury (or the Secretary's delegate), in consultation with the Secretary of Labor, shall modify the model plan language published under section 413(e)(5) of the Internal Revenue Code of 1986 to include language that requires participating employers be notified that the plan is subject to the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] and that such employer is a plan sponsor with respect to its employees participating in the multiple employer plan and, as such, has certain fiduciary duties with respect to the plan and to its employees.

''(2) MODEL PLANS FOR MULTIPLE EMPLOYER 403(B) PLANS.—For plans to which section 403(b)(15)(A) of the Internal Revenue Code of 1986 applies (other than a plan maintained for its employees by a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing), the Secretary of the Treasury (or the Secretary's delegate), in consultation with the Secretary of Labor, shall publish model plan language similar to model plan language published under section 413(e)(5) of such Code.

''(3) EDUCATIONAL OUTREACH TO EMPLOYERS EXEMPT FROM TAX.—The Secretary of the Treasury (or the Secretary's delegate), in consultation with the Secretary of Labor, shall provide education and outreach to increase awareness to employers described in section 501(c)(3) of the Internal Revenue Code of 1986, and which are exempt from tax under section 501(a) of such Code, that multiple employer plans are subject to the Employee Retirement Income Security Act of 1974 and that such employer is a plan sponsor with respect to its employees participating in the multiple employer plan and, as such, has certain fiduciary duties with respect to the plan and to its employees.''

§ 414. Definitions and special rules

(a) Service for predecessor employer

For purposes of this part—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary, be treated as service for the employer.

(b) Employees of controlled group of corporations

(1) In general

For purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the applicable limitations provided by section 404(a) shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary.

(2) Special rules for applying family attribution

For purposes of applying the attribution rules under section 1563 with respect to paragraph (1), the following rules apply:

(A) Community property laws shall be disregarded for purposes of determining ownership.

(B) Except as provided by the Secretary, stock of an individual not attributed under section 1563(e)(5) to such individual's spouse shall not be attributed to such spouse by reason of the combined application of paragraphs (1) and (6)(A) of section 1563(e).

(C) Except as provided by the Secretary, in the case of stock in different corporations that is attributed to a child under section 1563(e)(6)(A) from each parent, and is not attributed to such parents as spouses under section 1563(e)(5), such attribution to the child shall not by itself result in such corporations being members of the same controlled group.

(3) Plan shall not fail to be treated as satisfying this section

If application of paragraph (2) causes 2 or more entities to be a controlled group or to no longer be in a controlled group, such change shall be treated as a transaction to which section 410(b)(6)(C) applies.

(c) Employees of partnerships, proprietorships, etc., which are under common control

(1) In general

Except as provided in paragraph (2), for purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, under regulations prescribed by the Secretary, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).

(2) Special rules relating to church plans

(A) General rule

Except as provided in subparagraphs (B) and (C), for purposes of this subsection and subsection (m), an organization that is otherwise eligible to participate in a church plan shall not be aggregated with another such organization and treated as a single