§ 1058. Mergers and consolidations of plans or transfers of plan assets

A pension plan may not merge or consolidate with, or transfer its assets or liabilities to, any other plan after September 2, 1974, unless each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence shall not apply to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which subchapter III of this chapter applies.

(Pub. L. 93–406, title I, § 208, Sept. 2, 1974, 88 Stat. 865; Pub. L. 96–364, title IV, § 402(b)(1), Sept. 26, 1980, 94 Stat. 1299.)

Editorial Notes

AMENDMENTS

1980—Pub. L. 96–364 substituted provisions respecting applicability of preceding sentence to transactions under a covered multiemployer plan to which subchapter III applies, for provisions relating to applicability of paragraph to a multiemployer plan only to extent determined by Corporation.

Statutory Notes and Related Subsidiaries

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.

§ 1059. Recordkeeping and reporting requirements

(a)(1) Except as provided by paragraph (2) every employer shall, in accordance with such regulations as the Secretary may prescribe, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees. The plan administrator shall make a report, in such manner and at such time as may be provided in regulations prescribed by the Secretary, to each employee who is a participant under the plan and who—

(A) requests such report, in such manner and at such time as may be provided in such regulations,

(B) terminates his service with the employer, or

(C) has a 1-year break in service (as defined in section 1053(b)(3)(A) of this title).

The employer shall furnish to the plan administrator the information necessary for the administrator to make the reports required by the preceding sentence. Not more than one report shall be required under subparagraph (A) in any 12-month period. Not more than one report shall be required under subparagraph (C) with respect to consecutive 1-year breaks in service. The report required under this paragraph shall be in the same form, and contain the same information, as periodic benefit statements under section 1025(a) of this title.

(2) If more than one employer adopts a plan, each such employer shall furnish to the plan administrator the information necessary for the administrator to maintain the records, and make the reports, required by paragraph (1). Such administrator shall maintain the records, and make the reports, required by paragraph (1).

(b) If any person who is required, under subsection (a), to furnish information or maintain records for any plan year fails to comply with such requirement, he shall pay to the Secretary a civil penalty of $10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.

(Pub. L. 93–406, title I, § 209, Sept. 2, 1974, 88 Stat. 865; Pub. L. 110–458, title I, § 105(f), Dec. 23, 2008, 122 Stat. 5105.)

Editorial Notes

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–458, § 105(f)(1), in introductory provisions, substituted ''such regulations as the Secretary may prescribe'' for ''regulations prescribed by the Secretary'' and, in concluding provisions, inserted last sentence and struck out former last sentence which read as follows: ''The report required under this paragraph shall be sufficient to inform the employee of his accrued benefits under the plan and the percentage of such benefits which are nonforfeitable under the plan.''

Subsec. (a)(2). Pub. L. 110–458, § 105(f)(2), added par. (2) and struck out former par. (2) which read as follows: ''If more than one employer adopts a plan, each such employer shall, in accordance with regulations prescribed by the Secretary, furnish to the plan administrator the information necessary for the administrator to maintain the records and make the reports required by paragraph (1). Such administrator shall maintain the records and, to the extent provided under regulations prescribed by the Secretary, make the reports, required by paragraph (1).''

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of Title 26, Internal Revenue Code.

REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1060. Multiple employer plans and other special rules

(a) Plan maintained by more than one employer

Notwithstanding any other provision of this part or part 3, the following provisions of this subsection shall apply to a plan maintained by more than one employer:

(1) Section 1052 of this title shall be applied as if all employees of each of the employers were employed by a single employer.

(2) Sections 1053 and 1054 of this title shall be applied as if all such employers 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.

(3) The minimum funding standard provided by section 1082 of this title shall be determined as if all participants in the plan were employed by a single employer.

(b) Maintenance of plan of predecessor employer

For purposes of this part and part 3—

(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 of the Treasury, be treated as service for the employer.

(c) Plan maintained by controlled group of corporations

For purposes of sections 1052, 1053, and 1054 of this title, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of title 26, determined without regard to section 1563(a)(4) and (e)(3)(C) of title 26) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 1082 of this title 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 of the Treasury.

(d) Plan of trades or businesses under common control

For purposes of sections 1052, 1053, and 1054 of this title, under regulations prescribed by the Secretary of the Treasury, 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 (c).

(e) Special rules for eligible combined defined benefit plans and qualified cash or deferred arrangements

(1) General rule

Except as provided in this subsection, this chapter shall be applied to any defined benefit plan or applicable individual account plan which are[1] part of an eligible combined plan in the same manner as if each such plan were not a part of the eligible combined plan. In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately.

(2) Eligible combined plan

For purposes of this subsection—

(A) In general

The term ''eligible combined plan'' means a plan—

(i) which is maintained by an employer which, at the time the plan is established, is a small employer,

(ii) which consists of a defined benefit plan and an applicable individual account plan each of which qualifies under section 401(a) of title 26,

(iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable individual account plan to the extent necessary for the separate application of this chapter under paragraph (1), and

(iv) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

For purposes of this subparagraph, the term ''small employer'' has the meaning given such term by section 4980D(d)(2) of title 26, except that such section shall be applied by substituting ''500'' for ''50'' each place it appears.

(B) Benefit requirements

(i) In general

The benefit requirements of this subparagraph are met with respect to the defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is the lesser of—

(I) 1 percent multiplied by the number of years of service with the employer, or

(II) 20 percent.

(iii) Special rule for applicable defined benefit plans

If the defined benefit plan under clause (i) is an applicable defined benefit plan as defined in section 1053(f)(3)(B) of this title which meets the interest credit requirements of section 1054(b)(5)(B)(i) of this title, the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives pay credit for the year which is not less than the percentage of compensation determined in accordance with the following table:

If the participant's age as of the beginning of the year is—	The percentage is—
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

(iv) Years of service

For purposes of this subparagraph, years of service shall be determined under the

[1] So in original. Probably should be ''is''.

rules of paragraphs (1), (2), and (3) of section 1053(b) of this title, except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

(C) Contribution requirements

(i) In general

The contribution requirements of this subparagraph with respect to any applicable individual account plan forming part of an eligible combined plan are met if—

(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) of title 26 shall apply for purposes of this clause.

(ii) Nonelective contributions

An applicable individual account plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

(D) Vesting requirements

The vesting requirements of this subparagraph are met if—

(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

(ii) in the case of an applicable individual account plan forming part of eligible combined plan—

(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 1053 of this title shall apply to the extent not inconsistent with this subparagraph.

(E) Uniform provision of contributions and benefits

In the case of a defined benefit plan or applicable individual account plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all contributions and benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

(F) Requirements must be met without taking into account social security and similar contributions and benefits or other plans

(i) In general

The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) Social security and similar contributions

The requirements of this clause are met if—

(I) the requirements of subparagraphs (B) and (C) are met without regard to section 401(*l*) of title 26, and

(II) the requirements of sections 401(a)(4) and 410(b) of title 26 are met with respect to both the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan without regard to section 401(*l*) of title 26.

(iii) Other plans and arrangements

The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) of title 26 without being combined with any other plan.

(3) Automatic contribution arrangement

For purposes of this subsection—

(A) In general

A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

(ii) meets the notice requirements under subparagraph (B).

(B) Notice requirements

(i) In general

The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) Reasonable period to make election

The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies—

(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions made at a different rate, and

(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

(iii) Annual notice of rights and obligations

The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of this subparagraph shall not be treated as met unless the requirements of clauses (i) and (ii) of section 401(k)(12)(D) of title 26 are met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

(4) Coordination with other requirements

(A) Treatment of separate plans

The except clause in section 1002(35) of this title shall not apply to an eligible combined plan.

(B) Reporting

An eligible combined plan shall be treated as a single plan for purposes of section 1023 of this title.

(5) Applicable individual account plan

For purposes of this subsection—

(A) In general

The term ''applicable individual account plan'' means an individual account plan which includes a qualified cash or deferred arrangement.

(B) Qualified cash or deferred arrangement

The term ''qualified cash or deferred arrangement'' has the meaning given such term by section 401(k)(2) of title 26.

(f) Cooperative and small employer charity pension plans

(1) In general

For purposes of this subchapter, except as provided in this subsection, a CSEC plan is an employee pension benefit plan (other than a multiemployer plan) that is a defined benefit plan—

(A) to which section 104 of the Pension Protection Act of 2006 applies, without regard to—

(i) section 104(a)(2) of such Act;

(ii) the amendments to such section 104 by section 202(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010; and

(iii) paragraph (3)(B);

(B) that, as of June 25, 2010, was maintained by more than one employer and all of the employers were organizations described in section 501(c)(3) of title 26;

(C) that, as of June 25, 2010, was maintained by an employer—

(i) described in section 501(c)(3) of such title,

(ii) chartered under part B of subtitle II of title 36,

(iii) with employees in at least 40 States, and

(iv) whose primary exempt purpose is to provide services with respect to children; or

(D) that, as of January 1, 2000, was maintained by an employer—

(i) described in section 501(c)(3) of title 26,

(ii) who has been in existence since at least 1938,

(iii) who conducts medical research directly or indirectly through grant making, and

(iv) whose primary exempt purpose is to provide services with respect to mothers and children.

(2) Aggregation

All employers that are treated as a single employer under subsection (b) or (c) of section 414 of title 26 shall be treated as a single employer for purposes of determining if a plan was maintained by more than one employer under subparagraph[2] (B) and (C) of paragraph (1).

(3) Election

(A) In general

If a plan falls within the definition of a CSEC plan under this subsection (without regard to this paragraph), such plan shall be a CSEC plan unless the plan sponsor elects not later than the close of the first plan year of the plan beginning after December 31, 2013, not to be treated as a CSEC plan. An election under the preceding sentence shall take effect for such plan year and, once made, may be revoked only with the consent of the Secretary of the Treasury.

(B) Special rule

If a plan described in subparagraph (A) is treated as a CSEC plan, section 104 of the Pension Protection Act of 2006, as amended by the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, shall cease to apply to such plan as of the first date as of which such plan is treated as a CSEC plan.

(Pub. L. 93–406, title I, § 210, Sept. 2, 1974, 88 Stat. 866; Pub. L. 101–239, title VII, §§ 7891(a)(1), 7894(c)(10), Dec. 19, 1989, 103 Stat. 2445, 2449; Pub. L. 109–280, title IX, § 903(b)(1), (2)(A), Aug. 17, 2006, 120 Stat. 1044, 1048; Pub. L. 110–458, title I, § 109(c)(2), Dec. 23, 2008, 122 Stat. 5111; Pub. L. 113–97, title I, §§ 101, 103(a), Apr. 7, 2014, 128 Stat. 1102, 1117; Pub. L. 113–235, div. P, § 3(a), Dec. 16, 2014, 128 Stat. 2829; Pub. L. 116–136, div. A, title III, § 3609(a), Mar. 27, 2020, 134 Stat. 413.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (e)(1), (2)(A)(iii), was in the original ''this Act'', meaning Pub. L. 93–406,

[2] So in original. Probably should be ''subparagraphs''.

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 104 of the Pension Protection Act of 2006, referred to in subsec. (f)(1)(A), (3)(B), is section 104 of Pub. L. 109–280, which is set out as a note under section 401 of Title 26, Internal Revenue Code.

The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, referred to in subsec. (f)(3)(B), is Pub. L. 111–192, June 25, 2010, 124 Stat. 1280. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 1001 of this title and Tables.

AMENDMENTS

2020—Subsec. (f)(1)(D). Pub. L. 116–136 added subpar. (D).

2014—Subsec. (f). Pub. L. 113–97, §101, added subsec. (f).

Subsec. (f)(1)(C). Pub. L. 113–235, §3(a)(1), added subpar. (C).

Subsec. (f)(2). Pub. L. 113–235, §3(a)(2), substituted ''subparagraph (B) and (C) of paragraph (1)'' for ''paragraph (1)(B)''.

Subsec. (f)(3). Pub. L. 113–97, §103(a), added par. (3).

2008—Subsec. (e)(1). Pub. L. 110–458, §109(c)(2)(A), inserted at end ''In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately.''

Subsec. (e)(3) to (6). Pub. L. 110–458, §109(c)(2)(B), struck out par. (3) and redesignated pars. (4) to (6) as (3) to (5), respectively. Former par. (3) related to nondiscrimination requirements for qualified cash or deferred arrangement.

2006—Pub. L. 109–280, §903(b)(2)(A), inserted ''and other special rules'' after ''plans'' in section catchline.

Subsec. (e). Pub. L. 109–280, §903(b)(1), added subsec. (e).

1989—Subsec. (c). Pub. L. 101–239, §7894(c)(10), substituted ''and (e)(3)(C) of such Code'' for ''and (e)(3)(C) of such code'', which for purposes of codification was translated as ''and (e)(3)(C) of title 26'' thus requiring no change in text.

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.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Amendment by Pub. L. 116–136 applicable to plan years beginning after Dec. 31, 2018, see section 3609(c) of Pub. L. 116–136, set out as a note under section 414 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendments by Pub. L. 113–235 effective as if included in the amendments made by the Cooperative and Small Employer Charity Pension Flexibility Act, Pub. L. 113–97, see section 3(c) of Pub. L. 113–235, set out as a note under section 414 of Title 26, Internal Revenue Code.

Amendment by section 101 of 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 Title 26, Internal Revenue Code.

Pub. L. 113–97, title I, §103(d), Apr. 7, 2014, 128 Stat. 1120, provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 401 of Title 26, Internal Revenue Code] shall apply as of the date of enactment of this Act [Apr. 7, 2014].''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2009, see section 903(c) of Pub. L. 109–280, set out as a note under section 414 of Title 26, Internal Revenue Code.

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(c)(10) 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.

REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1061. Effective dates

(a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after September 2, 1974.

(b)(1) Except as otherwise provided in subsection (d), sections 1055, 1056(d) and 1058 of this title shall apply with respect to plan years beginning after December 31, 1975.

(2) Except as otherwise provided in subsections (c) and (d) in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee organizations and one or more employers, no plan shall be treated as not meeting the requirements of sections 1054 and 1055 of this title by reason of a supplementary or special plan provision (within the meaning of paragraph (2)) for any plan year before the year which begins after the earlier of—

(A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after September 2, 1974), or

(B) December 31, 1980.

For purposes of subparagraph (A) and section 1086(c)[1] of this title, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this chapter or title 26 shall not be treated as a termination of such collective bargaining agreement. This paragraph shall not apply unless the Secretary determines that the participation and vesting rules in effect on September 2, 1974, are not less favorable to participants, in the aggre-

[1] See References in Text note below.