

(Pub. L. 93-406, title IV, § 4043, Sept. 2, 1974, 88 Stat. 1024; Pub. L. 101-239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 103-465, title VII, § 771(a)-(e)(1), Dec. 8, 1994, 108 Stat. 5042, 5043; Pub. L. 109-280, title IV, § 407(c)(2), Aug. 17, 2006, 120 Stat. 930.)

Editorial Notes

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, 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.

AMENDMENTS

2006—Subsec. (c)(7). Pub. L. 109-280 substituted “1321(d)” for “1322(b)(6)” in introductory provisions.

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.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 effective Jan. 1, 2006, see section 407(d)(2) of Pub. L. 109-280, set out as a note under section 1321 of this title.

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.

§ 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 allo-

cate 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 described 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)(B) 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)—

(1) The amount allocated under any paragraph of subsection (a) 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).

(2) If the assets available for allocation under any paragraph of subsection (a) (other than paragraphs (4), (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) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.

(4) This paragraph applies if the assets available for allocation under paragraph (5) of subsection (a) 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.

(5) 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) shall be reallocated to the extent necessary to avoid such discrimination.

(6) 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.

(7) A plan may establish subclasses and categories within the classes described in paragraphs (1) through (6) of subsection (a) 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), 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)), 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).

(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)).

(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.

(e) Bankruptcy filing substituted for termination date

If a contributing sponsor of a plan has filed or has had filed against such person a petition seeking liquidation or reorganization in a case under title 11 or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date of the plan, then subsection (a)(3) shall be applied by treating the date such petition was filed as the termination date of the plan.

(f) Valuation of section 1362(c) liability for determining amounts payable by corporation to participants and beneficiaries

(1) In general

In the case of a terminated plan, the value of the recovery of liability under section 1362(c) of this title allocable as a plan asset under this section for purposes of determining the amount of benefits payable by the corporation shall be determined by multiplying—

(A) the amount of liability under section 1362(c) of this title as of the termination date of the plan, by

(B) the applicable section 1362(c) recovery ratio.

(2) Section 1362(c) recovery ratio

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (C), the term “section 1362(c) recovery ratio” means the ratio which—

(i) the sum of the values of all recoveries under section 1362(c) of this title determined by the corporation in connection with plan terminations described under subparagraph (B), bears to

(ii) the sum of all the amounts of liability under section 1362(c) of this title with respect to such plans as of the termination date in connection with any such prior termination.

(B) Prior terminations

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

(i) the value of recoveries under section 1362(c) of this title have been determined by the corporation, and

(ii) notices of intent to terminate were provided (or in the case of a termination by the corporation, a notice of determination under section 1342 of this title was issued) during the 5-Federal fiscal year period ending with the third fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate (or the notice of determination under section 1342 of this title) with respect to the plan termination for which the recovery ratio is being determined.

(C) Exception

In the case of a terminated plan with respect to which the outstanding amount of benefit liabilities exceeds \$20,000,000, the term “section 1362(c) recovery ratio” means, with respect to the termination of such plan, the ratio of—

(i) the value of the recoveries on behalf of the plan under section 1362(c) of this title, to

(ii) the amount of the liability owed under section 1362(c) of this title as of the date of plan termination to the trustee appointed under section 1342(b) or (c) of this title.

(3) Subsection not to apply

This subsection shall not apply with respect to the determination of—

(A) whether the amount of outstanding benefit liabilities exceeds \$20,000,000, or

(B) the amount of any liability under section 1362 of this title to the corporation or the trustee appointed under section 1342(b) or (c) of this title.

(4) Determinations

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.

(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; Pub. L. 109-280, title IV, §§404(b), 407(b), 408(b)(2), Aug. 17, 2006, 120 Stat. 928, 930, 931; Pub. L. 110-458, title I, §104(c), Dec. 23, 2008, 122 Stat. 5104.)

Editorial Notes

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

2008—Subsecs. (e), (f). Pub. L. 110-458 redesignated subsec. (e) relating to valuation of section 1362(c) liability for determining amounts payable by corporation to participants and beneficiaries as (f).

2006—Subsec. (a)(4)(B). Pub. L. 109-280, §407(b)(1), substituted “1322(b)(5)(B)” for “1322(b)(5)”.

Subsec. (b)(2). Pub. L. 109-280, §407(b)(2)(A), substituted “(4), (5),” for “(5)”.

Subsec. (b)(3) to (7). Pub. L. 109-280, §407(b)(2)(B), added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (e). Pub. L. 109-280, §408(b)(2), added subsec. (e) relating to valuation of section 1362(c) liability for determining amounts payable by corporation to participants and beneficiaries.

Pub. L. 109-280, §404(b), added subsec. (e) relating to substitution of bankruptcy filing date for termination date.

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”.

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.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 404(b) of Pub. L. 109-280 applicable with respect to proceedings initiated under Title 11, Bankruptcy, or under any similar Federal law or law of a State or political subdivision, on or after the date that is 30 days after Aug. 17, 2006, see section 404(c) of Pub. L. 109-280, set out as a note under section 1322 of this title.

Amendment by section 407(b) of Pub. L. 109-280 applicable to plan terminations under section 1341(c) of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 31, 2005, and under section 1342 of this title with respect to which notices of determination are provided under such section after such date, see section 407(d)(1) of Pub. L. 109-280, set out as a note under section 1321 of this title.

Amendment by section 408(b)(2) of Pub. L. 109-280 applicable for any termination for which notices of intent to terminate are provided, or in the case of a termination by the corporation, a notice of determination under section 1342 of this title is issued, on or after the date which is 30 days after Aug. 17, 2006, see section 408(c) of Pub. L. 109-280, set out as a note under section 1322 of this title.

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

Pub. L. 100-203, title IX, §9311(d), Dec. 22, 1987, 101 Stat. 1330-360, 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

Pub. L. 100-203, title IX, §9311(a)(2), Dec. 22, 1987, 101 Stat. 1330-359, 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.

§ 1345. Recapture of payments**(a) Authorization to recover benefits**

Except as provided in subsection (c), the trustee is authorized to recover for the benefit of a plan from a participant the recoverable amount (as defined in subsection (b)) 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) 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 con-

secutive 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) 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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of

¹ See References in Text note below.