

“(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 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) 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 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.

§ 1346. Reports to trustee

The corporation and the plan administrator of any plan to be terminated under this subtitle

¹ See References in Text note below.