

§ 1362. Liability for termination of single-employer plans under a distress termination or a termination by corporation

(a) In general

In any case in which a single-employer plan is terminated in a distress termination under section 1341(c) of this title or a termination otherwise instituted by the corporation under section 1342 of this title, any person who is, on the termination date, a contributing sponsor of the plan or a member of such a contributing sponsor's controlled group shall incur liability under this section. The liability under this section of all such persons shall be joint and several. The liability under this section consists of—

(1) liability to the corporation, to the extent provided in subsection (b), and

(2) liability to the trustee appointed under subsection (b) or (c) of section 1342 of this title, to the extent provided in subsection (c).

(b) Liability to corporation

(1) Amount of liability

(A) In general

Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) shall be the total amount of the unfunded benefit liabilities (as of the termination date) to all participants and beneficiaries under the plan, together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation.

(B) Special rule in case of subsequent insufficiency

For purposes of subparagraph (A), in any case described in section 1341(c)(3)(C)(ii) of this title, actuarial present values shall be determined as of the date of the notice to the corporation (or the finding by the corporation) described in such section.

(2) Payment of liability

(A) In general

Except as provided in subparagraph (B), the liability to the corporation under this subsection shall be due and payable to the corporation as of the termination date, in cash or securities acceptable to the corporation.

(B) Special rule

Payment of so much of the liability under paragraph (1)(A) as exceeds 30 percent of the collective net worth of all persons described in subsection (a) (including interest) shall be made under commercially reasonable terms prescribed by the corporation. The parties involved shall make a reasonable effort to reach agreement on such commercially reasonable terms. Any such terms prescribed by the corporation shall provide for deferral of 50 percent of any amount of liability otherwise payable for any year under this subparagraph if a person subject to such liability demonstrates to the satisfaction of the corporation that no person subject to such liability has any individual pre-tax profits

for such person's fiscal year ending during such year.

(3) Alternative arrangements

The corporation and any person liable under this section may agree to alternative arrangements for the satisfaction of liability to the corporation under this subsection.

(c) Liability to section 1342 trustee

A person described in subsection (a) shall be subject to liability under this subsection to the trustee appointed under subsection (b) or (c) of section 1342 of this title. The liability of such person under this subsection shall consist of—

(1) the sum of the shortfall amortization charge (within the meaning of section 1083(c)(1) of this title and 430(d)(1)¹ of title 26) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of shortfall amortization installments (if any) determined for succeeding plan years under section 1083(c)(2) of this title and section 430(d)(2) of title 26 (which, for purposes of this subparagraph, shall include any increase in such sum which would result if all applications for waivers of the minimum funding standard under section 1082(c) of this title and section 412(c) of title 26 which are pending with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year), and

(2) the sum of the waiver amortization charge (within the meaning of section 1083(e)(1) of this title and 430(e)(1)¹ of title 26) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of waiver amortization installments (if any) determined for succeeding plan years under section 1083(e)(2) of this title and section 430(e)(2) of title 26,

together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation. The liability under this subsection shall be due and payable to such trustee as of the termination date, in cash or securities acceptable to such trustee.

(d) Definitions

(1) Collective net worth of persons subject to liability

(A) In general

The collective net worth of persons subject to liability in connection with a plan termination consists of the sum of the individual net worths of all persons who—

(i) have individual net worths which are greater than zero, and

(ii) are (as of the termination date) contributing sponsors of the terminated plan or members of their controlled groups.

(B) Determination of net worth

For purposes of this paragraph, the net worth of a person is—

¹ So in original. Probably should be preceded by "section".

(i) determined on whatever basis best reflects, in the determination of the corporation, the current status of the person's operations and prospects at the time chosen for determining the net worth of the person, and

(ii) increased by the amount of any transfers of assets made by the person which are determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under title 11 if the person were a debtor in a case under chapter 7 of such title.

(C) Timing of determination

For purposes of this paragraph, determinations of net worth shall be made as of a day chosen by the corporation (during the 120-day period ending with the termination date) and shall be computed without regard to any liability under this section.

(2) Pre-tax profits

The term "pre-tax profits" means—

(A) except as provided in subparagraph (B), for any fiscal year of any person, such person's consolidated net income (excluding any extraordinary charges to income and including any extraordinary credits to income) for such fiscal year, as shown on audited financial statements prepared in accordance with generally accepted accounting principles, or

(B) for any fiscal year of an organization described in section 501(c) of title 26, the excess of income over expenses (as such terms are defined for such organizations under generally accepted accounting principles),

before provision for or deduction of Federal or other income tax, any contribution to any single-employer plan of which such person is a contributing sponsor at any time during the period beginning on the termination date and ending with the end of such fiscal year, and any amounts required to be paid for such fiscal year under this section. The corporation may by regulation require such information to be filed on such forms as may be necessary to determine the existence and amount of such pre-tax profits.

(e) Treatment of substantial cessation of operations

(1) General rule

Except as provided in paragraphs (3) and (4), if there is a substantial cessation of operations at a facility in any location, the employer shall be treated with respect to any single employer plan established and maintained by the employer covering participants at such facility as if the employer were a substantial employer under a plan under which more than one employer makes contributions and the provisions of sections 1363, 1364, and 1365 of this title shall apply.

(2) Substantial cessation of operations

For purposes of this subsection:

(A) In general

The term "substantial cessation of operations" means a permanent cessation of op-

erations at a facility which results in a workforce reduction of a number of eligible employees at the facility equivalent to more than 15 percent of the number of all eligible employees of the employer, determined immediately before the earlier of—

(i) the date of the employer's decision to implement such cessation, or

(ii) in the case of a workforce reduction which includes 1 or more eligible employees described in paragraph (6)(B), the earliest date on which any such eligible employee was separated from employment.

(B) Workforce reduction

Subject to subparagraphs (C) and (D), the term "workforce reduction" means the number of eligible employees at a facility who are separated from employment by reason of the permanent cessation of operations of the employer at the facility.

(C) Relocation of workforce

An eligible employee separated from employment at a facility shall not be taken into account in computing a workforce reduction if, within a reasonable period of time, the employee is replaced by the employer, at the same or another facility located in the United States, by an employee who is a citizen or resident of the United States.

(D) Dispositions

If, whether by reason of a sale or other disposition of the assets or stock of a contributing sponsor (or any member of the same controlled group as such a sponsor) of the plan relating to operations at a facility or otherwise, an employer (the "transferee employer") other than the employer which experiences the substantial cessation of operations (the "transferor employer") conducts any portion of such operations, then—

(i) an eligible employee separated from employment with the transferor employer at the facility shall not be taken into account in computing a workforce reduction if—

(I) within a reasonable period of time, the employee is replaced by the transferee employer by an employee who is a citizen or resident of the United States; and

(II) in the case of an eligible employee who is a participant in a single employer plan maintained by the transferor employer, the transferee employer, within a reasonable period of time, maintains a single employer plan which includes the assets and liabilities attributable to the accrued benefit of the eligible employee at the time of separation from employment with the transferor employer; and

(ii) an eligible employee who continues to be employed at the facility by the transferee employer shall not be taken into account in computing a workforce reduction if—

(I) the eligible employee is not a participant in a single employer plan maintained by the transferor employer, or

(II) in any other case, the transferee employer, within a reasonable period of time, maintains a single employer plan which includes the assets and liabilities attributable to the accrued benefit of the eligible employee at the time of separation from employment with the transferor employer.

(3) Exemption for plans with limited underfunding

Paragraph (1) shall not apply with respect to a single employer plan if, for the plan year preceding the plan year in which the cessation occurred—

(A) there were fewer than 100 participants with accrued benefits under the plan as of the valuation date of the plan for the plan year (as determined under section 1083(g)(2) of this title); or

(B) the ratio of the market value of the assets of the plan to the funding target of the plan for the plan year was 90 percent or greater.

(4) Election to make additional contributions to satisfy liability

(A) In general

An employer may elect to satisfy the employer's liability with respect to a plan by reason of paragraph (1) by making additional contributions to the plan in the amount determined under subparagraph (B) for each plan year in the 7-plan-year period beginning with the plan year in which the cessation occurred. Any such additional contribution for a plan year shall be in addition to any minimum required contribution under section 1083 of this title for such plan year and shall be paid not later than the earlier of—

(i) the due date for the minimum required contribution for such year under section 1083(j) of this title; or

(ii) in the case of the first such contribution, the date that is 1 year after the date on which the employer notifies the Corporation of the substantial cessation of operations or the date the Corporation determines a substantial cessation of operations has occurred, and in the case of subsequent contributions, the same date in each succeeding year.

(B) Amount determined

(i) In general

Except as provided in clause (iii), the amount determined under this subparagraph with respect to each plan year in the 7-plan-year period is the product of—

(I) $\frac{1}{7}$ of the unfunded vested benefits determined under section 1306(a)(3)(E) of this title as of the valuation date of the plan (as determined under section 1083(g)(2) of this title) for the plan year preceding the plan year in which the cessation occurred; and

(II) the reduction fraction.

(ii) Reduction fraction

For purposes of clause (i), the reduction fraction of a single employer plan is equal to—

(I) the number of participants with accrued benefits in the plan who were included in computing the workforce reduction under paragraph (2)(B) as a result of the cessation of operations at the facility; divided by

(II) the number of eligible employees of the employer who are participants with accrued benefits in the plan, determined as of the same date the determination under paragraph (2)(A) is made.

(iii) Limitation

The additional contribution under this subparagraph for any plan year shall not exceed the excess, if any, of—

(I) 25 percent of the difference between the market value of the assets of the plan and the funding target of the plan for the preceding plan year; over

(II) the minimum required contribution under section 1083 of this title for the plan year.

(C) Permitted cessation of annual installments when plan becomes sufficiently funded

An employer's obligation to make additional contributions under this paragraph shall not apply to—

(i) the first plan year (beginning on or after the first day of the plan year in which the cessation occurs) for which the ratio of the market value of the assets of the plan to the funding target of the plan for the plan year is 90 percent or greater, or

(ii) any plan year following such first plan year.

(D) Coordination with funding waivers

(i) In general

If the Secretary of the Treasury issues a funding waiver under section 1082(c) of this title with respect to the plan for a plan year in the 7-plan-year period under subparagraph (A), the additional contribution with respect to such plan year shall be permanently waived.

(ii) Notice

An employer maintaining a plan with respect to which such a funding waiver has been issued or a request for such a funding waiver is pending shall provide notice to the Secretary of the Treasury, in such form and at such time as the Secretary of the Treasury shall provide, of a cessation of operations to which paragraph (1) applies.

(E) Enforcement

(i) Notice

An employer making the election under this paragraph shall provide notice to the Corporation, in accordance with rules prescribed by the Corporation, of—

(I) such election, not later than 30 days after the earlier of the date the employer notifies the Corporation of the substantial cessation of operations or the date the Corporation determines a substantial cessation of operations has occurred;

(II) the payment of each additional contribution, not later than 10 days after such payment;

(III) any failure to pay the additional contribution in the full amount for any year in the 7-plan-year period, not later than 10 days after the due date for such payment;

(IV) the waiver under subparagraph (D)(i) of the obligation to make an additional contribution for any year, not later than 30 days after the funding waiver described in such subparagraph is granted; and

(V) the cessation of any obligation to make additional contributions under subparagraph (C), not later than 10 days after the due date for payment of the additional contribution for the first plan year to which such cessation applies.

(ii) Acceleration of liability to the plan for failure to pay

If an employer fails to pay the additional contribution in the full amount for any year in the 7-plan-year period by the due date for such payment, the employer shall, as of such date, be liable to the plan in an amount equal to the balance which remains unpaid as of such date of the aggregate amount of additional contributions required to be paid by the employer during such 7-year-plan period. The Corporation may waive or settle the liability described in the preceding sentence, at the discretion of the Corporation.

(iii) Civil action

The Corporation may bring a civil action in the district courts of the United States in accordance with section 1303(e) of this title to compel an employer making such election to pay the additional contributions required under this paragraph.

(5) Definitions

For purposes of this subsection:

(A) Eligible employee

The term “eligible employee” means an employee who is eligible to participate in an employee pension benefit plan (as defined in section 1002(2) of this title) established and maintained by the employer.

(B) Funding target

The term “funding target” means, with respect to any plan year, the funding target as determined under section 1306(a)(3)(E)(iii)(I) of this title for purposes of determining the premium paid to the Corporation under section 1307 of this title for the plan year.

(C) Market value

The market value of the assets of a plan shall be determined in the same manner as for purposes of section 1306(a)(3)(E) of this title.

(6) Special rules

(A) Change in operation of certain facilities and property

For purposes of paragraphs (1) and (2), an employer shall not be treated as ceasing op-

erations at a qualified lodging facility (as defined in section 856(d)(9)(D) of title 26) if such operations are continued by an eligible independent contractor (as defined in section 856(d)(9)(A) of such title) pursuant to an agreement with the employer.

(B) Aggregation of prior separations

The workforce reduction under paragraph (2) with respect to any cessation of operations shall be determined by taking into account any separation from employment of any eligible employee at the facility (other than a separation which is not taken into account as workforce reduction by reason of subparagraph (C) or (D) of paragraph (2)) which—

(i) is related to the permanent cessation of operations of the employer at the facility, and

(ii) occurs during the 3-year period preceding such cessation.

(C) No addition to prefunding balance

For purposes of section 1083(f)(6)(B) of this title and section 430(f)(6)(B) of title 26, any additional contribution made under paragraph (4) shall be treated in the same manner as a contribution an employer is required to make in order to avoid a benefit reduction under paragraph (1), (2), or (4) of section 1056(g) of this title or subsection (b), (c), or (e) of section 436 of title 26 for the plan year.

(Pub. L. 93-406, title IV, §4062, Sept. 2, 1974, 88 Stat. 1029; Pub. L. 95-598, title III, §321(b), Nov. 6, 1978, 92 Stat. 2678; Pub. L. 96-364, title IV, §403(g), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99-272, title XI, §11011(a), (b), Apr. 7, 1986, 100 Stat. 253, 257; Pub. L. 100-203, title IX, §9312(b)(1), (2)(A), (B)(ii), Dec. 22, 1987, 101 Stat. 1330-361; Pub. L. 101-239, title VII, §§7881(f)(2), (10)(A), (B), 7891(a)(1), Dec. 19, 1989, 103 Stat. 2440, 2441, 2445; Pub. L. 109-280, title I, §108(b)(4), formerly §107(b)(4), Aug. 17, 2006, 120 Stat. 819, renumbered Pub. L. 111-192, title II, §202(a), June 25, 2010, 124 Stat. 1297; amended Pub. L. 113-235, div. P, §1(a), Dec. 16, 2014, 128 Stat. 2822.)

Editorial Notes

AMENDMENTS

2014—Subsec. (e). Pub. L. 113-235 amended subsec. (e) generally. Prior to amendment, subsec. (e) related to treatment of substantial cessation of operations.

2006—Subsec. (c)(1) to (3). Pub. L. 109-280 added pars. (1) and (2) and struck out former pars. (1) to (3) which read as follows:

“(1) the outstanding balance of the accumulated funding deficiencies (within the meaning of section 1082(a)(2) of this title and section 412(a) of title 26) of the plan (if any) (which, for purposes of this subparagraph, shall include the amount of any increase in such accumulated funding deficiencies of the plan which would result if all pending applications for waivers of the minimum funding standard under section 1083 of this title or section 412(d) of title 26 and for extensions of the amortization period under section 1084 of this title or section 412(e) of title 26 with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year),

“(2) the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date

under section 1083 of this title or section 412(d) of title 26 (if any), and

“(3) the outstanding balance of the amount of decreases in the minimum funding standard allowed before such date under section 1084 of this title or section 412(e) of title 26 (if any),”.

1989—Subsec. (a). Pub. L. 101-239, § 7881(f)(2), inserted “and” at end of par. (1), redesignated par. (3) as (2), substituted “subsection (c)” for “subsection (d)”, and struck out former par. (2) which read as follows: “liability to the trust established pursuant to section 1341(c)(3)(B)(ii) or (iii) of this title or section 1342(i) of this title, to the extent provided in subsection (c), and”.

Subsec. (b)(2)(B). Pub. L. 101-239, § 7881(f)(10)(A), substituted “so much of the liability under paragraph (1)(A) as exceeds 30 percent of the collective net worth of all persons described in subsection (a) (including interest)” for “the liability under paragraph (1)(A)(ii)”.

Subsecs. (c)(1), (d)(2)(B). Pub. L. 101-239, § 7891(a)(1), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (d)(3). Pub. L. 101-239, § 7881(f)(10)(B), amended Pub. L. 100-203, § 9312(b)(2)(B)(ii), see 1987 Amendment note below.

1987—Subsec. (b)(1)(A). Pub. L. 100-203, § 9312(b)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) shall consist of the sum of—

“(i) the lesser of—

“(I) the total amount of unfunded guaranteed benefits (as of the termination date) of all participants and beneficiaries under the plan, or

“(II) 30 percent of the collective net worth of all persons described in subsection (a),

and

“(ii) the excess (if any) of—

“(I) 75 percent of the amount described in clause (i)(I), over

“(II) the amount described in clause (i)(II),

together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation.”

Subsec. (c). Pub. L. 100-203, § 9312(b)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to liability to section 1349 trust.

Subsec. (d). Pub. L. 100-203, § 9312(b)(1)(B), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(3). Pub. L. 100-203, § 9312(b)(2)(B)(ii), as amended by Pub. L. 101-239, § 7881(f)(10)(B), struck out par. (3) which read as follows: “The liability payment years in connection with a terminated plan consist of the consecutive one-year periods following the last plan year preceding the termination date, excluding the first such year in any case in which the first such year ends less than 180 days after the termination date.”

Subsecs. (e), (f). Pub. L. 100-203, § 9312(b)(1)(B), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1986—Pub. L. 99-272, § 11011(a)(2), substituted “Liability for termination of single-employer plans under a distress termination or a termination by the corporation” for “Liability of employer” in section catchline.

Subsec. (a). Pub. L. 99-272, § 11011(a)(2), added subsec. (a) specifying persons liable and the nature and extent of liability and struck out former subsec. (a) specifying employers covered.

Subsec. (b). Pub. L. 99-272, § 11011(a)(2), added subsec. (b) relating to liability to corporation and struck out former subsec. (b) relating to amount of liability.

Subsec. (c). Pub. L. 99-272, § 11011(a)(2), added subsec. (c) relating to liability to section 1349 trust and struck out former subsec. (c) relating to method of determining net worth of employer.

Subsec. (d). Pub. L. 99-272, § 11011(a)(2), added subsec. (d) relating to liability to section 1342 trustee and struck out former subsec. (d) relating to corporate reorganizations.

Subsec. (e). Pub. L. 99-272, § 11011(a), added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 99-272, § 11011(a)(1), (b), redesignated former subsec. (e) as (f), and substituted in heading “Treatment of substantial cessation of operations” for “Cessation of operations at one facility”.

1980—Subsec. (a). Pub. L. 96-364 substituted “single-employee plan” for “plan (other than a multiemployer plan)”.

1978—Subsec. (c)(2). Pub. L. 95-598 substituted “title 11” and “a debtor in a case under chapter 7 of such title” for “the Bankruptcy Act” and “the subject of a proceeding under that Act”, respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-235, div. P, § 1(b), Dec. 16, 2014, 128 Stat. 2826, provided that:

“(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to a cessation of operations or other event at a facility occurring on or after the date of enactment of this Act [Dec. 16, 2014].

“(2) TRANSITION RULE.—An employer that had a cessation of operations before the date of enactment of this Act [Dec. 16, 2014] (as determined under subsection 4062(e) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1362(e)]) as in effect before the amendment made by this section, but did not enter into an arrangement with the Pension Benefit Guaranty Corporation to satisfy the requirements of such subsection (as so in effect) before such date of enactment, shall be permitted to make the election under section 4062(e)(4) of such Act (as in effect after the amendment made by this section) as if such cessation had occurred on such date of enactment. Such election shall be made not later than 30 days after such Corporation issues, on or after such date of the enactment, a final administrative determination that a substantial cessation of operations has occurred.”

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to plan years beginning after 2007, see section 108(e) of Pub. L. 109-280, set out as a note under section 1021 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(2), (10)(A), (B) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100-203, §§ 9302-9346, to which such amendment relates, see section 7882 of Pub. L. 101-239, set out as a note under section 401 of Title 26, Internal Revenue Code.

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

EFFECTIVE DATE OF 1987 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

DIRECTION TO THE PENSION BENEFIT GUARANTY CORPORATION

Pub. L. 113-235, div. P, §1(c), Dec. 16, 2014, 128 Stat. 2827, provided that: "The Pension Benefit Guaranty Corporation shall not take any enforcement, administrative, or other action pursuant to section 4062(e) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1362(e)], or in connection with an agreement settling liability arising under such section, that is inconsistent with the amendment made by this section [amending this section], without regard to whether the action relates to a cessation or other event that occurs before, on, or after the date of the enactment of this Act [Dec. 16, 2014], unless such action is in connection with a settlement agreement that is in place before June 1, 2014. The Pension Benefit Guaranty Corporation shall not initiate a new enforcement action with respect to section 4062(e) of such Act that is inconsistent with its enforcement policy in effect on June 1, 2014."

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109-280

For special rules on applicability of amendments by subtitles A (§§101-108) and B (§§111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of Title 26, Internal Revenue Code.

SPECIAL DELAYED PAYMENT RULE

Pub. L. 99-272, title XI, §11012(d), Apr. 7, 1986, 100 Stat. 260, provided that: "In the case of a distress termination under section 4041(c) of the Employee Retirement Income Security Act of 1974 (as amended by section 11009) [29 U.S.C. 1341(c)] pursuant to a notice of intent to terminate filed before January 1, 1987, no payment of liability otherwise payable as provided in section 4062(c)(2)(B) of such Act [former 29 U.S.C. 1362(c)(2)(B)] (as amended by this section [Act]) shall be required to be made before January 1, 1989."

§ 1363. Liability of substantial employer for withdrawal from single-employer plans under multiple controlled groups

(a) Single-employer plans with two or more contributing sponsors

Except as provided in subsection (d), the plan administrator of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control—

(1) shall notify the corporation of the withdrawal during a plan year of a substantial employer for such plan year from the plan, within 60 days after such withdrawal, and

(2) request that the corporation determine the liability of all persons with respect to the withdrawal of the substantial employer.

The corporation shall, as soon as practicable thereafter, determine whether there is liability

resulting from the withdrawal of the substantial employer and notify the liable persons of such liability.

(b) Computation of liability

Except as provided in subsection (c), any one or more contributing sponsors who withdraw, during a plan year for which they constitute a substantial employer, from a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control, shall, upon notification of such contributing sponsors by the corporation as provided by subsection (a), be liable, together with the members of their controlled groups, to the corporation in accordance with the provisions of section 1362 of this title and this section. The amount of liability shall be computed on the basis of an amount determined by the corporation to be the amount described in section 1362 of this title for the entire plan, as if the plan had been terminated by the corporation on the date of the withdrawal referred to in subsection (a)(1) multiplied by a fraction—

(1) the numerator of which is the total amount required to be contributed to the plan by such contributing sponsors for the last 5 years ending prior to the withdrawal, and

(2) the denominator of which is the total amount required to be contributed to the plan by all contributing sponsors for such last 5 years.

In addition to and in lieu of the manner prescribed in the preceding sentence, the corporation may also determine such liability on any other equitable basis prescribed by the corporation in regulations. Any amount collected by the corporation under this subsection shall be held in escrow subject to disposition in accordance with the provisions of paragraphs (2) and (3) of subsection (c).

(c) Bond in lieu of payment of liability; 5-year termination period

(1) In lieu of payment of a contributing sponsor's liability under this section, the contributing sponsor may be required to furnish a bond to the corporation in an amount not exceeding 150 percent of his liability to insure payment of his liability under this section. The bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury under sections 9304-9308 of title 31. Any such bond shall be in a form or of a type approved by the Secretary including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(2) If the plan is not terminated under section 1341(c) or 1342 of this title within the 5-year period commencing on the day of withdrawal, the liability is abated and any payment held in escrow shall be refunded without interest (or the bond cancelled) in accordance with bylaws or rules prescribed by the corporation.

(3) If the plan terminates under section 1341(c) or 1342 of this title within the 5-year period commencing on the day of withdrawal, the corporation shall—

(A) demand payment or realize on the bond and hold such amount in escrow for the benefit of the plan;