

(B) treat any escrowed payments under this section as if they were plan assets and apply them in a manner consistent with this subtitle; and

(C) refund any amount to the contributing sponsor which is not required to meet any obligation of the corporation with respect to the plan.

(d) Alternate appropriate procedure

The provisions of this subsection apply in the case of a withdrawal described in subsection (a), and the provisions of subsections (b) and (c) shall not apply, if the corporation determines that the procedure provided for under this subsection is consistent with the purposes of this section and section 1364 of this title and is more appropriate in the particular case. Upon a showing by the plan administrator of the plan that the withdrawal from the plan by one or more contributing sponsors has resulted, or will result, in a significant reduction in the amount of aggregate contributions to or under the plan, the corporation may—

(1) require the plan fund to be equitably allocated between those participants no longer working in covered service under the plan as a result of the withdrawal, and those participants who remain in covered service under the plan;

(2) treat that portion of the plan funds allocable under paragraph (1) to participants no longer in covered service as a plan terminated under section 1342 of this title; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a separate plan.

(e) Indemnity agreement

The corporation is authorized to waive the application of the provisions of subsections (b), (c), and (d) of this section whenever it determines that there is an indemnity agreement in effect among contributing sponsors under the plan which is adequate to satisfy the purposes of this section and of section 1364 of this title.

(Pub. L. 93-406, title IV, §4063, Sept. 2, 1974, 88 Stat. 1030; Pub. L. 96-364, title IV, §403(h), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99-272, title XI, §11016(a)(5)(A), Apr. 7, 1986, 100 Stat. 268.)

Editorial Notes

CODIFICATION

In subsec. (c)(1), “sections 9304-9308 of title 31” substituted for “sections 6 through 13 of title 6, United States Code” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Pub. L. 99-272, §11016(a)(5)(A)(vi), inserted “from single-employer plans under multiple controlled groups” in section catchline.

Subsec. (a). Pub. L. 99-272, §11016(a)(5)(A)(i), in introductory par., substituted “single-employer plan which has two or more contributing sponsors at least two of whom are not under common control” for “plan under which more than one employer makes contributions (other than a multiemployer plan)”, in par. (1), substituted “withdrawal during a plan year of a substantial employer for such plan year” for “withdrawal of a substantial employer”, in par. (2), substituted “of all

persons with respect to the withdrawal of the substantial employer” for “of such employer under this subtitle with respect to such withdrawal”, and in concluding provision substituted “whether there is liability resulting from the withdrawal of the substantial employer” for “whether such employer is liable for any amount under this subtitle with respect to the withdrawal” and “notify the liable persons” for “notify such employer”.

Subsec. (b). Pub. L. 99-272, §11016(a)(5)(A)(ii), in introductory par., substituted “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,” for “an employer who withdraws from a plan to which section 1321 of this title applies, during a plan year for which he was a substantial employer, and who is notified by the corporation as provided by subsection (a), shall be liable”, “amount of liability” for “amount of such employer’s liability”, and “the withdrawal referred to in subsection (a)(1)” for “the employer’s withdrawal”, in par. (1), substituted “such contributing sponsors” for “such employer”, in par. (2), substituted “all contributing sponsors” for “all employers”, and in concluding provision substituted “such liability” for “the liability of each such employer”.

Subsec. (c)(1). Pub. L. 99-272, §11016(a)(5)(A)(iii)(I), substituted “of a contributing sponsor’s liability under this section, the contributing sponsor” for “of his liability under this section the employer”.

Subsec. (c)(2). Pub. L. 99-272, §11016(a)(5)(A)(iii)(II), inserted “under section 1341(c) or 1342 of this title” and substituted “liability is” for “liability of such employer is” and “(or the bond cancelled)” for “to the employer (or his bond cancelled)”.

Subsec. (c)(3). Pub. L. 99-272, §11016(a)(5)(A)(iii)(III), in introductory par., inserted “under section 1341(c) or 1342 of this title” and, in subpar. (C), substituted “contributing sponsor” for “employer”.

Subsec. (d). Pub. L. 99-272, §11016(a)(5)(A)(iv), in introductory par., substituted “of the plan that the withdrawal from the plan by one or more contributing sponsors” for “of a plan (other than a multiemployer plan) that the withdrawal from the plan by any employer or employers” and struck out “by employers” after “contributions to or under the plan”, in par. (1), substituted “the withdrawal” for “their employer’s withdrawal”, and in par. (2), substituted “plan terminated under section 1342 of this title” for “termination”.

Subsec. (e). Pub. L. 99-272, §11016(a)(5)(A)(v), struck out “to any employer or plan administrator” before “whenever it determines” and substituted “contributing sponsors” for “all other employers”.

1980—Subsecs. (a), (d). Pub. L. 96-364 inserted provisions excepting a multiemployer plan.

Statutory Notes and Related Subsidiaries

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.

§1364. Liability on termination of single-employer plans under multiple controlled groups

(a) This section applies to all contributing sponsors of a single-employer plan which has

two or more contributing sponsors at least two of whom are not under common control at the time such plan is terminated under section 1341(c) or 1342 of this title, or who, at any time within the 5 plan years preceding the date of termination, made contributions under the plan.

(b) The corporation shall determine the liability with respect to each contributing sponsor and each member of its controlled group in a manner consistent with section 1362 of this title, except that the amount of liability determined under section 1362(b)(1) of this title with respect to the entire plan shall be allocated to each controlled group by multiplying such amount by a fraction—

(1) the numerator of which is the amount required to be contributed to the plan for the last 5 plan years ending prior to the termination date by persons in such controlled group as contributing sponsors, and

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

and section 1368(a) of this title shall be applied separately with respect to each controlled group. The corporation may also determine the liability of each such contributing sponsor and member of its controlled group on any other equitable basis prescribed by the corporation in regulations.

(Pub. L. 93-406, title IV, §4064, Sept. 2, 1974, 88 Stat. 1031; Pub. L. 96-364, title IV, §403(i), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99-272, title XI, §11016(a)(5)(B), Apr. 7, 1986, 100 Stat. 270; Pub. L. 100-203, title IX, §9312(b)(2)(C)(i), Dec. 22, 1987, 101 Stat. 1330-361; Pub. L. 101-239, title VII, §7881(f)(3)(A), Dec. 19, 1989, 103 Stat. 2440.)

Editorial Notes

AMENDMENTS

1989—Subsec. (b). Pub. L. 101-239 substituted “section 1368(a)” for “clauses (i)(II) and (ii) of section 1362(b)(1)(A)”.

1987—Subsec. (b). Pub. L. 100-203 amended first sentence generally. Prior to amendment, first sentence read as follows: “The corporation shall determine the liability with respect to each contributing sponsor and each member of its controlled group in a manner consistent with section 1362 of this title, except that—

“(1) the amount of the liability determined under section 1362(b)(1) of this title with respect to the entire plan—

“(A) shall be determined without regard to clauses (i)(II) and (ii) of section 1362(b)(1)(A) of this title, and

“(B) shall be allocated to each controlled group by multiplying such amount by a fraction—

“(i) the numerator of which is the amount required to be contributed to the plan for the last 5 plan years ending prior to the termination date by persons in such controlled group as contributing sponsors, and

“(ii) the denominator of which is the total amount required to be contributed to the plan for such last 5 plan years by all persons as contributing sponsors,

and clauses (i)(II) and (ii) of section 1362(b)(1)(A) of this title shall be applied separately with respect to each such controlled group, and

“(2) the amount of the liability determined under section 1362(c)(1) of this title with respect to the entire plan shall be allocated to each controlled group

by multiplying such amount by the fraction described in paragraph (1)(B) in connection with such controlled group.”

1986—Pub. L. 99-272, §11016(a)(5)(B)(iii), substituted “on termination of single-employer plans under multiple controlled groups” for “of employers on termination of plan maintained by more than one employer” in section catchline.

Subsec. (a). Pub. L. 99-272, §11016(a)(5)(B)(i), substituted “all contributing sponsors of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control” for “all employers who maintain a plan under which more than one employer makes contributions (other than a multiemployer plan)” and inserted “under section 1341(c) or 1342 of this title” after “terminated”.

Subsec. (b). Pub. L. 99-272, §11016(a)(5)(B)(ii), amended subsec. (b) generally, substituting reference to each contributing sponsor and each member of its controlled group for reference to each employer of a plan maintained by more than one employer and inserted provisions that liability determined under section 1362(b)(1) of this title with respect to the entire plan be determined without regard to cls. (i)(II) and (ii) of section 1362(b)(1)(A) of this title and that the amount of liability determined under section 1362(c)(1) of this title with respect to the entire plan be allocated to each controlled group by multiplying such amount by the fraction described in par. (1)(B) in connection with such controlled group.

1980—Subsec. (a). Pub. L. 96-364 inserted provisions excepting a multiemployer plan.

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 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.

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.

§ 1365. Annual report of plan administrator

For each plan year for which section 1321 of this title applies to a plan, the plan administrator shall file with the corporation, on a form prescribed by the corporation, an annual report which identifies the plan and plan administrator and which includes—

(1) a copy of each notification required under section 1363 of this title with respect to such year,