

(5)(A) The corporation shall prescribe by regulation a procedure by which a plan may, by amendment, adopt any other alternative method for determining an employer's allocable share of unfunded vested benefits under this section, subject to the approval of the corporation based on its determination that adoption of the method by the plan would not significantly increase the risk of loss to plan participants and beneficiaries or to the corporation.

(B) The corporation may prescribe by regulation standard approaches for alternative methods, other than those set forth in the preceding paragraphs of this subsection, which a plan may adopt under subparagraph (A), for which the corporation may waive or modify the approval requirements of subparagraph (A). Any alternative method shall provide for the allocation of substantially all of a plan's unfunded vested benefits among employers who have an obligation to contribute under the plan.

(C) Unless the corporation by regulation provides otherwise, a plan may be amended to provide that a period of more than 5 but not more than 10 plan years may be used for determining the numerator and denominator of any fraction which is used under any method authorized under this section for determining an employer's allocable share of unfunded vested benefits under this section.

(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this subchapter, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

(E) FRESH START OPTION.—Notwithstanding paragraph (1), a plan may be amended to provide that the withdrawal liability method described in subsection (b) shall be applied by substituting the plan year which is specified in the amendment and for which the plan has no unfunded vested benefits for the plan year ending before September 26, 1980.

(d) Method of calculating allocable share of employer of unfunded vested benefits set forth in subsection (c)(3); applicability of certain statutory provisions

(1) The method of calculating an employer's allocable share of unfunded vested benefits set forth in subsection (c)(3) shall be the method for calculating an employer's allocable share of unfunded vested benefits under a plan to which section 404(c) of title 26, or a continuation of such a plan, applies, unless the plan is amended to adopt another method authorized under subsection (b) or (c).

(2) Sections 1384, 1389, 1399(c)(1)(B), and 1405 of this title shall not apply with respect to the withdrawal of an employer from a plan described in paragraph (1) unless the plan is amended to provide that any of such sections apply.

(e) Reduction of liability of withdrawn employer in case of transfer of liabilities to another plan incident to withdrawal or partial withdrawal of employer

In the case of a transfer of liabilities to another plan incident to an employer's withdrawal or partial withdrawal, the withdrawn employer's liability under this part shall be reduced in an

amount equal to the value, as of the end of the last plan year ending on or before the date of the withdrawal, of the transferred unfunded vested benefits.

(f) Computations applicable in case of withdrawal following merger of multiemployer plans

In the case of a withdrawal following a merger of multiemployer plans, subsection (b), (c), or (d) shall be applied in accordance with regulations prescribed by the corporation; except that, if a withdrawal occurs in the first plan year beginning after a merger of multiemployer plans, the determination under this section shall be made as if each of the multiemployer plans had remained separate plans.

(Pub. L. 93-406, title IV, § 4211, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1226; amended Pub. L. 98-369, div. A, title V, § 558(b)(1)(A), (B), July 18, 1984, 98 Stat. 899; Pub. L. 101-239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 109-280, title II, § 204(c)(2), Aug. 17, 2006, 120 Stat. 887.)

Editorial Notes

AMENDMENTS

2006—Subsec. (c)(5)(E). Pub. L. 109-280 added subpar. (E).

1989—Subsec. (d)(1). 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.

1984—Subsec. (b). Pub. L. 98-369, § 558(b)(1)(A), (B), substituted "September 25, 1980" for "April 28, 1980" in pars. (1)(A) and (2)(A), (B)(ii)(II), and "September 26, 1980" for "April 29, 1980" in pars. (1)(B) and (2)(B)(i)(I), (D), and in par. (3) in provisions preceding subpar. (A) and in subpar. (B)(i), (ii).

Subsec. (c)(2). Pub. L. 98-369, § 558(b)(1)(A), (B), substituted "September 25, 1980" for "April 28, 1980" in subpars. (B)(ii)(II) and (C)(i)(II) and "September 26, 1980" for "April 29, 1980" in subpar. (B)(i), (ii)(I), (II).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable with respect to plan withdrawals occurring on or after Jan. 1, 2007, see section 204(c)(3) of Pub. L. 109-280, set out as a note under section 1390 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.

§ 1392. Obligation to contribute

(a) "Obligation to contribute" defined

For purposes of this part, the term "obligation to contribute" means an obligation to contribute arising—

- (1) under one or more collective bargaining (or related) agreements, or
- (2) as a result of a duty under applicable labor-management relations law, but

does not include an obligation to pay withdrawal liability under this section or to pay delinquent contributions.

(b) Payments of withdrawal liability not considered contributions

Payments of withdrawal liability under this part shall not be considered contributions for purposes of this part.

(c) Transactions to evade or avoid liability

If a principal purpose of any transaction is to evade or avoid liability under this part, this part shall be applied (and liability shall be determined and collected) without regard to such transaction.

(Pub. L. 93-406, title IV, §4212, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1233.)

§ 1393. Actuarial assumptions**(a) Use by plan actuary in determining unfunded vested benefits of a plan for computing withdrawal liability of employer**

The corporation may prescribe by regulation actuarial assumptions which may be used by a plan actuary in determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part. Withdrawal liability under this part shall be determined by each plan on the basis of—

(1) actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan, or

(2) actuarial assumptions and methods set forth in the corporation's regulations for purposes of determining an employer's withdrawal liability.

(b) Factors determinative of unfunded vested benefits of plan for computing withdrawal liability of employer

In determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part, the plan actuary may—

(1) rely on the most recent complete actuarial valuation used for purposes of section 412 of title 26 and reasonable estimates for the interim years of the unfunded vested benefits, and

(2) in the absence of complete data, rely on the data available or on data secured by a sampling which can reasonably be expected to be representative of the status of the entire plan.

(c) Determination of amount of unfunded vested benefits

For purposes of this part, the term "unfunded vested benefits" means with respect to a plan, an amount equal to—

(A) the value of nonforfeitable benefits under the plan, less

(B) the value of the assets of the plan.

(Pub. L. 93-406, title IV, §4213, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1233; amended Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

Editorial Notes

AMENDMENTS

1989—Subsec. (b)(1). 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.

§ 1394. Application of plan amendments; exception

(a) No plan rule or amendment adopted after January 31, 1981, under section 1389 or 1391(c) of this title may be applied without the employer's consent with respect to liability for a withdrawal or partial withdrawal which occurred before the date on which the rule or amendment was adopted.

(b) All plan rules and amendments authorized under this part shall operate and be applied uniformly with respect to each employer, except that special provisions may be made to take into account the creditworthiness of an employer. The plan sponsor shall give notice to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan of any plan rules or amendments adopted pursuant to this section.

(Pub. L. 93-406, title IV, §4214, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1234.)

§ 1395. Plan notification to corporation of potentially significant withdrawals

The corporation may, by regulation, require the plan sponsor of a multiemployer plan to provide notice to the corporation when the withdrawal from the plan by any employer has resulted, or will result, in a significant reduction in the amount of aggregate contributions under the plan made by employers.

(Pub. L. 93-406, title IV, §4215, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1234.)

§ 1396. Special rules for plans under section 404(c) of title 26**(a) Amount of withdrawal liability; determinative factors**

In the case of a plan described in subsection (b)—

(1) if an employer withdraws prior to a termination described in section 1341a(a)(2) of this title, the amount of withdrawal liability to be paid in any year by such employer shall be an amount equal to the greater of—

(A) the amount determined under section 1399(c)(1)(C)(i) of this title, or

(B) the product of—

(i) the number of contribution base units for which the employer would have been