

**(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

required to make contributions for the prior plan year if the employer had not withdrawn, multiplied by

(ii) the contribution rate for the plan year which would be required to meet the amortization schedules contained in section 1423(d)(3)(B)(ii)<sup>1</sup> of this title (determined without regard to any limitation on such rate otherwise provided by this subchapter)

except that an employer shall not be required to pay an amount in excess of the withdrawal liability computed with interest; and

(2) the withdrawal liability of an employer who withdraws after December 31, 1983, as a result of a termination described in section 1341a(a)(2) of this title which is agreed to by the labor organization that appoints the employee representative on the joint board of trustees which sponsors the plan, shall be determined under subsection (c) if—

(A) as a result of prior employer withdrawals in any plan year commencing after January 1, 1980, the number of contribution base units is reduced to less than 67 percent of the average number of such units for the calendar years 1974 through 1979; and

(B) at least 50 percent of the withdrawal liability attributable to the first 33 percent decline described in subparagraph (A) has been determined by the plan sponsor to be uncollectible within the meaning of regulations of the corporation of general applicability; and

(C) the rate of employer contributions under the plan for each plan year following the first plan year beginning after September 26, 1980 and preceding the termination date equals or exceeds the rate described in section 1423(d)(3)<sup>1</sup> of this title.

**(b) Covered plans**

A plan is described in this subsection if—

(1) it is a plan described in section 404(c) of title 26 or a continuation thereof; and

(2) participation in the plan is substantially limited to individuals who retired prior to January 1, 1976.

**(c) Amount of liability of employer; “a year of signatory service” defined**

(1) The amount of an employer’s liability under this paragraph is the product of—

(A) the amount of the employer’s withdrawal liability determined without regard to this section, and

(B) the greater of 90 percent, or a fraction—

(i) the numerator of which is an amount equal to the portion of the plan’s unfunded vested benefits that is attributable to plan participants who have a total of 10 or more years of signatory service, and

(ii) the denominator of which is an amount equal to the total unfunded vested benefits of the plan.

(2) For purposes of paragraph (1), the term “a year of signatory service” means a year during any portion of which a participant was employed for an employer who was obligated to

contribute in that year, or who was subsequently obligated to contribute.

(Pub. L. 93-406, title IV, §4216, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1234.)

**Editorial Notes**

REFERENCES IN TEXT

Section 1423 of this title, referred to in subsec. (a)(1)(B)(ii), (2)(C), was repealed by Pub. L. 113-235, div. O, title I, §108(a)(1), Dec. 16, 2014, 128 Stat. 2786.

**§ 1397. Application of part in case of certain pre-1980 withdrawals; adjustment of covered plan**

(a) For the purpose of determining the amount of unfunded vested benefits allocable to an employer for a partial or complete withdrawal from a plan which occurs after September 25, 1980, and for the purpose of determining whether there has been a partial withdrawal after such date, the amount of contributions, and the number of contribution base units, of such employer properly allocable—

(1) to work performed under a collective bargaining agreement for which there was a permanent cessation of the obligation to contribute before September 26, 1980, or

(2) to work performed at a facility at which all covered operations permanently ceased before September 26, 1980, or for which there was a permanent cessation of the obligation to contribute before that date,

shall not be taken into account.

(b) A plan may, in a manner not inconsistent with regulations, which shall be prescribed by the corporation, adjust the amount of unfunded vested benefits allocable to other employers under a plan maintained by an employer described in subsection (a).

(Pub. L. 93-406, title IV, §4217, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1235; amended Pub. L. 98-369, div. A, title V, §558(b)(1)(A), (B), July 18, 1984, 98 Stat. 899.)

**Editorial Notes**

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, §558(b)(1)(A), (B), substituted “September 25, 1980” for “April 28, 1980” in provisions preceding par. (1) and “September 26, 1980” for “April 29, 1980” in pars. (1) and (2).

**§ 1398. Withdrawal not to occur because of change in business form or suspension of contributions during labor dispute**

Notwithstanding any other provision of this part, an employer shall not be considered to have withdrawn from a plan solely because—

(1) an employer ceases to exist by reason of—

(A) a change in corporate structure described in section 1369(b) of this title, or

(B) a change to an unincorporated form of business enterprise,

if the change causes no interruption in employer contributions or obligations to contribute under the plan, or

<sup>1</sup> See References in Text note below.