

amended Pub. L. 113–235, div. O, title I, §121(a), Dec. 16, 2014, 128 Stat. 2794.)

Editorial Notes

AMENDMENTS

2014—Subsec. (e). Pub. L. 113–235 added subsec. (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–235, div. O, title I, §121(b), Dec. 16, 2014, 128 Stat. 2794, provided that: “The amendments made by this section [amending this section] shall apply with respect to plan years beginning after December 31, 2014.”

EFFECTIVE DATE

Part effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

§ 1412. Transfers between a multiemployer plan and a single-employer plan

(a) General authority

A transfer of assets or liabilities between, or a merger of, a multiemployer plan and a single-employer plan shall satisfy the requirements of this section.

(b) Accrued benefit of participant or beneficiary not lower immediately after effective date of transfer or merger

No accrued benefit of a participant or beneficiary may be lower immediately after the effective date of a transfer or merger described in subsection (a) than the benefit immediately before that date.

(c) Liability of multiemployer plan to corporation where single-employer plan terminates within 60 months after effective date of transfer; amount of liability, exemption, etc.

(1) Except as provided in paragraphs (2) and (3), a multiemployer plan which transfers liabilities to a single-employer plan shall be liable to the corporation if the single-employer plan terminates within 60 months after the effective date of the transfer. The amount of liability shall be the lesser of—

(A) the amount of the plan asset insufficiency of the terminated single-employer plan, less 30 percent of the net worth of the employer who maintained the single-employer plan, determined in accordance with section 1362 or 1364 of this title, or

(B) the value, on the effective date of the transfer, of the unfunded benefits transferred to the single-employer plan which are guaranteed under section 1322 of this title.

(2) A multiemployer plan shall be liable to the corporation as provided in paragraph (1) unless, within 180 days after the corporation receives an application (together with such information as the corporation may reasonably require for purposes of such application) from the multiemployer plan sponsor for a determination under this paragraph—

(A) the corporation determines that the interests of the plan participants and beneficiaries and of the corporation are adequately protected, or

(B) fails to make any determination regarding the adequacy with which such interests are protected with respect to such transfer of liabilities.

If, after the receipt of such application, the corporation requests from the plan sponsor additional information necessary for the determination, the running of the 180-day period shall be suspended from the date of such request until the receipt by the corporation of the additional information requested. The corporation may by regulation prescribe procedures and standards for the issuance of determinations under this paragraph. This paragraph shall not apply to any application submitted less than 180 days after September 26, 1980.

(3) A multiemployer plan shall not be liable to the corporation as provided in paragraph (1) in the case of a transfer from the multiemployer plan to a single-employer plan of liabilities which accrued under a single-employer plan which merged with the multiemployer plan, if, the value of liabilities transferred to the single-employer plan does not exceed the value of the liabilities for benefits which accrued before the merger, and the value of the assets transferred to the single-employer plan is substantially equal to the value of the assets which would have been in the single-employer plan if the employer had maintained and funded it as a separate plan under which no benefits accrued after the date of the merger.

(4) The corporation may make equitable arrangements with multiemployer plans which are liable under this subsection for satisfaction of their liability.

(d) Guarantee of benefits under single-employer plan

Benefits under a single-employer plan to which liabilities are transferred in accordance with this section are guaranteed under section 1322 of this title to the extent provided in that section as of the effective date of the transfer and the plan is a successor plan.

(e) Transfer of liabilities by multiemployer plan to single-employer plan

(1) Except as provided in paragraph (2), a multiemployer plan may not transfer liabilities to a single-employer plan unless the plan sponsor of the plan to which the liabilities would be transferred agrees to the transfer.

(2) In the case of a transfer described in subsection (c)(3), paragraph (1) of this subsection is satisfied by the advance agreement to the transfer by the employer who will be obligated to contribute to the single-employer plan.

(f) Additional requirements by corporation for protection of interests of plan participants, beneficiaries and corporation; approval by corporation of transfer of assets or liabilities to single-employer plan from plan in reorganization; covered transfers in connection with termination

(1) The corporation may prescribe by regulation such additional requirements with respect to the transfer of assets or liabilities as may be necessary to protect the interests of plan participants and beneficiaries and the corporation.

(2) Except as otherwise determined by the corporation, a transfer of assets or liabilities to a

single-employer plan from a plan in reorganization under section 1421¹ of this title is not effective unless the corporation approves such transfer.

(3) No transfer to which this section applies, in connection with a termination described in section 1341a(a)(2) of this title shall be effective unless the transfer meets such requirements as may be established by the corporation to prevent an increase in the risk of loss to the corporation.

(Pub. L. 93-406, title IV, § 4232, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1245.)

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REFERENCES IN TEXT

Section 1421 of this title, referred to in subsec. (f)(2), was repealed by Pub. L. 113-235, div. O, title I, § 108(a)(1), Dec. 16, 2014, 128 Stat. 2786.

§ 1413. Partitions of eligible multiemployer plans

(a) Authority of corporation

(1) Upon the application by the plan sponsor of an eligible multiemployer plan for a partition of the plan in accordance with this section. The corporation shall make a determination regarding the application not later than 270 days after the date such application was filed (or, if later, the date such application was completed) in accordance with regulations promulgated by the corporation.

(2) Not later than 30 days after submitting an application for partition of a plan under paragraph (1), the plan sponsor of the plan shall notify the participants and beneficiaries of such application, in the form and manner prescribed by regulations issued by the corporation.

(b) Eligible multiemployer plans

For purposes of this section, a multiemployer plan is an eligible multiemployer plan if—

(1) the plan is in critical and declining status (as defined in section 1085(b)(4) of this title);

(2) the corporation determines, after consultation with the Participant and Plan Sponsor Advocate selected under section 1304 of this title, that the plan sponsor has taken (or is taking concurrently with an application for partition) all reasonable measures to avoid insolvency, including the maximum benefit suspensions under section 1085(e)(9) of this title, if applicable;

(3) the corporation reasonably expects that—

(A) a partition of the plan will reduce the corporation's expected long-term loss with respect to the plan; and

(B) a partition of the plan is necessary for the plan to remain solvent;

(4) the corporation certifies to Congress that its ability to meet existing financial assistance obligations to other plans (including any liabilities associated with multiemployer plans that are insolvent or that are projected to become insolvent within 10 years) will not be impaired by such partition; and

(5) the cost to the corporation arising from such partition is paid exclusively from the fund for basic benefits guaranteed for multi-employer plans.

(c) Transfer of liabilities

The corporation's partition order shall provide for a transfer to the plan referenced in subsection (d)(1) of the minimum amount of the plan's liabilities necessary for the plan to remain solvent.

(d) Plans created by partition orders

(1) The plan created by the partition order is a successor plan to which section 1322a of this title applies.

(2) The plan sponsor of an eligible multiemployer plan prior to the partition and the administrator of such plan shall be the plan sponsor and the administrator, respectively, of the plan created by the partition order.

(3) In the event an employer withdraws from the plan that was partitioned within ten years following the date of the partition order, withdrawal liability shall be computed under section 1381 of this title with respect to both the plan that was partitioned and the plan created by the partition order. If the withdrawal occurs more than ten years after the date of the partition order, withdrawal liability shall be computed under section 1381 of this title only with respect to the plan that was partitioned (and not with respect to the plan created by the partition order).

(e) Payment of benefits and premiums for beneficiaries of partitioned plans

(1) For each participant or beneficiary of the plan whose benefit was transferred to the plan created by the partition order pursuant to a partition, the plan that was partitioned shall pay a monthly benefit to such participant or beneficiary for each month in which such benefit is in pay status following the effective date of such partition in an amount equal to the excess of—

(A) the monthly benefit that would be paid to such participant or beneficiary for such month under the terms of the plan (taking into account benefit suspensions under section 1085(e)(9) of this title and any plan amendments following the effective date of such partition) if the partition had not occurred, over

(B) the monthly benefit for such participant or beneficiary which is guaranteed under section 1322a of this title.

(2) In any case in which a plan provides a benefit improvement (as defined in section 1085(e)(9)(E)(vi) of this title) that takes effect after the effective date of the partition, the plan shall pay to the corporation for each year during the 10-year period following the partition effective date, an annual amount equal to the lesser of—

(A) the total value of the increase in benefit payments for such year that is attributable to the benefit improvement, or

(B) the total benefit payments from the plan created by the partition for such year.

Such payment shall be made at the time of, and in addition to, any other premium imposed by the corporation under this subchapter.

¹ See References in Text note below.