

(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.

(3) The plan that was partitioned shall pay the premiums imposed by the corporation under this subchapter with respect to participants whose benefits were transferred to the plan created by the partition order for each year during the 10-year period following the partition effective date.

(f) Notice of partition orders to Congress

Not later than 14 days after the partition order, the corporation shall provide notice of such order to the Committee on Education and the Workforce of the House of Representatives, the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Committee on Health, Education, Labor, and Pensions of the Senate, and any affected participants or beneficiaries.

(Pub. L. 93-406, title IV, § 4233, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1246; amended Pub. L. 113-235, div. O, title I, § 122(a)(1), Dec. 16, 2014, 128 Stat. 2795.)

Editorial Notes

AMENDMENTS

2014—Pub. L. 113-235 amended section generally. Prior to amendment, section related to partition of multiemployer plans.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE 2014 AMENDMENT

Pub. L. 113-235, div. O, title I, § 122(b), Dec. 16, 2014, 128 Stat. 2796, provided that: "The amendments made by this section [amending this section] shall apply with respect to plan years beginning after December 31, 2014."

§ 1414. Asset transfer rules

(a) Applicability and scope

A transfer of assets from a multiemployer plan to another plan shall comply with asset-transfer rules which shall be adopted by the multiemployer plan and which—

(1) do not unreasonably restrict the transfer of plan assets in connection with the transfer of plan liabilities, and

(2) operate and are applied uniformly with respect to each proposed transfer, except that the rules may provide for reasonable variations taking into account the potential financial impact of a proposed transfer on the multiemployer plan.

Plan rules authorizing asset transfers consistent with the requirements of section 1412(c)(3) of this title shall be considered to satisfy the requirements of this subsection.

(b) Exemption of de minimis transfers

The corporation shall prescribe regulations which exempt de minimis transfers of assets from the requirements of this part.

(c) Written reciprocity agreements

This part shall not apply to transfers of assets pursuant to written reciprocity agreements, except to the extent provided in regulations prescribed by the corporation.

(Pub. L. 93-406, title IV, § 4234, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1247.)

§ 1415. Transfers pursuant to change in bargaining representative

(a) Authority to transfer from old plan to new plan pursuant to employee participation in another multiemployer plan after certified change of representative

In any case in which an employer has completely or partially withdrawn from a multiemployer plan (hereafter in this section referred to as the “old plan”) as a result of a certified change of collective bargaining representative occurring after September 25, 1980, if participants of the old plan who are employed by the employer will, as a result of that change, participate in another multiemployer plan (hereafter in this section referred to as the “new plan”), the old plan shall transfer assets and liabilities to the new plan in accordance with this section.

(b) Notification by employer of plan sponsor of old plan; notification by plan sponsor of old plan of employer and plan sponsor of new plan; appeal by new plan to prevent transfer; further proceedings

(1) The employer shall notify the plan sponsor of the old plan of a change in multiemployer plan participation described in subsection (a) no later than 30 days after the employer determines that the change will occur.

(2) The plan sponsor of the old plan shall—

(A) notify the employer of—

(i) the amount of the employer’s withdrawal liability determined under part 1 of this subtitle with respect to the withdrawal,

(ii) the old plan’s intent to transfer to the new plan the nonforfeitable benefits of the employees who are no longer working in covered service under the old plan as a result of the change of bargaining representative, and

(iii) the amount of assets and liabilities which are to be transferred to the new plan, and

(B) notify the plan sponsor of the new plan of the benefits, assets, and liabilities which will be transferred to the new plan.

(3) Within 60 days after receipt of the notice described in paragraph (2)(B), the new plan may file an appeal with the corporation to prevent the transfer. The transfer shall not be made if the corporation determines that the new plan would suffer substantial financial harm as a result of the transfer. Upon notification described in paragraph (2), if—

(A) the employer fails to object to the transfer within 60 days after receipt of the notice described in paragraph (2)(A), or

(B) the new plan either—

(i) fails to file such an appeal, or

(ii) the corporation, pursuant to such an appeal, fails to find that the new plan would suffer substantial financial harm as a result of the transfer described in the notice under paragraph (2)(B) within 180 days after the date on which the appeal is filed,

then the plan sponsor of the old plan shall transfer the appropriate amount of assets and liabilities to the new plan.

(c) Reduction of amount of withdrawal liability of employer upon transfer of appropriate amount of assets and liabilities by plan sponsor of old plan to new plan

If the plan sponsor of the old plan transfers the appropriate amount of assets and liabilities under this section to the new plan, then the amount of the employer’s withdrawal liability (as determined under section 1381(b) of this title without regard to such transfer and this section) with respect to the old plan shall be reduced by the amount by which—

(1) the value of the unfunded vested benefits allocable to the employer which were transferred by the plan sponsor of the old plan to the new plan, exceeds

(2) the value of the assets transferred.

(d) Escrow payments by employer upon complete or partial withdrawal and prior to transfer

In any case in which there is a complete or partial withdrawal described in subsection (a), if—

(1) the new plan files an appeal with the corporation under subsection (b)(3), and

(2) the employer is required by section 1399 of this title to begin making payments of withdrawal liability before the earlier of—

(A) the date on which the corporation finds that the new plan would not suffer substantial financial harm as a result of the transfer, or

(B) the last day of the 180-day period beginning on the date on which the new plan files its appeal,

then the employer shall make such payments into an escrow held by a bank or similar financial institution satisfactory to the old plan. If the transfer is made, the amounts paid into the escrow shall be returned to the employer. If the transfer is not made, the amounts paid into the escrow shall be paid to the old plan and credited against the employer’s withdrawal liability.

(e) Prohibition on transfer of assets to new plan by plan sponsor of old plan; exemptions

(1) Notwithstanding subsection (b), the plan sponsor shall not transfer any assets to the new plan if—

(A) the old plan is in reorganization (within the meaning of section 1421(a)¹ of this title), or

(B) the transfer of assets would cause the old plan to go into reorganization (within the meaning of section 1421(a)¹ of this title).

(2) In any case in which a transfer of assets from the old plan to the new plan is prohibited by paragraph (1), the plan sponsor of the old plan shall transfer—

(A) all nonforfeitable benefits described in subsection (b)(2), if the value of such benefits does not exceed the withdrawal liability of the employer with respect to such withdrawal, or

(B) such nonforfeitable benefits having a value equal to the withdrawal liability of the employer, if the value of such benefits exceeds the withdrawal liability of the employer.

¹ See References in Text note below.