

**§ 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In any case in which an employer has completely or partially withdrawn from a multiemployer plan (hereafter in this section referred to as the “old plan”) as a result of a certified change of collective bargaining representative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)<sup>1</sup> 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)<sup>1</sup> 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.

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

**(f) Agreement between plan sponsors of old plan and new plan to transfer in compliance with other statutory provisions; reduction of withdrawal liability of employer from old plan; amount of withdrawal liability of employer to new plan**

(1) Notwithstanding subsections (b) and (e), the plan sponsors of the old plan and the new plan may agree to a transfer of assets and liabilities that complies with sections 1411 and 1414 of this title, rather than this section, except that the employer's liability with respect to the withdrawal from the old plan shall be reduced under subsection (c) as if assets and liabilities had been transferred in accordance with this section.

(2) If the employer withdraws from the new plan within 240 months after the effective date of a transfer of assets and liabilities described in this section, the amount of the employer's withdrawal liability to the new plan shall be the greater of—

(A) the employer's withdrawal liability determined under part 1 of this subtitle with respect to the new plan, or

(B) the amount by which the employer's withdrawal liability to the old plan was reduced under subsection (c), reduced by 5 percent for each 12-month period following the effective date of the transfer and ending before the date of the withdrawal from the new plan.

**(g) Definitions**

For purposes of this section—

(1) "appropriate amount of assets" means the amount by which the value of the non-forfeitable benefits to be transferred exceeds the amount of the employer's withdrawal liability to the old plan (determined under part 1 of this subtitle without regard to section 1391(e) of this title), and

(2) "certified change of collective bargaining representative" means a change of collective bargaining representative certified under the Labor-Management Relations Act, 1947 [29 U.S.C. 141 et seq.], or the Railway Labor Act [45 U.S.C. 151 et seq.].

(Pub. L. 93-406, title IV, §4235, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1247; amended Pub. L. 98-369, div. A, title V, §558(b)(1)(A), July 18, 1984, 98 Stat. 899.)

**Editorial Notes**

**REFERENCES IN TEXT**

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

The Labor-Management Relations Act, 1947, referred to in subsec. (g)(2), is act June 23, 1947, ch. 120, 61 Stat. 136, which is classified principally to chapter 7 (§141 et seq.) of this title. For complete classification of this Act to the Code, see section 141 of this title and Tables.

The Railway Labor Act, referred to in subsec. (g)(2), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

**AMENDMENTS**

1984—Subsec. (a). Pub. L. 98-369 substituted "September 25, 1980" for "April 28, 1980".

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE**

Section effective Sept. 26, 1980, see section 1461(e)(4) of this title.

**PART 3—INSOLVENT PLANS**

**Editorial Notes**

**CODIFICATION**

Pub. L. 113-235, div. O, title I, §108(a)(3)(C), Dec. 16, 2014, 128 Stat. 2787, which directed amendment of part 3 of subtitle D of title IV of the Employee Retirement Income Security Act of 1974 by striking the heading and inserting "insolvent plans", was executed in this part, which is part 3 of subtitle E of title IV of the Act, to reflect the probable intent of Congress.

**§§ 1421 to 1425. Repealed. Pub. L. 113-235, div. O, title I, § 108(a)(1), Dec. 16, 2014, 128 Stat. 2786**

Section 1421, Pub. L. 93-406, title IV, §4241, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1249; amended Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445, related to reorganization status.

Section 1422, Pub. L. 93-406, title IV, §4242, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1251, related to notice of reorganization and funding requirements.

Section 1423, Pub. L. 93-406, title IV, §4243, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1252; amended Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 109-280, title I, §108(b)(6)-(9), formerly §107(b)(6)-(9), Aug. 17, 2006, 120 Stat. 820, renumbered Pub. L. 111-192, title II, §202(a), June 25, 2010, 124 Stat. 1297, related to minimum contribution requirement.

Section 1424, Pub. L. 93-406, title IV, §4244, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1255, related to overburden credit against minimum contribution requirement.

Section 1425, Pub. L. 93-406, title IV, §4244A, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1257; amended Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445, related to adjustments in accrued benefits.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE OF REPEAL**

Repeal applicable with respect to plan years beginning after Dec. 31, 2014, see section 108(c) of div. O of Pub. L. 113-235, set out as a note under section 418 of Title 26, Internal Revenue Code.

**§ 1426. Insolvent plans**

**(a) Suspension of payments of benefits; conditions, amount, etc.**

Notwithstanding sections 1053 and 1054 of this title, in any case in which benefit payments under an insolvent multiemployer plan exceed the resource benefit level, any such payments of benefits which are not basic benefits shall be suspended, in accordance with this section, to the extent necessary to reduce the sum of such payments and the payments of such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the corporation under section 1322a(g)(5) of this title.

**(b) Determination of insolvency status for plan year; definitions**

For purposes of this section, for a plan year—

(1) a multiemployer plan is insolvent if the plan's available resources are not sufficient to