

determinations made in plan years beginning after 2007.”

WITHDRAWAL LIABILITY OF EMPLOYER FROM PLAN TERMINATING WHILE PLAN INSOLVENT WITHIN THIS SECTION: DETERMINATIONS, FACTORS, ETC.

Pub. L. 96-364, title I, §108(c)(3), Sept. 26, 1980, 94 Stat. 1268, provided that:

“(A) For the purpose of determining the withdrawal liability of an employer under title IV of the Employee Retirement Income Security Act of 1974 [this subchapter] from a plan that terminates while the plan is insolvent (within the meaning of section 4245 of such Act [this section]), the plan’s unfunded vested benefits shall be reduced by an amount equal to the sum of all overburden credits that were applied in determining the plan’s accumulated funding deficiency for all plan years preceding the first plan year in which the plan is insolvent, plus interest thereon.

“(B) The provisions of subparagraph (A) apply only if—

“(i) the plan would have been eligible for the overburden credit in the last plan year beginning before the date of the enactment of this Act [Sept. 26, 1980], if section 4243 of the Employee Retirement Income Security Act of 1974 [former section 1423 of this title] had been in effect for that plan year, and

“(ii) the Pension Benefit Guaranty Corporation determines that the reduction of unfunded vested benefits under subparagraph (A) would not significantly increase the risk of loss to the corporation.”

PART 4—FINANCIAL ASSISTANCE

**§ 1431. Assistance by corporation**

**(a) Authority; procedure applicable; amount**

If, upon receipt of an application for financial assistance under section 1426(f) of this title or section 1441(d) of this title, the corporation verifies that the plan is or will be insolvent and unable to pay basic benefits when due, the corporation shall provide the plan financial assistance in an amount sufficient to enable the plan to pay basic benefits under the plan.

**(b) Conditions; repayment terms**

(1) Financial assistance shall be provided under such conditions as the corporation determines are equitable and are appropriate to prevent unreasonable loss to the corporation with respect to the plan.

(2) A plan which has received financial assistance shall repay the amount of such assistance to the corporation on reasonable terms consistent with regulations prescribed by the corporation.

**(c) Assistance pending final determination of application**

Pending determination of the amount described in subsection (a), the corporation may provide financial assistance in such amounts as it considers appropriate in order to avoid undue hardship to plan participants and beneficiaries.

(Pub. L. 93-406, title IV, §4261, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1261.)

**Editorial Notes**

EFFECTIVE DATE

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

**§ 1432. Special financial assistance by the corporation**

**(a) Special financial assistance**

**(1) In general**

The corporation shall provide special financial assistance to an eligible multiemployer plan under this section, upon the application of a plan sponsor of such a plan for such assistance.

**(2) Inapplicability of certain repayment obligation**

A plan receiving special financial assistance pursuant to this section shall not be subject to repayment obligations with respect to such special financial assistance.

**(b) Eligible multiemployer plans**

**(1) In general**

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

(A) the plan is in critical and declining status (within the meaning of section 1085(b)(6) of this title) in any plan year beginning in 2020 through 2022;

(B) a suspension of benefits has been approved with respect to the plan under section 1085(e)(9) of this title as of March 11, 2021;

(C) in any plan year beginning in 2020 through 2022, the plan is certified by the plan actuary to be in critical status (within the meaning of section 1085(b)(2) of this title), has a modified funded percentage of less than 40 percent, and has a ratio of active to inactive participants which is less than 2 to 3; or

(D) the plan became insolvent for purposes of section 418E of title 26 after December 16, 2014, and has remained so insolvent and has not been terminated as of March 11, 2021.

**(2) Modified funded percentage**

For purposes of paragraph (1)(C), the term “modified funded percentage” means the percentage equal to a fraction the numerator of which is current value of plan assets (as defined in section 1002(26) of this title) and the denominator of which is current liabilities (as defined in section 431(c)(6)(D) of title 26 and section 1084(c)(6)(D) of this title).

**(c) Applications for special financial assistance**

Within 120 days of March 11, 2021, the corporation shall issue regulations or guidance setting forth requirements for special financial assistance applications under this section. In such regulations or guidance, the corporation shall—

(1) limit the materials required for a special financial assistance application to the minimum necessary to make a determination on the application;

(2) specify effective dates for transfers of special financial assistance following approval of an application, based on the effective date of the supporting actuarial analysis and the date on which the application is submitted; and

(3) provide for an alternate application for special financial assistance under this section,

which may be used by a plan that has been approved for a partition under section 1413 of this title before March 11, 2021.

**(d) Temporary priority consideration of applications**

**(1) In general**

The corporation may specify in regulations or guidance under subsection (c) that, during a period no longer than the first 2 years following March 11, 2021, applications may not be filed by an eligible multiemployer plan unless—

(A) the eligible multiemployer plan is insolvent or is likely to become insolvent within 5 years of March 11, 2021;

(B) the corporation projects the eligible multiemployer plan to have a present value of financial assistance payments under section 1431 of this title that exceeds \$1,000,000,000 if the special financial assistance is not ordered;

(C) the eligible multiemployer plan has implemented benefit suspensions under section 1085(e)(9) of this title as of March 11, 2021; or

(D) the corporation determines it appropriate based on other similar circumstances.

**(e) Actuarial assumptions**

**(1) Eligibility**

For purposes of determining eligibility for special financial assistance, the corporation shall accept assumptions incorporated in a multiemployer plan's determination that it is in critical status or critical and declining status (within the meaning of section 1085(b) of this title) for certifications of plan status completed before January 1, 2021, unless such assumptions are clearly erroneous. For certifications of plan status completed after December 31, 2020, a plan shall determine whether it is in critical or critical and declining status for purposes of eligibility for special financial assistance by using the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions (excluding the plan's interest rate) are unreasonable.

**(2) Amount of financial assistance**

In determining the amount of special financial assistance in its application, an eligible multiemployer plan shall—

(A) use the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021, provided that such interest rate may not exceed the interest rate limit; and

(B) for other assumptions, use the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions are unreasonable.

**(3) Interest rate limit**

The interest rate limit for purposes of this subsection is the rate specified in section 1083(h)(2)(C)(iii) of this title (disregarding modifications made under clause (iv) of such section) for the month in which the application for special financial assistance is filed by

the eligible multiemployer plan or the 3 preceding months, with such specified rate increased by 200 basis points.

**(4) Changes in assumptions**

If a plan determines that use of one or more prior assumptions is unreasonable, the plan may propose in its application to change such assumptions, provided that the plan discloses such changes in its application and describes why such assumptions are no longer reasonable. The corporation shall accept such changed assumptions unless it determines the changes are unreasonable, individually or in the aggregate. The plan may not propose a change to the interest rate otherwise required under this subsection for eligibility or financial assistance amount.

**(f) Application deadline**

Any application by a plan for special financial assistance under this section shall be submitted to the corporation (and, in the case of a plan to which section 432(k)(1)(D) of title 26 applies, to the Secretary of the Treasury) no later than December 31, 2025, and any revised application for special financial assistance shall be submitted no later than December 31, 2026.

**(g) Determinations on applications**

A plan's application for special financial assistance under this section that is timely filed in accordance with the regulations or guidance issued under subsection (c) shall be deemed approved unless the corporation notifies the plan within 120 days of the filing of the application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is not eligible under this section. Such notice shall specify the reasons the plan is ineligible for special financial assistance, any proposed change or assumption is unreasonable, or information is needed to complete the application. If a plan is denied assistance under this subsection, the plan may submit a revised application under this section. Any revised application for special financial assistance submitted by a plan shall be deemed approved unless the corporation notifies the plan within 120 days of the filing of the revised application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is not eligible under this section. Special financial assistance issued by the corporation shall be effective on a date determined by the corporation, but no later than 1 year after a plan's special financial assistance application is approved by the corporation or deemed approved. The corporation shall not pay any special financial assistance after September 30, 2030.

**(h) Manner of payment**

The payment made by the corporation to an eligible multiemployer plan under this section shall be made as a single, lump sum payment.

**(i) Amount and manner of special financial assistance**

**(1) In general**

Special financial assistance under this section shall be a transfer of funds in the amount necessary as demonstrated by the plan sponsor

on the application for such special financial assistance, in accordance with the requirements described in subsection (j). Special financial assistance shall be paid to such plan as soon as practicable upon approval of the application by the corporation.

**(2) No cap**

Special financial assistance granted by the corporation under this section shall not be capped by the guarantee under 1322a<sup>1</sup> of this title.

**(j) Determination of amount of special financial assistance**

**(1) In general**

The amount of financial assistance provided to a multiemployer plan eligible for financial assistance under this section shall be such amount required for the plan to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment under this section and ending on the last day of the plan year ending in 2051, with no reduction in a participant's or beneficiary's accrued benefit as of March 11, 2021, except to the extent of a reduction in accordance with section 1085(e)(8) of this title adopted prior to the plan's application for special financial assistance under this section, and taking into account the reinstatement of benefits required under subsection (k).

**(2) Projections**

The funding projections for purposes of this section shall be performed on a deterministic basis.

**(k) Reinstatement of suspended benefits**

The Secretary, in coordination with the Secretary of the Treasury, shall ensure that an eligible multiemployer plan that receives special financial assistance under this section—

(1) reinstates any benefits that were suspended under section 1085(e)(9) of this title or section 1426(a) of this title in accordance with guidance issued by the Secretary of the Treasury pursuant to section 432(k)(1)(B) of title 26, effective as of the first month in which the effective date for the special financial assistance occurs, for participants and beneficiaries as of such month; and

(2) provides payments equal to the amount of benefits previously suspended under section 1085(e)(9) or 1426(a) of this title to any participants or beneficiaries in pay status as of the effective date of the special financial assistance, payable, as determined by the eligible multiemployer plan—

(A) as a lump sum within 3 months of such effective date; or

(B) in equal monthly installments over a period of 5 years, commencing within 3 months of such effective date, with no adjustment for interest.

**(l) Restrictions on the use of special financial assistance**

Special financial assistance received under this section and any earnings thereon may be

used by an eligible multiemployer plan to make benefit payments and pay plan expenses. Special financial assistance and any earnings on such assistance shall be segregated from other plan assets. Special financial assistance shall be invested by plans in investment-grade bonds or other investments as permitted by the corporation.

**(m) Conditions on plans receiving special financial assistance**

**(1) In general**

The corporation, in consultation with the Secretary of the Treasury, may impose, by regulation or other guidance, reasonable conditions on an eligible multiemployer plan that receives special financial assistance relating to increases in future accrual rates and any retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates, diversion of contributions to, and allocation of expenses to, other benefit plans, and withdrawal liability.

**(2) Limitation**

The corporation shall not impose conditions on an eligible multiemployer plan as a condition of, or following receipt of, special financial assistance under this section relating to—

(A) any prospective reduction in plan benefits (including benefits that may be adjusted pursuant to section 1085(e)(8) of this title);

(B) plan governance, including selection of, removal of, and terms of contracts with, trustees, actuaries, investment managers, and other service providers; or

(C) any funding rules relating to the plan receiving special financial assistance under this section.

**(3) Payment of premiums**

An eligible multiemployer plan receiving special financial assistance under this section shall continue to pay all premiums due under section 1307 of this title for participants and beneficiaries in the plan.

**(4) Assistance not considered for certain purposes**

An eligible multiemployer plan that receives special financial assistance shall be deemed to be in critical status within the meaning of section 1085(b)(2) of this title until the last plan year ending in 2051.

**(5) Insolvent plans**

An eligible multiemployer plan receiving special financial assistance under this section that subsequently becomes insolvent will be subject to the current rules and guarantee for insolvent plans.

**(6) Ineligibility for other assistance**

An eligible multiemployer plan that receives special financial assistance under this section is not eligible to apply for a new suspension of benefits under section 1085(e)(9)(G) of this title.

**(n) Coordination with Secretary of the Treasury**

In prescribing the application process for eligible multiemployer plans to receive special financial assistance under this section and re-

<sup>1</sup> So in original. Probably should be preceded by "section".

viewing applications of such plans, the corporation shall coordinate with the Secretary of the Treasury in the following manner:

(1) In the case of a plan which has suspended benefits under section 1085(e)(9) of this title—

(A) in determining whether to approve the application, the corporation shall consult with the Secretary of the Treasury regarding the plan's proposed method of reinstating benefits, as described in the plan's application and in accordance with guidance issued by the Secretary of the Treasury, and

(B) the corporation shall consult with the Secretary of the Treasury regarding the amount of special financial assistance needed based on the projected funded status of the plan as of the last day of the plan year ending in 2051, whether the plan proposes to repay benefits over 5 years or as a lump sum, as required by subsection (k)(2), and any other relevant factors, as determined by the corporation in consultation with the Secretary of the Treasury, to ensure the amount of assistance is sufficient to meet such requirement and is sufficient to pay benefits as required in subsection (j)(1).

(2) In the case of any plan which proposes in its application to change the assumptions used, as provided in subsection (e)(4), the corporation shall consult with the Secretary of the Treasury regarding such proposed change in assumptions.

(3) If the corporation specifies in regulations or guidance that temporary priority consideration is available for plans which are insolvent within the meaning of section 418E of title 26 or likely to become so insolvent or for plans which have suspended benefits under section 1085(e)(9) of this title, or that availability is otherwise based on the funded status of the plan under section 1085 of this title, as permitted by subsection (d), the corporation shall consult with the Secretary of the Treasury regarding any granting of priority consideration to such plans.

(Pub. L. 93-406, title IV, § 4262, as added Pub. L. 117-2, title IX, § 9704(b), Mar. 11, 2021, 135 Stat. 190.)

#### PART 5—BENEFITS AFTER TERMINATION

### § 1441. Benefits under certain terminated plans

#### (a) Amendment of plan by plan sponsor to reduce benefits, and suspension of benefit payments

Notwithstanding sections 1053 and 1054 of this title, the plan sponsor of a terminated multiemployer plan to which section 1341a(d) of this title applies shall amend the plan to reduce benefits, and shall suspend benefit payments, as required by this section.

#### (b) Determinations respecting value of nonforfeitable benefits under terminated plan and value of assets of plan

(1) The value of nonforfeitable benefits under a terminated plan referred to in subsection (a), and the value of the plan's assets, shall be determined in writing, in accordance with regulations prescribed by the corporation, as of the

end of the plan year during which section 1341a(d) of this title becomes applicable to the plan, and each plan year thereafter.

(2) For purposes of this section, plan assets include outstanding claims for withdrawal liability (within the meaning of section 1301(a)(12) of this title).

#### (c) Amendment of plan by plan sponsor to reduce benefits for conservation of assets; factors applicable

(1) If, according to the determination made under subsection (b), the value of nonforfeitable benefits exceeds the value of the plan's assets, the plan sponsor shall amend the plan to reduce benefits under the plan to the extent necessary to ensure that the plan's assets are sufficient, as determined and certified in accordance with regulations prescribed by the corporation, to discharge when due all of the plan's obligations with respect to nonforfeitable benefits.

(2) Any plan amendment required by this subsection shall, in accordance with regulations prescribed by the Secretary of the Treasury—

(A) reduce benefits only to the extent necessary to comply with paragraph (1);

(B) reduce accrued benefits only to the extent that those benefits are not eligible for the corporation's guarantee under section 1322a(b) of this title;

(C) comply with the rules for and limitations on benefit reductions under a plan in reorganization, as prescribed in section 1425<sup>1</sup> of this title, except to the extent that the corporation prescribes other rules and limitations in regulations under this section; and

(D) take effect no later than 6 months after the end of the plan year for which it is determined that the value of nonforfeitable benefits exceeds the value of the plan's assets.

#### (d) Suspension of benefit payments; determinative factors; powers and duties of plan sponsor; retroactive benefit payments

(1) In any case in which benefit payments under a plan which is insolvent under paragraph (2)(A) exceed the resource benefit level, any such payments which are not basic benefits shall be suspended, in accordance with this subsection, to the extent necessary to reduce the sum of such payments and 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 in connection with a supplemental guarantee program established under section 1322a(g)(2) of this title.

(2) For purposes of this subsection, for a plan year—

(A) a plan is insolvent if—

(i) the plan has been amended to reduce benefits to the extent permitted by subsection (c), and

(ii) the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year; and

(B) "resource benefit level" and "available resources" have the meanings set forth in paragraphs (2) and (3), respectively, of section 1426(b) of this title.

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