

Subsec. (g)(4)(A)(ii). Pub. L. 99-272, §11005(c)(10), substituted “joint” for “concurrent” and “enacted” for “adopted”.

Subsec. (g)(4)(B). Pub. L. 99-272, §11005(c)(11), substituted “joint” for “concurrent” in two places and “The” for “That the Congress disapproves the” and inserted “is hereby disapproved”.

Subsec. (g)(4)(D). Pub. L. 99-272, §11005(c)(12), substituted “joint” for “concurrent”.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(6) [title IX, §951(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-586, provided that: “The amendments made by this section [amending this section] shall apply to any multiemployer plan that has not received financial assistance (within the meaning of section 4261 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1431]) within the 1-year period ending on the date of the enactment of this Act [Dec. 21, 2000].”

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7891(a)(1) of 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.

Amendment by section 7893(b) of Pub. L. 101-239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99-272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101-239, set out as a note under section 1002 of this title.

Section 7894(g)(3)(C)(ii) of Pub. L. 101-239 provided that: “The amendment made by clause (i) [amending this section] shall take effect as if originally included in section 102 of the Multiemployer Pension Plan Amendments Act of 1980 [Pub. L. 96-364].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective for plan years commencing after Dec. 31, 1985, see section 11005(d)(1) of Pub. L. 99-272, set out as a note under section 1306 of this title.

EFFECTIVE DATE

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

§ 1322b. Aggregate limit on benefits guaranteed; criteria applicable

(a) Notwithstanding sections 1322 and 1322a of this title, no person shall receive from the corporation pursuant to a guarantee by the corporation of basic benefits with respect to a participant under all multiemployer and single employer plans an amount, or amounts, with an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the amount determined under section 1322(b)(3)(B) of this title as of the date of the last plan termination.

(b) For purposes of this section—

(1) the receipt of benefits under a multiemployer plan receiving financial assistance from the corporation shall be considered the receipt of amounts from the corporation pursuant to a guarantee by the corporation of basic benefits except to the extent provided in regulations prescribed by the corporation, and

(2) the date on which a multiemployer plan, whether or not terminated, begins receiving financial assistance from the corporation shall be considered a date of plan termination.

(Pub. L. 93-406, title IV, §4022B, as added Pub. L. 96-364, title I, §102, Sept. 26, 1980, 94 Stat. 1215.)

EFFECTIVE DATE

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

§ 1323. Plan fiduciaries

Notwithstanding any other provision of this chapter, a fiduciary of a plan to which section 1321 of this title applies is not in violation of the fiduciary’s duties as a result of any act or of any withholding of action required by this subchapter.

(Pub. L. 93-406, title IV, §4023, as added Pub. L. 96-364, title IV, §402(a)(5), Sept. 26, 1980, 94 Stat. 1298.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of the title and Tables.

PRIOR PROVISIONS

A prior section 1323, Pub. L. 93-406, title IV, §4023, Sept. 2, 1974, 88 Stat. 1019, related to contingent liability coverage, prior to repeal by Pub. L. 96-364, title I, §107, Sept. 26, 1980, 94 Stat. 1267.

EFFECTIVE DATE

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

SUBTITLE C—TERMINATIONS

§ 1341. Termination of single-employer plans

(a) General rules governing single-employer plan terminations

(1) Exclusive means of plan termination

Except in the case of a termination for which proceedings are otherwise instituted by the corporation as provided in section 1342 of this title, a single-employer plan may be terminated only in a standard termination under subsection (b) of this section or a distress termination under subsection (c) of this section.

(2) 60-day notice of intent to terminate

Not less than 60 days before the proposed termination date of a standard termination under subsection (b) of this section or a distress termination under subsection (c) of this section, the plan administrator shall provide to each affected party (other than the corporation in the case of a standard termination) a written notice of intent to terminate stating that such termination is intended and the proposed termination date. The written notice shall include any related additional information required in regulations of the corporation.

(3) Adherence to collective bargaining agreements

The corporation shall not proceed with a termination of a plan under this section if the

termination would violate the terms and conditions of an existing collective bargaining agreement. Nothing in the preceding sentence shall be construed as limiting the authority of the corporation to institute proceedings to involuntarily terminate a plan under section 1342 of this title.

(b) Standard termination of single-employer plans

(1) General requirements

A single-employer plan may terminate under a standard termination only if—

(A) the plan administrator provides the 60-day advance notice of intent to terminate to affected parties required under subsection (a)(2) of this section,

(B) the requirements of subparagraphs (A) and (B) of paragraph (2) are met,

(C) the corporation does not issue a notice of noncompliance under subparagraph (C) of paragraph (2), and

(D) when the final distribution of assets occurs, the plan is sufficient for benefit liabilities (determined as of the termination date).

(2) Termination procedure

(A) Notice to the corporation

As soon as practicable after the date on which the notice of intent to terminate is provided pursuant to subsection (a)(2) of this section, the plan administrator shall send a notice to the corporation setting forth—

(i) certification by an enrolled actuary—

(I) of the projected amount of the assets of the plan (as of a proposed date of final distribution of assets),

(II) of the actuarial present value (as of such date) of the benefit liabilities (determined as of the proposed termination date) under the plan, and

(III) that the plan is projected to be sufficient (as of such proposed date of final distribution) for such benefit liabilities,

(ii) such information as the corporation may prescribe in regulations as necessary to enable the corporation to make determinations under subparagraph (C), and

(iii) certification by the plan administrator that—

(I) the information on which the enrolled actuary based the certification under clause (i) is accurate and complete, and

(II) the information provided to the corporation under clause (ii) is accurate and complete.

Clause (i) and clause (iii)(I) shall not apply to a plan described in section 412(i)¹ of title 26.

(B) Notice to participants and beneficiaries of benefit commitments²

No later than the date on which a notice is sent by the plan administrator under subparagraph (A), the plan administrator shall

send a notice to each person who is a participant or beneficiary under the plan—

(i) specifying the amount of the benefit liabilities (if any) attributable to such person as of the proposed termination date and the benefit form on the basis of which such amount is determined, and

(ii) including the following information used in determining such benefit liabilities:

(I) the length of service,

(II) the age of the participant or beneficiary,

(III) wages,

(IV) the assumptions, including the interest rate, and

(V) such other information as the corporation may require.

Such notice shall be written in such manner as is likely to be understood by the participant or beneficiary and as may be prescribed in regulations of the corporation.

(C) Notice from the corporation of non-compliance

(i) In general

Within 60 days after receipt of the notice under subparagraph (A), the corporation shall issue a notice of noncompliance to the plan administrator if—

(I) it determines, based on the notice sent under paragraph (2)(A) of subsection (b) of this section, that there is reason to believe that the plan is not sufficient for benefit liabilities,

(II) it otherwise determines, on the basis of information provided by affected parties or otherwise obtained by the corporation, that there is reason to believe that the plan is not sufficient for benefit liabilities, or

(III) it determines that any other requirement of subparagraph (A) or (B) of this paragraph or of subsection (a)(2) of this section has not been met, unless it further determines that the issuance of such notice would be inconsistent with the interests of participants and beneficiaries.

(ii) Extension

The corporation and the plan administrator may agree to extend the 60-day period referred to in clause (i) by a written agreement signed by the corporation and the plan administrator before the expiration of the 60-day period. The 60-day period shall be extended as provided in the agreement and may be further extended by subsequent written agreements signed by the corporation and the plan administrator made before the expiration of a previously agreed upon extension of the 60-day period. Any extension may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator.

(D) Final distribution of assets in absence of notice of noncompliance

The plan administrator shall commence the final distribution of assets pursuant to

¹ See References in Text note below.

² So in original. Probably should be "benefit liabilities".

the standard termination of the plan as soon as practicable after the expiration of the 60-day (or extended) period referred to in subparagraph (C), but such final distribution may occur only if—

(i) the plan administrator has not received during such period a notice of non-compliance from the corporation under subparagraph (C), and

(ii) when such final distribution occurs, the plan is sufficient for benefit liabilities (determined as of the termination date).

(3) Methods of final distribution of assets

(A) In general

In connection with any final distribution of assets pursuant to the standard termination of the plan under this subsection, the plan administrator shall distribute the assets in accordance with section 1344 of this title. In distributing such assets, the plan administrator shall—

(i) purchase irrevocable commitments from an insurer to provide all benefit liabilities under the plan, or

(ii) in accordance with the provisions of the plan and any applicable regulations, otherwise fully provide all benefit liabilities under the plan. A transfer of assets to the corporation in accordance with section 1350 of this title on behalf of a missing participant shall satisfy this subparagraph with respect to such participant.

(B) Certification to the corporation of final distribution of assets

Within 30 days after the final distribution of assets is completed pursuant to the standard termination of the plan under this subsection, the plan administrator shall send a notice to the corporation certifying that the assets of the plan have been distributed in accordance with the provisions of subparagraph (A) so as to pay all benefit liabilities under the plan.

(4) Continuing authority

Nothing in this section shall be construed to preclude the continued exercise by the corporation, after the termination date of a plan terminated in a standard termination under this subsection, of its authority under section 1303 of this title with respect to matters relating to the termination. A certification under paragraph (3)(B) shall not affect the corporation's obligations under section 1322 of this title.

(5) Special rule for certain plans where cessation or change in membership of a controlled group

(A) In general

Except as provided in subparagraph (B), if—

(i) there is³ transaction or series of transactions which result in a person ceasing to be a member of a controlled group, and

(ii) such person immediately before the transaction or series of transactions main-

tained a single-employer plan which is a defined benefit plan which is fully funded, then the interest rate used in determining whether the plan is sufficient for benefit liabilities or to otherwise assess plan liabilities for purposes of this subsection or section 1342(a)(4) of this title shall be not less than the interest rate used in determining whether the plan is fully funded.

(B) Limitations

Subparagraph (A) shall not apply to any transaction or series of transactions unless—

(i) any employer maintaining the plan immediately before or after such transaction or series of transactions—

(I) has an outstanding senior unsecured debt instrument which is rated investment grade by each of the nationally recognized statistical rating organizations for corporate bonds that has issued a credit rating for such instrument, or

(II) if no such debt instrument of such employer has been rated by such an organization but 1 or more of such organizations has made an issuer credit rating for such employer, all such organizations which have so rated the employer have rated such employer investment grade, and

(ii) the employer maintaining the plan after the transaction or series of transactions employs at least 20 percent of the employees located in the United States who were employed by such employer immediately before the transaction or series of transactions.

(C) Fully funded

For purposes of subparagraph (A), a plan shall be treated as fully funded with respect to any transaction or series of transactions if—

(i) in the case of a transaction or series of transactions which occur in a plan year beginning before January 1, 2008, the funded current liability percentage determined under section 1082(d) of this title for the plan year is at least 100 percent, and

(ii) in the case of a transaction or series of transactions which occur in a plan year beginning on or after such date, the funding target attainment percentage determined under section 1083 of this title is, as of the valuation date for such plan year, at least 100 percent.

(D) 2 year limitation

Subparagraph (A) shall not apply to any transaction or series of transactions if the plan referred to in subparagraph (A)(ii) is terminated under subsection (c) or section 1342 of this title after the close of the 2-year period beginning on the date on which the first such transaction occurs.

(c) Distress termination of single-employer plans

(1) In general

A single-employer plan may terminate under a distress termination only if—

(A) the plan administrator provides the 60-day advance notice of intent to terminate to

³So in original. The word "a" probably should appear.

affected parties required under subsection (a)(2) of this section,

(B) the requirements of subparagraph (A) of paragraph (2) are met, and

(C) the corporation determines that the requirements of subparagraphs (B) and (D) of paragraph (2) are met.

(2) Termination requirements

(A) Information submitted to the corporation

As soon as practicable after the date on which the notice of intent to terminate is provided pursuant to subsection (a)(2) of this section, the plan administrator shall provide the corporation, in such form as may be prescribed by the corporation in regulations, the following information:

(i) such information as the corporation may prescribe by regulation as necessary to make determinations under subparagraph (B) and paragraph (3);

(ii) unless the corporation determines the information is not necessary for purposes of paragraph (3)(A) or section 1362 of this title, certification by an enrolled actuary of—

(I) the amount (as of the proposed termination date and, if applicable, the proposed distribution date) of the current value of the assets of the plan,

(II) the actuarial present value (as of such dates) of the benefit liabilities under the plan,

(III) whether the plan is sufficient for benefit liabilities as of such dates,

(IV) the actuarial present value (as of such dates) of benefits under the plan guaranteed under section 1322 of this title, and

(V) whether the plan is sufficient for guaranteed benefits as of such dates;

(iii) in any case in which the plan is not sufficient for benefit liabilities as of such date—

(I) the name and address of each participant and beneficiary under the plan as of such date, and

(II) such other information as shall be prescribed by the corporation by regulation as necessary to enable the corporation to be able to make payments to participants and beneficiaries as required under section 1322(c) of this title; and

(iv) certification by the plan administrator that—

(I) the information on which the enrolled actuary based the certifications under clause (ii) is accurate and complete, and

(II) the information provided to the corporation under clauses (i) and (iii) is accurate and complete.

Clause (ii) and clause (iv)(I) shall not apply to a plan described in section 412(i)¹ of title 26.

(B) Determination by the corporation of necessary distress criteria

Upon receipt of the notice of intent to terminate required under subsection (a)(2) of

this section and the information required under subparagraph (A), the corporation shall determine whether the requirements of this subparagraph are met as provided in clause (i), (ii), or (iii). The requirements of this subparagraph are met if each person who is (as of the proposed termination date) a contributing sponsor of such plan or a member of such sponsor's controlled group meets the requirements of any of the following clauses:

(i) Liquidation in bankruptcy or insolvency proceedings

The requirements of this clause are met by a person if—

(I) such person has filed or has had filed against such person, as of the proposed termination date, a petition seeking liquidation in a case under title 11 or under any similar Federal law or law of a State or political subdivision of a State (or a case described in clause (ii) filed by or against such person has been converted, as of such date, to a case in which liquidation is sought), and

(II) such case has not, as of the proposed termination date, been dismissed.

(ii) Reorganization in bankruptcy or insolvency proceedings

The requirements of this clause are met by a person if—

(I) such person has filed, or has had filed against such person, as of the proposed termination date, a petition seeking reorganization in a case under title 11 or under any similar law of a State or political subdivision of a State (or a case described in clause (i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought),

(II) such case has not, as of the proposed termination date, been dismissed,

(III) such person timely submits to the corporation any request for the approval of the bankruptcy court (or other appropriate court in a case under such similar law of a State or political subdivision) of the plan termination, and

(IV) the bankruptcy court (or such other appropriate court) determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination.

(iii) Termination required to enable payment of debts while staying in business or to avoid unreasonably burdensome pension costs caused by declining workforce

The requirements of this clause are met by a person if such person demonstrates to the satisfaction of the corporation that—

(I) unless a distress termination occurs, such person will be unable to pay such person's debts when due and will be unable to continue in business, or

(II) the costs of providing pension coverage have become unreasonably burdensome to such person, solely as a result of a decline of such person's workforce covered as participants under all single-employer plans of which such person is a contributing sponsor.

(C) Notification of determinations by the corporation

The corporation shall notify the plan administrator as soon as practicable of its determinations made pursuant to subparagraph (B).

(D) Disclosure of termination information

(i) In general

A plan administrator that has filed a notice of intent to terminate under subsection (a)(2) shall provide to an affected party any information provided to the corporation under subsection (a)(2) not later than 15 days after—

(I) receipt of a request from the affected party for the information; or

(II) the provision of new information to the corporation relating to a previous request.

(ii) Confidentiality

(I) In general

The plan administrator shall not provide information under clause (i) in a form that includes any information that may directly or indirectly be associated with, or otherwise identify, an individual participant or beneficiary.

(II) Limitation

A court may limit disclosure under this subparagraph of confidential information described in section 552(b) of title 5 to any authorized representative of the participants or beneficiaries that agrees to ensure the confidentiality of such information.

(iii) Form and manner of information; charges

(I) Form and manner

The corporation may prescribe the form and manner of the provision of information under this subparagraph, which shall include delivery in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to individuals to whom the information is required to be provided.

(II) Reasonable charges

A plan administrator may charge a reasonable fee for any information provided under this subparagraph in other than electronic form.

(iv) Authorized representative

For purposes of this subparagraph, the term "authorized representative" means any employee organization representing participants in the pension plan.

(3) Termination procedure

(A) Determinations by the corporation relating to plan sufficiency for guaranteed benefits and for benefit liabilities

If the corporation determines that the requirements for a distress termination set forth in paragraphs (1) and (2) are met, the corporation shall—

(i) determine that the plan is sufficient for guaranteed benefits (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation,

(ii) determine that the plan is sufficient for benefit liabilities (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation, and

(iii) notify the plan administrator of the determinations made pursuant to this subparagraph as soon as practicable.

(B) Implementation of termination

After the corporation notifies the plan administrator of its determinations under subparagraph (A), the termination of the plan shall be carried out as soon as practicable, as provided in clause (i), (ii), or (iii).

(i) Cases of sufficiency for benefit liabilities

In any case in which the corporation determines that the plan is sufficient for benefit liabilities, the plan administrator shall proceed to distribute the plan's assets, and make certification to the corporation with respect to such distribution, in the manner described in subsection (b)(3) of this section, and shall take such other actions as may be appropriate to carry out the termination of the plan.

(ii) Cases of sufficiency for guaranteed benefits without a finding of sufficiency for benefit liabilities

In any case in which the corporation determines that the plan is sufficient for guaranteed benefits, but further determines that it is unable to determine that the plan is sufficient for benefit liabilities on the basis of the information made available to it, the plan administrator shall proceed to distribute the plan's assets in the manner described in subsection (b)(3) of this section, make certification to the corporation that the distribution has occurred, and take such actions as may be appropriate to carry out the termination of the plan.

(iii) Cases without any finding of sufficiency

In any case in which the corporation determines that it is unable to determine that the plan is sufficient for guaranteed benefits on the basis of the information made available to it, the corporation shall commence proceedings in accordance with section 1342 of this title.

(C) Finding after authorized commencement of termination that plan is unable to pay benefits

(i) Finding with respect to benefit liabilities which are not guaranteed benefits

If, after the plan administrator has begun to terminate the plan as authorized under subparagraph (B)(i), the plan administrator finds that the plan is unable, or will be unable, to pay benefit liabilities which are not benefits guaranteed by the corporation under section 1322 of this title, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter.

(ii) Finding with respect to guaranteed benefits

If, after the plan administrator has begun to terminate the plan as authorized by subparagraph (B)(i) or (ii), the plan administrator finds that the plan is unable, or will be unable, to pay all benefits under the plan which are guaranteed by the corporation under section 1322 of this title, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation concurs in the finding of the plan administrator (or the corporation itself makes such a finding), the corporation shall institute appropriate proceedings under section 1342 of this title.

(D) Administration of the plan during interim period

(i) In general

The plan administrator shall—

(I) meet the requirements of clause (ii) for the period commencing on the date on which the plan administrator provides a notice of distress termination to the corporation under subsection (a)(2) of this section and ending on the date on which the plan administrator receives notification from the corporation of its determinations under subparagraph (A), and

(II) meet the requirements of clause (ii) commencing on the date on which the plan administrator or the corporation makes a finding under subparagraph (C)(ii).

(ii) Requirements

The requirements of this clause are met by the plan administrator if the plan administrator—

(I) refrains from distributing assets or taking any other actions to carry out the proposed termination under this subsection,

(II) pays benefits attributable to employer contributions, other than death benefits, only in the form of an annuity,

(III) does not use plan assets to purchase irrevocable commitments to provide benefits from an insurer, and

(IV) continues to pay all benefit liabilities under the plan, but, commencing on the proposed termination date, limits

the payment of benefits under the plan to those benefits which are guaranteed by the corporation under section 1322 of this title or to which assets are required to be allocated under section 1344 of this title.

In the event the plan administrator is later determined not to have met the requirements for distress termination, any benefits which are not paid solely by reason of compliance with subclause (IV) shall be due and payable immediately (together with interest, at a reasonable rate, in accordance with regulations of the corporation).

(d) Sufficiency

For purposes of this section—

(1) Sufficiency for benefit liabilities

A single-employer plan is sufficient for benefit liabilities if there is no amount of unfunded benefit liabilities under the plan.

(2) Sufficiency for guaranteed benefits

A single-employer plan is sufficient for guaranteed benefits if there is no amount of unfunded guaranteed benefits under the plan.

(e) Limitation on the conversion of a defined benefit plan to a defined contribution plan

The adoption of an amendment to a plan which causes the plan to become a plan described in section 1321(b)(1) of this title constitutes a termination of the plan. Such an amendment may take effect only after the plan satisfies the requirements for standard termination under subsection (b) of this section or distress termination under subsection (c) of this section.

(Pub. L. 93-406, title IV, §4041, Sept. 2, 1974, 88 Stat. 1020; Pub. L. 96-364, title IV, §403(d), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99-272, title XI, §§11007, 11008(a), (b), 11009, Apr. 7, 1986, 100 Stat. 244, 247, 248; Pub. L. 100-203, title IX, §§9312(c)(1), (2), 9313(a)(1)-(2)(E), (b)(1)-(5), 9314(a), Dec. 22, 1987, 101 Stat. 1330-363 to 1330-366; Pub. L. 101-239, title VII, §§7881(f)(7), (g)(1)-(6), 7893(c), (d), Dec. 19, 1989, 103 Stat. 2440, 2441, 2447; Pub. L. 103-465, title VII, §§776(b)(3), 778(a)(1), (b)(1), Dec. 8, 1994, 108 Stat. 5048-5050; Pub. L. 109-280, title IV, §409(a), title V, §506(a), Aug. 17, 2006, 120 Stat. 933, 946.)

REFERENCES IN TEXT

Section 412, referred to in subsecs. (b)(2)(A) and (c)(2)(A), was amended generally by Pub. L. 109-280, title I, §111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, no longer contains a subsec. (i).

Chapter 11, referred to in subsec. (c)(2)(B)(ii)(IV), probably means chapter 11 of Title 11, Bankruptcy.

AMENDMENTS

2006—Subsec. (b)(5). Pub. L. 109-280, §409(a), added par. (5).

Subsec. (c)(1)(C). Pub. L. 109-280, §506(a)(2), substituted “subparagraphs (B) and (D)” for “subparagraph (B)”.

Subsec. (c)(2)(D). Pub. L. 109-280, §506(a)(1), added subpar. (D).

1994—Subsec. (b)(2)(C)(i)(I). Pub. L. 103-465, §778(a)(1)(A), added subcl. (I) and struck out former subcl. (I) which read as follows: “It has reason to be-

lieve that any requirement of subsection (a)(2) of this section or subparagraph (A) or (B) has not been met, or”.

Subsec. (b)(2)(C)(i)(III). Pub. L. 103-465, § 778(a)(1)(B), (C), added subcl. (III).

Subsec. (b)(3)(A)(ii). Pub. L. 103-465, § 776(b)(3), inserted at end “A transfer of assets to the corporation in accordance with section 1350 of this title on behalf of a missing participant shall satisfy this subparagraph with respect to such participant.”

Subsec. (c)(2)(B)(i)(I). Pub. L. 103-465, § 778(b)(1), inserted “Federal law or” after “under any similar”.

1989—Subsec. (b)(2)(A). Pub. L. 101-239, § 7881(g)(6), realigned margin of last sentence.

Subsec. (b)(2)(B). Pub. L. 101-239, § 7893(c), realigned margin of last sentence.

Subsec. (b)(3)(B). Pub. L. 101-239, § 7881(g)(4), inserted period at end.

Subsec. (c)(2)(A)(ii). Pub. L. 101-239, § 7881(g)(3), in introductory provisions, inserted “unless the corporation determines the information is not necessary for purposes of paragraph (3)(A) or section 1362 of this title,” before “certification”, in subcl. (I), inserted “and, if applicable, the proposed distribution date” after “termination date”, and in subcls. (II) to (V), substituted “dates” for “date”.

Subsec. (c)(2)(A)(iii)(II). Pub. L. 101-239, § 7881(f)(7)(A), (B), struck out “(or its designee under section 1349(b) of this title)” before “to be able” and substituted “section 1322(c) of this title” for “section 1349 of this title”.

Subsec. (c)(2)(B). Pub. L. 101-239, § 7881(g)(2), substituted “(as of the proposed termination date)” for “(as of the termination date)”.

Subsec. (c)(2)(B)(i), (ii). Pub. L. 101-239, § 7881(g)(5), made clarifying amendment to directory language of Pub. L. 100-203, § 9313(b)(3), see 1987 Amendment note below.

Subsec. (c)(3)(C)(i). Pub. L. 101-239, § 7881(f)(7)(C), struck out at end “If the corporation concurs in the finding of the plan administrator (or the corporation itself makes such a finding) the corporation shall take the actions set forth in subparagraph (B)(ii)(II) relating to the trust established for purposes of section 1349 of this title.”

Subsec. (c)(3)(D). Pub. L. 101-239, § 7893(d)(1), realigned margins.

Subsec. (c)(3)(D)(ii)(I). Pub. L. 101-239, § 7893(d)(2), substituted “under this subsection” for “of this subsection”.

Subsec. (d)(1). Pub. L. 101-239, § 7881(g)(1), substituted “sufficient for benefit liabilities” for “sufficient for benefit commitments”.

1987—Subsec. (b)(1)(D). Pub. L. 100-203, § 9313(a)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “when the final distribution of assets occurs, the plan is sufficient for benefit commitments (determined as of the termination date).”

Subsec. (b)(2)(A). Pub. L. 100-203, § 9314(a)(1)(B), inserted at end “Clause (i) and clause (iii)(I) shall not apply to a plan described in section 412(i) of title 26.”

Subsec. (b)(2)(A)(i). Pub. L. 100-203, § 9313(a)(2)(A), substituted “benefit liabilities” for “benefit commitments” in subcls. (II) and (III).

Subsec. (b)(2)(A)(iii). Pub. L. 100-203, § 9314(a)(1)(A), added cl. (iii) and struck out former cl. (iii) which read as follows: “certification by the plan administrator that the information on which the enrolled actuary based the certification under clause (i) and the information provided to the corporation under clause (ii) are accurate and complete.”

Subsec. (b)(2)(B). Pub. L. 100-203, § 9313(a)(2)(B), substituted “the amount of the benefit liabilities (if any) attributable to such person” for “the amount of such person’s benefit commitments (if any)” in cl. (i), and “such benefit liabilities” for “such benefit commitments” in cl. (ii).

Subsec. (b)(2)(C)(i)(II), (D)(ii). Pub. L. 100-203, § 9313(a)(2)(A), substituted “benefit liabilities” for “benefit commitments”.

Subsec. (b)(3)(A)(i). Pub. L. 100-203, § 9313(a)(2)(C)(i), added cl. (i) and struck out former cl. (i) which read as

follows: “purchase irrevocable commitments from an insurer to provide the benefit liabilities under the plan and all other benefits (if any) under the plan to which assets are required to be allocated under section 1344 of this title, or”.

Pub. L. 100-203, § 9313(a)(2)(A), substituted “benefit liabilities” for “benefit commitments”.

Subsec. (b)(3)(A)(ii). Pub. L. 100-203, § 9313(a)(2)(C)(i), added cl. (ii) and struck out former cl. (ii) which read as follows: “in accordance with the provisions of the plan and any applicable regulations of the corporation, otherwise fully provide the benefit liabilities under the plan and all other benefits (if any) under the plan to which assets are required to be allocated under section 1344 of this title.”

Pub. L. 100-203, § 9313(a)(2)(A), substituted “benefit liabilities” for “benefit commitments”.

Subsec. (b)(3)(B). Pub. L. 100-203, § 9313(a)(2)(C)(ii), substituted “so as to pay all benefit liabilities under the plan” for “so as to pay the benefit liabilities under the plan and all other benefits under the plan to which assets are required to be allocated under section 1344 of this title.”

Pub. L. 100-203, § 9313(a)(2)(A), substituted “benefit liabilities” for “benefit commitments”.

Subsec. (c)(2)(A). Pub. L. 100-203, § 9314(a)(1)(B), inserted at end “Clause (ii) and clause (iv)(I) shall not apply to a plan described in section 412(i) of title 26.”

Subsec. (c)(2)(A)(ii). Pub. L. 100-203, § 9313(a)(2)(D), substituted “benefit liabilities” for “benefit commitments” in subcls. (II) and (III).

Subsec. (c)(2)(A)(iii). Pub. L. 100-203, § 9313(a)(2)(D), substituted “benefit liabilities” for “benefit commitments” in introductory provision.

Subsec. (c)(2)(A)(iv). Pub. L. 100-203, § 9314(a)(2)(A), added cl. (iv) and struck out former cl. (iv) which read as follows: “certification by the plan administrator that the information on which the enrolled actuary based the certifications under clause (ii) and the information provided to the corporation under clauses (i) and (iii) are accurate and complete.”

Subsec. (c)(2)(B). Pub. L. 100-203, § 9313(b)(1)(A), substituted “a member” for “a substantial member” in introductory provisions.

Subsec. (c)(2)(B)(i). Pub. L. 100-203, § 9313(b)(3), as amended by Pub. L. 101-239, § 7881(g)(5), substituted “proposed termination date” for “termination date” in subcls. (I) and (II).

Pub. L. 100-203, § 9313(b)(4), inserted “(or a case described in clause (ii) filed by or against such person has been converted, as of such date, to a case in which liquidation is sought)” in subcl. (I).

Subsec. (c)(2)(B)(ii)(I). Pub. L. 100-203, § 9313(b)(3), as amended by Pub. L. 101-239, § 7881(g)(5), substituted “proposed termination date” for “termination date”.

Subsec. (c)(2)(B)(ii)(II). Pub. L. 100-203 § 9313(b)(5)(A), struck out “and” at end.

Pub. L. 100-203, § 9313(b)(3), as amended by Pub. L. 101-239, § 7881(g)(5), substituted “proposed termination date” for “termination date”.

Subsec. (c)(2)(B)(ii)(III). Pub. L. 100-203, § 9313(b)(5)(C), added subcl. (III). Former subcl. (III) redesignated (IV).

Subsec. (c)(2)(B)(ii)(IV). Pub. L. 100-203, § 9313(b)(2), (5)(B), (D), redesignated former subcl. (III) as (IV) and substituted “(or such other appropriate court) determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination” for “(or other appropriate court in a case under such similar law of a State or political subdivision) approves the termination”.

Subsec. (c)(2)(C), (D). Pub. L. 100-203, § 9313(b)(1)(B), redesignated former subpar. (D) as (C) and struck out former subpar. (C) which read as follows: “For purposes of subparagraph (B), the term ‘substantial member’ of a controlled group means a person whose assets comprise 5 percent or more of the total assets of the controlled group as a whole.”

Subsec. (c)(3)(A). Pub. L. 100-203, § 9313(a)(2)(D), substituted “benefit liabilities” for “benefit commitments” in heading and in cl. (ii).

Subsec. (c)(3)(B)(i). Pub. L. 100-203, §9313(a)(2)(D), substituted in heading and text “benefit liabilities” for “benefit commitments”.

Subsec. (c)(3)(B)(ii). Pub. L. 100-203, §9313(a)(2)(D), substituted in heading and text “benefit liabilities” for “benefit commitments”.

Pub. L. 100-203, §9312(c)(1), struck out former subcl. (I) designation and substituted comma for dash before “the plan administrator”, substituted period for “, and” after “termination of the plan”, and struck out former subcl. (II) which read as follows: “the corporation shall establish a separate trust in connection with the plan for purposes of section 1349 of this title.”

Subsec. (c)(3)(B)(iii). Pub. L. 100-203, §9312(c)(2), struck out former subcl. (I) designation and substituted comma for dash before “the corporation shall commence”, substituted period for “, and” after “section 1342 of this title”, and struck out former subcl. (II) which read as follows: “the corporation shall establish a separate trust in connection with the plan for purposes of section 1349 of this title unless the corporation determines that all benefit commitments under the plan are benefits guaranteed by the corporation under section 1322 of this title.”

Subsec. (c)(3)(C)(i). Pub. L. 100-203, §9313(a)(2)(D), substituted in heading and text “benefit liabilities” for “benefit commitments”.

Subsec. (c)(3)(D)(ii)(IV). Pub. L. 100-203, §9313(a)(2)(D), substituted “benefit liabilities” for “benefit commitments”.

Subsec. (d)(1). Pub. L. 100-203, §9313(a)(2)(E), substituted in text, “no amount of unfunded benefit liabilities” for “no amount of unfunded benefit commitments” and in heading, “benefit liabilities” for “benefit commitments”.

1986—Subsec. (a). Pub. L. 99-272, §11007(a), added subsec. (a) relating to general rules governing single-employer plan terminations and struck out former subsec. (a) relating to filing of notice that the plan is to be terminated.

Subsec. (b). Pub. L. 99-272, §§11007(a), 11008(a), added subsec. (b) relating to standard termination of single-employer plans and struck out former subsec. (b) relating to notice of sufficiency of plan assets.

Subsec. (c). Pub. L. 99-272, §§11007(a), 11009(a), added subsec. (c) relating to distress termination of single-employer plans and struck out former subsec. (c) relating to a finding and notice of inability to determine that the assets of a plan are sufficient.

Subsec. (d). Pub. L. 99-272, §11007(b), amended subsec. (d) generally, substituting provisions relating to sufficiency for benefit commitments and for guaranteed benefits, for provisions relating to an extension of the 90-day period upon written agreement.

Subsec. (e). Pub. L. 99-272, §11009(b), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to notification and appropriate proceedings upon a finding after authorized commencement of termination that the plan is unable to pay basic benefits when due.

Subsec. (f). Pub. L. 99-272, §11009(b)(2), redesignated subsec. (f) as (e).

Pub. L. 99-272, §11008(b), amended subsec. (f) generally, substituting provisions relating to limitation on the conversion of a defined benefit plan to a defined contribution plan, for provisions relating to amendment of a plan with respect to which basic benefits are guaranteed.

1980—Subsec. (a). Pub. L. 96-364, §403(d)(2), inserted “single-employer” after “termination of a”.

Subsec. (g). Pub. L. 96-364, §403(d)(3), struck out subsec. (g) which related to petition to the appropriate court for appointment of a trustee.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title IV, §409(b), Aug. 17, 2006, 120 Stat. 934, provided that: “The amendments made by this section [amending this section] shall apply to any transaction or series of transactions occurring on and after the date of the enactment of this Act [Aug. 17, 2006].”

Pub. L. 109-280, title V, §506(c), Aug. 17, 2006, 120 Stat. 948, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 1342 of this title] shall apply to any plan termination under title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301 et seq.) with respect to which the notice of intent to terminate (or in the case of a termination by the Pension Benefit Guaranty Corporation, a notice of determination under section 4042 of such Act (29 U.S.C. 1342)) occurs after the date of enactment of this Act [Aug. 17, 2006].

“(2) TRANSITION RULE.—If notice under section 4041(c)(2)(D) or 4042(c)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1341(c)(2)(D), 1342(c)(3)] (as added by this section) would otherwise be required to be provided before the 90th day after the date of the enactment of this Act [Aug. 17, 2006], such notice shall not be required to be provided until such 90th day.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 776(b)(3) of Pub. L. 103-465 effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103-465, set out as a note under section 1056 of this title.

Section 778(a)(2) of Pub. L. 103-465 provided that: “The amendments made by this subsection [amending this section] shall apply to any plan termination under section 4041(b) of the Employee Retirement Income Security Act of 1974 [subsec. (b) of this section] with respect to which the Pension Benefit Guaranty Corporation has not, as of the date of enactment of this Act [Dec. 8, 1994], issued a notice of noncompliance that has become final, or otherwise issued a final determination that the plan termination is nullified.”

Section 778(b)(2) of Pub. L. 103-465 provided that: “The amendment made by this subsection [amending this section] shall be effective as if included in the Single-Employer Pension Plan Amendments Act of 1986 [Pub. L. 99-272, title XI].”

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(7), (g)(1)–(6) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100-203, §§9302-9346, to which such amendment relates, see section 7882 of Pub. L. 101-239, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 7893(c), (d) of Pub. L. 101-239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99-272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101-239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9312(c)(1), (2) of Pub. L. 100-203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100-203, as amended, set out as a note under section 1301 of this title.

Amendment by section 9313(a)(1)–(2)(E), (b)(1)–(5) of Pub. L. 100-203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, see section 9313(c) of Pub. L. 100-203, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 11019 of title XI of Pub. L. 99-272 provided that:

“(a) IN GENERAL.—Except as otherwise provided in this title, the amendments made by this title [see Short Title of 1986 Amendment note set out under section 1001 of this title] shall be effective as of January 1, 1986, except that such amendments shall not apply with respect to terminations for which—

“(1) notices of intent to terminate were filed with the Pension Benefit Guaranty Corporation under section 4041 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1341] before such date, or

“(2) proceedings were commenced under section 4042 of such Act [29 U.S.C. 1342] before such date.

“(b) TRANSITIONAL RULES.—

“(1) IN GENERAL.—In the case of a single-employer plan termination for which a notice of intent to terminate was filed with the Pension Benefit Guaranty Corporation under section 4041 of the Employee Retirement Income Security Act of 1974 (as in effect before the amendments made by this title) [29 U.S.C. 1341] on or after January 1, 1986, but before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this title [see Short Title of 1986 Amendment note set out under section 1001 of this title] shall apply with respect to such termination, as modified by paragraphs (2) and (3).

“(2) DEEMED COMPLIANCE WITH NOTICE REQUIREMENTS.—The requirements of subsections (a)(2), (b)(1)(A), and (c)(1)(A) of section 4041 of the Employee Retirement Income Security Act of 1974 (as amended by this title) [29 U.S.C. 1341] shall be considered to have been met with respect to a termination described in paragraph (1) if—

“(A) the plan administrator provided notice to the participants in the plan regarding the termination in compliance with applicable regulations of the Pension Benefit Guaranty Corporation as in effect on the date of the notice, and

“(B) the notice of intent to terminate provided to the Pension Benefit Guaranty Corporation in connection with the termination was filed with the Corporation not less than 10 days before the proposed date of termination specified in the notice.

For purposes of section 4041 of such Act (as amended by this title), the proposed date of termination specified in the notice of intent to terminate referred to in subparagraph (B) shall be considered the proposed termination date.

“(3) SPECIAL TERMINATION PROCEDURES.—

“(A) IN GENERAL.—This paragraph shall apply with respect to any termination described in paragraph (1) if, within 90 days after the date of enactment of this Act [Apr. 7, 1986], the plan administrator notifies the Corporation in writing—

“(i) that the plan administrator wishes the termination to proceed as a standard termination under section 4041(b) of the Employee Retirement Income Security Act of 1974 (as amended by this title) [29 U.S.C. 1341(b)] in accordance with subparagraph (B),

“(ii) that the plan administrator wishes the termination to proceed as a distress termination under section 4041(c) of such Act (as amended by this title) in accordance with subparagraph (C), or

“(iii) that the plan administrator wishes to stop the termination proceedings in accordance with subparagraph (D).

“(B) TERMINATIONS PROCEEDING AS STANDARD TERMINATION.—

“(i) TERMINATIONS FOR WHICH SUFFICIENCY NOTICES HAVE NOT BEEN ISSUED.—

“(I) IN GENERAL.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(i) and with respect to which a notice of sufficiency has not been issued by the Corporation before the date of the enactment of this Act, if, during the 90-day period commencing on the date of the notice required in subclause (II), all benefit commitments under the plan have been

satisfied, the termination shall be treated as a standard termination under section 4041(b) of such Act (as amended by this title).

“(II) SPECIAL NOTICE REGARDING SUFFICIENCY FOR TERMINATIONS FOR WHICH NOTICES OF SUFFICIENCY HAVE NOT BEEN ISSUED AS OF DATE OF ENACTMENT.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(i) and with respect to which a notice of sufficiency has not been issued by the Corporation before the date of the enactment of this Act, the Corporation shall make the determinations described in section 4041(c)(3)(A)(i) and (ii) (as amended by this title) and notify the plan administrator of such determinations as provided in section 4041(c)(3)(A)(iii) (as amended by this title).

“(ii) TERMINATIONS FOR WHICH NOTICES OF SUFFICIENCY HAVE BEEN ISSUED.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(i) and with respect to which a notice of sufficiency has been issued by the Corporation before the date of the enactment of this Act, clause (i)(I) shall apply, except that the 90-day period referred to in clause (i)(I) shall begin on the date of the enactment of this Act.

“(C) TERMINATIONS PROCEEDING AS DISTRESS TERMINATION.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(ii), if the requirements of section 4041(c)(2)(B) of such Act (as amended by this title) are met, the termination shall be treated as a distress termination under section 4041(c) of such Act (as amended by this title).

“(D) TERMINATION OF PROCEEDINGS BY PLAN ADMINISTRATOR.—

“(i) IN GENERAL.—Except as provided in clause (ii), in the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(iii), the termination shall not take effect.

“(ii) TERMINATIONS WITH RESPECT TO WHICH FINAL DISTRIBUTION OF ASSETS HAS COMMENCED.—Clause (i) shall not apply with respect to a termination with respect to which the final distribution of assets has commenced before the date of the enactment of this Act unless, within 90 days after the date of the enactment of this Act, the plan has been restored in accordance with procedures issued by the Corporation pursuant to subsection (c).

“(E) AUTHORITY OF CORPORATION TO EXTEND 90-DAY PERIODS TO PERMIT STANDARD TERMINATION.—The Corporation may, on a case-by-case basis in accordance with subsection (c), provide for extensions of the applicable 90-day period referred to in clause (i) or (ii) of subparagraph (B) if it is demonstrated to the satisfaction of the Corporation that—

“(i) the plan could not otherwise, pursuant to the preceding provisions of this paragraph, terminate in a termination treated as a standard termination under section 4041(b) of the Employee Retirement Income Security Act of 1974 (as amended by this title), and

“(ii) the extension would result in a greater likelihood that benefit commitments under the plan would be paid in full,

except that any such period may not be so extended beyond one year after the date of the enactment of this Act.

“(c) AUTHORITY TO PRESCRIBE TEMPORARY PROCEDURES.—The Pension Benefit Guaranty Corporation may prescribe temporary procedures for purposes of carrying out the amendments made by this title [see Short Title of 1986 Amendment note set out under sec-

tion 1001 of this title] during the 180-day period beginning on the date described in subsection (a)."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

60-DAY EXTENSION BY PENSION BENEFIT GUARANTY CORPORATION FOR NOTICE OF NONCOMPLIANCE

Section 11008(c) of Pub. L. 99-272 provided that: "In the case of a standard termination of a plan under section 4041(b) of the Employee Retirement Income Security Act of 1974 (as amended by this section) [29 U.S.C. 1341(b)] with respect to which a notice of intent to terminate is filed before 120 days after the date of the enactment of this Act [Apr. 7, 1986], the Pension Benefit Guaranty Corporation may, without the consent of the plan administrator, extend the 60-day period under section 4041(b)(2)(C)(i) of such Act (as so amended) for a period not to exceed 60 days."

SPECIAL TEMPORARY RULE FOR TERMINATION OF SINGLE-EMPLOYER PLAN

Section 11008(d) of Pub. L. 99-272 provided that: "(1) REQUIREMENTS TO BE MET BEFORE FINAL DISTRIBUTION OF ASSETS.—In the case of the termination of a single-employer plan described in paragraph (2) with respect to which the amount payable to the employer pursuant to section 4044(d) [29 U.S.C. 1344(d)] exceeds \$1,000,000 (determined as of the proposed date of final distribution of assets), the final distribution of assets pursuant to such termination may not occur unless the Pension Benefit Guaranty Corporation—

"(A) determines that the assets of the plan are sufficient for benefit commitments (within the meaning of section 4041(d)(1) of the Employee Retirement Income Security Act of 1974 (as amended by section 11007) [29 U.S.C. 1341(d)(1)]) under the plan, and

"(B) issues to the plan administrator a written notice setting forth the determination described in subparagraph (A).

"(2) PLANS TO WHICH SUBSECTION APPLIES.—A single-employer plan is described in this paragraph if—

"(A) the plan administrator has filed a notice of intent to terminate with the Pension Benefit Guaranty Corporation, and—

"(i) the filing was made before January 1, 1986, and the Corporation has not issued a notice of sufficiency for such plan before the date of the enactment of this Act [Apr. 7, 1986], or

"(ii) the filing is made on or after January 1, 1986, and before 60 days after the date of the enactment of this Act and the Corporation has not issued a notice of sufficiency for such plan before the date of the enactment of this Act, and

"(B) of the persons who are (as of the termination date) participants in the plan, the lesser of 10 percent or 200 have filed complaints with the Corporation regarding such termination—

"(i) in the case of plans described in subparagraph (A)(i), before 15 days after the date of the enactment of this Act, or

"(ii) in any other case, before the later of 15 days after the date of the enactment of this Act or 45 days after the date of the filing of such notice.

"(3) CONSIDERATION OF COMPLAINTS.—The Corporation shall consider and respond to such complaints not later than 90 days after the date on which the Corporation makes the determination described in paragraph (1)(A). The Corporation may hold informal hearings to expedite consideration of such complaints. Any such hearing shall be exempt from the requirements of chapter 5 of title 5, United States Code.

"(4) DELAY ON ISSUANCE OF NOTICE.—

"(A) GENERAL RULE.—Except as provided in subparagraph (B), the Corporation shall not issue any notice described in paragraph (1)(B) until 90 days after the date on which the Corporation makes the determination described in paragraph (1)(A).

"(B) EXCEPTION IN CASES OF SUBSTANTIAL BUSINESS HARDSHIP.—Except in the case of an acquisition, takeover, or leveraged buyout, the preceding provisions of this subsection shall not apply if the contributing sponsor demonstrates to the satisfaction of the Corporation that the contributing sponsor is experiencing substantial business hardship. For purposes of this subparagraph, a contributing sponsor shall be considered as experiencing substantial business hardship if the contributing sponsor has been operating, and can demonstrate that the contributing sponsor will continue to operate, at an economic loss."

§ 1341a. Termination of multiemployer plans

(a) Determinative factors

Termination of a multiemployer plan under this section occurs as a result of—

(1) the adoption after September 26, 1980, of a plan amendment which provides that participants will receive no credit for any purpose under the plan for service with any employer after the date specified by such amendment;

(2) the withdrawal of every employer from the plan, within the meaning of section 1383 of this title, or the cessation of the obligation of all employers to contribute under the plan; or

(3) the adoption of an amendment to the plan which causes the plan to become a plan described in section 1321(b)(1) of this title.

(b) Date of termination

(1) The date on which a plan terminates under paragraph (1) or (3) of subsection (a) of this section is the later of—

(A) the date on which the amendment is adopted, or

(B) the date on which the amendment takes effect.

(2) The date on which a plan terminates under paragraph (2) of subsection (a) of this section is the earlier of—

(A) the date on which the last employer withdraws, or

(B) the first day of the first plan year for which no employer contributions were required under the plan.

(c) Duties of plan sponsor of amended plan

Except as provided in subsection (f)(1) of this section, the plan sponsor of a plan which terminates under paragraph (2) of subsection (a) of this section shall—

(1) limit the payment of benefits to benefits which are nonforfeitable under the plan as of the date of the termination, and

(2) pay benefits attributable to employer contributions, other than death benefits, only in the form of an annuity, unless the plan assets are distributed in full satisfaction of all nonforfeitable benefits under the plan.

(d) Duties of plan sponsor of nonoperative plan

The plan sponsor of a plan which terminates under paragraph (2) of subsection (a) of this section shall reduce benefits and suspend benefit payments in accordance with section 1441 of this title.

(e) Amount of contribution of employer under amended plan for each plan year subsequent to plan termination date

In the case of a plan which terminates under paragraph (1) or (3) of subsection (a) of this sec-

tion, the rate of an employer's contributions under the plan for each plan year beginning on or after the plan termination date shall equal or exceed the highest rate of employer contributions at which the employer had an obligation to contribute under the plan in the 5 preceding plan years ending on or before the plan termination date, unless the corporation approves a reduction in the rate based on a finding that the plan is or soon will be fully funded.

(f) Payment of benefits; reporting requirements for terminated plans and rules and standards for administration of such plans

(1) The plan sponsor of a terminated plan may authorize the payment other than in the form of an annuity of a participant's entire nonforfeitable benefit attributable to employer contributions, other than a death benefit, if the value of the entire nonforfeitable benefit does not exceed \$1,750. The corporation may authorize the payment of benefits under the terms of a terminated plan other than nonforfeitable benefits, or the payment other than in the form of an annuity of benefits having a value greater than \$1,750, if the corporation determines that such payment is not adverse to the interest of the plan's participants and beneficiaries generally and does not unreasonably increase the corporation's risk of loss with respect to the plan.

(2) The corporation may prescribe reporting requirements for terminated plans, and rules and standards for the administration of such plans, which the corporation considers appropriate to protect the interests of plan participants and beneficiaries or to prevent unreasonable loss to the corporation.

(Pub. L. 93-406, title IV, § 4041A, as added Pub. L. 96-364, title I, § 103, Sept. 26, 1980, 94 Stat. 1216.)

EFFECTIVE DATE

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

§ 1342. Institution of termination proceedings by the corporation

(a) Authority to institute proceedings to terminate a plan

The corporation may institute proceedings under this section to terminate a plan whenever it determines that—

(1) the plan has not met the minimum funding standard required under section 412 of title 26, or has been notified by the Secretary of the Treasury that a notice of deficiency under section 6212 of title 26 has been mailed with respect to the tax imposed under section 4971(a) of title 26,

(2) the plan will be unable to pay benefits when due,

(3) the reportable event described in section 1343(c)(7) of this title has occurred, or

(4) the possible long-run loss of the corporation with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.

The corporation shall as soon as practicable institute proceedings under this section to terminate a single-employer plan whenever the corporation determines that the plan does not have

assets available to pay benefits which are currently due under the terms of the plan. The corporation may prescribe a simplified procedure to follow in terminating small plans as long as that procedure includes substantial safeguards for the rights of the participants and beneficiaries under the plans, and for the employers who maintain such plans (including the requirement for a court decree under subsection (c) of this section). Notwithstanding any other provision of this subchapter, the corporation is authorized to pool assets of terminated plans for purposes of administration, investment, payment of liabilities of all such terminated plans, and such other purposes as it determines to be appropriate in the administration of this subchapter.

(b) Appointment of trustee

(1) Whenever the corporation makes a determination under subsection (a) of this section with respect to a plan or is required under subsection (a) of this section to institute proceedings under this section, it may, upon notice to the plan, apply to the appropriate United States district court for the appointment of a trustee to administer the plan with respect to which the determination is made pending the issuance of a decree under subsection (c) of this section ordering the termination of the plan. If within 3 business days after the filing of an application under this subsection, or such other period as the court may order, the administrator of the plan consents to the appointment of a trustee, or fails to show why a trustee should not be appointed, the court may grant the application and appoint a trustee to administer the plan in accordance with its terms until the corporation determines that the plan should be terminated or that termination is unnecessary. The corporation may request that it be appointed as trustee of a plan in any case.

(2) Notwithstanding any other provision of this subchapter—

(A) upon the petition of a plan administrator or the corporation, the appropriate United States district court may appoint a trustee in accordance with the provisions of this section if the interests of the plan participants would be better served by the appointment of the trustee, and

(B) upon the petition of the corporation, the appropriate United States district court shall appoint a trustee proposed by the corporation for a multiemployer plan which is in reorganization or to which section 1341a(d) of this title applies, unless such appointment would be adverse to the interests of the plan participants and beneficiaries in the aggregate.

(3) The corporation and plan administrator may agree to the appointment of a trustee without proceeding in accordance with the requirements of paragraphs (1) and (2).

(c) Adjudication that plan must be terminated

(1) If the corporation is required under subsection (a) of this section to commence proceedings under this section with respect to a plan or, after issuing a notice under this section to a plan administrator, has determined that the plan should be terminated, it may, upon notice

to the plan administrator, apply to the appropriate United States district court for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the liability of the fund. If the trustee appointed under subsection (b) of this section disagrees with the determination of the corporation under the preceding sentence he may intervene in the proceeding relating to the application for the decree, or make application for such decree himself. Upon granting a decree for which the corporation or trustee has applied under this subsection the court shall authorize the trustee appointed under subsection (b) of this section (or appoint a trustee if one has not been appointed under such subsection and authorize him) to terminate the plan in accordance with the provisions of this subtitle. If the corporation and the plan administrator agree that a plan should be terminated and agree to the appointment of a trustee without proceeding in accordance with the requirements of this subsection (other than this sentence) the trustee shall have the power described in subsection (d)(1) of this section and, in addition to any other duties imposed on the trustee under law or by agreement between the corporation and the plan administrator, the trustee is subject to the duties described in subsection (d)(3) of this section. Whenever a trustee appointed under this subchapter is operating a plan with discretion as to the date upon which final distribution of the assets is to be commenced, the trustee shall notify the corporation at least 10 days before the date on which he proposes to commence such distribution.

(2) In the case of a proceeding initiated under this section, the plan administrator shall provide the corporation, upon the request of the corporation, the information described in clauses (ii), (iii), and (iv) of section 1341(c)(2)(A) of this title.

(3) DISCLOSURE OF TERMINATION INFORMATION.—

(A) IN GENERAL.—

(i) INFORMATION FROM PLAN SPONSOR OR ADMINISTRATOR.—A plan sponsor or plan administrator of a single-employer plan that has received a notice from the corporation of a determination that the plan should be terminated under this section shall provide to an affected party any information provided to the corporation in connection with the plan termination.

(ii) INFORMATION FROM CORPORATION.—The corporation shall provide a copy of the administrative record, including the trusteeship decision record of a termination of a plan described under clause (i).

(B) TIMING OF DISCLOSURE.—The plan sponsor, plan administrator, or the corporation, as applicable, shall provide the information described in subparagraph (A) not later than 15 days after—

(i) receipt of a request from an affected party for such information; or

(ii) in the case of information described under subparagraph (A)(i), the provision of any new information to the corporation relating to a previous request by an affected party.

(C) CONFIDENTIALITY.—

(i) IN GENERAL.—The plan administrator and plan sponsor shall not provide information under subparagraph (A)(i) in a form which includes any information that may directly or indirectly be associated with, or otherwise identify, an individual participant or beneficiary.

(ii) LIMITATION.—A court may limit disclosure under this paragraph of confidential information described in section 552(b) of title 5 to authorized representatives (within the meaning of section 1341(c)(2)(D)(iv) of this title) of the participants or beneficiaries that agree to ensure the confidentiality of such information.

(D) FORM AND MANNER OF INFORMATION; CHARGES.—

(i) FORM AND MANNER.—The corporation may prescribe the form and manner of the provision of information under this paragraph, which shall include delivery in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to individuals to whom the information is required to be provided.

(ii) REASONABLE CHARGES.—A plan sponsor may charge a reasonable fee for any information provided under this paragraph in other than electronic form.

(d) Powers of trustee

(1)(A) A trustee appointed under subsection (b) of this section shall have the power—

(i) to do any act authorized by the plan or this subchapter to be done by the plan administrator or any trustee of the plan;

(ii) to require the transfer of all (or any part) of the assets and records of the plan to himself as trustee;

(iii) to invest any assets of the plan which he holds in accordance with the provisions of the plan, regulations of the corporation, and applicable rules of law;

(iv) to limit payment of benefits under the plan to basic benefits or to continue payment of some or all of the benefits which were being paid prior to his appointment;

(v) in the case of a multiemployer plan, to reduce benefits or suspend benefit payments under the plan, give appropriate notices, amend the plan, and perform other acts required or authorized by subtitle (E) of this subchapter to be performed by the plan sponsor or administrator;

(vi) to do such other acts as he deems necessary to continue operation of the plan without increasing the potential liability of the corporation, if such acts may be done under the provisions of the plan; and

(vii) to require the plan sponsor, the plan administrator, any contributing or withdrawn employer, and any employee organization representing plan participants to furnish any information with respect to the plan which the trustee may reasonably need in order to administer the plan.

If the court to which application is made under subsection (c) of this section dismisses the application with prejudice, or if the corporation fails

to apply for a decree under subsection (c) of this section, within 30 days after the date on which the trustee is appointed under subsection (b) of this section, the trustee shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of such 30-day period, and shall not be liable to the plan or any other person for his acts as trustee except for willful misconduct, or for conduct in violation of the provisions of part 4 of subtitle B of subchapter I of this chapter (except as provided in subsection (d)(1)(A)(v) of this section). The 30-day period referred to in this subparagraph may be extended as provided by agreement between the plan administrator and the corporation or by court order obtained by the corporation.

(B) If the court to which an application is made under subsection (c) of this section issues the decree requested in such application, in addition to the powers described in subparagraph (A), the trustee shall have the power—

- (i) to pay benefits under the plan in accordance with the requirements of this subchapter;
- (ii) to collect for the plan any amounts due the plan, including but not limited to the power to collect from the persons obligated to meet the requirements of section 1082 of this title or the terms of the plan;
- (iii) to receive any payment made by the corporation to the plan under this subchapter;
- (iv) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan;
- (v) to issue, publish, or file such notices, statements, and reports as may be required by the corporation or any order of the court;
- (vi) to liquidate the plan assets;
- (vii) to recover payments under section 1345(a) of this title; and
- (viii) to do such other acts as may be necessary to comply with this subchapter or any order of the court and to protect the interests of plan participants and beneficiaries.

(2) As soon as practicable after his appointment, the trustee shall give notice to interested parties of the institution of proceedings under this subchapter to determine whether the plan should be terminated or to terminate the plan, whichever is applicable. For purposes of this paragraph, the term “interested party” means—

- (A) the plan administrator,
- (B) each participant in the plan and each beneficiary of a deceased participant,
- (C) each employer who may be subject to liability under section 1362, 1363, or 1364 of this title,
- (D) each employer who is or may be liable to the plan under section¹ part 1 of subtitle E of this subchapter,
- (E) each employer who has an obligation to contribute, within the meaning of section 1392(a) of this title, under a multiemployer plan, and
- (F) each employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer described in subparagraph (C), (D), or (E).

(3) Except to the extent inconsistent with the provisions of this chapter, or as may be otherwise ordered by the court, a trustee appointed under this section shall be subject to the same duties as those of a trustee under section 704 of title 11, and shall be, with respect to the plan, a fiduciary within the meaning of paragraph (21) of section 1002 of this title and under section 4975(e) of title 26 (except to the extent that the provisions of this subchapter are inconsistent with the requirements applicable under part 4 of subtitle B of subchapter I of this chapter and of section 4975).

(e) Filing of application notwithstanding pendency of other proceedings

An application by the corporation under this section may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

(f) Exclusive jurisdiction; stay of other proceedings

Upon the filing of an application for the appointment of a trustee or the issuance of a decree under this section, the court to which an application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of the United States having jurisdiction over cases under chapter 11 of title 11. Pending an adjudication under subsection (c) of this section such court shall stay, and upon appointment by it of a trustee, as provided in this section such court shall continue the stay of, any pending mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan or its property and any other suit against any receiver, conservator, or trustee of the plan or its property. Pending such adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the plan or any other suit against the plan.

(g) Venue

An action under this subsection may be brought in the judicial district where the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

(h) Compensation of trustee and professional service personnel appointed or retained by trustee

(1) The amount of compensation paid to each trustee appointed under the provisions of this subchapter shall require the prior approval of the corporation, and, in the case of a trustee appointed by a court, the consent of that court.

(2) Trustees shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel in accordance with regulations prescribed by the corporation.

(Pub. L. 93-406, title IV, §4042, Sept. 2, 1974, 88 Stat. 1021; Pub. L. 95-598, title III, §321(a), Nov.

¹ So in original.

6, 1978, 92 Stat. 2678; Pub. L. 96-364, title IV, § 402(a)(6), Sept. 26, 1980, 94 Stat. 1298; Pub. L. 99-272, title XI, §§ 11010, 11016(c)(10), (11), Apr. 7, 1986, 100 Stat. 253, 274; Pub. L. 100-203, title IX, §§ 9312(c)(3), 9314(b), 9314(b), Dec. 22, 1987, 101 Stat. 1330-363, 1330-366, 1330-367; Pub. L. 101-239, title VII, §§ 7881(g)(7), 7891(a)(1), 7893(e), Dec. 19, 1989, 103 Stat. 2441, 2445, 2447; Pub. L. 103-465, title VII, § 771(e)(2), Dec. 8, 1994, 108 Stat. 5043; Pub. L. 109-280, title V, § 506(b), Aug. 17, 2006, 120 Stat. 947.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(3), was in the original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109-280 designated first par. as par. (1), redesignated par. (3) as (2), and added a new par. (3).

1994—Subsec. (a)(3). Pub. L. 103-465 substituted "1343(c)(7)" for "1343(b)(7)".

1989—Subsec. (a). Pub. L. 101-239, § 7893(e), inserted period after "terms of the plan" at end of second sentence.

Pub. L. 101-239, § 7881(g)(7), made technical correction to directory language of Pub. L. 100-203, § 9314(b), see 1987 Amendment note below.

Subsecs. (a)(1), (d)(3). Pub. L. 101-239, § 7891(a)(1), 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.

1987—Subsec. (a). Pub. L. 100-203, § 9314(b), as amended by Pub. L. 101-239, § 7881(g)(7), amended last sentence generally. Prior to amendment, last sentence read as follows: "The corporation is authorized to pool the assets of terminated plans for purposes of administration and such other purposes, not inconsistent with its duties to the plan participants and the employer maintaining the plan under this subchapter, as it determines to be required for the efficient administration of this subchapter." Another section 9314(b) of Pub. L. 100-203 amended subsec. (c) of this section, see below.

Subsec. (c)(3). Pub. L. 100-203, § 9314(b), added par. (3). Another section 9314(b) of Pub. L. 100-203 amended subsec. (a) of this section, see above.

Subsec. (i). Pub. L. 100-203, § 9312(c)(3), struck out subsec. (i) which read as follows: "In any case in which a plan is terminated under this section in a termination proceeding initiated by the corporation pursuant to subsection (a) of this section, the corporation shall establish a separate trust in connection with the plan for purposes of section 1349 of this title, unless the corporation determines that all benefit commitments under the plan are benefits guaranteed by the corporation under section 1322 of this title or that there is no amount of unfunded benefit commitments under the plan."

1986—Pub. L. 99-272, § 11010(c), substituted "Institution of termination proceedings by the corporation" for "Termination by corporation" in section catchline.

Subsec. (a). Pub. L. 99-272, § 11010(a)(1)(B), in provision following par. (4) inserted provision that the corporation as soon as practicable institute proceedings under this section to terminate a single-employer plan whenever the corporation determines that the plan does not have assets available to pay benefits currently due under the terms of the plan.

Subsec. (a)(2). Pub. L. 99-272, § 11010(a)(1)(A), substituted "will be" for "is".

Subsec. (b)(1). Pub. L. 99-272, § 11010(a)(2)(A), inserted "or is required under subsection (a) of this section to institute proceedings under this section,".

Subsec. (c). Pub. L. 99-272, § 11010(a)(2)(B), substituted "is required under subsection (a) of this section to commence proceedings under this section with respect to a plan or, after issuing a notice under this section to a plan administrator," for "has issued a notice under this section to a plan administrator and (whether or not a trustee has been appointed under subsection (b) of this section)".

Subsec. (d)(1)(B)(ii). Pub. L. 99-272, § 11016(c)(10), inserted "including but not limited to the power to collect from the persons obligated to meet the requirements of section 1082 of this title or the terms of the plan".

Subsec. (d)(3). Pub. L. 99-272, § 11016(c)(11), substituted "those of a trustee under section 704 of title 11" for "a trustee appointed under section 75 of title 11".

Subsec. (i). Pub. L. 99-272, § 11010(b), added subsec. (i). 1980—Subsec. (a). Pub. L. 96-364, § 402(a)(6)(A), substituted "terminated plans" for "such small plans".

Subsec. (b). Pub. L. 96-364, § 402(a)(6)(B), redesignated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (c). Pub. L. 96-364, § 402(a)(6)(C), (D), substituted "unreasonable" for "further" wherever appearing, and "of the participants or" for "of the participants and".

Subsec. (d)(1)(A). Pub. L. 96-364, § 402(a)(6)(E), added cls. (v) and (vii) and redesignated former cl. (v) as (vi).

Subsec. (d)(1)(B). Pub. L. 96-364, § 402(a)(6)(F), (G), in cl. (i) substituted "requirements of this subchapter" for "allocation requirements of section 1344 of this title", and in cl. (iv) struck out exception respecting adverse party status of corporation.

Subsec. (d)(2)(D) to (F). Pub. L. 96-364, § 402(a)(6)(H)-(J), added subpars. (D) to (F).

1978—Subsec. (f). Pub. L. 95-598 substituted "of a court of the United States having jurisdiction over cases under chapter 11 of title 11" for "of a court of bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act" in first sentence and struck out "bankruptcy," before "mortgage foreclosure" in second sentence.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to any plan termination under this subchapter with respect to which the notice of intent to terminate, or in the case of a termination by the Pension Benefit Guaranty Corporation, a notice of determination under this section occurs after Aug. 17, 2006, with transition rule, see section 506(c) of Pub. L. 109-280, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 771(f) of Pub. L. 103-465 provided that: "The amendments made by this section [amending this section and section 1343 of this title] shall be effective for events occurring 60 days or more after the date of enactment of this Act [Dec. 8, 1994]."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(g)(7) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100-203, §§ 9302-9346, to which such amendment relates, see section 7882 of Pub. L. 101-239, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1) of 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.

Amendment by section 7893(e) of Pub. L. 101-239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99-272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101-239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9312(c)(3) of Pub. L. 100-203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under this section after that date, see section 9312(d)(1) of Pub. L. 100-203, as amended, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99-272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1343. Reportable events**(a) Notification that event has occurred**

Within 30 days after the plan administrator or the contributing sponsor knows or has reason to know that a reportable event described in subsection (c) of this section has occurred, he shall notify the corporation that such event has occurred, unless a notice otherwise required under this subsection has already been provided with respect to such event. The corporation is authorized to waive the requirement of the preceding sentence with respect to any or all reportable events with respect to any plan, and to require the notification to be made by including the event in the annual report made by the plan.

(b) Notification that event is about to occur

(1) The requirements of this subsection shall be applicable to a contributing sponsor if, as of the close of the preceding plan year—

(A) the aggregate unfunded vested benefits (as determined under section 1306(a)(3)(E)(iii) of this title) of plans subject to this subchapter which are maintained by such sponsor and members of such sponsor's controlled groups (disregarding plans with no unfunded vested benefits) exceed \$50,000,000, and

(B) the funded vested benefit percentage for such plans is less than 90 percent.

For purposes of subparagraph (B), the funded vested benefit percentage means the percentage which the aggregate value of the assets of such plans bears to the aggregate vested benefits of such plans (determined in accordance with section 1306(a)(3)(E)(iii) of this title).

(2) This subsection shall not apply to an event if the contributing sponsor, or the member of the contributing sponsor's controlled group to which the event relates, is—

(A) a person subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m, 78o(d)], or

(B) a subsidiary (as defined for purposes of such Act [15 U.S.C. 78a et seq.]) of a person subject to such reporting requirements.

(3) No later than 30 days prior to the effective date of an event described in paragraph (9), (10), (11), (12), or (13) of subsection (c) of this section, a contributing sponsor to which the requirements of this subsection apply shall notify the corporation that the event is about to occur.

(4) The corporation may waive the requirement of this subsection with respect to any or all reportable events with respect to any contributing sponsor.

(c) Enumeration of reportable events

For purposes of this section a reportable event occurs—

(1) when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 1321(a)(2) of this title, or when the Secretary of Labor determines the plan is not in compliance with subchapter I of this chapter;

(2) when an amendment of the plan is adopted if, under the amendment, the benefit payable with respect to any participant may be decreased;

(3) when the number of active participants is less than 80 percent of the number of such participants at the beginning of the plan year, or is less than 75 percent of the number of such participants at the beginning of the previous plan year;

(4) when the Secretary of the Treasury determines that there has been a termination or partial termination of the plan within the meaning of section 411(d)(3) of title 26, but the occurrence of such a termination or partial termination does not, by itself, constitute or require a termination of a plan under this subchapter;

(5) when the plan fails to meet the minimum funding standards under section 412 of title 26 (without regard to whether the plan is a plan described in section 1321(a)(2) of this title) or under section 1082 of this title;

(6) when the plan is unable to pay benefits thereunder when due;

(7) when there is a distribution under the plan to a participant who is a substantial owner as defined in section 1321(d) of this title if—

(A) such distribution has a value of \$10,000 or more;

(B) such distribution is not made by reason of the death of the participant; and

(C) immediately after the distribution, the plan has nonforfeitable benefits which are not funded;

(8) when a plan merges, consolidates, or transfers its assets under section 1058 of this title, or when an alternative method of compliance is prescribed by the Secretary of Labor under section 1030 of this title;

(9) when, as a result of an event, a person ceases to be a member of the controlled group;

(10) when a contributing sponsor or a member of a contributing sponsor's controlled group liquidates in a case under title 11, or under any similar Federal law or law of a State or political subdivision of a State;

(11) when a contributing sponsor or a member of a contributing sponsor's controlled group declares an extraordinary dividend (as

defined in section 1059(c) of title 26) or re-deems, in any 12-month period, an aggregate of 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or an aggregate of 10 percent or more of the total value of shares of all classes of stock, of a contributing sponsor and all members of its controlled group;

(12) when, in any 12-month period, an aggregate of 3 percent or more of the benefit liabilities of a plan covered by this subchapter and maintained by a contributing sponsor or a member of its controlled group are transferred to a person that is not a member of the controlled group or to a plan or plans maintained by a person or persons that are not such a contributing sponsor or a member of its controlled group; or

(13) when any other event occurs that may be indicative of a need to terminate the plan and that is prescribed by the corporation in regulations.

For purposes of paragraph (7), all distributions to a participant within any 24-month period are treated as a single distribution.

(d) Notification to corporation by Secretary of the Treasury

The Secretary of the Treasury shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (4), or (5) of subsection (c) of this section occurs, or

(2) whenever any other event occurs which the Secretary of the Treasury believes indicates that the plan may not be sound.

(e) Notification to corporation by Secretary of Labor

The Secretary of Labor shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (5), or (8) of subsection (c) of this section occurs, or

(2) whenever any other event occurs which the Secretary of Labor believes indicates that the plan may not be sound.

(f) Disclosure exemption

Any information or documentary material submitted to the corporation pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

(Pub. L. 93-406, title IV, §4043, Sept. 2, 1974, 88 Stat. 1024; Pub. L. 101-239, title VII, §7891(a), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 103-465, title VII, §771(a)-(e)(1), Dec. 8, 1994, 108 Stat. 5042, 5043; Pub. L. 109-280, title IV, §407(c)(2), Aug. 17, 2006, 120 Stat. 930.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (b)(2)(B), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2006—Subsec. (c)(7). Pub. L. 109-280 substituted “1321(d)” for “1322(b)(6)” in introductory provisions.

1994—Subsec. (a). Pub. L. 103-465, §771(a), (e)(1), in first sentence, inserted “or the contributing sponsor” after “administrator”, substituted “subsection (c)” for “subsection (b)”, and inserted before period at end “; unless a notice otherwise required under this subsection has already been provided with respect to such event”, and struck out last sentence which read as follows: “Whenever an employer making contributions under a plan to which section 1321 of this title applies knows or has reason to know that a reportable event has occurred he shall notify the plan administrator immediately.”

Subsec. (b). Pub. L. 103-465, §771(b), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 103-465, §771(b), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(8) to (13). Pub. L. 103-465, §771(c), struck out “or” at end of par. (8), added pars. (9) to (13), and struck out former par. (9) which read as follows: “when any other event occurs which the corporation determines may be indicative of a need to terminate the plan.”

Subsecs. (d), (e). Pub. L. 103-465, §771(b), (e)(1), redesignated subsecs. (c) and (d) as (d) and (e), respectively, and substituted “subsection (c)” for “subsection (b)” in par. (1) of each subsec.

Subsec. (f). Pub. L. 103-465, §771(d), added subsec. (f).

1989—Subsec. (b)(4). 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.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 effective Jan. 1, 2006, see section 407(d)(2) of Pub. L. 109-280, set out as a note under section 1321 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective for events occurring 60 days or more after Dec. 8, 1994, see section 771(f) of Pub. L. 103-465, set out as a note under section 1342 of this title.

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.

§ 1344. Allocation of assets

(a) Order of priority of participants and beneficiaries

In the case of the termination of a single-employer plan, the plan administrator shall allocate the assets of the plan (available to provide benefits) among the participants and beneficiaries of the plan in the following order:

(1) First, to that portion of each individual’s accrued benefit which is derived from the participant’s contributions to the plan which were not mandatory contributions.

(2) Second, to that portion of each individual’s accrued benefit which is derived from the participant’s mandatory contributions.

(3) Third, in the case of benefits payable as an annuity—

(A) in the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the plan, to

each such benefit, based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

(B) in the case of a participant's or beneficiary's benefit (other than a benefit described in subparagraph (A)) which would have been in pay status as of the beginning of such 3-year period if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of annuity under the plan) as of the beginning of such period, to each such benefit based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

For purposes of subparagraph (A), the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

(4) Fourth—

(A) to all other benefits (if any) of individuals under the plan guaranteed under this subchapter (determined without regard to section 1322b(a) of this title), and

(B) to the additional benefits (if any) which would be determined under subparagraph (A) if section 1322(b)(5)(B) of this title did not apply.

For purposes of this paragraph, section 1321 of this title shall be applied without regard to subsection (c) thereof.

(5) Fifth, to all other nonforfeitable benefits under the plan.

(6) Sixth, to all other benefits under the plan.

(b) Adjustment of allocations; reallocations; mandatory contributions; establishment of subclasses and categories

For purposes of subsection (a) of this section—

(1) The amount allocated under any paragraph of subsection (a) of this section with respect to any benefit shall be properly adjusted for any allocation of assets with respect to that benefit under a prior paragraph of subsection (a) of this section.

(2) If the assets available for allocation under any paragraph of subsection (a) of this section (other than paragraphs (4), (5), and (6)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in that paragraph.

(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among

individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.

(4) This paragraph applies if the assets available for allocation under paragraph (5) of subsection (a) of this section are not sufficient to satisfy in full the benefits of individuals described in that paragraph.

(A) If this paragraph applies, except as provided in subparagraph (B), the assets shall be allocated to the benefits of individuals described in such paragraph (5) on the basis of the benefits of individuals which would have been described in such paragraph (5) under the plan as in effect at the beginning of the 5-year period ending on the date of plan termination.

(B) If the assets available for allocation under subparagraph (A) are sufficient to satisfy in full the benefits described in such subparagraph (without regard to this subparagraph), then for purposes of subparagraph (A), benefits of individuals described in such subparagraph shall be determined on the basis of the plan as amended by the most recent plan amendment effective during such 5-year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in subparagraph (A) and any assets remaining to be allocated under such subparagraph shall be allocated under subparagraph (A) on the basis of the plan as amended by the next succeeding plan amendment effective during such period.

(5) If the Secretary of the Treasury determines that the allocation made pursuant to this section (without regard to this paragraph) results in discrimination prohibited by section 401(a)(4) of title 26 then, if required to prevent the disqualification of the plan (or any trust under the plan) under section 401(a) or 403(a) of title 26, the assets allocated under subsections (a)(4)(B), (a)(5), and (a)(6) of this section shall be reallocated to the extent necessary to avoid such discrimination.

(6) The term "mandatory contributions" means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions. For this purpose, the total amount of mandatory contributions of a participant is the amount of such contributions reduced (but not below zero) by the sum of the amounts paid or distributed to him under the plan before its termination.

(7) A plan may establish subclasses and categories within the classes described in paragraphs (1) through (6) of subsection (a) of this section in accordance with regulations prescribed by the corporation.

(c) Increase or decrease in value of assets

Any increase or decrease in the value of the assets of a single-employer plan occurring during the period beginning on the later of (1) the date a trustee is appointed under section 1342(b) of this title or (2) the date on which the plan is terminated is to be allocated between the plan

and the corporation in the manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the corporation and the plan administrator in any other case. Any increase or decrease in the value of the assets of a single-employer plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the corporation.

(d) Distribution of residual assets; restrictions on reversions pursuant to recently amended plans; assets attributable to employee contributions; calculation of remaining assets

(1) Subject to paragraph (3), any residual assets of a single-employer plan may be distributed to the employer if—

(A) all liabilities of the plan to participants and their beneficiaries have been satisfied,

(B) the distribution does not contravene any provision of law, and

(C) the plan provides for such a distribution in these circumstances.

(2)(A) In determining the extent to which a plan provides for the distribution of plan assets to the employer for purposes of paragraph (1)(C), any such provision, and any amendment increasing the amount which may be distributed to the employer, shall not be treated as effective before the end of the fifth calendar year following the date of the adoption of such provision or amendment.

(B) A distribution to the employer from a plan shall not be treated as failing to satisfy the requirements of this paragraph if the plan has been in effect for fewer than 5 years and the plan has provided for such a distribution since the effective date of the plan.

(C) Except as otherwise provided in regulations of the Secretary of the Treasury, in any case in which a transaction described in section 1058 of this title occurs, subparagraph (A) shall continue to apply separately with respect to the amount of any assets transferred in such transaction.

(D) For purposes of this subsection, the term “employer” includes any member of the controlled group of which the employer is a member. For purposes of the preceding sentence, the term “controlled group” means any group treated as a single employer under subsection (b), (c), (m) or (o) of section 414 of title 26.

(3)(A) Before any distribution from a plan pursuant to paragraph (1), if any assets of the plan attributable to employee contributions remain after satisfaction of all liabilities described in subsection (a) of this section, such remaining assets shall be equitably distributed to the participants who made such contributions or their beneficiaries (including alternate payees, within the meaning of section 1056(d)(3)(K) of this title).

(B) For purposes of subparagraph (A), the portion of the remaining assets which are attributable to employee contributions shall be an amount equal to the product derived by multiplying—

(i) the market value of the total remaining assets, by

(ii) a fraction—

(I) the numerator of which is the present value of all portions of the accrued benefits with respect to participants which are de-

rived from participants’ mandatory contributions (referred to in subsection (a)(2) of this section), and

(II) the denominator of which is the present value of all benefits with respect to which assets are allocated under paragraphs (2) through (6) of subsection (a) of this section.

(C) For purposes of this paragraph, each person who is, as of the termination date—

(i) a participant under the plan, or

(ii) an individual who has received, during the 3-year period ending with the termination date, a distribution from the plan of such individual’s entire nonforfeitable benefit in the form of a single sum distribution in accordance with section 1053(e) of this title or in the form of irrevocable commitments purchased by the plan from an insurer to provide such nonforfeitable benefit,

shall be treated as a participant with respect to the termination, if all or part of the nonforfeitable benefit with respect to such person is or was attributable to participants’ mandatory contributions (referred to in subsection (a)(2) of this section).

(4) Nothing in this subsection shall be construed to limit the requirements of section 4980(d) of title 26 (as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990) or section 1104(d) of this title with respect to any distribution of residual assets of a single-employer plan to the employer.

(e)¹ Bankruptcy filing substituted for termination date

If a contributing sponsor of a plan has filed or has had filed against such person a petition seeking liquidation or reorganization in a case under title 11 or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date of the plan, then subsection (a)(3) shall be applied by treating the date such petition was filed as the termination date of the plan.

(e)¹ Valuation of section 1362(c) liability for determining amounts payable by corporation to participants and beneficiaries

(1) In general

In the case of a terminated plan, the value of the recovery of liability under section 1362(c) of this title allocable as a plan asset under this section for purposes of determining the amount of benefits payable by the corporation shall be determined by multiplying—

(A) the amount of liability under section 1362(c) of this title as of the termination date of the plan, by

(B) the applicable section 1362(c) recovery ratio.

(2) Section 1362(c) recovery ratio

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (C), the term “section 1362(c) recovery ratio” means the ratio which—

¹ So in original. Two subses. (e) have been enacted.

(i) the sum of the values of all recoveries under section 1362(c) of this title determined by the corporation in connection with plan terminations described under subparagraph (B), bears to

(ii) the sum of all the amounts of liability under section 1362(c) of this title with respect to such plans as of the termination date in connection with any such prior termination.

(B) Prior terminations

A plan termination described in this subparagraph is a termination with respect to which—

(i) the value of recoveries under section 1362(c) of this title have been determined by the corporation, and

(ii) notices of intent to terminate were provided (or in the case of a termination by the corporation, a notice of determination under section 1342 of this title was issued) during the 5-Federal fiscal year period ending with the third fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate (or the notice of determination under section 1342 of this title) with respect to the plan termination for which the recovery ratio is being determined.

(C) Exception

In the case of a terminated plan with respect to which the outstanding amount of benefit liabilities exceeds \$20,000,000, the term “section 1362(c) recovery ratio” means, with respect to the termination of such plan, the ratio of—

(i) the value of the recoveries on behalf of the plan under section 1362(c) of this title, to

(ii) the amount of the liability owed under section 1362(c) of this title as of the date of plan termination to the trustee appointed under section 1342(b) or (c) of this title.

(3) Subsection not to apply

This subsection shall not apply with respect to the determination of—

(A) whether the amount of outstanding benefit liabilities exceeds \$20,000,000, or

(B) the amount of any liability under section 1362 of this title to the corporation or the trustee appointed under section 1342(b) or (c) of this title.

(4) Determinations

Determinations under this subsection shall be made by the corporation. Such determinations shall be binding unless shown by clear and convincing evidence to be unreasonable.

(Pub. L. 93-406, title IV, §4044, Sept. 2, 1974, 88 Stat. 1025; Pub. L. 96-364, title IV, §402(a)(7), Sept. 26, 1980, 94 Stat. 1299; Pub. L. 99-272, title XI, §11016(c)(12), (13), Apr. 7, 1986, 100 Stat. 274; Pub. L. 100-203, title IX, §9311(a)(1), (b), (c), Dec. 22, 1987, 101 Stat. 1330-359, 1330-360; Pub. L. 101-239, title VII, §§7881(e)(3), 7891(a)(1), 7894(g)(2), Dec. 19, 1989, 103 Stat. 2440, 2445, 2451; Pub. L. 101-508, title XII, §12002(b)(2)(B), Nov. 5, 1990, 104 Stat. 1388-566; Pub. L. 109-280, title IV,

§§404(b), 407(b), 408(b)(2), Aug. 17, 2006, 120 Stat. 928, 930, 931.)

REFERENCES IN TEXT

The enactment of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (d)(4), is the enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

AMENDMENTS

2006—Subsec. (a)(4)(B). Pub. L. 109-280, §407(b)(1), substituted “1322(b)(5)(B)” for “1322(b)(5)”.

Subsec. (b)(2). Pub. L. 109-280, §407(b)(2)(A), substituted “(4), (5),” for “(5)”.

Subsec. (b)(3) to (7). Pub. L. 109-280, §407(b)(2)(B), added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (e). Pub. L. 109-280, §408(b)(2), added subsec. (e) relating to valuation of section 1362(c) liability for determining amounts payable by corporation to participants and beneficiaries.

Pub. L. 109-280, §404(b), added subsec. (e) relating to substitution of bankruptcy filing date for termination date.

1990—Subsec. (d)(4). Pub. L. 101-508 added par. (4).

1989—Subsec. (a)(1). Pub. L. 101-239, §7894(g)(2), substituted “accrued” for “accured”.

Subsec. (b)(4). Pub. L. 101-239, §7891(a)(1), 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.

Subsec. (d)(3). Pub. L. 101-239, §7881(e)(3), made technical correction to directory language of Pub. L. 100-203, §9311(b)(2), see 1987 Amendment note below.

1987—Subsec. (b)(4). Pub. L. 100-203, §9311(c), struck out reference to section 405(a) of title 26.

Subsec. (d)(1). Pub. L. 100-203, §9311(b)(1), substituted “Subject to paragraph (3), any” for “Any”.

Subsec. (d)(2). Pub. L. 100-203, §9311(a)(1)(B), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 100-203, §9311(b)(2), as amended by Pub. L. 101-239, §7881(e)(3), added par. (3), and struck out former par. (3) which read as follows: “Notwithstanding the provisions of paragraph (1), if any assets of the plan attributable to employee contributions, remain after all liabilities of the plan to participants and their beneficiaries have been satisfied, such assets shall be equitably distributed to the employees who made such contributions (or their beneficiaries) in accordance with their rate of contributions.”

Pub. L. 100-203, §9311(a)(1)(A), redesignated former par. (2) as (3).

1986—Subsec. (a). Pub. L. 99-272, §11016(c)(12), in provision preceding par. (1) struck out “defined benefit” after “single-employer”.

Subsec. (a)(4)(A). Pub. L. 99-272, §11016(c)(13)(A), substituted “section 1322b(a)” for “section 1322(b)(5)”.

Subsec. (a)(4)(B). Pub. L. 99-272, §11016(c)(13)(B), substituted “section 1322(b)(5)” for “section 1322(b)(6)”.

1980—Subsec. (a). Pub. L. 96-364, §402(a)(7)(A), inserted “single-employer” before “defined benefit”.

Subsec. (c). Pub. L. 96-364, §402(a)(7)(B), inserted “single-employer” before “plan occurring” wherever appearing.

Subsec. (d)(1). Pub. L. 96-364, §402(a)(7)(C), inserted “single-employer” after “assets of a”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 404(b) of Pub. L. 109-280 applicable with respect to proceedings initiated under Title 11, Bankruptcy, or under any similar Federal law or law of a State or political subdivision, on or after the date that is 30 days after Aug. 17, 2006, see section 404(c) of Pub. L. 109-280, set out as a note under section 1322 of this title.

Amendment by section 407(b) of Pub. L. 109-280 applicable to plan terminations under section 1341(c) of this title with respect to which notices of intent to termi-

nate are provided under section 1341(a)(2) of this title after Dec. 31, 2005, and under section 1342 of this title with respect to which notices of determination are provided under such section after such date, see section 407(d)(1) of Pub. L. 109-280, set out as a note under section 1321 of this title.

Amendment by section 408(b)(2) of Pub. L. 109-280 applicable for any termination for which notices of intent to terminate are provided, or in the case of a termination by the corporation, a notice of determination under section 1342 of this title is issued, on or after the date which is 30 days after Aug. 17, 2006, see section 408(c) of Pub. L. 109-280, set out as a note under section 1322 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to reversions occurring after Sept. 30, 1990, but not applicable to any reversion after Sept. 30, 1990, if (1) in the case of plans subject to subchapter III of this chapter, notice of intent to terminate under such subchapter was provided to participants (or if no participants, to Pension Benefit Guaranty Corporation) before Oct. 1, 1990, (2) in the case of plans subject to subchapter I of this chapter (and not subchapter III), notice of intent to reduce future accruals under section 1054(h) of this title was provided to participants in connection with termination before Oct. 1, 1990, (3) in the case of plans not subject to subchapter I or III of this chapter, a request for a determination letter with respect to termination was filed with Secretary of the Treasury or Secretary's delegate before Oct. 1, 1990, or (4) in the case of plans not subject to subchapter I or III of this chapter and having only one participant, a resolution terminating the plan was adopted by employer before Oct. 1, 1990, see section 12003 of Pub. L. 101-508, set out as a note under section 4980 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(e)(3) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100-203, §§9302-9346, to which such amendment relates, see section 7882 of Pub. L. 101-239, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1) of 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.

Amendment by section 7894(g)(2) of Pub. L. 101-239 effective, except as otherwise provided, as if originally included in the provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, to which such amendment relates, see section 7894(i) of Pub. L. 101-239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9311(d) of Pub. L. 100-203, as amended by Pub. L. 101-239, title VII, §7881(e)(2), Dec. 19, 1989, 103 Stat. 2439, provided that: "The amendments made by this section [amending this section] shall apply with respect to—

"(1) plan terminations under section 4041 of ERISA [29 U.S.C. 1341] with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987, and

"(2) plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of ERISA [29 U.S.C. 1342] after December 17, 1987.

Except as provided in subsection (a)(2) [set out below], the amendments made by subsection (a) [amending this section] shall apply to any provision of the plan or plan amendment adopted after December 17, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99-272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

TRANSITIONAL RULE RELATING TO RESTRICTIONS ON EMPLOYER REVERSIONS UPON PLAN TERMINATION PURSUANT TO RECENTLY AMENDED PLANS

Section 9311(a)(2) of Pub. L. 100-203, as amended by Pub. L. 101-239, title VII, §7881(e)(1), (4), Dec. 19, 1989, 103 Stat. 2439, 2440, provided that: "The amendments made by paragraph (1) [amending this section] shall apply, in the case of plans which, as of December 17, 1987, have no provision relating to the distribution of residual plan assets upon termination, only with respect to plan amendments providing for the distribution of plan assets to the employer which are adopted after December 17, 1988."

SPECIAL TEMPORARY RULE FOR TERMINATION OF SINGLE-EMPLOYER PLAN

For special temporary rule relating to requirements to be met before the final distribution of assets in the case of the termination of certain single-employer plans with respect to which the amount payable to the employer pursuant to subsec. (d) of this section exceeds \$1,000,000, see section 11008(d) of Pub. L. 99-272, set out as a note under section 1341 of this title.

§ 1345. Recapture of payments

(a) Authorization to recover benefits

Except as provided in subsection (c) of this section, the trustee is authorized to recover for the benefit of a plan from a participant the recoverable amount (as defined in subsection (b) of this section) of all payments from the plan to him which commenced within the 3-year period immediately preceding the time the plan is terminated.

(b) Recoverable amount

For purposes of subsection (a) of this section the recoverable amount is the excess of the amount determined under paragraph (1) over the amount determined under paragraph (2).

(1) The amount determined under this paragraph is the sum of the amount of the actual payments received by the participant within the 3-year period.

(2) The amount determined under this paragraph is the sum of—

(A) the sum of the amount such participant would have received during each consecutive 12-month period within the 3 years if the participant received the benefit in the form described in paragraph (3),

(B) the sum for each of the consecutive 12-month periods of the lesser of—

(i) the excess, if any, of \$10,000 over the benefit in the form described in paragraph (3), or

(ii) the excess of the actual payment, if any, over the benefit in the form described in paragraph (3), and

(C) the present value at the time of termination of the participant's future benefits guaranteed under this subchapter as if the benefits commenced in the form described in paragraph (3).

(3) The form of benefit for purposes of this subsection shall be the monthly benefit the participant would have received during the

consecutive 12-month period, if he had elected at the time of the first payment made during the 3-year period, to receive his interest in the plan as a monthly benefit in the form of a life annuity commencing at the time of such first payment.

(c) Payments made on or after death or disability of participant; waiver of recovery in case of hardship

(1) In the event of a distribution described in section 1343(b)(7)¹ of this title the 3-year period referred to in subsection (b) of this section shall not end sooner than the date on which the corporation is notified of the distribution.

(2) The trustee shall not recover any payment made from a plan after or on account of the death of a participant, or to a participant who is disabled (within the meaning of section 72(m)(7) of title 26).

(3) The corporation is authorized to waive, in whole or in part, the recovery of any amount which the trustee is authorized to recover for the benefit of a plan under this section in any case in which it determines that substantial economic hardship would result to the participant or his beneficiaries from whom such amount is recoverable.

(Pub. L. 93-406, title IV, §4045, Sept. 2, 1974, 88 Stat. 1027; Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

REFERENCES IN TEXT

Section 1343(b)(7) of this title, referred to in subsec. (c)(1), was redesignated section 1343(c)(7) of this title by Pub. L. 103-465, title VII, §771(b), Dec. 8, 1994, 108 Stat. 5042.

AMENDMENTS

1989—Subsec. (c)(2). 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.

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.

§ 1346. Reports to trustee

The corporation and the plan administrator of any plan to be terminated under this subtitle shall furnish to the trustee such information as the corporation or the plan administrator has and, to the extent practicable, can obtain regarding—

(1) the amount of benefits payable with respect to each participant under a plan to be terminated,

(2) the amount of basic benefits guaranteed under section 1322 or 1322a of this title which are payable with respect to each participant in the plan,

(3) the present value, as of the time of termination, of the aggregate amount of basic benefits payable under section 1322 or 1322a of this title (determined without regard to section 1322b of this title),

(4) the fair market value of the assets of the plan at the time of termination,

(5) the computations under section 1344 of this title, and all actuarial assumptions under which the items described in paragraphs (1) through (4) were computed, and

(6) any other information with respect to the plan the trustee may require in order to terminate the plan.

(Pub. L. 93-406, title IV, §4046, Sept. 2, 1974, 88 Stat. 1028; Pub. L. 96-364, title IV, §403(e), Sept. 26, 1980, 94 Stat. 1301.)

AMENDMENTS

1980—Par. (2). Pub. L. 96-364, §403(e)(1), inserted “basic” before “benefits” and “or 1322a” after “1322”.

Par. (3). Pub. L. 96-364, §403(e), inserted “basic” before “benefits” and “or 1322a” after “1322”, and substituted “1322b” for “1322(b)(5)”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

§ 1347. Restoration of plans

Whenever the corporation determines that a plan which is to be terminated under section 1341 or 1342 of this title, or which is in the process of being terminated under section 1341 or 1342 of this title, should not be terminated under section 1341 or 1342 of this title as a result of such circumstances as the corporation determines to be relevant, the corporation is authorized to cease any activities undertaken to terminate the plan, and to take whatever action is necessary and within its power to restore the plan to its status prior to the determination that the plan was to be terminated under section 1341 or 1342 of this title. In the case of a plan which has been terminated under section 1341 or 1342 of this title the corporation is authorized in any such case in which the corporation determines such action to be appropriate and consistent with its duties under this subchapter, to take such action as may be necessary to restore the plan to its pretermination status, including, but not limited to, the transfer to the employer or a plan administrator of control of part or all of the remaining assets and liabilities of the plan.

(Pub. L. 93-406, title IV, §4047, Sept. 2, 1974, 88 Stat. 1028; Pub. L. 99-272, title XI, §11016(a)(3), Apr. 7, 1986, 100 Stat. 268; Pub. L. 101-239, title VII, §7893(g)(1), Dec. 19, 1989, 103 Stat. 2447.)

AMENDMENTS

1989—Pub. L. 101-239 struck out “under this subtitle” before “should not be terminated”.

1986—Pub. L. 99-272 inserted “under section 1341 or 1342 of this title” after “terminated” in four places and substituted “section 1341 or 1342 of this title the corporation” for “section 1342 of this title the corporation”.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99-272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101-239, set out as a note under section 1002 of this title.

¹ See References in Text note below.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99-272, set out as a note under section 1341 of this title.

§ 1348. Termination date

(a) For purposes of this subchapter the termination date of a single-employer plan is—

(1) in the case of a plan terminated in a standard termination in accordance with the provisions of section 1341(b) of this title, the termination date proposed in the notice provided under section 1341(a)(2) of this title,

(2) in the case of a plan terminated in a distress termination in accordance with the provisions of section 1341(c) of this title, the date established by the plan administrator and agreed to by the corporation,

(3) in the case of a plan terminated in accordance with the provisions of section 1342 of this title, the date established by the corporation and agreed to by the plan administrator, or

(4) in the case of a plan terminated under section 1341(c) or 1342 of this title in any case in which no agreement is reached between the plan administrator and the corporation (or the trustee), the date established by the court.

(b) For purposes of this subchapter, the date of termination of a multiemployer plan is—

(1) in the case of a plan terminated in accordance with the provisions of section 1341a of this title, the date determined under subsection (b) of that section; or

(2) in the case of a plan terminated in accordance with the provisions of section 1342 of this title, the date agreed to between the plan administrator and the corporation (or the trustee appointed under section 1342(b)(2) of this title, if any), or, if no agreement is reached, the date established by the court.

(Pub. L. 93-406, title IV, § 4048, Sept. 2, 1974, 88 Stat. 1028; Pub. L. 96-364, title IV, § 402(a)(8), Sept. 26, 1980, 94 Stat. 1299; Pub. L. 99-272, title XI, § 11016(a)(4), Apr. 7, 1986, 100 Stat. 268.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-272 in provisions preceding par. (1) substituted “termination date” for “date of termination”, redesignated pars. (1) to (3) as (2) to (4), respectively, added par. (1), in par. (2), as so redesignated, inserted “in a distress termination” after “terminated” and substituted “section 1341(c)” for “section 1341”, and in par. (4), as so redesignated, substituted “under section 1341(c) or 1342 of this title” for “in accordance with the provisions of either section”.

1980—Subsec. (a). Pub. L. 96-364, § 402(a)(8)(A), (B), designated existing provisions as subsec. (a), and inserted applicability to a single-employer plan.

Subsec. (b). Pub. L. 96-364, § 402(a)(8)(C), added subsec. (b).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99-272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

§ 1349. Repealed. Pub. L. 100-203, title IX, § 9312(a), Dec. 22, 1987, 101 Stat. 1330-361

Section, Pub. L. 93-406, title IV, § 4049, as added Pub. L. 99-272, title XI, § 11012(a), Apr. 7, 1986, 100 Stat. 258; amended Pub. L. 99-514, title XVIII, § 1879(u)(2), Oct. 22, 1986, 100 Stat. 2913; Pub. L. 100-203, title IX, § 9312(d)(2), Dec. 22, 1987, 101 Stat. 1330-364, related to distribution of liability payments to participants and beneficiaries.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100-203, as amended, set out as an Effective Date of 1987 Amendment note under section 1301 of this title.

§ 1350. Missing participants**(a) General rule****(1) Payment to the corporation**

A plan administrator satisfies section 1341(b)(3)(A) of this title in the case of a missing participant only if the plan administrator—

(A) transfers the participant’s designated benefit to the corporation or purchases an irrevocable commitment from an insurer in accordance with clause (i) of section 1341(b)(3)(A) of this title, and

(B) provides the corporation such information and certifications with respect to such designated benefits or irrevocable commitments as the corporation shall specify.

(2) Treatment of transferred assets

A transfer to the corporation under this section shall be treated as a transfer of assets from a terminated plan to the corporation as trustee, and shall be held with assets of terminated plans for which the corporation is trustee under section 1342 of this title, subject to the rules set forth in that section.

(3) Payment by the corporation

After a missing participant whose designated benefit was transferred to the corporation is located—

(A) in any case in which the plan could have distributed the benefit of the missing participant in a single sum without participant or spousal consent under section 1055(g) of this title, the corporation shall pay the participant or beneficiary a single sum benefit equal to the designated benefit paid the corporation plus interest as specified by the corporation, and

(B) in any other case, the corporation shall pay a benefit based on the designated benefit and the assumptions prescribed by the corporation at the time that the corporation received the designated benefit.

The corporation shall make payments under subparagraph (B) available in the same forms and at the same times as a guaranteed benefit under section 1322 of this title would be available to be paid, except that the corporation may make a benefit available in the form of a

single sum if the plan provided a single sum benefit (other than a single sum described in subsection (b)(2)(A) of this section).

(b) Definitions

For purposes of this section—

(1) Missing participant

The term “missing participant” means a participant or beneficiary under a terminating plan whom the plan administrator cannot locate after a diligent search.

(2) Designated benefit

The term “designated benefit” means the single sum benefit the participant would receive—

(A) under the plan’s assumptions, in the case of a distribution that can be made without participant or spousal consent under section 1055(g) of this title;

(B) under the assumptions of the corporation in effect on the date that the designated benefit is transferred to the corporation, in the case of a plan that does not pay any single sums other than those described in subparagraph (A); or

(C) under the assumptions of the corporation or of the plan, whichever provides the higher single sum, in the case of a plan that pays a single sum other than those described in subparagraph (A).

(c) Multiemployer plans

The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this subchapter that terminate under section 1341a of this title.

(d) Plans not otherwise subject to subchapter

(1) Transfer to corporation

The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant’s benefits to the corporation upon termination of the plan.

(2) Information to the corporation

To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

(A) to the corporation, or

(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

(3) Payment by the corporation

If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

(A) in a single sum (plus interest), or

(B) in such other form as is specified in regulations of the corporation.

(4) Plans described

A plan is described in this paragraph if—

(A) the plan is a pension plan (within the meaning of section 1002(2) of this title)—

(i) to which the provisions of this section do not apply (without regard to this subsection), and

(ii) which is not a plan described in paragraphs (2) through (11) of section 1321(b) of this title, and

(B) at the time the assets are to be distributed upon termination, the plan—

(i) has missing participants, and

(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 1002(2) of this title).

(5) Certain provisions not to apply

Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (4).

(e) Regulatory authority

The corporation shall prescribe such regulations as are necessary to carry out the purposes of this section, including rules relating to what will be considered a diligent search, the amount payable to the corporation, and the amount to be paid by the corporation.

(Pub. L. 93-406, title IV, §4050, as added Pub. L. 103-465, title VII, §776(a), Dec. 8, 1994, 108 Stat. 5047; amended Pub. L. 109-280, title IV, §410(a), Aug. 17, 2006, 120 Stat. 934.)

AMENDMENTS

2006—Subsecs. (c) to (e). Pub. L. 109-280 added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to distributions made after final regulations implementing subsections (c) and (d) of this section are prescribed, see section 410(c) of Pub. L. 109-280, set out as a note under section 1056 of this title.

EFFECTIVE DATE

Section effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103-465, set out as an Effective Date of 1994 Amendment note under section 1056 of this title.

SUBTITLE D—LIABILITY

§ 1361. Amounts payable by corporation

The corporation shall pay benefits under a single-employer plan terminated under this subchapter subject to the limitations and requirements of subtitle B of this subchapter. The corporation shall provide financial assistance to pay benefits under a multiemployer plan which is insolvent under section 1426 or 1441(d)(2)(A) of this title, subject to the limitations and requirements of subtitles B, C, and E of this subchapter. Amounts guaranteed by the corporation under sections 1322 and 1322a of this title shall be paid by the corporation only out of the appropriate fund. The corporation shall make payments under the supplemental program to reimburse multiemployer plans for uncollectible withdrawal liability only out of the fund established under section 1305(e) of this title.

(Pub. L. 93-406, title IV, §4061, Sept. 2, 1974, 88 Stat. 1029; Pub. L. 96-364, title IV, §403(f), Sept. 26, 1980, 94 Stat. 1301.)