

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.)

AMENDMENTS

1980—Pub. L. 96-364 substituted provisions relating to payment of benefits under a single-employer plan terminated under this subchapter subject to limitations and requirements of subtitle B of this subchapter for provisions relating to payment of benefits under a plan terminated under this subchapter subject to limitations and requirements of subtitle B of this subchapter.

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.

§ 1362. Liability for termination of single-employer plans under a distress termination or a termination by corporation

(a) In general

In any case in which a single-employer plan is terminated in a distress termination under section 1341(c) of this title or a termination otherwise instituted by the corporation under section 1342 of this title, any person who is, on the termination date, a contributing sponsor of the plan or a member of such a contributing sponsor's controlled group shall incur liability under this section. The liability under this section of all such persons shall be joint and several. The liability under this section consists of—

- (1) liability to the corporation, to the extent provided in subsection (b) of this section, and
- (2) liability to the trustee appointed under subsection (b) or (c) of section 1342 of this title, to the extent provided in subsection (c) of this section.

(b) Liability to corporation

(1) Amount of liability
(A) In general

Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) of this section shall be the total amount of the unfunded benefit liabilities (as of the termination date) to all participants and beneficiaries under the plan, together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation.

(B) Special rule in case of subsequent insufficiency

For purposes of subparagraph (A), in any case described in section 1341(c)(3)(C)(ii) of this title, actuarial present values shall be determined as of the date of the notice to the corporation (or the finding by the corporation) described in such section.

(2) Payment of liability

(A) In general

Except as provided in subparagraph (B), the liability to the corporation under this subsection shall be due and payable to the corporation as of the termination date, in cash or securities acceptable to the corporation.

(B) Special rule

Payment of so much of the liability under paragraph (1)(A) as exceeds 30 percent of the

collective net worth of all persons described in subsection (a) of this section (including interest) shall be made under commercially reasonable terms prescribed by the corporation. The parties involved shall make a reasonable effort to reach agreement on such commercially reasonable terms. Any such terms prescribed by the corporation shall provide for deferral of 50 percent of any amount of liability otherwise payable for any year under this subparagraph if a person subject to such liability demonstrates to the satisfaction of the corporation that no person subject to such liability has any individual pre-tax profits for such person's fiscal year ending during such year.

(3) Alternative arrangements

The corporation and any person liable under this section may agree to alternative arrangements for the satisfaction of liability to the corporation under this subsection.

(c) Liability to section 1342 trustee

A person described in subsection (a) of this section shall be subject to liability under this subsection to the trustee appointed under subsection (b) or (c) of section 1342 of this title. The liability of such person under this subsection shall consist of—

(1) the sum of the shortfall amortization charge (within the meaning of section 1083(c)(1) of this title and 430(d)(1)¹ of title 26) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of shortfall amortization installments (if any) determined for succeeding plan years under section 1083(c)(2) of this title and section 430(d)(2) of title 26 (which, for purposes of this subparagraph, shall include any increase in such sum which would result if all applications for waivers of the minimum funding standard under section 1082(c) of this title and section 412(c) of title 26 which are pending with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year), and

(2) the sum of the waiver amortization charge (within the meaning of section 1083(e)(1) of this title and 430(e)(1)¹ of title 26) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of waiver amortization installments (if any) determined for succeeding plan years under section 1083(e)(2) of this title and section 430(e)(2) of title 26,

together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation. The liability under this subsection shall be due and payable to such trustee as of the termination date, in cash or securities acceptable to such trustee.

¹ So in original. Probably should be preceded by "section".