

“(I) the total amount of unfunded guaranteed benefits (as of the termination date) of all participants and beneficiaries under the plan, or

“(II) 30 percent of the collective net worth of all persons described in subsection (a) of this section, and

“(ii) the excess (if any) of—

“(I) 75 percent of the amount described in clause (i)(I), over

“(II) the amount described in clause (i)(II), together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation.”

Subsec. (c). Pub. L. 100-203, §9312(b)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to liability to section 1349 trust.

Subsec. (d). Pub. L. 100-203, §9312(b)(1)(B), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(3). Pub. L. 100-203, §9312(b)(2)(B)(ii), as amended by Pub. L. 101-239, §7881(f)(10)(B), struck out par. (3) which read as follows: “The liability payment years in connection with a terminated plan consist of the consecutive one-year periods following the last plan year preceding the termination date, excluding the first such year in any case in which the first such year ends less than 180 days after the termination date.”

Subsecs. (e), (f). Pub. L. 100-203, §9312(b)(1)(B), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1986—Pub. L. 99-272, §1101(a)(2), substituted “Liability for termination of single-employer plans under a distress termination or a termination by the corporation” for “Liability of employer” in section catchline.

Subsec. (a). Pub. L. 99-272, §1101(a)(2), added subsec. (a) specifying persons liable and the nature and extent of liability and struck out former subsec. (a) specifying employers covered.

Subsec. (b). Pub. L. 99-272, §1101(a)(2), added subsec. (b) relating to liability to corporation and struck out former subsec. (b) relating to amount of liability.

Subsec. (c). Pub. L. 99-272, §1101(a)(2), added subsec. (c) relating to liability to section 1349 trust and struck out former subsec. (c) relating to method of determining net worth of employer.

Subsec. (d). Pub. L. 99-272, §1101(a)(2), added subsec. (d) relating to liability to section 1342 trustee and struck out former subsec. (d) relating to corporate reorganizations.

Subsec. (e). Pub. L. 99-272, §1101(a), added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 99-272, §1101(a)(1), (b), redesignated former subsec. (e) as (f), and substituted in heading “Treatment of substantial cessation of operations” for “Cessation of operations at one facility”.

1980—Subsec. (a). Pub. L. 96-364 substituted “single-employee plan” for “plan (other than a multiemployer plan)”.

1978—Subsec. (c)(2). Pub. L. 95-598 substituted “title 11” and “a debtor in a case under chapter 7 of such title” for “the Bankruptcy Act” and “the subject of a proceeding under that Act”, respectively.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to plan years beginning after 2007, see section 107(e) of Pub. L. 109-280, set out as a note under section 1021 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(2), (10)(A), (B) 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.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by 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.

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.

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109-280

For special rules on applicability of amendments by subtitles A (§§101-107) and B (§§111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of Title 26, Internal Revenue Code.

SPECIAL DELAYED PAYMENT RULE

Pub. L. 99-272, title XI, §11012(d), Apr. 7, 1986, 100 Stat. 260, provided that: “In the case of a distress termination under section 4041(c) of the Employee Retirement Income Security Act of 1974 (as amended by section 11009) [29 U.S.C. 1341(c)] pursuant to a notice of intent to terminate filed before January 1, 1987, no payment of liability otherwise payable as provided in section 4062(c)(2)(B) of such Act [former 29 U.S.C. 1362(c)(2)(B)] (as amended by this section [Act]) shall be required to be made before January 1, 1989.”

§ 1363. Liability of substantial employer for withdrawal from single-employer plans under multiple controlled groups

(a) Single-employer plans with two or more contributing sponsors

Except as provided in subsection (d) of this section, the plan administrator of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control—

(1) shall notify the corporation of the withdrawal during a plan year of a substantial employer for such plan year from the plan, within 60 days after such withdrawal, and

(2) request that the corporation determine the liability of all persons with respect to the withdrawal of the substantial employer.

The corporation shall, as soon as practicable thereafter, determine whether there is liability resulting from the withdrawal of the substantial

employer and notify the liable persons of such liability.

(b) Computation of liability

Except as provided in subsection (c) of this section, any one or more contributing sponsors who withdraw, during a plan year for which they constitute a substantial employer, from a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control, shall, upon notification of such contributing sponsors by the corporation as provided by subsection (a) of this section, be liable, together with the members of their controlled groups, to the corporation in accordance with the provisions of section 1362 of this title and this section. The amount of liability shall be computed on the basis of an amount determined by the corporation to be the amount described in section 1362 of this title for the entire plan, as if the plan had been terminated by the corporation on the date of the withdrawal referred to in subsection (a)(1) of this section multiplied by a fraction—

- (1) the numerator of which is the total amount required to be contributed to the plan by such contributing sponsors for the last 5 years ending prior to the withdrawal, and
- (2) the denominator of which is the total amount required to be contributed to the plan by all contributing sponsors for such last 5 years.

In addition to and in lieu of the manner prescribed in the preceding sentence, the corporation may also determine such liability on any other equitable basis prescribed by the corporation in regulations. Any amount collected by the corporation under this subsection shall be held in escrow subject to disposition in accordance with the provisions of paragraphs (2) and (3) of subsection (c) of this section.

(c) Bond in lieu of payment of liability; 5-year termination period

(1) In lieu of payment of a contributing sponsor's liability under this section, the contributing sponsor may be required to furnish a bond to the corporation in an amount not exceeding 150 percent of his liability to insure payment of his liability under this section. The bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury under sections 9304-9308 of title 31. Any such bond shall be in a form or of a type approved by the Secretary including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(2) If the plan is not terminated under section 1341(c) or 1342 of this title within the 5-year period commencing on the day of withdrawal, the liability is abated and any payment held in escrow shall be refunded without interest (or the bond cancelled) in accordance with bylaws or rules prescribed by the corporation.

(3) If the plan terminates under section 1341(c) or 1342 of this title within the 5-year period commencing on the day of withdrawal, the corporation shall—

- (A) demand payment or realize on the bond and hold such amount in escrow for the benefit of the plan;

(B) treat any escrowed payments under this section as if they were plan assets and apply them in a manner consistent with this subtitle; and

(C) refund any amount to the contributing sponsor which is not required to meet any obligation of the corporation with respect to the plan.

(d) Alternate appropriate procedure

The provisions of this subsection apply in the case of a withdrawal described in subsection (a) of this section, and the provisions of subsections (b) and (c) of this section shall not apply, if the corporation determines that the procedure provided for under this subsection is consistent with the purposes of this section and section 1364 of this title and is more appropriate in the particular case. Upon a showing by the plan administrator of the plan that the withdrawal from the plan by one or more contributing sponsors has resulted, or will result, in a significant reduction in the amount of aggregate contributions to or under the plan, the corporation may—

(1) require the plan fund to be equitably allocated between those participants no longer working in covered service under the plan as a result of the withdrawal, and those participants who remain in covered service under the plan;

(2) treat that portion of the plan funds allocable under paragraph (1) to participants no longer in covered service as a plan terminated under section 1342 of this title; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a separate plan.

(e) Indemnity agreement

The corporation is authorized to waive the application of the provisions of subsections (b), (c), and (d) of this section whenever it determines that there is an indemnity agreement in effect among contributing sponsors under the plan which is adequate to satisfy the purposes of this section and of section 1364 of this title.

(Pub. L. 93-406, title IV, §4063, Sept. 2, 1974, 88 Stat. 1030; Pub. L. 96-364, title IV, §403(h), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99-272, title XI, §11016(a)(5)(A), Apr. 7, 1986, 100 Stat. 268.)

CODIFICATION

In subsec. (c)(1), "sections 9304-9308 of title 31" substituted for "sections 6 through 13 of title 6, United States Code" on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Pub. L. 99-272, §11016(a)(5)(A)(vi), inserted "from single-employer plans under multiple controlled groups" in section catchline.

Subsec. (a). Pub. L. 99-272, §11016(a)(5)(A)(i), in introductory par., substituted "single-employer plan which has two or more contributing sponsors at least two of whom are not under common control" for "plan under which more than one employer makes contributions (other than a multiemployer plan)", in par. (1), substituted "withdrawal during a plan year of a substantial employer for such plan year" for "withdrawal of a substantial employer", in par. (2), substituted "of all persons with respect to the withdrawal of the substan-

tial employer" for "of such employer under this subtitle with respect to such withdrawal", and in concluding provision substituted "whether there is liability resulting from the withdrawal of the substantial employer" for "whether such employer is liable for any amount under this subtitle with respect to the withdrawal" and "notify the liable persons" for "notify such employer".

Subsec. (b). Pub. L. 99-272, §11016(a)(5)(A)(ii), in introductory par., substituted "any one or more contributing sponsors who withdraw, during a plan year for which they constitute a substantial employer, from a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control, shall, upon notification of such contributing sponsors by the corporation as provided by subsection (a) of this section, be liable, together with the members of their controlled groups," for "an employer who withdraws from a plan to which section 1321 of this title applies, during a plan year for which he was a substantial employer, and who is notified by the corporation as provided by subsection (a) of this section, shall be liable", "amount of liability" for "amount of such employer's liability", and "the withdrawal referred to in subsection (a)(1) of this section" for "the employer's withdrawal", in par. (1), substituted "such contributing sponsors" for "such employer", in par. (2), substituted "all contributing sponsors" for "all employers", and in concluding provision substituted "such liability" for "the liability of each such employer".

Subsec. (c)(1). Pub. L. 99-272, §11016(a)(5)(A)(iii)(I), substituted "of a contributing sponsor's liability under this section, the contributing sponsor" for "of his liability under this section the employer".

Subsec. (c)(2). Pub. L. 99-272, §11016(a)(5)(A)(iii)(II), inserted "under section 1341(c) or 1342 of this title" and substituted "liability is" for "liability of such employer is" and "(or the bond cancelled)" for "to the employer (or his bond cancelled)".

Subsec. (c)(3). Pub. L. 99-272, §11016(a)(5)(A)(iii)(III), in introductory par., inserted "under section 1341(c) or 1342 of this title" and, in subpar. (C), substituted "contributing sponsor" for "employer".

Subsec. (d). Pub. L. 99-272, §11016(a)(5)(A)(iv), in introductory par., substituted "of the plan that the withdrawal from the plan by one or more contributing sponsors" for "of a plan (other than a multiemployer plan) that the withdrawal from the plan by any employer or employers" and struck out "by employers" after "contributions to or under the plan", in par. (1), substituted "the withdrawal" for "their employer's withdrawal", and in par. (2), substituted "plan terminated under section 1342 of this title" for "termination".

Subsec. (e). Pub. L. 99-272, §11016(a)(5)(A)(v), struck out "to any employer or plan administrator" before "whenever it determines" and substituted "contributing sponsors" for "all other employers".

1980—Subsecs. (a), (d). Pub. L. 96-364 inserted provisions excepting a multiemployer plan.

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.

§ 1364. Liability on termination of single-employer plans under multiple controlled groups

(a) This section applies to all contributing sponsors of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control at the time such plan is terminated under section

1341(c) or 1342 of this title, or who, at any time within the 5 plan years preceding the date of termination, made contributions under the plan.

(b) The corporation shall determine the liability with respect to each contributing sponsor and each member of its controlled group in a manner consistent with section 1362 of this title, except that the amount of liability determined under section 1362(b)(1) of this title with respect to the entire plan shall be allocated to each controlled group by multiplying such amount by a fraction—

(1) the numerator of which is the amount required to be contributed to the plan for the last 5 plan years ending prior to the termination date by persons in such controlled group as contributing sponsors, and

(2) the denominator of which is the total amount required to be contributed to the plan for such last 5 plan years by all persons as contributing sponsors,

and section 1368(a) of this title shall be applied separately with respect to each controlled group. The corporation may also determine the liability of each such contributing sponsor and member of its controlled group on any other equitable basis prescribed by the corporation in regulations.

(Pub. L. 93-406, title IV, §4064, Sept. 2, 1974, 88 Stat. 1031; Pub. L. 96-364, title IV, §403(i), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99-272, title XI, §11016(a)(5)(B), Apr. 7, 1986, 100 Stat. 270; Pub. L. 100-203, title IX, §9312(b)(2)(C)(i), Dec. 22, 1987, 101 Stat. 1330-361; Pub. L. 101-239, title VII, §7881(f)(3)(A), Dec. 19, 1989, 103 Stat. 2440.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101-239 substituted "section 1368(a)" for "clauses (i)(II) and (ii) of section 1362(b)(1)(A)".

1987—Subsec. (b). Pub. L. 100-203 amended first sentence generally. Prior to amendment, first sentence read as follows: "The corporation shall determine the liability with respect to each contributing sponsor and each member of its controlled group in a manner consistent with section 1362 of this title, except that—

"(1) the amount of the liability determined under section 1362(b)(1) of this title with respect to the entire plan—

"(A) shall be determined without regard to clauses (i)(II) and (ii) of section 1362(b)(1)(A) of this title, and

"(B) shall be allocated to each controlled group by multiplying such amount by a fraction—

"(i) the numerator of which is the amount required to be contributed to the plan for the last 5 plan years ending prior to the termination date by persons in such controlled group as contributing sponsors, and

"(ii) the denominator of which is the total amount required to be contributed to the plan for such last 5 plan years by all persons as contributing sponsors,

and clauses (i)(II) and (ii) of section 1362(b)(1)(A) of this title shall be applied separately with respect to each such controlled group, and

"(2) the amount of the liability determined under section 1362(c)(1) of this title with respect to the entire plan shall be allocated to each controlled group by multiplying such amount by the fraction described in paragraph (1)(B) in connection with such controlled group."

1986—Pub. L. 99-272, §11016(a)(5)(B)(iii), substituted "on termination of single-employer plans under mul-