

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".

(d) Definitions**(1) Collective net worth of persons subject to liability****(A) In general**

The collective net worth of persons subject to liability in connection with a plan termination consists of the sum of the individual net worths of all persons who—

(i) have individual net worths which are greater than zero, and

(ii) are (as of the termination date) contributing sponsors of the terminated plan or members of their controlled groups.

(B) Determination of net worth

For purposes of this paragraph, the net worth of a person is—

(i) determined on whatever basis best reflects, in the determination of the corporation, the current status of the person's operations and prospects at the time chosen for determining the net worth of the person, and

(ii) increased by the amount of any transfers of assets made by the person which are determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under title 11 if the person were a debtor in a case under chapter 7 of such title.

(C) Timing of determination

For purposes of this paragraph, determinations of net worth shall be made as of a day chosen by the corporation (during the 120-day period ending with the termination date) and shall be computed without regard to any liability under this section.

(2) Pre-tax profits

The term "pre-tax profits" means—

(A) except as provided in subparagraph (B), for any fiscal year of any person, such person's consolidated net income (excluding any extraordinary charges to income and including any extraordinary credits to income) for such fiscal year, as shown on audited financial statements prepared in accordance with generally accepted accounting principles, or

(B) for any fiscal year of an organization described in section 501(c) of title 26, the excess of income over expenses (as such terms are defined for such organizations under generally accepted accounting principles),

before provision for or deduction of Federal or other income tax, any contribution to any single-employer plan of which such person is a contributing sponsor at any time during the period beginning on the termination date and ending with the end of such fiscal year, and any amounts required to be paid for such fiscal year under this section. The corporation may by regulation require such information to be filed on such forms as may be necessary to determine the existence and amount of such pre-tax profits.

(e) Treatment of substantial cessation of operations

If an employer ceases operations at a facility in any location and, as a result of such cessation

of operations, more than 20 percent of the total number of his employees who are participants under a plan established and maintained by him are separated from employment, the employer shall be treated with respect to that plan as if he were a substantial employer under a plan under which more than one employer makes contributions and the provisions of sections 1363, 1364, and 1365 of this title shall apply.

(Pub. L. 93-406, title IV, §4062, Sept. 2, 1974, 88 Stat. 1029; Pub. L. 95-598, title III, §321(b), Nov. 6, 1978, 92 Stat. 2678; Pub. L. 96-364, title IV, §403(g), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99-272, title XI, §11011(a), (b), Apr. 7, 1986, 100 Stat. 253, 257; Pub. L. 100-203, title IX, §9312(b)(1), (2)(A), (B)(ii), Dec. 22, 1987, 101 Stat. 1330-361; Pub. L. 101-239, title VII, §§7881(f)(2), (10)(A), (B), 7891(a)(1), Dec. 19, 1989, 103 Stat. 2440, 2441, 2445; Pub. L. 109-280, title I, §107(b)(4), Aug. 17, 2006, 120 Stat. 819.)

AMENDMENTS

2006—Subsec. (c)(1) to (3). Pub. L. 109-280 added pars. (1) and (2) and struck out former pars. (1) to (3) which read as follows:

"(1) the outstanding balance of the accumulated funding deficiencies (within the meaning of section 1082(a)(2) of this title and section 412(a) of title 26) of the plan (if any) (which, for purposes of this subparagraph, shall include the amount of any increase in such accumulated funding deficiencies of the plan which would result if all pending applications for waivers of the minimum funding standard under section 1083 of this title or section 412(d) of title 26 and for extensions of the amortization period under section 1084 of this title or section 412(e) of title 26 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),

"(2) the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date under section 1083 of this title or section 412(d) of title 26 (if any), and

"(3) the outstanding balance of the amount of decreases in the minimum funding standard allowed before such date under section 1084 of this title or section 412(e) of title 26 (if any)."

1989—Subsec. (a). Pub. L. 101-239, §7881(f)(2), inserted "and" at end of par. (1), redesignated par. (3) as (2), substituted "subsection (c)" for "subsection (d)", and struck out former par. (2) which read as follows: "liability to the trust established pursuant to section 1341(c)(3)(B)(ii) or (iii) of this title or section 1342(i) of this title, to the extent provided in subsection (c) of this section, and".

Subsec. (b)(2)(B). Pub. L. 101-239, §7881(f)(10)(A), substituted "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)" for "the liability under paragraph (1)(A)(ii)".

Subsecs. (c)(1), (d)(2)(B). 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(f)(10)(B), amended Pub. L. 100-203, §9312(b)(2)(B)(ii), see 1987 Amendment note below.

1987—Subsec. (b)(1)(A). Pub. L. 100-203, §9312(b)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) of this section shall consist of the sum of—

"(i) the lesser of—

“(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, §11011(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, §11011(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, §11011(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, §11011(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, §11011(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, §11011(a), added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 99-272, §11011(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-

multiple controlled groups” for “of employers on termination of plan maintained by more than one employer” in section catchline.

Subsec. (a). Pub. L. 99-272, §11016(a)(5)(B)(i), substituted “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” for “all employers who maintain a plan under which more than one employer makes contributions (other than a multiemployer plan)” and inserted “under section 1341(c) or 1342 of this title” after “terminated”.

Subsec. (b). Pub. L. 99-272, §11016(a)(5)(B)(ii), amended subsec. (b) generally, substituting reference to each contributing sponsor and each member of its controlled group for reference to each employer of a plan maintained by more than one employer and inserted provisions that liability determined under section 1362(b)(1) of this title with respect to the entire plan be determined without regard to cls. (i)(II) and (ii) of section 1362(b)(1)(A) of this title and that the amount of liability determined under section 1362(c)(1) of this title with respect to the entire plan be allocated to each controlled group by multiplying such amount by the fraction described in par. (1)(B) in connection with such controlled group.

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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.

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.

§ 1365. Annual report of plan administrator

For each plan year for which section 1321 of this title applies to a plan, the plan administrator shall file with the corporation, on a form prescribed by the corporation, an annual report which identifies the plan and plan administrator and which includes—

(1) a copy of each notification required under section 1363 of this title with respect to such year,

(2) a statement disclosing whether any reportable event (described in section 1343(b)¹ of this title) occurred during the plan year except to the extent the corporation waives such requirement, and

(3) in the case of a multiemployer plan, information with respect to such plan which the

corporation determines is necessary for the enforcement of subtitle E of this subchapter and requires by regulation, which may include—

(A) a statement certified by the plan’s enrolled actuary of—

- (i) the value of all vested benefits under the plan as of the end of the plan year, and
- (ii) the value of the plan’s assets as of the end of the plan year;

(B) a statement certified by the plan sponsor of each claim for outstanding withdrawal liability (within the meaning of section 1301(a)(12) of this title) and its value as of the end of that plan year and as of the end of the preceding plan year; and

(C) the number of employers having an obligation to contribute to the plan and the number of employers required to make withdrawal liability payments.

The report shall be filed within 6 months after the close of the plan year to which it relates. The corporation shall cooperate with the Secretary of the Treasury and the Secretary of Labor in an endeavor to coordinate the timing and content, and possibly obtain the combination, of reports under this section with reports required to be made by plan administrators to such Secretaries.

(Pub. L. 93-406, title IV, §4065, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 96-364, title I, §106, Sept. 26, 1980, 94 Stat. 1266.)

REFERENCES IN TEXT

Section 1343(b) of this title, referred to in par. (2), was redesignated section 1343(c) of this title and a new section 1343(b) was added by Pub. L. 103-465, title VII, §771(b), Dec. 8, 1994, 108 Stat. 5042.

AMENDMENTS

1980—Pub. L. 96-364 inserted provisions in par. (2) respecting waiver by corporation and added par. (3).

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.

§ 1366. Annual notification to substantial employers

The plan administrator of each single-employer plan which has at least two contributing sponsors at least two of whom are not under common control shall notify, within 6 months after the close of each plan year, any contributing sponsor of the plan who is described in section 1301(a)(2) of this title that such contributing sponsor (alone or together with members of such contributing sponsor’s controlled group) constitutes a substantial employer for that year.

(Pub. L. 93-406, title IV, §4066, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 96-364, title IV, §403(j), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99-272, title XI, §11016(a)(5)(C), Apr. 7, 1986, 100 Stat. 271; Pub. L. 101-239, title VII, §7893(g)(2), Dec. 19, 1989, 103 Stat. 2447.)

AMENDMENTS

1989—Pub. L. 101-239 inserted “any” before “contributing sponsor of the plan”.

¹ See References in Text note below.

1986—Pub. L. 99-272 substituted “each single-employer plan which has at least two contributing sponsors at least two of whom are not under common control” for “each plan under which contributions are made by more than one employer (other than a multi-employer plan)”, “contributing sponsor of the plan” for “any employer making contributions under that plan”, and “that such contributing sponsor (alone or together with members of such contributing sponsor’s controlled group) constitutes a substantial employer” for “that he is a substantial employer”.

1980—Pub. L. 96-364 inserted provisions excepting a multiemployer plan.

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.

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.

§ 1367. Recovery of liability for plan termination

The corporation is authorized to make arrangements with contributing sponsors and members of their controlled groups who are or may become liable under section 1362, 1363, or 1364 of this title for payment of their liability, including arrangements for deferred payment of amounts of liability to the corporation accruing as of the termination date on such terms and for such periods as the corporation deems equitable and appropriate.

(Pub. L. 93-406, title IV, §4067, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 99-272, title XI, §11016(a)(6)(A), Apr. 7, 1986, 100 Stat. 271; Pub. L. 100-203, title IX, §9313(b)(6), Dec. 22, 1987, 101 Stat. 1330-366; Pub. L. 101-239, title VII, §7893(g)(3), Dec. 19, 1989, 103 Stat. 2448.)

AMENDMENTS

1989—Pub. L. 101-239 amended directory language of Pub. L. 99-272, §11016(a)(6)(A)(ii), see 1986 Amendment note below.

1987—Pub. L. 100-203 inserted “or may become” after “who are”.

1986—Pub. L. 99-272, §11016(a)(6)(A)(i), (iii), substituted “of liability” for “of employer liability” in section catchline and inserted “of amounts of liability to the corporation accruing as of the termination date” in text.

Pub. L. 99-272, §11016(a)(6)(A)(ii), as amended by Pub. L. 101-239, substituted “contributing sponsors and members of their controlled groups” for “employers”.

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.

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, 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

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.

§ 1368. Lien for liability

(a) Creation of lien

If any person liable to the corporation under section 1362, 1363, or 1364 of this title neglects or refuses to pay, after demand, the amount of such liability (including interest), there shall be a lien in favor of the corporation in the amount of such liability (including interest) upon all property and rights to property, whether real or personal, belonging to such person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 1362(a) of this title¹

(b) Term of lien

The lien imposed by subsection (a) of this section arises on the date of termination of a plan, and continues until the liability imposed under section 1362, 1363, or 1364 of this title is satisfied or becomes unenforceable by reason of lapse of time.

(c) Priority

(1) Except as otherwise provided under this section, the priority of a lien imposed under subsection (a) of this section shall be determined in the same manner as under section 6323 of title 26 (as in effect on April 7, 1986). Such section 6323 shall be applied for purposes of this section by disregarding subsection (g)(4) and by substituting—

(A) “lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1368]” for “lien imposed by section 6321” each place it appears in subsections (a), (b), (c)(1), (c)(4)(B), (d), (e), and (h)(5);

(B) “the corporation” for “the Secretary” in subsections (a) and (b)(9)(C);

(C) “the payment of the amount on which the section 4068(a) lien is based” for “the collection of any tax under this title” in subsection (b)(3);

(D) “a person whose property is subject to the lien” for “the taxpayer” in subsections (b)(8), (c)(2)(A)(i) (the first place it appears), (c)(2)(A)(ii), (c)(2)(B), (c)(4)(B), and (c)(4)(C) (in the matter preceding clause (i));

(E) “such person” for “the taxpayer” in subsections (c)(2)(A)(i) (the second place it appears) and (c)(4)(C)(ii);

(F) “payment of the loan value of the amount on which the lien is based is made to the corporation” for “satisfaction of a levy pursuant to section 6332(b)” in subsection (b)(9)(C);

(G) “section 4068(a) lien” for “tax lien” each place it appears in subsections (c)(1), (c)(2)(A), (c)(2)(B), (c)(3)(B)(iii), (c)(4)(B), (d), and (h)(5); and

(H) “the date on which the lien is first filed” for “the date of the assessment of the tax” in subsection (g)(3)(A).

¹ So in original. Probably should be followed by a period.

(2) In a case under title 11 or in insolvency proceedings, the lien imposed under subsection (a) of this section shall be treated in the same manner as a tax due and owing to the United States for purposes of title 11 or section 3713 of title 31.

(3) For purposes of applying section 6323(a) of title 26 to determine the priority between the lien imposed under subsection (a) of this section and a Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(4) For purposes of this subsection, notice of the lien imposed by subsection (a) of this section shall be filed in the same manner as under section 6323(f) and (g) of title 26.

(d) Civil action; limitation period

(1) In any case where there has been a refusal or neglect to pay the liability imposed under section 1362, 1363, or 1364 of this title, the corporation may bring civil action in a district court of the United States to enforce the lien of the corporation under this section with respect to such liability or to subject any property, of whatever nature, of the liable person, or in which he has any right, title, or interest to the payment of such liability.

(2) The liability imposed by section 1362, 1363, or 1364 of this title may be collected by a proceeding in court if the proceeding is commenced within 6 years after the date upon which the plan was terminated or prior to the expiration of any period for collection agreed upon in writing by the corporation and the liable person before the expiration of such 6-year period. The period of limitations provided under this paragraph shall be suspended for the period the assets of the liable person are in the control or custody of any court of the United States, or of any State, or of the District of Columbia, and for 6 months thereafter, and for any period during which the liable person is outside the United States if such period of absence is for a continuous period of at least 6 months.

(e) Release or subordination

If the corporation determines that release of the lien or subordination of the lien to any other creditor of the liable person would not adversely affect the collection of the liability imposed under section 1362, 1363, or 1364 of this title, or that the amount realizable by the corporation from the property to which the lien attaches will ultimately be increased by such release or subordination, and that the ultimate collection of the liability will be facilitated by such release or subordination, the corporation may issue a certificate of release or subordination of the lien with respect to such property, or any part thereof.

(f) Definitions

For purposes of this section—

(1) The collective net worth of persons subject to liability in connection with a plan termination shall be determined as provided in section 1362(d)(1) of this title.

(2) The term “pre-tax profits” has the meaning provided in section 1362(d)(2) of this title.

(Pub. L. 93-406, title IV, §4068, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 95-598, title III, §321(c), Nov.

6, 1978, 92 Stat. 2678; Pub. L. 99-272, title XI, §11016(a)(6)(B), (c)(14), Apr. 7, 1986, 100 Stat. 271, 275; Pub. L. 100-203, title IX, §9312(b)(2)(B)(i), (C)(ii), Dec. 22, 1987, 101 Stat. 1330-361, 1330-362; Pub. L. 101-239, title VII, §§7881(f)(3)(B), (10)(C), (12), 7891(a)(1), 7894(g)(4)(A), Dec. 19, 1989, 103 Stat. 2440, 2441, 2445, 2451.)

CODIFICATION

A former subsec. (f) of this section was originally subsec. (e) of section 1362 of this title and was redesignated as subsec. (f) of this section by Pub. L. 100-203, §9312(b)(2)(B)(ii). Subsequently, Pub. L. 100-203, §9312(b)(2)(B)(ii), was amended generally by Pub. L. 101-239, §7881(f)(10)(B), and, as so amended, no longer contains language redesignating subsec. (e) of section 1362 as subsec. (f) of this section. As a result of that amendment, the transfer of subsec. (e) of section 1362 to subsec. (f) of this section was rescinded.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-239, §7881(f)(12), struck out “to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 1362(a) of this title” after “the amount of such liability” and substituted “in the amount of such liability (including interest) upon all property and rights to property, whether real or personal, belonging to such person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 1362(a) of this title” for “to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 1362(a) of this title upon all property and rights to property, whether real or personal, belonging to such person.”

Pub. L. 101-239, §7881(f)(3)(B), struck out at end “The preceding provisions of this subsection shall be applied in a manner consistent with the provisions of section 1364(d) of this title relating to treatment of multiple controlled groups.”

Subsec. (c). Pub. L. 101-239, §7891(a)(1), in pars. (1), (3), and (4), 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. (c)(2). Pub. L. 101-239, §7894(g)(4)(A), substituted “section 3713 of title 31” for “section 3466 of the Revised Statutes (31 U.S.C. 191)”.

Subsec. (f). Pub. L. 101-239, §7881(f)(10)(C), added subsec. (f).

1987—Subsec. (a). Pub. L. 100-203, §9312(b)(2)(B)(i), substituted “to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 1362(a) of this title” for “to the extent of an amount equal to the unpaid amount described in section 1362(b)(1)(A)(i) of this title” in two places.

Pub. L. 100-203, §9312(b)(2)(C)(ii), inserted at end “The preceding provisions of this subsection shall be applied in a manner consistent with the provisions of section 1364(d) of this title relating to treatment of multiple controlled groups.”

1986—Pub. L. 99-272, §11016(a)(6)(B)(i), struck out “of employer” after “liability” in section catchline.

Subsec. (a). Pub. L. 99-272, §11016(a)(6)(B)(ii), substituted “person liable” for “employer or employers liable”, “neglects or refuses” for “neglect or refuse”, and “such person” for “such employer or employers” and inserted “to the extent of an amount equal to the unpaid amount described in section 1362(b)(1)(A)(i) of this title” in two places.

Subsec. (c)(1). Pub. L. 99-272, §11016(a)(6)(B)(vi), substituted par. (1) for former par. (1) which read as follows: “Except as otherwise provided under this section, the priority of the lien imposed under subsection (a) of this section shall be determined in the same manner as under section 6323 of title 26. Such section 6323 shall be

applied by substituting 'lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974' for 'lien imposed by section 6321'; 'corporation' for 'Secretary or his delegate'; 'employer liability lien' for 'tax lien'; 'employer' for 'taxpayer'; 'lien arising under section 4068(a) of the Employee Retirement Income Security Act of 1974' for 'assessment of the tax'; and 'payment of the loan value is made to the corporation' for 'satisfaction of a levy pursuant to section 6332(b)'; each place such terms appear."

Subsec. (d)(1), (2). Pub. L. 99-272, § 11016(a)(6)(B)(iii), (iv), substituted "liable person" for "employer" wherever appearing.

Subsec. (e). Pub. L. 99-272, § 11016(a)(6)(B)(v), (c)(14), struck out "," with the consent of the board of directors," after "corporation determines" and substituted "liable person" for "employer or employers".

1978—Subsec. (c)(2). Pub. L. 95-598 substituted "a case under title 11 or in" and "title 11" for "the case of bankruptcy or" and "the Bankruptcy Act".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(3)(B), (10)(C), (12) 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.

Section 7894(g)(4)(B) of Pub. L. 101-239 provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if originally included in section 3 of Public Law 97-258."

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 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.

§ 1369. Treatment of transactions to evade liability; effect of corporate reorganization

(a) Treatment of transactions to evade liability

If a principal purpose of any person in entering into any transaction is to evade liability to which such person would be subject under this subtitle and the transaction becomes effective within five years before the termination date of the termination on which such liability would be based, then such person and the members of such person's controlled group (determined as of the termination date) shall be subject to liability under this subtitle in connection with such

termination as if such person were a contributing sponsor of the terminated plan as of the termination date. This subsection shall not cause any person to be liable under this subtitle in connection with such plan termination for any increases or improvements in the benefits provided under the plan which are adopted after the date on which the transaction referred to in the preceding sentence becomes effective.

(b) Effect of corporate reorganization

For purposes of this subtitle, the following rules apply in the case of certain corporate reorganizations:

(1) Change of identity, form, etc.

If a person ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the person to whom this subtitle applies.

(2) Liquidation into parent corporation

If a person ceases to exist by reason of liquidation into a parent corporation, the parent corporation shall be treated as the person to whom this subtitle applies.

(3) Merger, consolidation, or division

If a person ceases to exist by reason of a merger, consolidation, or division, the successor corporation or corporations shall be treated as the person to whom this subtitle applies.

(Pub. L. 93-406, title IV, § 4069, as added Pub. L. 99-272, title XI, § 11013(a), Apr. 7, 1986, 100 Stat. 260.)

EFFECTIVE DATE

Section 11013(b) of Pub. L. 99-272 provided that: "Section 4069(a) of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)) [subsec. (a) of this section] shall apply with respect to transactions becoming effective on or after January 1, 1986."

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

§ 1370. Enforcement authority relating to terminations of single-employer plans

(a) In general

Any person who is with respect to a single-employer plan a fiduciary, contributing sponsor, member of a contributing sponsor's controlled group, participant, or beneficiary, and is adversely affected by an act or practice of any party (other than the corporation) in violation of any provision of section 1341, 1342, 1362, 1363, 1364, or 1369 of this title, or who is an employee organization representing such a participant or beneficiary so adversely affected for purposes of collective bargaining with respect to such plan, may bring an action—

(1) to enjoin such act or practice, or

(2) to obtain other appropriate equitable relief (A) to redress such violation or (B) to enforce such provision.

(b) Status of plan as party to action and with respect to legal process

A single-employer plan may be sued under this section as an entity. Service of summons, sub-

poena, or other legal process of a court upon a trustee or an administrator of a single-employer plan in such trustee's or administrator's capacity as such shall constitute service upon the plan. If a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon any contributing sponsor of the plan shall constitute such service. Any money judgment under this section against a single-employer plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in such person's individual capacity.

(c) Jurisdiction and venue

The district courts of the United States shall have exclusive jurisdiction of civil actions under this section. Such actions may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found. The district courts of the United States shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(d) Right of corporation to intervene

A copy of the complaint or notice of appeal in any action under this section shall be served upon the corporation by certified mail. The corporation shall have the right in its discretion to intervene in any action.

(e) Awards of costs and expenses

(1) General rule

In any action brought under this section, the court in its discretion may award all or a portion of the costs and expenses incurred in connection with such action, including reasonable attorney's fees, to any party who prevails or substantially prevails in such action.

(2) Exemption for plans

Notwithstanding the preceding provisions of this subsection, no plan shall be required in any action to pay any costs and expenses (including attorney's fees).

(f) Limitation on actions

(1) In general

Except as provided in paragraph (3), an action under this section may not be brought after the later of—

(A) 6 years after the date on which the cause of action arose, or

(B) 3 years after the applicable date specified in paragraph (2).

(2) Applicable date

(A) General rule

Except as provided in subparagraph (B), the applicable date specified in this paragraph is the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

(B) Special rule for plaintiffs who are fiduciaries

In the case of a plaintiff who is a fiduciary bringing the action in the exercise of fiduciary duties, the applicable date specified in this paragraph is the date on which the plaintiff became a fiduciary with respect to the plan if such date is later than the date described in subparagraph (A).

(3) Cases of fraud or concealment

In the case of fraud or concealment, the period described in paragraph (1)(B) shall be extended to 6 years after the applicable date specified in paragraph (2).

(Pub. L. 93-406, title IV, § 4070, as added Pub. L. 99-272, title XI, § 11014(a), Apr. 7, 1986, 100 Stat. 261; amended Pub. L. 101-239, title VII, § 7881(f)(8), Dec. 19, 1989, 103 Stat. 2440.)

AMENDMENTS

1989—Subsec. (a), Pub. L. 101-239 struck out “1349,” after “section 1341, 1342,”.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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.

EFFECTIVE DATE

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

§ 1371. Penalty for failure to timely provide required information

The corporation may assess a penalty, payable to the corporation, against any person who fails to provide any notice or other material information required under this subtitle, subtitle A, B, or C of this subchapter, as¹ section 1083(k)(4) or 1085b(e) of this title, or any regulations prescribed under any such subtitle or such section, within the applicable time limit specified therein. Such penalty shall not exceed \$1,000 for each day for which such failure continues.

(Pub. L. 93-406, title IV, § 4071, as added Pub. L. 100-203, title IX, § 9314(c)(1), Dec. 22, 1987, 101 Stat. 1330-367; amended Pub. L. 101-239, title VII, § 7881(g)(8), (i)(3)(B), Dec. 19, 1989, 103 Stat. 2442; Pub. L. 109-280, title I, § 107(b)(5), Aug. 17, 2006, 120 Stat. 820.)

AMENDMENTS

2006—Pub. L. 109-280 substituted “1083(k)(4)” for “1082(f)(4)”.

1989—Pub. L. 101-239, § 7881(i)(3)(B), substituted “, subtitle A, B, or C of this subchapter, as section 1082(f)(4) or 1085b(e) of this title” for “or subtitle A, B, or C” and inserted “or such section” after “such subtitle”.

Pub. L. 101-239, § 7881(g)(8), made clarifying amendment to directory language of Pub. L. 100-203, § 9314(c)(1), resulting in no change in text.

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.

¹ So in original. Probably should be “or”.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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.

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.

SUBTITLE E—SPECIAL PROVISIONS FOR
MULTIEMPLOYER PLANS
AMENDMENTS

1980—Pub. L. 96-364, title I, § 104, Sept. 26, 1980, 94 Stat. 1217, added subtitle heading. Former subtitle E heading “Effective Date; Special Rules” was struck out. See subtitle F of this subchapter.

PART 1—EMPLOYER WITHDRAWALS

§ 1381. Withdrawal liability established; criteria and definitions

(a) If an employer withdraws from a multiemployer plan in a complete withdrawal or a partial withdrawal, then the employer is liable to the plan in the amount determined under this part to be the withdrawal liability.

(b) For purposes of subsection (a) of this section—

(1) The withdrawal liability of an employer to a plan is the amount determined under section 1391 of this title to be the allocable amount of unfunded vested benefits, adjusted—

(A) first, by any de minimis reduction applicable under section 1389 of this title,

(B) next, in the case of a partial withdrawal, in accordance with section 1386 of this title,

(C) then, to the extent necessary to reflect the limitation on annual payments under section 1399(c)(1)(B) of this title, and

(D) finally, in accordance with section 1405 of this title.

(2) The term “complete withdrawal” means a complete withdrawal described in section 1383 of this title.

(3) The term “partial withdrawal” means a partial withdrawal described in section 1385 of this title.

(Pub. L. 93-406, title IV, § 4201, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1217.)

PRIOR PROVISIONS

A prior section 1381, Pub. L. 93-406, title IV, § 4402, formerly § 4082, Sept. 2, 1974, 88 Stat. 1034; S.Res. 4, Feb. 4, 1977; Pub. L. 95-214, § 1, Dec. 19, 1977, 91 Stat. 1501; S.Res. 30, Mar. 7, 1979; Pub. L. 96-24, June 19, 1979, 93 Stat. 70; Pub. L. 96-239, § 1, Apr. 30, 1980, 94 Stat. 341; Pub. L. 96-293, § 1, June 30, 1980, 94 Stat. 610, renumbered § 4402 and amended Pub. L. 96-364, title I, § 108(a)-(c)(1), Sept. 26, 1980, 94 Stat. 1267, relating to the effective dates and special rules for this subchapter, was transferred to section 1461 of this title.

EFFECTIVE DATE

Part effective Sept. 26, 1980, see section 1461(e)(2) of this title.

ELIMINATION OF RETROACTIVE APPLICATION OF AMENDMENTS MADE BY MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980, PUB. L. 96-364

Pub. L. 98-369, div. A, title V, § 558(a), (c), (d), July 18, 1984, 98 Stat. 899, provided that:

“(a) IN GENERAL.—

“(1) LIABILITY.—Any withdrawal liability incurred by an employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.) as a result of the complete or partial withdrawal of such employer from a multiemployer plan before September 26, 1980, shall be void.

“(2) REFUNDS.—Any amounts paid by an employer to a plan sponsor as a result of such withdrawal liability shall be refunded by the plan sponsor to the employer with interest (in accordance with section 401(a)(2) [26 U.S.C. 401(a)(2)]), less a reasonable amount for administrative expenses incurred by the plan sponsor (other than legal expenses incurred with respect to the plan) in calculating, assessing, and refunding such amounts.

“(c) NO INCREASE IN LIABILITY.—The amendments made by this section [amending sections 1391, 1397, 1399, 1415 and 1461 of this title and provisions set out as a note under section 1385 of this title] shall not be construed to increase the liability incurred by any employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.), as in effect immediately before the amendments made by subsection (b) [amending sections 1391, 1397, 1399, 1415, and 1461 of this title and provisions set out as a note under section 1385 of this title], as a result of the complete or partial withdrawal of such employer from a multiemployer plan prior to September 26, 1980.

“(d) SPECIAL RULE FOR CERTAIN BINDING AGREEMENTS.—In the case of an employer who, on September 26, 1980, has a binding agreement to withdraw from a multiemployer plan, subsection (a)(1) shall be applied by substituting ‘December 31, 1980’ for ‘September 26, 1980.’”

APPLICABILITY TO CERTAIN EMPLOYERS WITHDRAWN BEFORE SEPT. 26, 1980, FROM MULTIEMPLOYER PLAN COVERING EMPLOYEES IN SEAGOING INDUSTRY; EFFECTIVE DATE, COVERAGE, ETC.

Section 108(c)(4) of Pub. L. 96-364 provided that: “In the case of an employer who withdrew before the date of enactment of this Act [Sept. 26, 1980] from a multiemployer plan covering employees in the seagoing industry (as determined by the corporation), sections 4201 through 4219 of the Employee Retirement Income Security Act of 1974, as added by this Act, [section 1381 through 1399 of this title], are effective as of May 3, 1979. For the purpose of applying section 4217 [section 1397 of this title] for purposes of the preceding sentence, the date ‘May 2, 1979,’ shall be substituted for ‘April 28, 1980,’ and the date ‘May 3, 1979’ shall be substituted for ‘April 29, 1980.’ For purposes of this paragraph, terms which are used in title IV of the Employee Retirement Income Security Act of 1974 [this subchapter], or in regulations prescribed under that title, and which are used in the preceding sentence have the same meaning as when used in that Act [see Short Title note set out under sections 1001 of this title] or those regulations. For purposes of this paragraph, the term ‘employer’ includes only a substantial employer covering employees in the seagoing industry (as so determined) in connection with ports on the West Coast of the United States, but does not include an employer who withdrew from a plan because of a change in the collective bargaining representative.”