

**(e) One or more withdrawals of employer attributable to same sale, liquidation, or dissolution**

In the case of one or more withdrawals of an employer attributable to the same sale, liquidation, or dissolution, under regulations prescribed by the corporation—

(1) all such withdrawals shall be treated as a single withdrawal for the purpose of applying this section, and

(2) the withdrawal liability of the employer to each plan shall be an amount which bears the same ratio to the present value of the withdrawal liability payments to all plans (after the application of the preceding provisions of this section) as the withdrawal liability of the employer to such plan (determined without regard to this section) bears to the withdrawal liability of the employer to all such plans (determined without regard to this section).

(Pub. L. 93-406, title IV, §4225, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1243; amended Pub. L. 109-280, title II, §204(a)(1), (2), Aug. 17, 2006, 120 Stat. 886, 887.)

AMENDMENTS

2006—Subsec. (a)(1)(B). Pub. L. 109-280, §204(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the unfunded vested benefits attributable to employees of the employer.”

Subsec. (a)(2). Pub. L. 109-280, §204(a)(1), added table and struck out former table which provided for a portion of: 30 percent of the amount if the liquidation or dissolution value of the employer after the sale or exchange is not more than \$2,000,000; \$600,000, plus 35 percent of the amount in excess of \$2,000,000, if the employer's liquidation or dissolution value is more than \$2,000,000, but not more than \$4,000,000; \$1,300,000, plus 40 percent of the amount in excess of \$4,000,000, if the employer's liquidation or dissolution value is more than \$4,000,000, but not more than \$6,000,000; \$2,100,000, plus 45 percent of the amount in excess of \$6,000,000, if the employer's liquidation or dissolution value is more than \$6,000,000, but not more than \$7,000,000; \$2,550,000, plus 50 percent of the amount in excess of \$7,000,000, if the employer's liquidation or dissolution value is more than \$7,000,000, but not more than \$8,000,000; \$3,050,000, plus 60 percent of the amount in excess of \$8,000,000, if the employer's liquidation or dissolution value is more than \$8,000,000, but not more than \$9,000,000; \$3,650,000, plus 70 percent of the amount in excess of \$9,000,000, if the employer's liquidation or dissolution value is more than \$9,000,000, but not more than \$10,000,000; and \$4,350,000, plus 80 percent of the amount in excess of \$10,000,000, if the employer's liquidation or dissolution value is more than \$10,000,000.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title II, §204(a)(3), Aug. 17, 2006, 120 Stat. 887, provided that: “The amendments made by this subsection [amending this section] shall apply to sales occurring on or after January 1, 2007.”

PART 2—MERGER OR TRANSFER OF PLAN ASSETS OR LIABILITIES

**§ 1411. Mergers and transfers between multiemployer plans**

**(a) Authority of plan sponsor**

Unless otherwise provided in regulations prescribed by the corporation, a plan sponsor may not cause a multiemployer plan to merge with one or more multiemployer plans, or engage in

a transfer of assets and liabilities to or from another multiemployer plan, unless such merger or transfer satisfies the requirements of subsection (b) of this section.

**(b) Criteria**

A merger or transfer satisfies the requirements of this section if—

(1) in accordance with regulations of the corporation, the plan sponsor of a multiemployer plan notifies the corporation of a merger with or transfer of plan assets or liabilities to another multiemployer plan at least 120 days before the effective date of the merger or transfer;

(2) no participant's or beneficiary's accrued benefit will be lower immediately after the effective date of the merger or transfer than the benefit immediately before that date;

(3) the benefits of participants and beneficiaries are not reasonably expected to be subject to suspension under section 1426 of this title; and

(4) an actuarial valuation of the assets and liabilities of each of the affected plans has been performed during the plan year preceding the effective date of the merger or transfer, based upon the most recent data available as of the day before the start of that plan year, or other valuation of such assets and liabilities performed under such standards and procedures as the corporation may prescribe by regulation.

**(c) Actions not deemed violation of section 1106(a) or (b)(2) of this title**

The merger of multiemployer plans or the transfer of assets or liabilities between multiemployer plans, shall be deemed not to constitute a violation of the provisions of section 1106(a) of this title or section 1106(b)(2) of this title if the corporation determines that the merger or transfer otherwise satisfies the requirements of this section.

**(d) Nature of plan to which liabilities are transferred**

A plan to which liabilities are transferred under this section is a successor plan for purposes of section 1322a(b)(2)(B) of this title.

(Pub. L. 93-406, title IV, §4231, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1244.)

EFFECTIVE DATE

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

**§ 1412. Transfers between a multiemployer plan and a single-employer plan**

**(a) General authority**

A transfer of assets or liabilities between, or a merger of, a multiemployer plan and a single-employer plan shall satisfy the requirements of this section.

**(b) Accrued benefit of participant or beneficiary not lower immediately after effective date of transfer or merger**

No accrued benefit of a participant or beneficiary may be lower immediately after the ef-

fective date of a transfer or merger described in subsection (a) of this section than the benefit immediately before that date.

**(c) Liability of multiemployer plan to corporation where single-employer plan terminates within 60 months after effective date of transfer; amount of liability, exemption, etc.**

(1) Except as provided in paragraphs (2) and (3), a multiemployer plan which transfers liabilities to a single-employer plan shall be liable to the corporation if the single-employer plan terminates within 60 months after the effective date of the transfer. The amount of liability shall be the lesser of—

(A) the amount of the plan asset insufficiency of the terminated single-employer plan, less 30 percent of the net worth of the employer who maintained the single-employer plan, determined in accordance with section 1362 or 1364 this title, or

(B) the value, on the effective date of the transfer, of the unfunded benefits transferred to the single-employer plan which are guaranteed under section 1322 of this title.

(2) A multiemployer plan shall be liable to the corporation as provided in paragraph (1) unless, within 180 days after the corporation receives an application (together with such information as the corporation may reasonably require for purposes of such application) from the multiemployer plan sponsor for a determination under this paragraph—

(A) the corporation determines that the interests of the plan participants and beneficiaries and of the corporation are adequately protected, or

(B) fails to make any determination regarding the adequacy with which such interests are protected with respect to such transfer of liabilities.

If, after the receipt of such application, the corporation requests from the plan sponsor additional information necessary for the determination, the running of the 180-day period shall be suspended from the date of such request until the receipt by the corporation of the additional information requested. The corporation may by regulation prescribe procedures and standards for the issuance of determinations under this paragraph. This paragraph shall not apply to any application submitted less than 180 days after September 26, 1980.

(3) A multiemployer plan shall not be liable to the corporation as provided in paragraph (1) in the case of a transfer from the multiemployer plan to a single-employer plan of liabilities which accrued under a single-employer plan which merged with the multiemployer plan, if, the value of liabilities transferred to the single-employer plan does not exceed the value of the liabilities for benefits which accrued before the merger, and the value of the assets transferred to the single-employer plan is substantially equal to the value of the assets which would have been in the single-employer plan if the employer had maintained and funded it as a separate plan under which no benefits accrued after the date of the merger.

(4) The corporation may make equitable arrangements with multiemployer plans which are

liable under this subsection for satisfaction of their liability.

**(d) Guarantee of benefits under single-employer plan**

Benefits under a single-employer plan to which liabilities are transferred in accordance with this section are guaranteed under section 1322 of this title to the extent provided in that section as of the effective date of the transfer and the plan is a successor plan.

**(e) Transfer of liabilities by multiemployer plan to single-employer plan**

(1) Except as provided in paragraph (2), a multiemployer plan may not transfer liabilities to a single-employer plan unless the plan sponsor of the plan to which the liabilities would be transferred agrees to the transfer.

(2) In the case of a transfer described in subsection (c)(3) of this section, paragraph (1) of this subsection is satisfied by the advance agreement to the transfer by the employer who will be obligated to contribute to the single-employer plan.

**(f) Additional requirements by corporation for protection of interests of plan participants, beneficiaries and corporation; approval by corporation of transfer of assets or liabilities to single-employer plan from plan in reorganization; covered transfers in connection with termination**

(1) The corporation may prescribe by regulation such additional requirements with respect to the transfer of assets or liabilities as may be necessary to protect the interests of plan participants and beneficiaries and the corporation.

(2) Except as otherwise determined by the corporation, a transfer of assets or liabilities to a single-employer plan from a plan in reorganization under section 1421 of this title is not effective unless the corporation approves such transfer.

(3) No transfer to which this section applies, in connection with a termination described in section 1341a(a)(2) of this title shall be effective unless the transfer meets such requirements as may be established by the corporation to prevent an increase in the risk of loss to the corporation.

(Pub. L. 93-406, title IV, §4232, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1245.)

**§ 1413. Partition**

**(a) Authority of corporation**

The corporation may order the partition of a multiemployer plan in accordance with this section.

**(b) Authority of plan sponsor upon application to corporation for partition order; procedures applicable to corporation**

A plan sponsor may apply to the corporation for an order partitioning a plan. The corporation may not order the partition of a plan except upon notice to the plan sponsor and the participants and beneficiaries whose vested benefits will be affected by the partition of the plan, and upon finding that—

(1) a substantial reduction in the amount of aggregate contributions under the plan has resulted or will result from a case or proceeding under title 11 with respect to an employer;

(2) the plan is likely to become insolvent;

(3) contributions will have to be increased significantly in reorganization to meet the minimum contribution requirement and prevent insolvency; and

(4) partition would significantly reduce the likelihood that the plan will become insolvent.

**(c) Authority of corporation notwithstanding pendency of partition proceeding**

The corporation may order the partition of a plan notwithstanding the pendency of a proceeding described in subsection (b)(1) of this section.

**(d) Scope of partition order**

The corporation's partition order shall provide for a transfer of no more than the nonforfeitable benefits directly attributable to service with the employer referred to in subsection (b)(1) of this section and an equitable share of assets.

**(e) Nature of plan created by partition**

The plan created by the partition is—

(1) a successor plan to which section 1322a of this title applies, and

(2) a terminated multiemployer plan to which section 1341a(d) of this title applies, with respect to which only the employer described in subsection (b)(1) of this section has withdrawal liability, and to which section 1368 of this title applies.

**(f) Authority of corporation to obtain decree partitioning plan and appointing trustee for terminated portion of partitioned plan**

The corporation may proceed under section 1342(c) through (h) of this title for a decree partitioning a plan and appointing a trustee for the terminated portion of a partitioned plan. The court may order the partition of a plan upon making the findings described in subsection (b)(1) through (4) of this section, and subject to the conditions set forth in subsections (c) through (e) of this section.

(Pub. L. 93-406, title IV, §4233, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1246.)

**§ 1414. Asset transfer rules**

**(a) Applicability and scope**

A transfer of assets from a multiemployer plan to another plan shall comply with asset-transfer rules which shall be adopted by the multiemployer plan and which—

(1) do not unreasonably restrict the transfer of plan assets in connection with the transfer of plan liabilities, and

(2) operate and are applied uniformly with respect to each proposed transfer, except that the rules may provide for reasonable variations taking into account the potential financial impact of a proposed transfer on the multiemployer plan.

Plan rules authorizing asset transfers consistent with the requirements of section 1412(c)(3) of this title shall be considered to satisfy the requirements of this subsection.

**(b) Exemption of de minimis transfers**

The corporation shall prescribe regulations which exempt de minimis transfers of assets from the requirements of this part.

**(c) Written reciprocity agreements**

This part shall not apply to transfers of assets pursuant to written reciprocity agreements, except to the extent provided in regulations prescribed by the corporation.

(Pub. L. 93-406, title IV, §4234, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1247.)

**§ 1415. Transfers pursuant to change in bargaining representative**

**(a) Authority to transfer from old plan to new plan pursuant to employee participation in another multiemployer plan after certified change of representative**

In any case in which an employer has completely or partially withdrawn from a multiemployer plan (hereafter in this section referred to as the "old plan") as a result of a certified change of collective bargaining representative occurring after September 25, 1980, if participants of the old plan who are employed by the employer will, as a result of that change, participate in another multiemployer plan (hereafter in this section referred to as the "new plan"), the old plan shall transfer assets and liabilities to the new plan in accordance with this section.

**(b) Notification by employer of plan sponsor of old plan; notification by plan sponsor of old plan of employer and plan sponsor of new plan; appeal by new plan to prevent transfer; further proceedings**

(1) The employer shall notify the plan sponsor of the old plan of a change in multiemployer plan participation described in subsection (a) of this section no later than 30 days after the employer determines that the change will occur.

(2) The plan sponsor of the old plan shall—

(A) notify the employer of—

(i) the amount of the employer's withdrawal liability determined under part 1 of this subtitle with respect to the withdrawal,

(ii) the old plan's intent to transfer to the new plan the nonforfeitable benefits of the employees who are no longer working in covered service under the old plan as a result of the change of bargaining representative, and

(iii) the amount of assets and liabilities which are to be transferred to the new plan, and

(B) notify the plan sponsor of the new plan of the benefits, assets, and liabilities which will be transferred to the new plan.

(3) Within 60 days after receipt of the notice described in paragraph (2)(B), the new plan may file an appeal with the corporation to prevent the transfer. The transfer shall not be made if the corporation determines that the new plan would suffer substantial financial harm as a result of the transfer. Upon notification described in paragraph (2), if—

(A) the employer fails to object to the transfer within 60 days after receipt of the notice described in paragraph (2)(A), or

(B) the new plan either—

- (i) fails to file such an appeal, or
- (ii) the corporation, pursuant to such an appeal, fails to find that the new plan would suffer substantial financial harm as a result of the transfer described in the notice under paragraph (2)(B) within 180 days after the date on which the appeal is filed,

then the plan sponsor of the old plan shall transfer the appropriate amount of assets and liabilities to the new plan.

**(c) Reduction of amount of withdrawal liability of employer upon transfer of appropriate amount of assets and liabilities by plan sponsor of old plan to new plan**

If the plan sponsor of the old plan transfers the appropriate amount of assets and liabilities under this section to the new plan, then the amount of the employer's withdrawal liability (as determined under section 1381(b) of this title without regard to such transfer and this section) with respect to the old plan shall be reduced by the amount by which—

(1) the value of the unfunded vested benefits allocable to the employer which were transferred by the plan sponsor of the old plan to the new plan, exceeds

(2) the value of the assets transferred.

**(d) Escrow payments by employer upon complete or partial withdrawal and prior to transfer**

In any case in which there is a complete or partial withdrawal described in subsection (a) of this section, if—

(1) the new plan files an appeal with the corporation under subsection (b)(3) of this section, and

(2) the employer is required by section 1399 of this title to begin making payments of withdrawal liability before the earlier of—

(A) the date on which the corporation finds that the new plan would not suffer substantial financial harm as a result of the transfer, or

(B) the last day of the 180-day period beginning on the date on which the new plan files its appeal,

then the employer shall make such payments into an escrow held by a bank or similar financial institution satisfactory to the old plan. If the transfer is made, the amounts paid into the escrow shall be returned to the employer. If the transfer is not made, the amounts paid into the escrow shall be paid to the old plan and credited against the employer's withdrawal liability.

**(e) Prohibition on transfer of assets to new plan by plan sponsor of old plan; exemptions**

(1) Notwithstanding subsection (b) of this section, the plan sponsor shall not transfer any assets to the new plan if—

(A) the old plan is in reorganization (within the meaning of section 1421(a) of this title), or

(B) the transfer of assets would cause the old plan to go into reorganization (within the meaning of section 1421(a) of this title).

(2) In any case in which a transfer of assets from the old plan to the new plan is prohibited by paragraph (1), the plan sponsor of the old plan shall transfer—

(A) all nonforfeitable benefits described in subsection (b)(2) of this section, if the value of such benefits does not exceed the withdrawal liability of the employer with respect to such withdrawal, or

(B) such nonforfeitable benefits having a value equal to the withdrawal liability of the employer, if the value of such benefits exceeds the withdrawal liability of the employer.

**(f) Agreement between plan sponsors of old plan and new plan to transfer in compliance with other statutory provisions; reduction of withdrawal liability of employer from old plan; amount of withdrawal liability of employer to new plan**

(1) Notwithstanding subsections (b) and (e) of this section, the plan sponsors of the old plan and the new plan may agree to a transfer of assets and liabilities that complies with sections 1411 and 1414 of this title, rather than this section, except that the employer's liability with respect to the withdrawal from the old plan shall be reduced under subsection (c) of this section as if assets and liabilities had been transferred in accordance with this section.

(2) If the employer withdraws from the new plan within 240 months after the effective date of a transfer of assets and liabilities described in this section, the amount of the employer's withdrawal liability to the new plan shall be the greater of—

(A) the employer's withdrawal liability determined under part 1 of this subtitle with respect to the new plan, or

(B) the amount by which the employer's withdrawal liability to the old plan was reduced under subsection (c) of this section, reduced by 5 percent for each 12-month period following the effective date of the transfer and ending before the date of the withdrawal from the new plan.

**(g) Definitions**

For purposes of this section—

(1) "appropriate amount of assets" means the amount by which the value of the nonforfeitable benefits to be transferred exceeds the amount of the employer's withdrawal liability to the old plan (determined under part 1 of this subtitle without regard to section 1391(e) of this title), and

(2) "certified change of collective bargaining representative" means a change of collective bargaining representative certified under the Labor-Management Relations Act, 1947 [29 U.S.C. 141 et seq.], or the Railway Labor Act [45 U.S.C. 151 et seq.].

(Pub. L. 93-406, title IV, § 4235, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1247; amended Pub. L. 98-369, div. A, title V, § 558(b)(1)(A), July 18, 1984, 98 Stat. 899.)

REFERENCES IN TEXT

The Labor-Management Relations Act, 1947, referred to in subsec. (g)(2), is act June 23, 1947, ch. 120, 61 Stat. 136, as amended, which is classified principally to chapter 7 (§ 141 et seq.) of this title. For complete classification of this Act to the Code, see section 141 of this title and Tables.

The Railway Labor Act, referred to in subsec. (g)(2), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended,

which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

#### AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted “September 25, 1980” for “April 28, 1980”.

#### EFFECTIVE DATE

Section effective Sept. 26, 1980, see section 1461(e)(4) of this title.

#### PART 3—REORGANIZATION; MINIMUM CONTRIBUTION REQUIREMENT FOR MULTIEMPLOYER PLANS

### § 1421. Reorganization status

#### (a) Reorganization index of plan for plan year greater than zero

A multiemployer plan is in reorganization for a plan year if the plan’s reorganization index for that year is greater than zero.

#### (b) Determination of reorganization index of plan for plan year; applicable factors, definitions, etc.

(1) A plan’s reorganization index for any plan year is the excess of—

(A) the vested benefits charge for such year, over

(B) the net charge to the funding standard account for such year.

(2) For purposes of this part, the net charge to the funding standard account for any plan year is the excess (if any) of—

(A) the charges to the funding standard account for such year under section 412(b)(2)<sup>1</sup> of title 26, over

(B) the credits to the funding standard account under section 412(b)(3)(B)<sup>1</sup> of title 26.

(3) For purposes of this part, the vested benefits charge for any plan year is the amount which would be necessary to amortize the plan’s unfunded vested benefits as of the end of the base plan year in equal annual installments—

(A) over 10 years, to the extent such benefits are attributable to persons in pay status, and

(B) over 25 years, to the extent such benefits are attributable to other participants.

(4)(A) The vested benefits charge for a plan year shall be based on an actuarial valuation of the plan as of the end of the base plan year, adjusted to reflect—

(i) any—

(I) decrease of 5 percent or more in the value of plan assets, or increase of 5 percent or more in the number of persons in pay status, during the period beginning on the first day of the plan year following the base plan year and ending on the adjustment date, or

(II) at the election of the plan sponsor, actuarial valuation of the plan as of the adjustment date or any later date not later than the last day of the plan year for which the determination is being made,

(ii) any change in benefits under the plan which is not otherwise taken into account

under this subparagraph and which is pursuant to any amendment—

(I) adopted before the end of the plan year for which the determination is being made, and

(II) effective after the end of the base plan year and on or before the end of the plan year referred to in subclause (I), and

(iii) any other event (including an event described in subparagraph (B)(i)(I)) which, as determined in accordance with regulations prescribed by the Secretary, would substantially increase the plan’s vested benefit charge.

(B)(i) In determining the vested benefits charge for a plan year following a plan year in which the plan was not in reorganization, any change in benefits which—

(I) results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits as a result of changes in a collective bargaining agreement, or

(II) results from any other change in a collective bargaining agreement,

shall not be taken into account except to the extent provided in regulations prescribed by the Secretary of the Treasury.

(ii) Except as otherwise determined by the Secretary of the Treasury, in determining the vested benefits charge for any plan year following any plan year in which the plan was in reorganization, any change in benefits—

(I) described in clause (i)(I), or

(II) described in clause (i)(II) as determined under regulations prescribed by the Secretary of the Treasury,

shall, for purposes of subparagraph (A)(ii), be treated as a change in benefits pursuant to an amendment to a plan.

(5)(A) For purposes of this part, the base plan year for any plan year is—

(i) if there is a relevant collective bargaining agreement, the last plan year ending at least 6 months before the relevant effective date, or

(ii) if there is no relevant collective bargaining agreement, the last plan year ending at least 12 months before the beginning of the plan year.

(B) For purposes of this part, a relevant collective bargaining agreement is a collective bargaining agreement—

(i) which is in effect for at least 6 months during the plan year, and

(ii) which has not been in effect for more than 36 months as of the end of the plan year.

(C) For purposes of this part, the relevant effective date is the earliest of the effective dates for the relevant collective bargaining agreements.

(D) For purposes of this part, the adjustment date is the date which is—

(i) 90 days before the relevant effective date, or

(ii) if there is no relevant effective date, 90 days before the beginning of the plan year.

(6) For purposes of this part, the term “person in pay status” means—

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