

United States Code Annotated

Title 29. Labor

Chapter 18. Employee Retirement Income Security Program (Refs & Annos)

Subchapter III. Plan Termination Insurance (Refs & Annos)

Subtitle A. Pension Benefit Guaranty Corporation

29 U.S.C.A. § 1301

§ 1301. Definitions

Currentness

(a) For purposes of this subchapter, the term--

(1) “administrator” means the person or persons described in paragraph (16) of [section 1002](#) of this title;

(2) “substantial employer”, for any plan year of a single-employer plan, means one or more persons--

(A) who are contributing sponsors of the plan in such plan year,

(B) who, at any time during such plan year, are members of the same controlled group, and

(C) whose required contributions to the plan for each plan year constituting one of--

(i) the two immediately preceding plan years, or

(ii) the first two of the three immediately preceding plan years,

total an amount greater than or equal to 10 percent of all contributions required to be paid to or under the plan for such plan year;

(3) “multiemployer plan” means a plan--

(A) to which more than one employer is required to contribute,

(B) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

(C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation,

except that, in applying this paragraph--

(i) a plan shall be considered a multiemployer plan on and after its termination date if the plan was a multiemployer plan under this paragraph for the plan year preceding such termination, and

(ii) for any plan year which began before September 26, 1980, the term “multiemployer plan” means a plan described in [section 414\(f\) of Title 26](#) as in effect immediately before such date;

(4) “corporation”, except where the context clearly requires otherwise, means the Pension Benefit Guaranty Corporation established under [section 1302](#) of this title;

(5) “fund” means the appropriate fund established under [section 1305](#) of this title;

(6) “basic benefits” means benefits guaranteed under [section 1322](#) of this title (other than under [section 1322\(c\)](#) of this title), or under [section 1322a](#) of this title (other than under [section 1322a\(g\)](#) of this title);

(7) “non-basic benefits” means benefits guaranteed under [section 1322\(c\)](#) of this title or [1322a\(g\)](#) of this title;

(8) “nonforfeitable benefit” means, with respect to a plan, a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of this chapter (other than submission of a formal application, retirement, completion of a required waiting period, or death in the case of a benefit which returns all or a portion of a participant's accumulated mandatory employee contributions upon the participant's death), whether or not the benefit may subsequently be reduced or suspended by a plan amendment, an occurrence of any condition, or operation of this chapter or Title 26;

(9) Repealed. [Pub.L. 113-235](#), Div. O, [Title I, § 108\(a\)\(3\)\(A\)](#), Dec. 16, 2014, 128 Stat. 2787

(10) “plan sponsor” means, with respect to a multiemployer plan--

(A) the plan's joint board of trustees, or

(B) if the plan has no joint board of trustees, the plan administrator;

(11) “contribution base unit” means a unit with respect to which an employer has an obligation to contribute under a multiemployer plan, as defined in regulations prescribed by the Secretary of the Treasury;

(12) “outstanding claim for withdrawal liability” means a plan's claim for the unpaid balance of the liability determined under part 1 of subtitle E of this subchapter for which demand has been made, valued in accordance with regulations prescribed by the corporation;

(13) “contributing sponsor”, of a single-employer plan, means a person described in [section 1082\(b\)\(1\)](#) of this title (without regard to [section 1082\(b\)\(2\)](#) of this title) or [section 412\(b\)\(1\)](#) of Title 26 (without regard to [section 412\(b\)\(2\)](#) of Title 26).¹

(14) in the case of a single-employer plan--

(A) “controlled group” means, in connection with any person, a group consisting of such person and all other persons under common control with such person;

(B) the determination of whether two or more persons are under “common control” shall be made under regulations of the corporation which are consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under [subsections \(b\) and \(c\) of section 414 of Title 26](#); and

(C)(i) notwithstanding any other provision of this subchapter, during any period in which an individual possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an affected air carrier of which he was an accountable owner, whether through the ownership of voting securities, by contract, or otherwise, the affected air carrier shall be considered to be under common control not only with those persons described in subparagraph (B), but also with all related persons; and

(ii) for purposes of this subparagraph, the term--

(I) “affected air carrier” means an air carrier, as defined in [section 40102\(a\)\(2\) of Title 49](#), that holds a certificate of public convenience and necessity under [section 41102 of Title 49](#) for route number 147, as of November 12, 1991;

(II) “related person” means any person which was under common control (as determined under subparagraph (B)) with an affected air carrier on October 10, 1991, or any successor to such related person;

(III) “accountable owner” means any individual who on October 10, 1991, owned directly or indirectly through the application of [section 318 of Title 26](#) more than 50 percent of the total voting power of the stock of an affected air carrier;

(IV) “successor” means any person that acquires, directly or indirectly through the application of [section 318 of Title 26](#), more than 50 percent of the total voting power of the stock of a related person, more than 50 percent of the total value of the securities (as defined in [section 1002\(20\)](#) of this title) of the related person, more than 50 percent

of the total value of the assets of the related person, or any person into which such related person shall be merged or consolidated; and

(V) “individual” means a living human being;

(15) “single-employer plan” means any defined benefit plan (as defined in [section 1002\(35\)](#) of this title) which is not a multiemployer plan;

(16) “benefit liabilities” means the benefits of employees and their beneficiaries under the plan (within the meaning of [section 401\(a\)\(2\) of Title 26](#));

(17) “amount of unfunded guaranteed benefits”, of a participant or beneficiary as of any date under a single-employer plan, means an amount equal to the excess of--

(A) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of [section 1344](#) of this title) of the benefits of the participant or beneficiary under the plan which are guaranteed under [section 1322](#) of this title, over

(B) the current value (as of such date) of the assets of the plan which are required to be allocated to those benefits under [section 1344](#) of this title;

(18) “amount of unfunded benefit liabilities” means, as of any date, the excess (if any) of--

(A) the value of the benefit liabilities under the plan (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of [section 1344](#) of this title), over

(B) the current value (as of such date) of the assets of the plan;

(19) “outstanding amount of benefit liabilities” means, with respect to any plan, the excess (if any) of--

(A) the value of the benefit liabilities under the plan (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of [section 1344](#) of this title), over

(B) the value of the benefit liabilities which would be so determined by only taking into account benefits which are guaranteed under [section 1322](#) of this title or to which assets of the plan are allocated under [section 1344](#) of this title;

(20) “person” has the meaning set forth in [section 1002\(9\)](#) of this title;

(21) “affected party” means, with respect to a plan--

(A) each participant in the plan,

(B) each beneficiary under the plan who is a beneficiary of a deceased participant or who is an alternate payee (within the meaning of [section 1056\(d\)\(3\)\(K\)](#) of this title) under an applicable qualified domestic relations order (within the meaning of [section 1056\(d\)\(3\)\(B\)\(i\)](#) of this title),

(C) each employee organization representing participants in the plan, and

(D) the corporation,

except that, in connection with any notice required to be provided to the affected party, if an affected party has designated, in writing, a person to receive such notice on behalf of the affected party, any reference to the affected party shall be construed to refer to such person.

(b)(1) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of [section 401\(c\)\(1\) of Title 26](#). For purposes of this subchapter, under regulations prescribed by the corporation, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as

employed by a single employer and all such trades and businesses as a single employer. The regulations prescribed under the preceding sentence shall be consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under [section 414\(c\) of Title 26](#).

(2) For purposes of subtitle E of this subchapter--

(A) except as otherwise provided in subtitle E of this subchapter, contributions or other payments shall be considered made under a plan for a plan year if they are made within the period prescribed under [section 412\(c\)\(10\) of Title 26](#) (determined, in the case of a terminated plan, as if the plan had continued beyond the termination date), and

(B) the term “Secretary of the Treasury” means the Secretary of the Treasury or such Secretary's delegate.

CREDIT(S)

([Pub.L. 93-406, Title IV, § 4001](#), Sept. 2, 1974, 88 Stat. 1003; [Pub.L. 96-364, Title IV, § 402\(a\)\(1\)](#), Sept. 26, 1980, 94 Stat. 1296; [Pub.L. 99-272, Title XI, § 11004](#), Apr. 7, 1986, 100 Stat. 238; [Pub.L. 100-203, Title IX, §§ 9312\(b\)\(4\), \(5\), 9313\(a\)\(2\)\(F\)](#), Dec. 22, 1987, 101 Stat. 1330-363, 1330-365; [Pub.L. 101-239, Title VII, § 7891\(a\)\(1\)](#), Dec. 19, 1989, 103 Stat. 2445; [Pub.L. 102-229, Title II, § 214](#), Dec. 12, 1991, 105 Stat. 1718; [Pub.L. 103-465, Title VII, § 761\(a\)\(11\)](#), Dec. 8, 1994, 108 Stat. 5034; [Pub.L. 109-280, Title I, § 108\(b\)\(1\)](#), formerly § 107(b)(1), Aug. 17, 2006, 120 Stat. 819, renumbered § 108(b)(1), [Pub.L. 111-192, Title II, § 202\(a\)](#), June 25, 2010, 124 Stat. 1297; [Pub.L. 113-235, Div. O, Title I, § 108\(a\)\(3\)\(A\)](#), Dec. 16, 2014, 128 Stat. 2787.)

[Notes of Decisions \(117\)](#)

Footnotes

¹ So in original. The period probably should be a semicolon.

29 U.S.C.A. § 1301, 29 USCA § 1301

Current through P.L. 115-40. Also includes P.L. 115-42 and 115-43. Title 26 current through 115-43.

United States Code Annotated

Title 29. Labor

Chapter 18. Employee Retirement Income Security Program (Refs & Annos)

Subchapter III. Plan Termination Insurance (Refs & Annos)

Subtitle B. Coverage (Refs & Annos)

29 U.S.C.A. § 1321

§ 1321. Coverage

Currentness

(a) Plans covered

Except as provided in subsection (b) of this section, this subchapter applies to any plan (including a successor plan) which, for a plan year--

(1) is an employee pension benefit plan (as defined in [paragraph \(2\) of section 1002](#) of this title) established or maintained--

(A) by an employer engaged in commerce or in any industry or activity affecting commerce, or

(B) by any employee organization, or organization representing employees, engaged in commerce or in any industry or activity affecting commerce, or

(C) by both,

which has, in practice, met the requirements of part I of subchapter D of chapter 1 of Title 26 (as in effect for the preceding 5 plan years of the plan) applicable to the plans described in [paragraph \(2\)](#) for the preceding 5 plan years; or

(2) is, or has been determined by the Secretary of the Treasury to be, a plan described in [section 401\(a\) of Title 26](#), or which meets, or has been determined by the Secretary of the Treasury to meet, the requirements of [section 404\(a\)\(2\) of Title 26](#).

For purposes of this subchapter, a successor plan is considered to be a continuation of a predecessor plan. For this purpose, unless otherwise specifically indicated in this subchapter, a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided.

(b) Plans not covered

This section does not apply to any plan--

(1) which is an individual account plan, as defined in paragraph (34) of [section 1002](#) of this title,¹

(2) established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or to which the Railroad Retirement Act of 1935 or 1937 [[45 U.S.C.A. § 231 et seq.](#)] applies and which is financed by contributions required under that Act, or which is described in the last sentence of [section 1002\(32\)](#) of this title²

(3) which is a church plan as defined in [section 414\(e\) of Title 26](#), unless that plan has made an election under [section 410\(d\) of Title 26](#), and has notified the corporation in accordance with procedures prescribed by the corporation, that it wishes to have the provisions of this part apply to it,¹

(4)(A) established and maintained by a society, order, or association described in [section 501\(c\)\(8\) or \(9\) of Title 26](#), if no part of the contributions to or under the plan is made by employers of participants in the plan, or

(B) of which a trust described in [section 501\(c\)\(18\) of Title 26](#) is a part;

(5) which has not at any time after September 2, 1974, provided for employer contributions;

(6) which is unfunded and which is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(7) which is established and maintained outside of the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens;

(8) which is maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by [section 415 of Title 26](#) on plans to which that section applies, without regard to whether the plan is funded, and, to the extent that a separable part of a plan (as determined by the corporation) maintained by an employer is maintained for such purpose, that part shall be treated for purposes of this subchapter, as a separate plan which is an excess benefit plan;

(9) which is established and maintained exclusively for substantial owners;

(10) of an international organization which is exempt from taxation under the International Organizations Immunities Act [[22 U.S.C.A. § 288 et seq.](#)];

(11) maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(12) which is a defined benefit plan, to the extent that it is treated as an individual account plan under paragraph (35)(B) of [section 1002](#) of this title; or

(13) established and maintained by a professional service employer which does not at any time after September 2, 1974, have more than 25 active participants in the plan.

(c) Definitions

(1) For purposes of subsection (b)(1) of this section, the term “individual account plan” does not include a plan under which a fixed benefit is promised if the employer or his representative participated in the determination of that benefit.

(2) For purposes of this paragraph and for purposes of subsection (b)(13) of this section--

(A) the term “professional service employer” means any proprietorship, partnership, corporation, or other association or organization (i) owned or controlled by professional individuals or by executors or administrators of professional individuals, (ii) the principal business of which is the performance of professional services, and

(B) the term “professional individuals” includes but is not limited to, physicians, dentists, chiropractors, osteopaths, optometrists, other licensed practitioners of the healing arts, attorneys at law, public accountants, public engineers, architects, draftsmen, actuaries, psychologists, social or physical scientists, and performing artists.

(3) In the case of a plan established and maintained by more than one professional service employer, the plan shall not be treated as a plan described in subsection (b)(13) of this section if, at any time after September 2, 1974, the plan has more than 25 active participants.

(d) For purposes of subsection (b)(9) of this section, the term “substantial owner” means an individual who, at any time during the 60-month period ending on the date the determination is being made--

(1) owns the entire interest in an unincorporated trade or business,

(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

(3) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of paragraph (3), the constructive ownership rules of [section 1563\(e\) of Title 26](#) (other than paragraph (3)(C) thereof) shall apply, including the application of such rules under [section 414\(c\) of Title 26](#).

CREDIT(S)

(Pub.L. 93-406, Title IV, § 4021, Sept. 2, 1974, 88 Stat. 1014; Pub.L. 96-364, Title IV, § 402(a)(4), Sept. 26, 1980, 94 Stat. 1298; Pub.L. 101-239, Title VII, §§ 7891(a)(1), 7894(g)(3) (A), Dec. 19, 1989, 103 Stat. 2445, 2451; Pub.L. 109-280, Title IV, § 407(c)(1), Title IX, § 906(a)(2)(B), (b)(2), Aug. 17, 2006, 120 Stat. 930, 1051, 1052; Pub.L. 110-458, Title I, § 109(d) (2), Dec. 23, 2008, 122 Stat. 5112.)

Notes of Decisions (9)

Footnotes

- 1 So in original. The comma probably should be a semicolon.
- 2 So in original. A semicolon probably should appear.

29 U.S.C.A. § 1321, 29 USCA § 1321

Current through P.L. 115-40. Also includes P.L. 115-42 and 115-43. Title 26 current through 115-43.

United States Code Annotated

Title 29. Labor

Chapter 18. Employee Retirement Income Security Program (Refs & Annos)

Subchapter III. Plan Termination Insurance (Refs & Annos)

Subtitle E. Special Provisions for Multiemployer Plans (Refs & Annos)

Part 1. Employer Withdrawals (Refs & Annos)

29 U.S.C.A. § 1383

§ 1383. Complete withdrawal

Currentness

(a) Determinative factors

For purposes of this part, a complete withdrawal from a multiemployer plan occurs when an employer--

- (1)** permanently ceases to have an obligation to contribute under the plan, or
- (2)** permanently ceases all covered operations under the plan.

(b) Building and construction industry

(1) Notwithstanding subsection (a) of this section, in the case of an employer that has an obligation to contribute under a plan for work performed in the building and construction industry, a complete withdrawal occurs only as described in paragraph (2), if--

- (A)** substantially all the employees with respect to whom the employer has an obligation to contribute under the plan perform work in the building and construction industry, and
- (B)** the plan--

- (i)** primarily covers employees in the building and construction industry, or

(ii) is amended to provide that this subsection applies to employers described in this paragraph.

(2) A withdrawal occurs under this paragraph if--

(A) an employer ceases to have an obligation to contribute under the plan, and

(B) the employer--

(i) continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or

(ii) resumes such work within 5 years after the date on which the obligation to contribute under the plan ceases, and does not renew the obligation at the time of the resumption.

(3) In the case of a plan terminated by mass withdrawal (within the meaning of [section 1341a\(a\)\(2\)](#) of this title), paragraph (2) shall be applied by substituting “3 years” for “5 years” in subparagraph (B)(ii).

(c) **Entertainment industry**

(1) Notwithstanding subsection (a) of this section, in the case of an employer that has an obligation to contribute under a plan for work performed in the entertainment industry, primarily on a temporary or project-by-project basis, if the plan primarily covers employees in the entertainment industry, a complete withdrawal occurs only as described in subsection (b)(2) of this section applied by substituting “plan” for “collective bargaining agreement” in subparagraph (B)(i) thereof.

(2) For purposes of this subsection, the term “entertainment industry” means--

(A) theater, motion picture (except to the extent provided in regulations prescribed by the corporation), radio, television, sound or visual recording, music, and dance, and

(B) such other entertainment activities as the corporation may determine to be appropriate.

(3) The corporation may by regulation exclude a group or class of employers described in the preceding sentence from the application of this subsection if the corporation determines that such exclusion is necessary--

(A) to protect the interest of the plan's participants and beneficiaries, or

(B) to prevent a significant risk of loss to the corporation with respect to the plan.

(4) A plan may be amended to provide that this subsection shall not apply to a group or class of employers under the plan.

(d) Other determinative factors

(1) Notwithstanding subsection (a) of this section, in the case of an employer who--

(A) has an obligation to contribute under a plan described in paragraph (2) primarily for work described in such paragraph, and

(B) does not continue to perform work within the jurisdiction of the plan,

a complete withdrawal occurs only as described in paragraph (3).

(2) A plan is described in this paragraph if substantially all of the contributions required under the plan are made by employers primarily engaged in the long and short haul trucking industry, the household goods moving industry, or the public warehousing industry.

(3) A withdrawal occurs under this paragraph if--

(A) an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan, and

(B) either--

(i) the corporation determines that the plan has suffered substantial damage to its contribution base as a result of such cessation, or

(ii) the employer fails to furnish a bond issued by a corporate surety company that is an acceptable surety for purposes of [section 1112](#) of this title, or an amount held in escrow by a bank or similar financial institution satisfactory to the plan, in an amount equal to 50 percent of the withdrawal liability of the employer.

(4) If, after an employer furnishes a bond or escrow to a plan under paragraph (3)(B)(ii), the corporation determines that the cessation of the employer's obligation to contribute under the plan (considered together with any cessations by other employers), or cessation of covered operations under the plan, has resulted in substantial damage to the contribution base of the plan, the employer shall be treated as having withdrawn from the plan on the date on which the obligation to contribute or covered operations ceased, and such bond or escrow shall be paid to the plan. The corporation shall not make a determination under this paragraph more than 60 months after the date on which such obligation to contribute or covered operations ceased.

(5) If the corporation determines that the employer has no further liability under the plan either--

(A) because it determines that the contribution base of the plan has not suffered substantial damage as a result of the cessation of the employer's obligation to contribute or cessation of covered operations (considered together with any cessation of contribution obligation, or of covered operations, with respect to other employers), or

(B) because it may not make a determination under paragraph (4) because of the last sentence thereof,

then the bond shall be cancelled or the escrow refunded.

(6) Nothing in this subsection shall be construed as a limitation on the amount of the withdrawal liability of any employer.

(e) Date of complete withdrawal

For purposes of this part, the date of a complete withdrawal is the date of the cessation of the obligation to contribute or the cessation of covered operations.

(f) Special liability withdrawal rules for industries other than construction and entertainment industries; procedures applicable to amend plans

(1) The corporation may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules similar to the rules described in subsections (b) and (c) of this section.

(2) Regulations under paragraph (1) shall permit use of special withdrawal liability rules--

(A) only in industries (or portions thereof) in which, as determined by the corporation, the characteristics that would make use of such rules appropriate are clearly shown, and

(B) only if the corporation determines, in each instance in which special withdrawal liability rules are permitted, that use of such rules will not pose a significant risk to the corporation under this subchapter.

CREDIT(S)

(Pub.L. 93-406, Title IV, § 4203, as added Pub.L. 96-364, Title I, § 104(2), Sept. 26, 1980, 94 Stat. 1218.)

Notes of Decisions (51)

29 U.S.C.A. § 1383, 29 USCA § 1383

Current through P.L. 115-40. Also includes P.L. 115-42 and 115-43. Title 26 current through 115-43.

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Part 1. Employer Withdrawals (Refs & Annos)

29 U.S.C.A. § 1391

§ 1391. Methods for computing withdrawal liability

Effective: August 17, 2006

[Currentness](#)

(a) Determination of amount of unfunded vested benefits allocable to employer withdrawn from plan

The amount of the unfunded vested benefits allocable to an employer that withdraws from a plan shall be determined in accordance with subsection (b), (c), or (d) of this section.

(b) Factors determining computation of amount of unfunded vested benefits allocable to employer withdrawn from plan

(1) Except as provided in subsections (c) and (d) of this section, the amount of unfunded vested benefits allocable to an employer that withdraws is the sum of--

(A) the employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, as determined under paragraph (2),

(B) the employer's proportional share, if any, of the unamortized amount of the plan's unfunded vested benefits at the end of the plan year ending before September 26, 1980, as determined under paragraph (3); and

(C) the employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits (if any) as determined under paragraph (4).

If the sum of the amounts determined with respect to an employer under paragraphs (2), (3), and (4) is negative, the unfunded vested benefits allocable to the employer shall be zero.

(2)(A) An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, is the sum of the employer's proportional shares of the unamortized amount of the change in unfunded vested benefits for each plan year in which the employer has an obligation to contribute under the plan ending--

(i) after such date, and

(ii) before the plan year in which the withdrawal of the employer occurs.

(B) The change in a plan's unfunded vested benefits for a plan year is the amount by which--

(i) the unfunded vested benefits at the end of the plan year; exceeds

(ii) the sum of--

(I) the unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, and

(II) the sum of the unamortized amounts of the change in unfunded vested benefits for each plan year ending after September 25, 1980, and preceding the plan year for which the change is determined.

(C) The unamortized amount of the change in a plan's unfunded vested benefits with respect to a plan year is the change in unfunded vested benefits for the plan year, reduced by 5 percent of such change for each succeeding plan year.

(D) The unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, is the amount of the unfunded vested benefits as of the end of that plan year reduced by 5 percent of such amount for each succeeding plan year.

(E) An employer's proportional share of the unamortized amount of a change in unfunded vested benefits is the product of--

(i) the unamortized amount of such change (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

(ii) a fraction--

(I) the numerator of which is the sum of the contributions required to be made under the plan by the employer for the year in which such change arose and for the 4 preceding plan years, and

(II) the denominator of which is the sum for the plan year in which such change arose and the 4 preceding plan years of all contributions made by employers who had an obligation to contribute under the plan for the plan year in which such change arose reduced by the contributions made in such years by employers who had withdrawn from the plan in the year in which the change arose.

(3) An employer's proportional share of the unamortized amount of the plan's unfunded vested benefits for the last plan year ending before September 26, 1980, is the product of--

(A) such unamortized amount; multiplied by--

(B) a fraction--

(i) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the most recent 5 plan years ending before September 26, 1980, and

(ii) the denominator of which is the sum of all contributions made for the most recent 5 plan years ending before September 26, 1980, by all employers--

(I) who had an obligation to contribute under the plan for the first plan year ending on or after such date, and

(II) who had not withdrawn from the plan before such date.

(4)(A) An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits is the sum of the employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits for each plan year ending before the plan year in which the employer withdrew from the plan.

(B) Except as otherwise provided in regulations prescribed by the corporation, the reallocated unfunded vested benefits for a plan year is the sum of--

(i) any amount which the plan sponsor determines in that plan year to be uncollectible for reasons arising out of cases or proceedings under Title 11, or similar proceedings.¹

(ii) any amount which the plan sponsor determines in that plan year will not be assessed as a result of the operation of [section 1389](#), [1399\(c\)\(1\)\(B\)](#), or [1405](#) of this title against an employer to whom a notice described in [section 1399](#) of this title has been sent, and

(iii) any amount which the plan sponsor determines to be uncollectible or unassessable in that plan year for other reasons under standards not inconsistent with regulations prescribed by the corporation.

(C) The unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the reallocated unfunded vested benefits for the plan year, reduced by 5 percent of such reallocated unfunded vested benefits for each succeeding plan year.

(D) An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the product of--

(i) the unamortized amount of the reallocated unfunded vested benefits (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

(ii) the fraction defined in paragraph (2)(E)(ii).

(c) Amendment of multiemployer plan for determination respecting amount of unfunded vested benefits allocable to employer withdrawn from plan; factors determining computation of amount

(1) A multiemployer plan, other than a plan which primarily covers employees in the building and construction industry, may be amended to provide that the amount of unfunded vested benefits allocable to an employer that withdraws from the plan is an amount determined under paragraph (2), (3), (4), or (5) of this subsection, rather than under subsection (b) or (d) of this section. A plan described in [section 1383\(b\)\(1\)\(B\)\(i\)](#) of this title (relating to the building and construction industry) may be amended, to the extent provided in regulations prescribed by the corporation, to provide that the amount of the unfunded vested benefits allocable to an employer not described in [section 1383\(b\)\(1\)\(A\)](#) of this title shall be determined in a manner different from that provided in subsection (b) of this section.

(2)(A) The amount of the unfunded vested benefits allocable to any employer under this paragraph is the sum of the amounts determined under subparagraphs (B) and (C).

(B) The amount determined under this subparagraph is the product of--

(i) the plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning with the first plan year ending on or after such date; multiplied by

(ii) a fraction--

(I) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the last 5 plan years ending before September 26, 1980, and

(II) the denominator of which is the sum of all contributions made for the last 5 plan years ending before September 26, 1980, by all employers who had an obligation to contribute under the plan for the first plan year ending after September 25, 1980, and who had not withdrawn from the plan before such date.

(C) The amount determined under this subparagraph is the product of--

(i) an amount equal to--

(I) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less

(II) the sum of the value as of such date of all outstanding claims for withdrawal liability which can reasonably be expected to be collected, with respect to employers withdrawing before such plan year, and that portion of the amount determined under subparagraph (B)(i) which is allocable to employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws and who also had an obligation to contribute under the plan for the first plan year ending after September 25, 1980; multiplied by

(ii) a fraction--

(I) the numerator of which is the total amount required to be contributed under the plan by the employer for the last 5 plan years ending before the date on which the employer withdraws, and

(II) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the date on which the employer withdraws, increased by the amount of any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount

contributed by an employer who withdrew from the plan under this part during those plan years.

(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this subchapter, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

(3) The amount of the unfunded vested benefits allocable to an employer under this paragraph is the product of--

(A) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less the value as of the end of such year of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from employers withdrawing before such year; multiplied by

(B) a fraction--

(i) the numerator of which is the total amount required to be contributed by the employer under the plan for the last 5 plan years ending before the withdrawal, and

(ii) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the withdrawal, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed to the plan during those plan years by employers who withdrew from the plan under this section during those plan years.

(4)(A) The amount of the unfunded vested benefits allocable to an employer under this paragraph is equal to the sum of--

(i) the plan's unfunded vested benefits which are attributable to participants' service with the employer (determined as of the end of the plan year preceding the plan year in which the employer withdraws), and

(ii) the employer's proportional share of any unfunded vested benefits which are not attributable to service with the employer or other employers who are obligated to contribute under the plan in the plan year preceding the plan year in which the employer withdraws (determined as of the end of the plan year preceding the plan year in which the employer withdraws).

(B) The plan's unfunded vested benefits which are attributable to participants' service with the employer is the amount equal to the value of nonforfeitable benefits under the plan which are attributable to participants' service with such employer (determined under plan rules not inconsistent with regulations of the corporation) decreased by the share of plan assets determined under subparagraph (C) which is allocated to the employer as provided under subparagraph (D).

(C) The value of plan assets determined under this subparagraph is the value of plan assets allocated to nonforfeitable benefits which are attributable to service with the employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws, which is determined by multiplying--

(i) the value of the plan assets as of the end of the plan year preceding the plan year in which the employer withdraws, by

(ii) a fraction--

(I) the numerator of which is the value of nonforfeitable benefits which are attributable to service with such employers, and

(II) the denominator of which is the value of all nonforfeitable benefits under the plan as of the end of the plan year.

(D) The share of plan assets, determined under subparagraph (C), which is allocated to the employer shall be determined in accordance with one of the following methods which shall be adopted by the plan by amendment:

(i) by multiplying the value of plan assets determined under subparagraph (C) by a fraction--

(I) the numerator of which is the value of the nonforfeitable benefits which are attributable to service with the employer, and

(II) the denominator of which is the value of the nonforfeitable benefits which are attributable to service with all employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws;

(ii) by multiplying the value of plan assets determined under subparagraph (C) by a fraction--

(I) the numerator of which is the sum of all contributions (accumulated with interest) which have been made to the plan by the employer for the plan year preceding the plan year in which the employer withdraws and all preceding plan years; and

(II) the denominator of which is the sum of all contributions (accumulated with interest) which have been made to the plan (for the plan year preceding the plan year in which the employer withdraws and all preceding plan years) by all employers who have an obligation to contribute to the plan for the plan year preceding the plan year in which the employer withdraws; or

(iii) by multiplying the value of plan assets under subparagraph (C) by a fraction--

(I) the numerator of which is the amount determined under clause (ii)(I) of this subparagraph, less the sum of benefit payments (accumulated with interest) made to participants (and their beneficiaries) for the plan years described in such clause (ii)(I) which are attributable to service with the employer; and

(II) the denominator of which is the amount determined under clause (ii)(II) of this subparagraph, reduced by the sum of benefit payments (accumulated with interest)

made to participants (and their beneficiaries) for the plan years described in such clause (ii)(II) which are attributable to service with respect to the employers described in such clause (ii)(II).

(E) The amount of the plan's unfunded vested benefits for a plan year preceding the plan year in which an employer withdraws, which is not attributable to service with employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which such employer withdraws, is equal to--

(i) an amount equal to--

(I) the value of all nonforfeitable benefits under the plan at the end of such plan year, reduced by

(II) the value of nonforfeitable benefits under the plan at the end of such plan year which are attributable to participants' service with employers who have an obligation to contribute under the plan for such plan year; reduced by

(ii) an amount equal to--

(I) the value of the plan assets as of the end of such plan year, reduced by

(II) the value of plan assets as of the end of such plan year as determined under subparagraph (C); reduced by

(iii) the value of all outstanding claims for withdrawal liability which can reasonably be expected to be collected with respect to employers withdrawing before the year preceding the plan year in which the employer withdraws.

(F) The employer's proportional share described in subparagraph (A)(ii) for a plan year is the amount determined under subparagraph (E) for the employer, but not in excess of an amount which bears the same ratio to the sum of the amounts determined under subparagraph (E) for all employers under the plan as the amount determined under subparagraph (C) for

the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan.

(G) The corporation may prescribe by regulation other methods which a plan may adopt for allocating assets to determine the amount of the unfunded vested benefits attributable to service with the employer and to determine the employer's share of unfunded vested benefits not attributable to service with employers who have an obligation to contribute under the plan in the plan year in which the employer withdraws.

(5)(A) The corporation shall prescribe by regulation a procedure by which a plan may, by amendment, adopt any other alternative method for determining an employer's allocable share of unfunded vested benefits under this section, subject to the approval of the corporation based on its determination that adoption of the method by the plan would not significantly increase the risk of loss to plan participants and beneficiaries or to the corporation.

(B) The corporation may prescribe by regulation standard approaches for alternative methods, other than those set forth in the preceding paragraphs of this subsection, which a plan may adopt under subparagraph (A), for which the corporation may waive or modify the approval requirements of subparagraph (A). Any alternative method shall provide for the allocation of substantially all of a plan's unfunded vested benefits among employers who have an obligation to contribute under the plan.

(C) Unless the corporation by regulation provides otherwise, a plan may be amended to provide that a period of more than 5 but not more than 10 plan years may be used for determining the numerator and denominator of any fraction which is used under any method authorized under this section for determining an employer's allocable share of unfunded vested benefits under this section.

(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this subchapter, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

(E) Fresh start option

Notwithstanding paragraph (1), a plan may be amended to provide that the withdrawal liability method described in subsection (b) of this section shall be applied by substituting the plan year which is specified in the amendment and for which the plan has no unfunded vested benefits for the plan year ending before September 26, 1980.

(d) Method of calculating allocable share of employer of unfunded vested benefits set forth in subsection (c)(3) of this section; applicability of certain statutory provisions

(1) The method of calculating an employer's allocable share of unfunded vested benefits set forth in subsection (c)(3) of this section shall be the method for calculating an employer's allocable share of unfunded vested benefits under a plan to which [section 404\(c\) of Title 26](#), or a continuation of such a plan, applies, unless the plan is amended to adopt another method authorized under subsection (b) or (c) of this section.

(2) [Sections 1384](#), [1389](#), [1399\(c\)\(1\)\(B\)](#), and [1405](#) of this title shall not apply with respect to the withdrawal of an employer from a plan described in paragraph (1) unless the plan is amended to provide that any of such sections apply.

(e) Reduction of liability of withdrawn employer in case of transfer of liabilities to another plan incident to withdrawal or partial withdrawal of employer

In the case of a transfer of liabilities to another plan incident to an employer's withdrawal or partial withdrawal, the withdrawn employer's liability under this part shall be reduced in an amount equal to the value, as of the end of the last plan year ending on or before the date of the withdrawal, of the transferred unfunded vested benefits.

(f) Computations applicable in case of withdrawal following merger of multiemployer plans

In the case of a withdrawal following a merger of multiemployer plans, subsection (b), (c), or (d) of this section shall be applied in accordance with regulations prescribed by the corporation; except that, if a withdrawal occurs in the first plan year beginning after a merger of multiemployer plans, the determination under this section shall be made as if each of the multiemployer plans had remained separate plans.

CREDIT(S)

(Pub.L. 93-406, Title IV, § 4211, as added Pub.L. 96-364, Title I, § 104(2), Sept. 26, 1980, 94 Stat. 1226; amended Pub.L. 98-369, Div. A, Title V, § 558(b)(1)(A), (B), July 18, 1984, 98 Stat. 899; Pub.L. 101-239, Title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445; Pub.L. 109-280, Title II, § 204(c)(2), Aug. 17, 2006, 120 Stat. 887.)

Notes of Decisions (20)

Footnotes

1 So in original. The period probably should be a comma.

29 U.S.C.A. § 1391, 29 USCA § 1391

Current through P.L. 115-40. Also includes P.L. 115-42 and 115-43. Title 26 current through 115-43.

United States Code Annotated

Title 29. Labor

Chapter 18. Employee Retirement Income Security Program (Refs & Annos)

Subchapter III. Plan Termination Insurance (Refs & Annos)

Subtitle E. Special Provisions for Multiemployer Plans (Refs & Annos)

Part 1. Employer Withdrawals (Refs & Annos)

29 U.S.C.A. § 1392

§ 1392. Obligation to contribute

Currentness

(a) “Obligation to contribute” defined

For purposes of this part, the term “obligation to contribute” means an obligation to contribute arising--

(1) under one or more collective bargaining (or related) agreements, or

(2) as a result of a duty under applicable labor-management relations law, but

does not include an obligation to pay withdrawal liability under this section or to pay delinquent contributions.

(b) Payments of withdrawal liability not considered contributions

Payments of withdrawal liability under this part shall not be considered contributions for purposes of this part.

(c) Transactions to evade or avoid liability

If a principal purpose of any transaction is to evade or avoid liability under this part, this part shall be applied (and liability shall be determined and collected) without regard to such transaction.

CREDIT(S)

(Pub.L. 93-406, Title IV, § 4212, as added Pub.L. 96-364, Title I, § 104(2), Sept. 26, 1980, 94 Stat. 1233.)

[Notes of Decisions \(31\)](#)

29 U.S.C.A. § 1392, 29 USCA § 1392

Current through P.L. 115-40. Also includes P.L. 115-42 and 115-43. Title 26 current through 115-43.