

which shall be prescribed from time to time by the corporation. The premium schedule shall contain such rates and bases for the application of such rates as the corporation considers to be appropriate.

(b) Discretionary supplemental program to reimburse for payments due from employers uncollectible for other appropriate reasons

The corporation may provide under the program for reimbursement of amounts of withdrawal liability determined to be uncollectible for any other reasons the corporation considers appropriate.

(c) Payment of cost of program

The cost of the program (including such administrative and legal costs as the corporation considers appropriate) may be paid only out of premiums collected under such program.

(d) Terms and conditions, limitations, etc., of supplemental program

The supplemental program may be offered to eligible plans on such terms and conditions, and with such limitations with respect to the payment of reimbursements (including the exclusion of de minimis amounts of uncollectible employer liability, and the reduction or elimination of reimbursements which cannot be paid from collected premiums) and such restrictions on withdrawal from the program, as the corporation considers necessary and appropriate.

(e) Arrangements by corporation with private insurers for implementation of program; election of coverage by participating plans with private insurers

The corporation may enter into arrangements with private insurers to carry out in whole or in part the program authorized by this section and may require plans which elect coverage under the program to elect coverage by those private insurers.

(Pub. L. 93-406, title IV, §4222, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1240.)

§ 1403. Withdrawal liability payment fund

(a) Establishment of or participation in fund by plan sponsors

The plan sponsors of multiemployer plans may establish or participate in a withdrawal liability payment fund.

(b) Definitions

For purposes of this section, the term “withdrawal liability payment fund”, and the term “fund”, mean a trust which—

- (1) is established and maintained under section 501(c)(22) of title 26,
- (2) maintains agreements which cover a substantial portion of the participants who are in multiemployer plans which (under the rules of the trust instrument) are eligible to participate in the fund,
- (3) is funded by amounts paid by the plans which participate in the fund, and
- (4) is administered by a Board of Trustees, and in the administration of the fund there is equal representation of—
 - (A) trustees representing employers who are obligated to contribute to the plans participating in the fund, and

(B) trustees representing employees who are participants in plans which participate in the fund.

(c) Payments to plan; amount, criteria, etc.

(1) If an employer withdraws from a plan which participates in a withdrawal liability payment fund, then, to the extent provided in the trust, the fund shall pay to that plan—

- (A) the employer’s unattributable liability,
- (B) the employer’s withdrawal liability payments which would have been due but for section 1388, 1389, 1399, or 1405 of this title,
- (C) the employer’s withdrawal liability payments to the extent they are uncollectible.

(2) The fund may provide for the payment of the employer’s attributable liability if the fund—

- (A) provides for the payment of both the attributable and the unattributable liability of the employer in a single payment, and
- (B) is subrogated to all rights of the plan against the employer.

(3) For purposes of this section, the term—

- (A) “attributable liability” means the excess, if any, determined under the provisions of a plan not inconsistent with regulations of the corporation, of—
 - (i) the value of vested benefits accrued as a result of service with the employer, over
 - (ii) the value of plan assets attributed to the employer, and
- (B) “unattributable liability” means the excess of withdrawal liability over attributable liability.

Such terms may be further defined, and the manner in which they shall be applied may be prescribed, by the corporation by regulation.

(4)(A) The trust of a fund shall be maintained for the exclusive purpose of paying—

- (i) any amount described in paragraph (1) and paragraph (2), and
- (ii) reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the fund.

(B) The amounts paid by a plan to a fund shall be deemed a reasonable expense of administering the plan under sections 1103(c)(1) and 1104(a)(1)(A)(ii) of this title, and the payments made by a fund to a participating plan shall be deemed services necessary for the operation of the plan within the meaning of section 1108(b)(2) of this title or within the meaning of section 4975(d)(2) of title 26.

(d) Application of payments by plan

(1) For purposes of this part—

- (A) only amounts paid by the fund to a plan under subsection (c)(1)(A) of this section shall be credited to withdrawal liability otherwise payable by the employer, unless the plan otherwise provides, and
- (B) any amounts paid by the fund under subsection (c) of this section to a plan shall be treated by the plan as a payment of withdrawal liability to such plan.

(2) For purposes of applying provisions relating to the funding standard accounts (and mini-

mum contribution requirements), amounts paid from the plan to the fund shall be applied to reduce the amount treated as contributed to the plan.

(e) Subrogation of fund to rights of plan

The fund shall be subrogated to the rights of the plan against the employer that has withdrawn from the plan for amounts paid by a fund to a plan under—

(1) subsection (c)(1)(A) of this section, to the extent not credited under subsection (d)(1)(A) of this section, and

(2) subsection (c)(1)(C) of this section.

(f) Discharge of rights of fiduciary of fund; standards applicable, etc.

Notwithstanding any other provision of this chapter, a fiduciary of the fund shall discharge the fiduciary's duties with respect to the fund in accordance with the standards for fiduciaries prescribed by this chapter (to the extent not inconsistent with the purposes of this section), and in accordance with the documents and instruments governing the fund insofar as such documents and instruments are consistent with the provisions of this chapter (to the extent not inconsistent with the purposes of this section). The provisions of the preceding sentence shall supersede any and all State laws relating to fiduciaries insofar as they may now or hereafter relate to a fund to which this section applies.

(g) Prohibition on payments from fund to plan where certain labor negotiations involve employer withdrawn or partially withdrawn from plan and continuity of labor organization representing employees continues

No payments shall be made from a fund to a plan on the occasion of a withdrawal or partial withdrawal of an employer from such plan if the employees representing the withdrawn contribution base units continue, after such withdrawal, to be represented under section 159 of this title (or other applicable labor laws) in negotiations with such employer by the labor organization which represented such employees immediately preceding such withdrawal.

(h) Purchase of insurance by employer

Nothing in this section shall be construed to prohibit the purchase of insurance by an employer from any other person, to limit the circumstances under which such insurance would be payable, or to limit in any way the terms and conditions of such insurance.

(i) Promulgation of regulations for establishment and maintenance of fund

The corporation may provide by regulation rules not inconsistent with this section governing the establishment and maintenance of funds, but only to the extent necessary to carry out the purposes of this part (other than section 1402 of this title).

(Pub. L. 93-406, title IV, §4223, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1241; amended Pub. L. 101-239, title VII, §7891(a), Dec. 19, 1989, 103 Stat. 2445.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), was in the original "this Act", meaning Pub. L. 93-406, known as

the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

1989—Subsecs. (b)(1), (c)(4)(B). Pub. L. 101-239 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.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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.

§ 1404. Alternative method of withdrawal liability payments

A multiemployer plan may adopt rules providing for other terms and conditions for the satisfaction of an employer's withdrawal liability if such rules are consistent with this chapter and with such regulations as may be prescribed by the corporation.

(Pub. L. 93-406, title IV, §4224, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1242.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

§ 1405. Limitation on withdrawal liability

(a) Unfunded vested benefits allocable to employer in bona fide sale of assets of employer in arms-length transaction to unrelated party; maximum amount; determinative factors

(1) In the case of bona fide sale of all or substantially all of the employer's assets in an arm's-length transaction to an unrelated party (within the meaning of section 1384(d) of this title), the unfunded vested benefits allocable to an employer (after the application of all sections of this part having a lower number designation than this section), other than an employer undergoing reorganization under title 11 or similar provisions of State law, shall not exceed the greater of—

(A) a portion (determined under paragraph (2)) of the liquidation or dissolution value of the employer (determined after the sale or exchange of such assets), or

(B) in the case of a plan using the attributable method of allocating withdrawal liability, the unfunded vested benefits attributable to employees of the employer.

(2) For purposes of paragraph (1), the portion shall be determined in accordance with the following table: