TRANSITIONAL RULE REGARDING AMENDMENTS BY SECTION 9312 OF PUB. L. 100–203

Pub. L. 100–203, title IX, § 9312(b)(3)(B), Dec. 22, 1987, 101 Stat. 1330–363, as amended by Pub. L. 101–239, title VII, § 7881(f)(1), (6), Dec. 19, 1989, 103 Stat. 2440, provided that:

''(i) IN GENERAL.—In the case of any plan termination to which the amendments made by this section [amending sections 1301, 1305, 1322, 1341, 1342, 1349, 1362, 1364, and 1368 of this title and repealing section 1349 of this title] apply and with respect to which notices of intent to terminate were provided on or before December 17, 1990—

''(I) subparagraph (A) of section 4022(c)(3) of ERISA [29 U.S.C. 1322(c)(3)(A)] (as amended by this paragraph) shall not apply, and

''(II) subparagraph (C) of section 4022(c)(3) of ERISA (as so amended) shall apply irrespective of the outstanding amount of benefit liabilities under the plan.

''(ii) [Repealed. Pub. L. 101–239, title VII, § 7881(f)(6), Dec. 19, 1989, 103 Stat. 2440.]''

§ 1322a. Multiemployer plan benefits guaranteed

(a) Benefits of covered plans subject to guarantee

The corporation shall guarantee, in accordance with this section, the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under a multiemployer plan—

(1) to which this subchapter applies, and

(2) which is insolvent under section 1426(b) or 1441(d)(2) of this title.

(b) Benefits or benefit increases not eligible for guarantee

(1)(A) For purposes of this section, a benefit or benefit increase which has been in effect under a plan for less than 60 months is not eligible for the corporation's guarantee. For purposes of this paragraph, any month of any plan year during which the plan was insolvent or terminated (within the meaning of section 1341a(a)(2) of this title) shall not be taken into account.

(B) For purposes of this section, a benefit or benefit increase which has been in effect under a plan for less than 60 months before the first day of the plan year for which an amendment reducing the benefit or the benefit increase is taken into account under section 1425(a)(2) of this title in determining the minimum contribution requirement for the plan year under section 1423(b) of this title is not eligible for the corporation's guarantee.

(2) For purposes of this section—

(A) the date on which a benefit or a benefit increase under a plan is first in effect is the later of—

(i) the date on which the documents establishing or increasing the benefit were executed, or

(ii) the effective date of the benefit or benefit increase;

(B) the period of time for which a benefit or a benefit increase has been in effect under a successor plan includes the period of time for which the benefit or benefit increase was in effect under a previously established plan; and

(C) in the case of a plan to which section 1321 of this title did not apply on September 3, 1974, the time periods referred to in this section are computed beginning on the date on which section 1321 of this title first applies to the plan.

(c) Determinations respecting amount of guarantee

(1) Except as provided in subsection (g) of this section, the monthly benefit of a participant or a beneficiary which is guaranteed under this section by the corporation with respect to a plan is the product of—

(A) 100 percent of the accrual rate up to $11, plus 75 percent of the lesser of—

(i) $33, or

(ii) the accrual rate, if any, in excess of $11, and

(B) the number of the participant's years of credited service.

(2) For purposes of this section, the accrual rate is—

(A) the monthly benefit of the participant or beneficiary which is described in subsection (a) of this section and which is eligible for the corporation's guarantee under subsection (b) of this section, except that such benefit shall be—

(i) no greater than the monthly benefit which would be payable under the plan at normal retirement age in the form of a single life annuity, and

(ii) determined without regard to any reduction under section 411(a)(3)(E) of title 26; divided by

(B) the participant's years of credited service.

(3) For purposes of this subsection—

(A) a year of credited service is a year in which the participant completed—

(i) a full year of participation in the plan, or

(ii) any period of service before participation which is credited for purposes of benefit accrual as the equivalent of a full year of participation;

(B) any year for which the participant is credited for purposes of benefit accrual with a fraction of the equivalent of a full year of participation shall be counted as such a fraction of a year of credited service; and

(C) years of credited service shall be determined by including service which may otherwise be disregarded by the plan under section 411(a)(3)(E) of title 26.

(d) Amount of guarantee of reduced benefit

In the case of a benefit which has been reduced under section 411(a)(3)(E) of title 26, the corporation shall guarantee the lesser of—

(1) the reduced benefit, or

(2) the amount determined under subsection (c) of this section.

(e) Ineligibility of benefits for guarantee

The corporation shall not guarantee benefits under a multiemployer plan which, under section 1322(b)(6) of this title, would not be guaranteed under a single-employer plan.

(f) Study, report, etc., respecting premium increase in existing basic-benefit guarantee levels; Congressional procedures applicable for revision of schedules

(1) No later than 5 years after September 26, 1980, and at least every fifth year thereafter, the corporation shall—

(A) conduct a study to determine—

(i) the premiums needed to maintain the basic-benefit guarantee levels for multiemployer plans described in subsection (c) of this section, and

(ii) whether the basic-benefit guarantee levels for multiemployer plans may be increased without increasing the basic-benefit premiums for multiemployer plans under this subchapter; and

(B) report such determinations to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(2)(A) If the last report described in paragraph (1) indicates that a premium increase is necessary to support the existing basic-benefit guarantee levels for multiemployer plans, the corporation shall transmit to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate by March 31 of any calendar year in which congressional action under this subsection is requested—

(i) a revised schedule of basic-benefit guarantees for multiemployer plans which would be necessary in the absence of an increase in premiums approved in accordance with section 1306(b) of this title,

(ii) a revised schedule of basic-benefit premiums for multiemployer plans which is necessary to support the existing basic-benefit guarantees for such plans, and

(iii) a revised schedule of basic-benefit guarantees for multiemployer plans for which the schedule of premiums necessary is higher than the existing premium schedule for such plans but lower than the revised schedule of premiums for such plans specified in clause (ii), together with such schedule of premiums.

(B) The revised schedule of increased premiums referred to in subparagraph (A)(ii) or (A)(iii) shall go into effect as approved by the enactment of a joint resolution.

(C) If an increase in premiums is not so enacted, the revised guarantee schedule described in subparagraph (A)(i) shall go into effect on the first day of the second calendar year following the year in which such revised guarantee schedule was submitted to the Congress.

(3)(A) If the last report described in paragraph (1) indicates that basic-benefit guarantees for multiemployer plans can be increased without increasing the basic-benefit premiums for multiemployer plans under this subchapter, the corporation shall submit to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate by March 31 of the calendar year in which congressional action under this paragraph is requested—

(i) a revised schedule of increases in the basic-benefit guarantees which can be supported by the existing schedule of basic-benefit premiums for multiemployer plans, and

(ii) a revised schedule of basic-benefit premiums sufficient to support the existing basic-benefit guarantees.

(B) The revised schedules referred to in subparagraph (A)(i) or subparagraph (A)(ii) shall go into effect as approved by the enactment of a joint resolution.

(4)(A) The succeeding subparagraphs of this paragraph are enacted by the Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of joint resolutions (as defined in subparagraph (B)). Such subparagraphs shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any rule of that House.

(B) For purposes of this subsection, ''joint resolution'' means only a joint resolution, the matter after the resolving clause of which is as follows: ''The proposed schedule described in transmitted to the Congress by the Pension Benefit Guaranty Corporation on is hereby approved.'', the first blank space therein being filled with ''section 4022A(f)(2)(A)(ii) of the Employee Retirement Income Security Act of 1974'', ''section 4022A(f)(2)(A)(iii) of the Employee Retirement Income Security Act of 1974'', ''section 4022A(f)(3)(A)(i) of the Employee Retirement Income Security Act of 1974'', or ''section 4022A(f)(3)(A)(ii) of the Employee Retirement Income Security Act of 1974'' (whichever is applicable), and the second blank space therein being filled with the date on which the corporation's message proposing the revision was submitted.

(C) The procedure for disposition of a joint resolution shall be the procedure described in section 1306(b)(4) through (7) of this title.

(g) Guarantee of payment of other classes of benefits and establishment of terms and conditions of guarantee; promulgation of regulations for establishment of supplemental program to guarantee benefits otherwise ineligible; status of benefits; applicability of revised schedule of premiums

(1) The corporation may guarantee the payment of such other classes of benefits under multiemployer plans, and establish the terms and conditions under which those other classes of benefits are guaranteed, as it determines to be appropriate.

(2)(A) The corporation shall prescribe regulations to establish a supplemental program to

guarantee benefits under multiemployer plans which would be guaranteed under this section but for the limitations in subsection (c) of this section. Such regulations shall be proposed by the corporation no later than the end of the 18th calendar month following September 26, 1980. The regulations shall make coverage under the supplemental program available no later than January 1, 1983. Any election to participate in the supplemental program shall be on a voluntary basis, and a plan electing such coverage shall continue to pay the premiums required under section 1306(a)(2)(B) of this title to the revolving fund used pursuant to section 1305 of this title in connection with benefits otherwise guaranteed under this section. Any such election shall be irrevocable, except to the extent otherwise provided by regulations prescribed by the corporation.

(B) The regulations prescribed under this paragraph shall provide—

(i) that a plan must elect coverage under the supplemental program within the time permitted by the regulations;

(ii) unless the corporation determines otherwise, that a plan may not elect supplemental coverage unless the value of the assets of the plan as of the end of the plan year preceding the plan year in which the election must be made is an amount equal to 15 times the total amount of the benefit payments made under the plan for that year; and

(iii) such other reasonable terms and conditions for supplemental coverage, including funding standards and any other reasonable limitations with respect to plans or benefits covered or to means of program financing, as the corporation determines are necessary and appropriate for a feasible supplemental program consistent with the purposes of this subchapter.

(3) Any benefits guaranteed under this subsection shall be considered nonbasic benefits for purposes of this subchapter.

(4)(A) No revised schedule of premiums under this subsection, after the initial schedule, shall go into effect unless—

(i) the revised schedule is submitted to the Congress, and

(ii) a joint resolution described in subparagraph (B) is not enacted before the close of the 60th legislative day after such schedule is submitted to the Congress.

(B) For purposes of subparagraph (A), a joint resolution described in this subparagraph is a joint resolution the matter after the resolving clause of which is as follows: ''The revised premium schedule transmitted to the Congress by the Pension Benefit Guaranty Corporation under section 4022A(g)(4) of the Employee Retirement Income Security Act of 1974 on is hereby disapproved.'', the blank space therein being filled with the date on which the revised schedule was submitted.

(C) For purposes of subparagraph (A), the term ''legislative day'' means any calendar day other than a day on which either House is not in session because of a sine die adjournment or an adjournment of more than 3 days to a day certain.

(D) The procedure for disposition of a joint resolution described in subparagraph (B) shall be the procedure described in paragraphs (4) through (7) of section 1306(b) of this title.

(5) Regulations prescribed by the corporation to carry out the provisions of this subsection, may, to the extent provided therein, supersede the requirements of sections 1426, 1431, and 1441 of this title, and the requirements of section 418E of title 26, but only with respect to benefits guaranteed under this subsection.

(h) Applicability to nonforfeitable benefits accrued as of July 30, 1980; manner and extent of guarantee

(1) Except as provided in paragraph (3), subsections (b) and (c) of this section shall not apply with respect to the nonforfeitable benefits accrued as of July 29, 1980, with respect to a participant or beneficiary under a multiemployer plan—

(1) who is in pay status on July 29, 1980, or

(2) who is within 36 months of the normal retirement age and has a nonforfeitable right to a pension as of that date.

(2) The benefits described in paragraph (1) shall be guaranteed by the corporation in the same manner and to the same extent as benefits are guaranteed by the corporation under section 1322 of this title (without regard to this section).

(3) This subsection does not apply with respect to a plan for plan years following a plan year—

(A) in which the plan has terminated within the meaning of section 1341a(a)(2) of this title, or

(B) in which it is determined by the corporation that substantially all the employers have withdrawn from the plan pursuant to an agreement or arrangement to withdraw.

(Pub. L. 93–406, title IV, § 4022A, as added Pub. L. 96–364, title I, § 102, Sept. 26, 1980, 94 Stat. 1210; amended Pub. L. 99–272, title XI, § 11005(c)(4)–(12), Apr. 7, 1986, 100 Stat. 242; Pub. L. 101–239, title VII, §§ 7891(a)(1), 7893(b), 7894(g)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2445, 2447, 2451; Pub. L. 106–554, § 1(a)(6) [title IX, § 951(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–586.)

REFERENCES IN TEXT

Section 4022A(f)(2)(A)(ii), (iii), (3)(A)(i), and (ii) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(4)(B), is classified to subsec. (f)(2)(A)(ii), (iii), (3)(A)(i) and (ii) of this section.

Section 4022A(g)(4) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (g)(4)(B), is classified to subsec. (g)(4) of this section.

AMENDMENTS

2000—Subsec. (c)(1)(A). Pub. L. 106–554, § 1(a)(6) [title IX, § 951(a)(1)], substituted ''$11'' for ''$5'' in two places.

Subsec. (c)(1)(A)(i). Pub. L. 106–554, § 1(a)(6) [title IX, § 951(a)(2)], substituted ''$33'' for ''$15''.

Subsec. (c)(2) to (6). Pub. L. 106–554, § 1(a)(6) [title IX, § 951(a)(3)], redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former pars. (2), (5), and (6). Prior to amendment, par. (2) modified the amount of benefits guaranteed under par. (1) with respect to plans described in par. (5)(A), par. (5) described certain plans for which the first plan year in which the plan was insolvent and in which benefits were required to be suspended or reduced to a certain level began before the year 2000, and par. (6) provided that par. (2) did not apply to a plan described in par. (5)(A) if the value of the assets of the plan was at least a specified amount for a specified period of time.

1989—Subsec. (a)(1). Pub. L. 101–239, §7894(g)(3)(C)(i), substituted ''this subchapter'' for ''section 1321 of this title''.

Subsecs. (c)(3)(A)(ii), (4)(C), (5)(A)(ii), (6), (d), (g)(5). 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. (f)(2)(B). Pub. L. 101–239, §7893(b), substituted ''the enactment'' for ''the the enactment''.

1986—Subsec. (f)(2)(B). Pub. L. 99–272, §11005(c)(4), substituted ''the enactment of a joint resolution'' for ''Congress by concurrent resolution''.

Subsec. (f)(2)(C). Pub. L. 99–272, §11005(c)(5), substituted ''so enacted'' for ''approved''.

Subsec. (f)(3)(B). Pub. L. 99–272, §11005(c)(6), substituted ''enactment of a joint resolution'' for ''Congress by concurrent resolution''.

Subsec. (f)(4)(A). Pub. L. 99–272, §11005(c)(7), substituted ''joint'' for ''concurrent''.

Subsec. (f)(4)(B). Pub. L. 99–272, §11005(c)(8), substituted ''joint'' for ''concurrent'' in two places and ''The'' for ''That the Congress favors the'' and inserted ''is hereby approved''.

Subsec. (f)(4)(C). Pub. L. 99–272, §11005(c)(9), substituted ''joint'' for ''concurrent''.

Subsec. (g)(4)(A)(ii). Pub. L. 99–272, §11005(c)(10), substituted ''joint'' for ''concurrent'' and ''enacted'' for ''adopted''.

Subsec. (g)(4)(B). Pub. L. 99–272, §11005(c)(11), substituted ''joint'' for ''concurrent'' in two places and ''The'' for ''That the Congress disapproves the'' and inserted ''is hereby disapproved''.

Subsec. (g)(4)(D). Pub. L. 99–272, §11005(c)(12), substituted ''joint'' for ''concurrent''.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(6) [title IX, §951(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–586, provided that: ''The amendments made by this section [amending this section] shall apply to any multiemployer plan that has not received financial assistance (within the meaning of section 4261 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1431]) within the 1-year period ending on the date of the enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1989 AMENDMENT

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.

Amendment by section 7893(b) of 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.

Pub. L. 101–239, title VII, §7894(g)(3)(C)(ii), Dec. 19, 1989, 103 Stat. 2451, provided that: ''The amendment made by clause (i) [amending this section] shall take effect as if originally included in section 102 of the Multiemployer Pension Plan Amendments Act of 1980 [Pub. L. 96–364].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective for plan years commencing after Dec. 31, 1985, see section 11005(d)(1) of Pub. L. 99–272, set out as a note under section 1306 of this title.

EFFECTIVE DATE

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

§ 1322b. Aggregate limit on benefits guaranteed; criteria applicable

(a) Notwithstanding sections 1322 and 1322a of this title, no person shall receive from the corporation pursuant to a guarantee by the corporation of basic benefits with respect to a participant under all multiemployer and single employer plans an amount, or amounts, with an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the amount determined under section 1322(b)(3)(B) of this title as of the date of the last plan termination.

(b) For purposes of this section—

(1) the receipt of benefits under a multiemployer plan receiving financial assistance from the corporation shall be considered the receipt of amounts from the corporation pursuant to a guarantee by the corporation of basic benefits except to the extent provided in regulations prescribed by the corporation, and

(2) the date on which a multiemployer plan, whether or not terminated, begins receiving financial assistance from the corporation shall be considered a date of plan termination.

(Pub. L. 93–406, title IV, §4022B, as added Pub. L. 96–364, title I, §102, Sept. 26, 1980, 94 Stat. 1215.)

EFFECTIVE DATE

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

§ 1323. Plan fiduciaries

Notwithstanding any other provision of this chapter, a fiduciary of a plan to which section 1321 of this title applies is not in violation of the fiduciary's duties as a result of any act or of any withholding of action required by this subchapter.

(Pub. L. 93–406, title IV, §4023, as added Pub. L. 96–364, title IV, §402(a)(5), Sept. 26, 1980, 94 Stat. 1298.)

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 the title and Tables.

PRIOR PROVISIONS

A prior section 1323, Pub. L. 93–406, title IV, §4023, Sept. 2, 1974, 88 Stat. 1019, related to contingent liability coverage, prior to repeal by Pub. L. 96–364, title I, §107, Sept. 26, 1980, 94 Stat. 1267.

EFFECTIVE DATE

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