

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

§ 1365. Annual report of plan administrator

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

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

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

(3) in the case of a multiemployer plan, information with respect to such plan which the corporation determines is necessary for the enforcement of subtitle E of this subchapter and requires by regulation, which may include—

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

(i) the value of all vested benefits under the plan as of the end of the plan year, and

(ii) the value of the plan's assets as of the end of the plan year;

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

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

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

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

REFERENCES IN TEXT

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

AMENDMENTS

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

¹ See References in Text note below.

§ 1366. Annual notification to substantial employers

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

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

AMENDMENTS

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

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

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99-272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101-239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

§ 1367. Recovery of liability for plan termination

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

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

AMENDMENTS

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

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

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

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99-272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101-239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, see section 9313(c) of Pub. L. 100-203, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

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

§ 1368. Lien for liability**(a) Creation of lien**

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

(b) Term of lien

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

(c) Priority

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

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

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

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

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

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

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

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

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

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

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

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

(d) Civil action; limitation period

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

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

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