

withdrawal liability under this part, the plan actuary may—

(1) rely on the most recent complete actuarial valuation used for purposes of section 412 of title 26 and reasonable estimates for the interim years of the unfunded vested benefits, and

(2) in the absence of complete data, rely on the data available or on data secured by a sampling which can reasonably be expected to be representative of the status of the entire plan.

(c) Determination of amount of unfunded vested benefits

For purposes of this part, the term “unfunded vested benefits” means with respect to a plan, an amount equal to—

(A) the value of nonforfeitable benefits under the plan, less

(B) the value of the assets of the plan.

(Pub. L. 93-406, title IV, §4213, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1233; amended Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (b)(1). 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.

§ 1394. Application of plan amendments; exception

(a) No plan rule or amendment adopted after January 31, 1981, under section 1389 or 1391(c) of this title may be applied without the employer’s consent with respect to liability for a withdrawal or partial withdrawal which occurred before the date on which the rule or amendment was adopted.

(b) All plan rules and amendments authorized under this part shall operate and be applied uniformly with respect to each employer, except that special provisions may be made to take into account the creditworthiness of an employer. The plan sponsor shall give notice to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan of any plan rules or amendments adopted pursuant to this section.

(Pub. L. 93-406, title IV, §4214, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1234.)

§ 1395. Plan notification to corporation of potentially significant withdrawals

The corporation may, by regulation, require the plan sponsor of a multiemployer plan to provide notice to the corporation when the withdrawal from the plan by any employer has resulted, or will result, in a significant reduction

in the amount of aggregate contributions under the plan made by employers.

(Pub. L. 93-406, title IV, §4215, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1234.)

§ 1396. Special rules for plans under section 404(c) of title 26

(a) Amount of withdrawal liability; determinative factors

In the case of a plan described in subsection (b) of this section—

(1) if an employer withdraws prior to a termination described in section 1341a(a)(2) of this title, the amount of withdrawal liability to be paid in any year by such employer shall be an amount equal to the greater of—

(A) the amount determined under section 1399(c)(1)(C)(i) of this title, or

(B) the product of—

(i) the number of contribution base units for which the employer would have been required to make contributions for the prior plan year if the employer had not withdrawn, multiplied by

(ii) the contribution rate for the plan year which would be required to meet the amortization schedules contained in section 1423(d)(3)(B)(ii) of this title (determined without regard to any limitation on such rate otherwise provided by this subchapter)

except that an employer shall not be required to pay an amount in excess of the withdrawal liability computed with interest; and

(2) the withdrawal liability of an employer who withdraws after December 31, 1983, as a result of a termination described in section 1341a(a)(2) of this title which is agreed to by the labor organization that appoints the employee representative on the joint board of trustees which sponsors the plan, shall be determined under subsection (c) of this section if—

(A) as a result of prior employer withdrawals in any plan year commencing after January 1, 1980, the number of contribution base units is reduced to less than 67 percent of the average number of such units for the calendar years 1974 through 1979; and

(B) at least 50 percent of the withdrawal liability attributable to the first 33 percent decline described in subparagraph (A) has been determined by the plan sponsor to be uncollectible within the meaning of regulations of the corporation of general applicability; and

(C) the rate of employer contributions under the plan for each plan year following the first plan year beginning after September 26, 1980 and preceding the termination date equals or exceeds the rate described in section 1423(d)(3) of this title.

(b) Covered plans

A plan is described in this subsection if—

(1) it is a plan described in section 404(c) of title 26 or a continuation thereof; and

(2) participation in the plan is substantially limited to individuals who retired prior to January 1, 1976.

(c) Amount of liability of employer; “a year of signatory service” defined

(1) The amount of an employer's liability under this paragraph is the product of—

(A) the amount of the employer's withdrawal liability determined without regard to this section, and

(B) the greater of 90 percent, or a fraction—

(i) the numerator of which is an amount equal to the portion of the plan's unfunded vested benefits that is attributable to plan participants who have a total of 10 or more years of signatory service, and

(ii) the denominator of which is an amount equal to the total unfunded vested benefits of the plan.

(2) For purposes of paragraph (1), the term “a year of signatory service” means a year during any portion of which a participant was employed for an employer who was obligated to contribute in that year, or who was subsequently obligated to contribute.

(Pub. L. 93-406, title IV, §4216, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1234.)

§ 1397. Application of part in case of certain pre-1980 withdrawals; adjustment of covered plan

(a) For the purpose of determining the amount of unfunded vested benefits allocable to an employer for a partial or complete withdrawal from a plan which occurs after September 25, 1980, and for the purpose of determining whether there has been a partial withdrawal after such date, the amount of contributions, and the number of contribution base units, of such employer properly allocable—

(1) to work performed under a collective bargaining agreement for which there was a permanent cessation of the obligation to contribute before September 26, 1980, or

(2) to work performed at a facility at which all covered operations permanently ceased before September 26, 1980, or for which there was a permanent cessation of the obligation to contribute before that date,

shall not be taken into account.

(b) A plan may, in a manner not inconsistent with regulations, which shall be prescribed by the corporation, adjust the amount of unfunded vested benefits allocable to other employers under a plan maintained by an employer described in subsection (a) of this section.

(Pub. L. 93-406, title IV, §4217, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1235; amended Pub. L. 98-369, div. A, title V, §558(b)(1)(A), (B), July 18, 1984, 98 Stat. 899.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, §558(b)(1)(A), (B), substituted “September 25, 1980” for “April 28, 1980” in provisions preceding par. (1) and “September 26, 1980” for “April 29, 1980” in pars. (1) and (2).

§ 1398. Withdrawal not to occur because of change in business form or suspension of contributions during labor dispute

Notwithstanding any other provision of this part, an employer shall not be considered to have withdrawn from a plan solely because—

(1) an employer ceases to exist by reason of—

(A) a change in corporate structure described in section 1369(b) of this title, or

(B) a change to an unincorporated form of business enterprise,

if the change causes no interruption in employer contributions or obligations to contribute under the plan, or

(2) an employer suspends contributions under the plan during a labor dispute involving its employees.

For purposes of this part, a successor or parent corporation or other entity resulting from any such change shall be considered the original employer.

(Pub. L. 93-406, title IV, §4218, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1236; amended Pub. L. 99-514, title XVIII, §1879(u)(4), as added Pub. L. 101-239, title VII, §7862(b)(1)(C), Dec. 19, 1989, 103 Stat. 2432; Pub. L. 101-239, title VII, §7893(f), Dec. 19, 1989, 103 Stat. 2447.)

AMENDMENTS

1989—Par. (1)(A). Pub. L. 101-239, §7893(f), made identical amendment to that of Pub. L. 99-514, §1879(u)(4), as added by Pub. L. 101-239, §7862(b)(1)(C), see below.

Pub. L. 101-239, §7862(b)(1)(C), added Pub. L. 99-514, §1879(u)(4), see 1986 Amendment note below.

1986—Par. (1)(A). Pub. L. 99-514, §1879(u)(4), as added by Pub. L. 101-239, §7862(b)(1)(C), substituted “section 1369(b) of this title” for “section 1362(d) of this title”.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7862(b)(1)(C) of Pub. L. 101-239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7863 of Pub. L. 101-239, set out as a note under section 106 of Title 26, Internal Revenue Code.

Amendment by section 7893(f) 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.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1399. Notice, collection, etc., of withdrawal liability**(a) Furnishing of information by employer to plan sponsor**

An employer shall, within 30 days after a written request from the plan sponsor, furnish such information as the plan sponsor reasonably determines to be necessary to enable the plan sponsor to comply with the requirements of this part.