

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-218, title II, §202(b), Apr. 10, 2004, 118 Stat. 609, provided that: "The amendments made by this section [amending this section] shall apply to any employer that receives a notification under section 4219(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1399(b)(1)) after October 31, 2003."

§ 1402. Reimbursements for uncollectible withdrawal liability

(a) Required supplemental program to reimburse for payments due from employers uncollectible as a result of employer involvement in bankruptcy case or proceedings; program participation, premiums, etc.

By May 1, 1982, the corporation shall establish by regulation a supplemental program to reimburse multiemployer plans for withdrawal liability payments which are due from employers and which are determined to be uncollectible for reasons arising out of cases or proceedings involving the employers under title 11, or similar cases or proceedings. Participation in the supplemental program shall be on a voluntary basis, and a plan which elects coverage under the program shall pay premiums to the corporation in accordance with a premium schedule 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