

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 minimum 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The fund shall be subrogated to the rights of the plan against the employer that has withdrawn from the plan for amounts paid by a fund to a plan under—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**(g) Prohibition on payments from fund to plan where certain labor negotiations involve employer withdrawn or partially withdrawn from plan and continuity of labor organization representing employees continues**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:

| If the liquidation or distribution value of the employer after the sale or exchange is— | The portion is—  |
|---|--|
| Not more than \$5,000,000 ....  | 30 percent of the amount.  |
| More than \$5,000,000, but not more than \$10,000,000.                                  | \$1,500,000, plus 35 percent of the amount in excess of \$5,000,000.   |
| More than \$10,000,000, but not more than \$15,000,000.                                 | \$3,250,000, plus 40 percent of the amount in excess of \$10,000,000.  |
| More than \$15,000,000, but not more than \$17,500,000.                                 | \$5,250,000, plus 45 percent of the amount in excess of \$15,000,000.  |
| More than \$17,500,000, but not more than \$20,000,000.                                 | \$6,375,000, plus 50 percent of the amount in excess of \$17,500,000.  |
| More than \$20,000,000, but not more than \$22,500,000.                                 | \$7,625,000, plus 60 percent of the amount in excess of \$20,000,000.  |
| More than \$22,500,000, but not more than \$25,000,000.                                 | \$9,125,000, plus 70 percent of the amount in excess of \$22,500,000.  |
| More than \$25,000,000 .....  | \$10,875,000, plus 80 percent of the amount in excess of \$25,000,000. |

**(b) Unfunded vested benefits allocable to insolvent employer undergoing liquidation or dissolution; maximum amount; determinative factors**

In the case of an insolvent employer undergoing liquidation or dissolution, the unfunded vested benefits allocable to that employer shall not exceed an amount equal to the sum of—

(1) 50 percent of the unfunded vested benefits allocable to the employer (determined without regard to this section), and

(2) that portion of 50 percent of the unfunded vested benefits allocable to the employer (as determined under paragraph (1)) which does not exceed the liquidation or dissolution value of the employer determined—

(A) as of the commencement of liquidation or dissolution, and

(B) after reducing the liquidation or dissolution value of the employer by the amount determined under paragraph (1).

**(c) Property not subject to enforcement of liability; precondition**

To the extent that the withdrawal liability of an employer is attributable to his obligation to contribute to or under a plan as an individual (whether as a sole proprietor or as a member of a partnership), property which may be exempt from the estate under section 522 of title 11 or under similar provisions of law, shall not be subject to enforcement of such liability.

**(d) Insolvency of employer; liquidation or dissolution value of employer**

For purposes of this section—

(1) an employer is insolvent if the liabilities of the employer, including withdrawal liability under the plan (determined without regard to subsection (b) of this section), exceed the assets of the employer (determined as of the commencement of the liquidation or dissolution), and

(2) the liquidation or dissolution value of the employer shall be determined without regard to such withdrawal liability.

**(e) One or more withdrawals of employer attributable to same sale, liquidation, or dissolution**

In the case of one or more withdrawals of an employer attributable to the same sale, liquidation, or dissolution, under regulations prescribed by the corporation—

(1) all such withdrawals shall be treated as a single withdrawal for the purpose of applying this section, and

(2) the withdrawal liability of the employer to each plan shall be an amount which bears the same ratio to the present value of the withdrawal liability payments to all plans (after the application of the preceding provisions of this section) as the withdrawal liability of the employer to such plan (determined without regard to this section) bears to the withdrawal liability of the employer to all such plans (determined without regard to this section).

(Pub. L. 93-406, title IV, § 4225, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1243; amended Pub. L. 109-280, title II, § 204(a)(1), (2), Aug. 17, 2006, 120 Stat. 886, 887.)

AMENDMENTS

2006—Subsec. (a)(1)(B). Pub. L. 109-280, § 204(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the unfunded vested benefits attributable to employees of the employer."

Subsec. (a)(2). Pub. L. 109-280, § 204(a)(1), added table and struck out former table which provided for a portion of: 30 percent of the amount if the liquidation or dissolution value of the employer after the sale or exchange is not more than \$2,000,000; \$600,000, plus 35 percent of the amount in excess of \$2,000,000, if the employer's liquidation or dissolution value is more than \$2,000,000, but not more than \$4,000,000; \$1,300,000, plus 40 percent of the amount in excess of \$4,000,000, if the employer's liquidation or dissolution value is more than \$4,000,000, but not more than \$6,000,000; \$2,100,000, plus 45