

**§ 1322. Single-employer plan benefits guaranteed****(a) Nonforfeitable benefits**

Subject to the limitations contained in subsection (b) of this section, 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 single-employer plan which terminates at a time when this subchapter applies to it.

**(b) Exceptions**

(1) Except to the extent provided in paragraph (7)—

(A) no benefits provided by a plan which has been in effect for less than 60 months at the time the plan terminates shall be guaranteed under this section, and

(B) any increase in the amount of benefits under a plan resulting from a plan amendment which was made, or became effective, whichever is later, within 60 months before the date on which the plan terminates shall be disregarded.

(2) For purposes of this subsection, the time a successor plan (within the meaning of section 1321(a) of this title) has been in effect includes the time a previously established plan (within the meaning of section 1321(a) of this title) was in effect. For purposes of determining what benefits are guaranteed under this section in the case of a plan to which section 1321 of this title does not apply on September 3, 1974, the 60-month period referred to in paragraph (1) shall be computed beginning on the first date on which such section does apply to the plan.

(3) The amount of monthly benefits described in subsection (a) of this section provided by a plan, which are guaranteed under this section with respect to a participant, shall not have 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 lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income from that employer was greater than during any other such period with that employer determined by dividing  $\frac{1}{2}$  of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) \$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act [42 U.S.C. 430]) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974.

The provisions of this paragraph do not apply to non-basic benefits. The maximum guaranteed monthly benefit shall not be reduced solely on account of the age of a participant in the case of a benefit payable by reason of disability that occurred on or before the termination date, if the participant demonstrates to the satisfaction of the corporation that the Social Security Admin-

istration has determined that the participant satisfies the definition of disability under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq.; 1381 et seq.], and the regulations thereunder. If a benefit payable by reason of disability is converted to an early or normal retirement benefit for reasons other than a change in the health of the participant, such early or normal retirement benefit shall be treated as a continuation of the benefit payable by reason of disability and this subparagraph shall continue to apply.

(4)(A) The actuarial value of a benefit, for purposes of this subsection, shall be determined in accordance with regulations prescribed by the corporation.

(B) For purposes of paragraph (3)—

(i) the term “gross income” means “earned income” within the meaning of section 911(b) of title 26 (determined without regard to any community property laws),

(ii) in the case of a participant in a plan under which contributions are made by more than one employer, amounts received as gross income from any employer under that plan shall be aggregated with amounts received from any other employer under that plan during the same period, and

(iii) any non-basic benefit shall be disregarded.

(5)(A) For purposes of this paragraph, the term “majority owner” means an individual who, at any time during the 60-month period ending on the date the determination is being made—

(i) owns the entire interest in an unincorporated trade or business,

(ii) in the case of a partnership, is a partner who owns, directly or indirectly, 50 percent or more of either the capital interest or the profit interest in such partnership, or

(iii) in the case of a corporation, owns, directly or indirectly, 50 percent or more in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii), the constructive ownership rules of section 1563(e) of title 26 (other than paragraph (3)(C) thereof) shall apply, including the application of such rules under section 414(c) of title 26.

(B) In the case of a participant who is a majority owner, the amount of benefits guaranteed under this section shall equal the product of—

(i) a fraction (not to exceed 1) the numerator of which is the number of years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10, and

(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.

(6)(A) No benefits accrued under a plan after the date on which the Secretary of the Treasury issues notice that he has determined that any trust which is a part of a plan does not meet the requirements of section 401(a) of title 26, or that the plan does not meet the requirements of section 404(a)(2) of title 26, are guaranteed under this section unless such determination is erroneous. This subparagraph does not apply if the Secretary subsequently issues a notice that such

trust meets the requirements of section 401(a) of title 26 or that the plan meets the requirements of section 404(a)(2) of title 26 and if the Secretary determines that the trust or plan has taken action necessary to meet such requirements during the period between the issuance of the notice referred to in the preceding sentence and the issuance of the notice referred to in this sentence.

(B) No benefits accrued under a plan after the date on which an amendment of the plan is adopted which causes the Secretary of the Treasury to determine that any trust under the plan has ceased to meet the requirements of section 401(a) of title 26 or that the plan has ceased to meet the requirements of section 404(a)(2) of title 26, are guaranteed under this section unless such determination is erroneous. This subparagraph shall not apply if the amendment is revoked as of the date it was first effective or amended to comply with such requirements.

(7) Benefits described in paragraph (1) are guaranteed only to the extent of the greater of—

(A) 20 percent of the amount which, but for the fact that the plan or amendment has not been in effect for 60 months or more, would be guaranteed under this section, or

(B) \$20 per month,

multiplied by the number of years (but not more than 5) the plan or amendment, as the case may be, has been in effect. In determining how many years a plan or amendment has been in effect for purposes of this paragraph, the first 12 months beginning with the date on which the plan or amendment is made or first becomes effective (whichever is later) constitutes one year, and each consecutive period of 12 months thereafter constitutes an additional year. This paragraph does not apply to benefits payable under a plan unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this subchapter.

(8) If an unpredictable contingent event benefit (as defined in section 1056(g)(1) of this title) is payable by reason of the occurrence of any event, this section shall be applied as if a plan amendment had been adopted on the date such event occurred.

**(c) Payment by corporation to participants and beneficiaries of recovery percentage of outstanding amount of benefit liabilities**

(1) In addition to benefits paid under the preceding provisions of this section with respect to a terminated plan, the corporation shall pay the portion of the amount determined under paragraph (2) which is allocated with respect to each participant under section 1344(a) of this title. Such payment shall be made to such participant or to such participant's beneficiaries (including alternate payees, within the meaning of section 1056(d)(3)(K) of this title).

(2) The amount determined under this paragraph is an amount equal to the product derived by multiplying—

(A) the outstanding amount of benefit liabilities under the plan (including interest calculated from the termination date), by

(B) the applicable recovery ratio.

(3)(A) IN GENERAL.—Except as provided in subparagraph (C), the term “recovery ratio” means the ratio which—

(i) the sum of the values of all recoveries under section 1362, 1363, or 1364 of this title, determined by the corporation in connection with plan terminations described under subparagraph (B), bears to

(ii) the sum of all unfunded benefit liabilities under such plans as of the termination date in connection with any such prior termination.

(B) A plan termination described in this subparagraph is a termination with respect to which—

(i) the corporation has determined the value of recoveries under section 1362, 1363, or 1364 of this title, and

(ii) notices of intent to terminate were provided (or in the case of a termination by the corporation, a notice of determination under section 1342 of this title was issued) during the 5-Federal fiscal year period ending with the third fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate (or the notice of determination under section 1342 of this title) with respect to the plan termination for which the recovery ratio is being determined.

(C) In the case of a terminated plan with respect to which the outstanding amount of benefit liabilities exceeds \$20,000,000, for purposes of this section, the term “recovery ratio” means, with respect to the termination of such plan, the ratio of—

(i) the value of the recoveries of the corporation under section 1362, 1363, or 1364 of this title in connection with such plan, to

(ii) the amount of unfunded benefit liabilities under such plan as of the termination date.

(4) Determinations under this subsection shall be made by the corporation. Such determinations shall be binding unless shown by clear and convincing evidence to be unreasonable.

**(d) Authorization to guarantee other classes of benefits**

The corporation is authorized to guarantee the payment of such other classes of benefits and to establish the terms and conditions under which such other classes of benefits are guaranteed as it determines to be appropriate.

**(e) Nonforfeatability of preretirement survivor annuity**

For purposes of subsection (a) of this section, a qualified preretirement survivor annuity (as defined in section 1055(e)(1) of this title) with respect to a participant under a terminated single-employer plan shall not be treated as forfeitable solely because the participant has not died as of the termination date.

**(f) Effective date of plan amendments**

For purposes of this section, the effective date of a plan amendment described in section 1054(i)(1) of this title shall be the effective date of the plan of reorganization of the employer described in section 1054(i)(1) of this title or, if later, the effective date stated in such amendment.

**(g) Bankruptcy filing substituted for termination date**

If a contributing sponsor of a plan has filed or has had filed against such person a petition seeking liquidation or reorganization in a case under title 11 or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date of the plan, then this section shall be applied by treating the date such petition was filed as the termination date of the plan.

**(h) Special rule for plans electing certain funding requirements**

If any plan makes an election under section 402(a)(1) of the Pension Protection Act of 2006 and is terminated effective before the end of the 10-year period beginning on the first day of the first applicable plan year—

(1) this section shall be applied—

(A) by treating the first day of the first applicable plan year as the termination date of the plan, and

(B) by determining the amount of guaranteed benefits on the basis of plan assets and liabilities as of such assumed termination date, and

(2) notwithstanding section 1344(a) of this title, plan assets shall first be allocated to pay the amount, if any, by which—

(A) the amount of guaranteed benefits under this section (determined without regard to paragraph (1) and on the basis of plan assets and liabilities as of the actual date of plan termination), exceeds

(B) the amount determined under paragraph (1).

(Pub. L. 93-406, title IV, § 4022, Sept. 2, 1974, 88 Stat. 1016; Pub. L. 96-364, title IV, § 403(c), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99-272, title XI, § 11016(c)(8), (9), Apr. 7, 1986, 100 Stat. 274; Pub. L. 100-203, title IX, § 9312(b)(3)(A), Dec. 22, 1987, 101 Stat. 1330-362; Pub. L. 101-239, title VII, §§ 7881(f)(4), (5), (11), 7891(a)(1), 7894(g)(1), (3)(B), Dec. 19, 1989, 103 Stat. 2440, 2441, 2445, 2451; Pub. L. 103-465, title VII, §§ 766(c), 777(a), Dec. 8, 1994, 108 Stat. 5037, 5049; Pub. L. 109-280, title IV, §§ 402(g)(2)(A), 403(a), 404(a), 407(a), 408(a), (b)(1), Aug. 17, 2006, 120 Stat. 926, 928, 929, 931.)

## REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II, and XVI of the Act are classified generally to subchapters II (§ 401 et seq.) and XVI (§ 1381 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 402(a)(1) of the Pension Protection Act of 2006, referred to in subsec. (h), is section 402(a)(1) of Pub. L. 109-280, which is set out as a note under section 430 of Title 26, Internal Revenue Code.

## AMENDMENTS

2006—Subsec. (b)(5). Pub. L. 109-280, § 407(a), amended par. (5) generally. Prior to amendment, par. (5) related to the amount of benefits guaranteed under this section in the case of a participant in a plan who was covered by the plan as a substantial owner.

Subsec. (b)(8). Pub. L. 109-280, § 403(a), added par. (8).

Subsec. (c)(3)(A). Pub. L. 109-280, § 408(b)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A)

read as follows: “Except as provided in subparagraph (C), for purposes of this subsection, the term ‘recovery ratio’ means the average ratio, with respect to prior plan terminations described in subparagraph (B), of—

“(i) the value of the recovery of the corporation under section 1362, 1363, or 1364 of this title in connection with such prior terminations, to

“(ii) the amount of unfunded benefit liabilities under such plans as of the termination date in connection with such prior terminations.”

Subsec. (c)(3)(B)(ii). Pub. L. 109-280, § 408(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “notices of intent to terminate were provided after December 17, 1987, and during the 5-Federal fiscal year period ending with the fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate with respect to the plan termination for which the recovery ratio is being determined.”

Subsec. (g). Pub. L. 109-280, § 404(a), which directed amendment of this section, as amended by Pub. L. 109-280, by adding subsec. (g) at the end, was executed by adding subsec. (g) after subsec. (f) and before subsec. (h) to reflect the probable intent of Congress.

Subsec. (h). Pub. L. 109-280, § 402(g)(2)(A), added subsec. (h).

1994—Subsec. (b)(3). Pub. L. 103-465, § 777(a), inserted at end “The maximum guaranteed monthly benefit shall not be reduced solely on account of the age of a participant in the case of a benefit payable by reason of disability that occurred on or before the termination date, if the participant demonstrates to the satisfaction of the corporation that the Social Security Administration has determined that the participant satisfies the definition of disability under title II or XVI of the Social Security Act, and the regulations thereunder. If a benefit payable by reason of disability is converted to an early or normal retirement benefit for reasons other than a change in the health of the participant, such early or normal retirement benefit shall be treated as a continuation of the benefit payable by reason of disability and this subparagraph shall continue to apply.”

Subsec. (f). Pub. L. 103-465, § 766(c), added subsec. (f).

1989—Subsec. (a). Pub. L. 101-239, § 7894(g)(3)(B), substituted “this subchapter” for “section 1321 of this title”.

Subsec. (b)(2). Pub. L. 101-239, § 7894(g)(1), substituted “60-month” for “60 month”.

Subsec. (b)(4)(B)(i), (5)(A), (6). 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. (c)(1). Pub. L. 101-239, § 7881(f)(11), substituted “under section 1344(a) of this title. Such payment shall be made to such participant” for “under section 1344(a) of this title, to such participant”.

Pub. L. 101-239, § 7881(f)(4), struck out “(in the case of a deceased participant)” before “to such participant’s beneficiaries”.

Subsec. (c)(3)(B)(ii). Pub. L. 101-239, § 7881(f)(5), inserted before period at end “, and during the 5-Federal fiscal year period ending with the fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate with respect to the plan termination for which the recovery ratio is being determined”.

1987—Subsecs. (c) to (e). Pub. L. 100-203 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (b)(7). Pub. L. 99-272, § 11016(c)(8), in provisions following subpar. (B) substituted “12 months beginning with” for “12 months following”.

Subsec. (d). Pub. L. 99-272, § 11016(c)(9), added subsec. (d).

1980—Subsec. (a). Pub. L. 96-364, § 403(c)(2), inserted “, in accordance with this section,” after “guarantee” and “single-employer” before “plan which”, and struck out “the terms of” after “under”.

Subsec. (b). Pub. L. 96-364, § 403(c)(3), (4), in par. (1) substituted “(7)” for “(8)”, struck out par. (5) relating

to receipt of a life annuity commencing at age 65, and redesignated pars. (6) to (8) as (5) to (7), respectively.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 402(g)(2)(A) of Pub. L. 109-280 applicable to plan years ending after Aug. 17, 2006, see section 402(j) of Pub. L. 109-280, set out as a Special Funding Rules for Certain Plans Maintained by Commercial Airlines note under section 430 of Title 26, Internal Revenue Code.

Pub. L. 109-280, title IV, § 403(b), Aug. 17, 2006, 120 Stat. 928, provided that: “The amendment made by this section [amending this section] shall apply to benefits that become payable as a result of an event which occurs after July 26, 2005.”

Pub. L. 109-280, title IV, § 404(c), Aug. 17, 2006, 120 Stat. 928, provided that: “The amendments made this section [amending this section and section 1344 of this title] shall apply with respect to proceedings initiated under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, on or after the date that is 30 days after the date of enactment of this Act [Aug. 17, 2006].”

Amendment by section 407(a) of Pub. L. 109-280 applicable to plan terminations under section 1341(c) of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 31, 2005, and under section 1342 of this title with respect to which notices of determination are provided under such section after such date, see section 407(d)(1) of Pub. L. 109-280, set out as a note under section 1321 of this title.

Pub. L. 109-280, title IV, § 408(c), Aug. 17, 2006, 120 Stat. 932, provided that: “The amendments made by this section [amending this section and section 1344 of this title] shall apply for any termination for which notices of intent to terminate are provided (or in the case of a termination by the corporation, a notice of determination under section 4042 under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1342] is issued) on or after the date which is 30 days after the date of enactment of this section [Aug. 17, 2006].”

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 766(c) of Pub. L. 103-465 applicable to plan amendments adopted on or after Dec. 8, 1994, see section 766(d) of Pub. L. 103-465, set out as a note under section 401 of Title 26, Internal Revenue Code.

Pub. L. 103-465, title VII, § 777(b), Dec. 8, 1994, 108 Stat. 5049, provided that: “The amendment made by this section [amending this section] shall be effective for plan terminations under section 4041(c) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1341(c)] with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act [29 U.S.C. 1342], or under section 4042 of such Act with respect to which proceedings are instituted by the corporation, on or after the date of enactment of this Act [Dec. 8, 1994].”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(4), (5), (11) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100-203, §§ 9302-9346, to which such amendment relates, see section 7882 of Pub. L. 101-239, set out as a note under section 401 of Title 26, Internal Revenue Code.

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 7894(g)(1), (3)(B) of Pub. L. 101-239 effective, except as otherwise provided, as if originally included in the provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406,

to which such amendment relates, see section 7894(i) 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, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100-203, as amended, 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.

#### 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.

#### 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 re-