

## SPECIAL DELAYED PAYMENT RULE

Pub. L. 99-272, title XI, § 11012(d), Apr. 7, 1986, 100 Stat. 260, provided that: "In the case of a distress termination under section 4041(c) of the Employee Retirement Income Security Act of 1974 (as amended by section 11009) [29 U.S.C. 1341(c)] pursuant to a notice of intent to terminate filed before January 1, 1987, no payment of liability otherwise payable as provided in section 4062(c)(2)(B) of such Act [former 29 U.S.C. 1362(c)(2)(B)] (as amended by this section [Act]) shall be required to be made before January 1, 1989."

**§ 1363. Liability of substantial employer for withdrawal from single-employer plans under multiple controlled groups**

**(a) Single-employer plans with two or more contributing sponsors**

Except as provided in subsection (d) of this section, the plan administrator of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control—

(1) shall notify the corporation of the withdrawal during a plan year of a substantial employer for such plan year from the plan, within 60 days after such withdrawal, and

(2) request that the corporation determine the liability of all persons with respect to the withdrawal of the substantial employer.

The corporation shall, as soon as practicable thereafter, determine whether there is liability resulting from the withdrawal of the substantial employer and notify the liable persons of such liability.

**(b) Computation of liability**

Except as provided in subsection (c) of this section, any one or more contributing sponsors who withdraw, during a plan year for which they constitute a substantial employer, from a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control, shall, upon notification of such contributing sponsors by the corporation as provided by subsection (a) of this section, be liable, together with the members of their controlled groups, to the corporation in accordance with the provisions of section 1362 of this title and this section. The amount of liability shall be computed on the basis of an amount determined by the corporation to be the amount described in section 1362 of this title for the entire plan, as if the plan had been terminated by the corporation on the date of the withdrawal referred to in subsection (a)(1) of this section multiplied by a fraction—

(1) the numerator of which is the total amount required to be contributed to the plan by such contributing sponsors for the last 5 years ending prior to the withdrawal, and

(2) the denominator of which is the total amount required to be contributed to the plan by all contributing sponsors for such last 5 years.

In addition to and in lieu of the manner prescribed in the preceding sentence, the corporation may also determine such liability on any other equitable basis prescribed by the corporation in regulations. Any amount collected by the corporation under this subsection shall be held in escrow subject to disposition in accord-

ance with the provisions of paragraphs (2) and (3) of subsection (c) of this section.

**(c) Bond in lieu of payment of liability; 5-year termination period**

(1) In lieu of payment of a contributing sponsor's liability under this section, the contributing sponsor may be required to furnish a bond to the corporation in an amount not exceeding 150 percent of his liability to insure payment of his liability under this section. The bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury under sections 9304-9308 of title 31. Any such bond shall be in a form or of a type approved by the Secretary including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(2) If the plan is not terminated under section 1341(c) or 1342 of this title within the 5-year period commencing on the day of withdrawal, the liability is abated and any payment held in escrow shall be refunded without interest (or the bond cancelled) in accordance with bylaws or rules prescribed by the corporation.

(3) If the plan terminates under section 1341(c) or 1342 of this title within the 5-year period commencing on the day of withdrawal, the corporation shall—

(A) demand payment or realize on the bond and hold such amount in escrow for the benefit of the plan;

(B) treat any escrowed payments under this section as if they were plan assets and apply them in a manner consistent with this subtitle; and

(C) refund any amount to the contributing sponsor which is not required to meet any obligation of the corporation with respect to the plan.

**(d) Alternate appropriate procedure**

The provisions of this subsection apply in the case of a withdrawal described in subsection (a) of this section, and the provisions of subsections (b) and (c) of this section shall not apply, if the corporation determines that the procedure provided for under this subsection is consistent with the purposes of this section and section 1364 of this title and is more appropriate in the particular case. Upon a showing by the plan administrator of the plan that the withdrawal from the plan by one or more contributing sponsors has resulted, or will result, in a significant reduction in the amount of aggregate contributions to or under the plan, the corporation may—

(1) require the plan fund to be equitably allocated between those participants no longer working in covered service under the plan as a result of the withdrawal, and those participants who remain in covered service under the plan;

(2) treat that portion of the plan funds allocable under paragraph (1) to participants no longer in covered service as a plan terminated under section 1342 of this title; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a separate plan.

**(e) Indemnity agreement**

The corporation is authorized to waive the application of the provisions of subsections (b), (c), and (d) of this section whenever it determines that there is an indemnity agreement in effect among contributing sponsors under the plan which is adequate to satisfy the purposes of this section and of section 1364 of this title.

(Pub. L. 93-406, title IV, § 4063, Sept. 2, 1974, 88 Stat. 1030; Pub. L. 96-364, title IV, § 403(h), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99-272, title XI, § 11016(a)(5)(A), Apr. 7, 1986, 100 Stat. 268.)

## CODIFICATION

In subsec. (c)(1), "sections 9304-9308 of title 31" substituted for "sections 6 through 13 of title 6, United States Code" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

## AMENDMENTS

1986—Pub. L. 99-272, § 11016(a)(5)(A)(vi), inserted "from single-employer plans under multiple controlled groups" in section catchline.

Subsec. (a). Pub. L. 99-272, § 11016(a)(5)(A)(i), in introductory par., substituted "single-employer plan which has two or more contributing sponsors at least two of whom are not under common control" for "plan under which more than one employer makes contributions (other than a multiemployer plan)", in par. (1), substituted "withdrawal during a plan year of a substantial employer for such plan year" for "withdrawal of a substantial employer", in par. (2), substituted "of all persons with respect to the withdrawal of the substantial employer" for "of such employer under this subtitle with respect to such withdrawal", and in concluding provision substituted "whether there is liability resulting from the withdrawal of the substantial employer" for "whether such employer is liable for any amount under this subtitle with respect to the withdrawal" and "notify the liable persons" for "notify such employer".

Subsec. (b). Pub. L. 99-272, § 11016(a)(5)(A)(ii), in introductory par., substituted "any one or more contributing sponsors who withdraw, during a plan year for which they constitute a substantial employer, from a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control, shall, upon notification of such contributing sponsors by the corporation as provided by subsection (a) of this section, be liable, together with the members of their controlled groups," for "an employer who withdraws from a plan to which section 1321 of this title applies, during a plan year for which he was a substantial employer, and who is notified by the corporation as provided by subsection (a) of this section, shall be liable", "amount of liability" for "amount of such employer's liability", and "the withdrawal referred to in subsection (a)(1) of this section" for "the employer's withdrawal", in par. (1), substituted "such contributing sponsors" for "such employer", in par. (2), substituted "all contributing sponsors" for "all employers", and in concluding provision substituted "such liability" for "the liability of each such employer".

Subsec. (c)(1). Pub. L. 99-272, § 11016(a)(5)(A)(iii)(I), substituted "of a contributing sponsor's liability under this section, the contributing sponsor" for "of his liability under this section the employer".

Subsec. (c)(2). Pub. L. 99-272, § 11016(a)(5)(A)(iii)(II), inserted "under section 1341(c) or 1342 of this title" and substituted "liability is" for "liability of such employer is" and "(or the bond cancelled)" for "to the employer (or his bond cancelled)".

Subsec. (c)(3). Pub. L. 99-272, § 11016(a)(5)(A)(iii)(III), in introductory par., inserted "under section 1341(c) or 1342 of this title" and, in subpar. (C), substituted "contributing sponsor" for "employer".

Subsec. (d). Pub. L. 99-272, § 11016(a)(5)(A)(iv), in introductory par., substituted "of the plan that the withdrawal from the plan by one or more contributing sponsors" for "of a plan (other than a multiemployer plan) that the withdrawal from the plan by any employer or employers" and struck out "by employers" after "contributions to or under the plan", in par. (1), substituted "the withdrawal" for "their employer's withdrawal", and in par. (2), substituted "plan terminated under section 1342 of this title" for "termination".

Subsec. (e). Pub. L. 99-272, § 11016(a)(5)(A)(v), struck out "to any employer or plan administrator" before "whenever it determines" and substituted "contributing sponsors" for "all other employers".

1980—Subsecs. (a), (d). Pub. L. 96-364 inserted provisions excepting a multiemployer plan.

## 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.

**§ 1364. Liability on termination of single-employer plans under multiple controlled groups**

(a) This section applies to all contributing sponsors of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control at the time such plan is terminated under section 1341(c) or 1342 of this title, or who, at any time within the 5 plan years preceding the date of termination, made contributions under the plan.

(b) The corporation shall determine the liability with respect to each contributing sponsor and each member of its controlled group in a manner consistent with section 1362 of this title, except that the amount of liability determined under section 1362(b)(1) of this title with respect to the entire plan shall be allocated to each controlled group by multiplying such amount by a fraction—

(1) the numerator of which is the amount required to be contributed to the plan for the last 5 plan years ending prior to the termination date by persons in such controlled group as contributing sponsors, and

(2) the denominator of which is the total amount required to be contributed to the plan for such last 5 plan years by all persons as contributing sponsors,

and section 1368(a) of this title shall be applied separately with respect to each controlled group. The corporation may also determine the liability of each such contributing sponsor and member of its controlled group on any other equitable basis prescribed by the corporation in regulations.

(Pub. L. 93-406, title IV, § 4064, Sept. 2, 1974, 88 Stat. 1031; Pub. L. 96-364, title IV, § 403(i), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99-272, title XI, § 11016(a)(5)(B), Apr. 7, 1986, 100 Stat. 270; Pub. L. 100-203, title IX, § 9312(b)(2)(C)(i), Dec. 22, 1987, 101 Stat. 1330-361; Pub. L. 101-239, title VII, § 7881(f)(3)(A), Dec. 19, 1989, 103 Stat. 2440.)

## AMENDMENTS

1989—Subsec. (b). Pub. L. 101-239 substituted "section 1368(a)" for "clauses (i)(II) and (ii) of section 1362(b)(1)(A)".