

of section 1112 of this title, or an amount held in escrow by a bank or similar financial institution satisfactory to the plan, in an amount equal to the sum of the withdrawal liability payments that would otherwise be due under subsection (d) and section 1399(c) of this title for the 12-month period beginning with the first anniversary of such notice. Such bond or escrow shall remain in effect until there is a final decision in the arbitration proceeding, or in court, of the withdrawal liability dispute, at which time such bond or escrow shall be paid to the plan if such final decision upholds the plan sponsor's determination.

(3) DEFINITION OF SMALL EMPLOYER.—For purposes of this subsection—

(A) IN GENERAL.—The term “small employer” means any employer which, for the calendar year in which the transaction referred to in paragraph (1)(B) occurred and for each of the 3 preceding years, on average—

(i) employs not more than 500 employees, and

(ii) is required to make contributions to the plan for not more than 250 employees.

(B) CONTROLLED GROUP.—Any group treated as a single employer under subsection (b)(1) of section 1301 of this title, without regard to any transaction that was a basis for the plan's finding under section 1392 of this title, shall be treated as a single employer for purposes of this subparagraph.

(4) ADDITIONAL SECURITY PENDING RESOLUTION OF DISPUTE.—If a withdrawal liability dispute to which this subsection applies is not concluded by 12 months after the electing person posts the bond or escrow described in paragraph (2), the electing person shall, at the start of each succeeding 12-month period, provide an additional bond or amount held in escrow equal to the sum of the withdrawal liability payments that would otherwise be payable to the plan during that period.

(5) The liability of the party furnishing a bond or escrow under this subsection shall be reduced, upon the payment of the bond or escrow to the plan, by the amount thereof.

(Pub. L. 93-406, title IV, §4221, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1239; amended Pub. L. 108-218, title II, §202(a), Apr. 10, 2004, 118 Stat. 608; Pub. L. 109-280, title II, §204(d)(1), Aug. 17, 2006, 120 Stat. 887; Pub. L. 110-458, title I, §105(b)(2), Dec. 23, 2008, 122 Stat. 5105.)

AMENDMENTS

2008—Subsecs. (e) to (g). Pub. L. 110-458 redesignated subsecs. (f) and (g) as (e) and (f), respectively, and struck out former subsec. (e). Prior to amendment, text read as follows: “If any employer requests in writing that the plan sponsor make available to the employer general information necessary for the employer to compute its withdrawal liability with respect to the plan (other than information which is unique to that employer), the plan sponsor shall furnish the information to the employer without charge. If any employer requests in writing that the plan sponsor make an estimate of such employer's potential withdrawal liability with respect to the plan or to provide information unique to that employer, the plan sponsor may require the employer to pay the reasonable cost of making such estimate or providing such information.”

2006—Subsec. (g). Pub. L. 109-280 added subsec. (g).
2004—Subsec. (f). Pub. L. 108-218 added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title II, §204(d)(2), Aug. 17, 2006, 120 Stat. 889, provided that: “The amendments made by this subsection [amending this section] shall apply to any person 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)] on or after the date of enactment of this Act [Aug. 17, 2006] with respect to a transaction that occurred after December 31, 1998.”

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 exclu-

sion 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 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 in-