(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 percent of the amount in excess of $6,000,000, if the employer's liquidation or dissolution value is more than $6,000,000, but not more than $7,000,000; $2,550,000, plus 50 percent of the amount in excess of $7,000,000, if the employer's liquidation or dissolution value is more than $7,000,000, but not more than $8,000,000; $3,050,000, plus 60 percent of the amount in excess of $8,000,000, if the employer's liquidation or dissolution value is more than $8,000,000, but not more than $9,000,000; $3,650,000, plus 70 percent of the amount in excess of $9,000,000, if the employer's liquidation or dissolution value is more than $9,000,000, but not more than $10,000,000; and $4,350,000, plus 80 percent of the amount in excess of $10,000,000, if the employer's liquidation or dissolution value is more than $10,000,000.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title II, § 204(a)(3), Aug. 17, 2006, 120 Stat. 887, provided that: ''The amendments made by this subsection [amending this section] shall apply to sales occurring on or after January 1, 2007.''

PART 2—MERGER OR TRANSFER OF PLAN ASSETS OR LIABILITIES

§ 1411. Mergers and transfers between multiemployer plans

(a) Authority of plan sponsor

Unless otherwise provided in regulations prescribed by the corporation, a plan sponsor may not cause a multiemployer plan to merge with one or more multiemployer plans, or engage in a transfer of assets and liabilities to or from another multiemployer plan, unless such merger or transfer satisfies the requirements of subsection (b) of this section.

(b) Criteria

A merger or transfer satisfies the requirements of this section if—

(1) in accordance with regulations of the corporation, the plan sponsor of a multiemployer plan notifies the corporation of a merger with or transfer of plan assets or liabilities to another multiemployer plan at least 120 days before the effective date of the merger or transfer;

(2) no participant's or beneficiary's accrued benefit will be lower immediately after the effective date of the merger or transfer than the benefit immediately before that date;

(3) the benefits of participants and beneficiaries are not reasonably expected to be subject to suspension under section 1426 of this title; and

(4) an actuarial valuation of the assets and liabilities of each of the affected plans has been performed during the plan year preceding

the effective date of the merger or transfer, based upon the most recent data available as of the day before the start of that plan year, or other valuation of such assets and liabilities performed under such standards and procedures as the corporation may prescribe by regulation.

(c) Actions not deemed violation of section 1106(a) or (b)(2) of this title

The merger of multiemployer plans or the transfer of assets or liabilities between multiemployer plans, shall be deemed not to constitute a violation of the provisions of section 1106(a) of this title or section 1106(b)(2) of this title if the corporation determines that the merger or transfer otherwise satisfies the requirements of this section.

(d) Nature of plan to which liabilities are transferred

A plan to which liabilities are transferred under this section is a successor plan for purposes of section 1322a(b)(2)(B) of this title.

(Pub. L. 93–406, title IV, § 4231, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1244.)

EFFECTIVE DATE

Part effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

§ 1412. Transfers between a multiemployer plan and a single-employer plan

(a) General authority

A transfer of assets or liabilities between, or a merger of, a multiemployer plan and a single-employer plan shall satisfy the requirements of this section.

(b) Accrued benefit of participant or beneficiary not lower immediately after effective date of transfer or merger

No accrued benefit of a participant or beneficiary may be lower immediately after the effective date of a transfer or merger described in subsection (a) of this section than the benefit immediately before that date.

(c) Liability of multiemployer plan to corporation where single-employer plan terminates within 60 months after effective date of transfer; amount of liability, exemption, etc.

(1) Except as provided in paragraphs (2) and (3), a multiemployer plan which transfers liabilities to a single-employer plan shall be liable to the corporation if the single-employer plan terminates within 60 months after the effective date of the transfer. The amount of liability shall be the lesser of—

(A) the amount of the plan asset insufficiency of the terminated single-employer plan, less 30 percent of the net worth of the employer who maintained the single-employer plan, determined in accordance with section 1362 or 1364 this title, or

(B) the value, on the effective date of the transfer, of the unfunded benefits transferred to the single-employer plan which are guaranteed under section 1322 of this title.

(2) A multiemployer plan shall be liable to the corporation as provided in paragraph (1) unless, within 180 days after the corporation receives an application (together with such information as the corporation may reasonably require for purposes of such application) from the multiemployer plan sponsor for a determination under this paragraph—

(A) the corporation determines that the interests of the plan participants and beneficiaries and of the corporation are adequately protected, or

(B) fails to make any determination regarding the adequacy with which such interests are protected with respect to such transfer of liabilities.

If, after the receipt of such application, the corporation requests from the plan sponsor additional information necessary for the determination, the running of the 180-day period shall be suspended from the date of such request until the receipt by the corporation of the additional information requested. The corporation may by regulation prescribe procedures and standards for the issuance of determinations under this paragraph. This paragraph shall not apply to any application submitted less than 180 days after September 26, 1980.

(3) A multiemployer plan shall not be liable to the corporation as provided in paragraph (1) in the case of a transfer from the multiemployer plan to a single-employer plan of liabilities which accrued under a single-employer plan which merged with the multiemployer plan, if, the value of liabilities transferred to the single-employer plan does not exceed the value of the liabilities for benefits which accrued before the merger, and the value of the assets transferred to the single-employer plan is substantially equal to the value of the assets which would have been in the single-employer plan if the employer had maintained and funded it as a separate plan under which no benefits accrued after the date of the merger.

(4) The corporation may make equitable arrangements with multiemployer plans which are liable under this subsection for satisfaction of their liability.

(d) Guarantee of benefits under single-employer plan

Benefits under a single-employer plan to which liabilities are transferred in accordance with this section are guaranteed under section 1322 of this title to the extent provided in that section as of the effective date of the transfer and the plan is a successor plan.

(e) Transfer of liabilities by multiemployer plan to single-employer plan

(1) Except as provided in paragraph (2), a multiemployer plan may not transfer liabilities to a single-employer plan unless the plan sponsor of the plan to which the liabilities would be transferred agrees to the transfer.

(2) In the case of a transfer described in subsection (c)(3) of this section, paragraph (1) of this subsection is satisfied by the advance agreement to the transfer by the employer who will be obligated to contribute to the single-employer plan.