

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.

§ 1389. De minimis rule

(a) Reduction of unfunded vested benefits allocable to employer withdrawn from plan

Except in the case of a plan amended under subsection (b) of this section, the amount of the unfunded vested benefits allocable under section 1391 of this title to an employer who withdraws from a plan shall be reduced by the smaller of—

- (1) $\frac{3}{4}$ of 1 percent of the plan's unfunded vested obligations (determined as of the end of the plan year ending before the date of withdrawal), or
- (2) \$50,000,

reduced by the amount, if any, by which the unfunded vested benefits allowable to the employer, determined without regard to this subsection, exceeds \$100,000.

(b) Amendment of plan for reduction of amount of unfunded vested benefits allocable to employer withdrawn from plan

A plan may be amended to provide for the reduction of the amount determined under section 1391 of this title by not more than the greater of—

- (1) the amount determined under subsection (a) of this section, or
- (2) the lesser of—
 - (A) the amount determined under subsection (a)(1) of this section, or
 - (B) \$100,000,

reduced by the amount, if any, by which the amount determined under section 1391 of this title for the employer, determined without regard to this subsection, exceeds \$150,000.

(c) Nonapplicability

This section does not apply—

- (1) to an employer who withdraws in a plan year in which substantially all employers withdraw from the plan, or
- (2) in any case in which substantially all employers withdraw from the plan during a period of one or more plan years pursuant to an agreement or arrangement to withdraw, to an employer who withdraws pursuant to such agreement or arrangement.

(d) Presumption of employer withdrawal from plan pursuant to agreement or arrangement applicable in action or proceeding to determine or collect withdrawal liability

In any action or proceeding to determine or collect withdrawal liability, if substantially all employers have withdrawn from a plan within a period of 3 plan years, an employer who has withdrawn from such plan during such period shall be presumed to have withdrawn from the plan pursuant to an agreement or arrangement, unless the employer proves otherwise by a preponderance of the evidence.

(Pub. L. 93-406, title IV, §4209, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1225.)

§ 1390. Nonapplicability of withdrawal liability for certain temporary contribution obligation periods; exception

(a) An employer who withdraws from a plan in complete or partial withdrawal is not liable to the plan if the employer—

- (1) first had an obligation to contribute to the plan after September 26, 1980,
- (2) had an obligation to contribute to the plan for no more than the lesser of—
 - (A) 6 consecutive plan years preceding the date on which the employer withdraws, or
 - (B) the number of years required for vesting under the plan,
- (3) was required to make contributions to the plan for each such plan year in an amount equal to less than 2 percent of the sum of all employer contributions made to the plan for each such year, and
- (4) has never avoided withdrawal liability because of the application of this section with respect to the plan.

(b) Subsection (a) of this section shall apply to an employer with respect to a plan only if—

- (1) the plan is amended to provide that subsection (a) of this section applies;
- (2) the plan provides, or is amended to provide, that the reduction under section 411(a)(3)(E) of title 26 applies with respect to the employees of the employer; and
- (3) the ratio of the assets of the plan for the plan year preceding the first plan year for which the employer was required to contribute to the plan to the benefit payments made during that plan year was at least 8 to 1.

(Pub. L. 93-406, title IV, §4210, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1226; amended Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 109-280, title II, §204(c)(1), Aug. 17, 2006, 120 Stat. 887.)

AMENDMENTS

2006—Subsec. (b)(1) to (4). Pub. L. 109-280 redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: “the plan is not a plan which primarily covers employees in the building and construction industry;”.

1989—Subsec. (b)(3). 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 2006 AMENDMENT

Pub. L. 109-280, title II, §204(c)(3), Aug. 17, 2006, 120 Stat. 887, provided that: “The amendments made by this subsection [amending this section and section 1391 of this title] shall apply with respect to plan withdrawals occurring on or after January 1, 2007.”

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.