

§ 1350. Missing participants

(a) General rule

(1) Payment to the corporation

A plan administrator satisfies section 1341(b)(3)(A) of this title in the case of a missing participant only if the plan administrator—

(A) transfers the participant's designated benefit to the corporation or purchases an irrevocable commitment from an insurer in accordance with clause (i) of section 1341(b)(3)(A) of this title, and

(B) provides the corporation such information and certifications with respect to such designated benefits or irrevocable commitments as the corporation shall specify.

(2) Treatment of transferred assets

A transfer to the corporation under this section shall be treated as a transfer of assets from a terminated plan to the corporation as trustee, and shall be held with assets of terminated plans for which the corporation is trustee under section 1342 of this title, subject to the rules set forth in that section.

(3) Payment by the corporation

After a missing participant whose designated benefit was transferred to the corporation is located—

(A) in any case in which the plan could have distributed the benefit of the missing participant in a single sum without participant or spousal consent under section 1055(g) of this title, the corporation shall pay the participant or beneficiary a single sum benefit equal to the designated benefit paid the corporation plus interest as specified by the corporation, and

(B) in any other case, the corporation shall pay a benefit based on the designated benefit and the assumptions prescribed by the corporation at the time that the corporation received the designated benefit.

The corporation shall make payments under subparagraph (B) available in the same forms and at the same times as a guaranteed benefit under section 1322 of this title would be available to be paid, except that the corporation may make a benefit available in the form of a single sum if the plan provided a single sum benefit (other than a single sum described in subsection (b)(2)(A)).

(b) Definitions

For purposes of this section—

(1) Missing participant

The term “missing participant” means a participant or beneficiary under a terminating plan whom the plan administrator cannot locate after a diligent search.

(2) Designated benefit

The term “designated benefit” means the single sum benefit the participant would receive—

(A) under the plan's assumptions, in the case of a distribution that can be made without participant or spousal consent under section 1055(g) of this title;

(B) under the assumptions of the corporation in effect on the date that the designated benefit is transferred to the corporation, in the case of a plan that does not pay any single sums other than those described in subparagraph (A); or

(C) under the assumptions of the corporation or of the plan, whichever provides the higher single sum, in the case of a plan that pays a single sum other than those described in subparagraph (A).

(c) Multiemployer plans

The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this subchapter that terminate under section 1341a of this title.

(d) Plans not otherwise subject to subchapter

(1) Transfer to corporation

The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant's benefits to the corporation upon termination of the plan.

(2) Information to the corporation

To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

(A) to the corporation, or

(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

(3) Payment by the corporation

If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

(A) in a single sum (plus interest), or

(B) in such other form as is specified in regulations of the corporation.

(4) Plans described

A plan is described in this paragraph if—

(A) the plan is a pension plan (within the meaning of section 1002(2) of this title)—

(i) to which the provisions of this section do not apply (without regard to this subsection),

(ii) which is not a plan described in paragraph (2), (3), (4), (6), (7), (8), (9), (10), or (11) of section 1321(b) of this title, and

(iii) which,¹ was a plan described in section 401(a) of title 26 which includes a trust exempt from tax under section 501(a) of such title, and

(B) at the time the assets are to be distributed upon termination, the plan—

(i) has missing participants, and

(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 1002(2) of this title).

¹ So in original. The comma probably should not appear.

(5) Certain provisions not to apply

Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (4).

(e) Regulatory authority

The corporation shall prescribe such regulations as are necessary to carry out the purposes of this section, including rules relating to what will be considered a diligent search, the amount payable to the corporation, and the amount to be paid by the corporation.

(Pub. L. 93-406, title IV, §4050, as added Pub. L. 103-465, title VII, §776(a), Dec. 8, 1994, 108 Stat. 5047; amended Pub. L. 109-280, title IV, §410(a), Aug. 17, 2006, 120 Stat. 934; Pub. L. 110-458, title I, §104(e), Dec. 23, 2008, 122 Stat. 5104.)

AMENDMENTS

2008—Subsec. (d)(4)(A)(ii), (iii). Pub. L. 110-458 added cls. (ii) and (iii) and struck out former cl. (ii) which read as follows: “which is not a plan described in paragraphs (2) through (11) of section 1321(b) of this title, and”.

2006—Subsecs. (c) to (e). Pub. L. 109-280 added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

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

Amendment by Pub. L. 109-280 applicable to distributions made after final regulations implementing subsections (c) and (d) of this section are prescribed, see section 410(c) of Pub. L. 109-280, set out as a note under section 1056 of this title.

EFFECTIVE DATE

Section effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103-465, set out as an Effective Date of 1994 Amendment note under section 1056 of this title.

SUBTITLE D—LIABILITY

§ 1361. Amounts payable by corporation

The corporation shall pay benefits under a single-employer plan terminated under this subchapter subject to the limitations and requirements of subtitle B of this subchapter. The corporation shall provide financial assistance to pay benefits under a multiemployer plan which is insolvent under section 1426 or 1441(d)(2)(A) of this title, subject to the limitations and requirements of subtitles B, C, and E of this subchapter. Amounts guaranteed by the corporation under sections 1322 and 1322a of this title shall be paid by the corporation only out of the appropriate fund. The corporation shall make payments under the supplemental program to reimburse multiemployer plans for uncollectible withdrawal liability only out of the fund established under section 1305(e) of this title.

(Pub. L. 93-406, title IV, §4061, Sept. 2, 1974, 88 Stat. 1029; Pub. L. 96-364, title IV, §403(f), Sept. 26, 1980, 94 Stat. 1301.)

AMENDMENTS

1980—Pub. L. 96-364 substituted provisions relating to payment of benefits under a single-employer plan ter-

minated under this subchapter subject to limitations and requirements of subtitle B of this subchapter for provisions relating to payment of benefits under a plan terminated under this subchapter subject to limitations and requirements of subtitle B of this subchapter.

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.

§ 1362. Liability for termination of single-employer plans under a distress termination or a termination by corporation**(a) In general**

In any case in which a single-employer plan is terminated in a distress termination under section 1341(c) of this title or a termination otherwise instituted by the corporation under section 1342 of this title, any person who is, on the termination date, a contributing sponsor of the plan or a member of such a contributing sponsor's controlled group shall incur liability under this section. The liability under this section of all such persons shall be joint and several. The liability under this section consists of—

- (1) liability to the corporation, to the extent provided in subsection (b), and
- (2) liability to the trustee appointed under subsection (b) or (c) of section 1342 of this title, to the extent provided in subsection (c).

(b) Liability to corporation**(1) Amount of liability****(A) In general**

Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) shall be the total amount of the unfunded benefit liabilities (as of the termination date) to all participants and beneficiaries under the plan, together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation.

(B) Special rule in case of subsequent insufficiency

For purposes of subparagraph (A), in any case described in section 1341(c)(3)(C)(ii) of this title, actuarial present values shall be determined as of the date of the notice to the corporation (or the finding by the corporation) described in such section.

(2) Payment of liability**(A) In general**

Except as provided in subparagraph (B), the liability to the corporation under this subsection shall be due and payable to the corporation as of the termination date, in cash or securities acceptable to the corporation.

(B) Special rule

Payment of so much of the liability under paragraph (1)(A) as exceeds 30 percent of the collective net worth of all persons described in subsection (a) (including interest) shall be made under commercially reasonable terms prescribed by the corporation. The parties involved shall make a reasonable effort to