

Pub. L. 99-272, set out as a note under section 1306 of this title.

EFFECTIVE DATE

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

§ 1322b. Aggregate limit on benefits guaranteed; criteria applicable

(a) Notwithstanding sections 1322 and 1322a of this title, no person shall receive from the corporation pursuant to a guarantee by the corporation of basic benefits with respect to a participant under all multiemployer and single employer plans an amount, or amounts, with an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the amount determined under section 1322(b)(3)(B) of this title as of the date of the last plan termination.

(b) For purposes of this section—

(1) the receipt of benefits under a multiemployer plan receiving financial assistance from the corporation shall be considered the receipt of amounts from the corporation pursuant to a guarantee by the corporation of basic benefits except to the extent provided in regulations prescribed by the corporation, and

(2) the date on which a multiemployer plan, whether or not terminated, begins receiving financial assistance from the corporation shall be considered a date of plan termination.

(Pub. L. 93-406, title IV, § 4022B, as added Pub. L. 96-364, title I, § 102, Sept. 26, 1980, 94 Stat. 1215.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

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

§ 1323. Plan fiduciaries

Notwithstanding any other provision of this chapter, a fiduciary of a plan to which section 1321 of this title applies is not in violation of the fiduciary's duties as a result of any act or of any withholding of action required by this subchapter.

(Pub. L. 93-406, title IV, § 4023, as added Pub. L. 96-364, title IV, § 402(a)(5), Sept. 26, 1980, 94 Stat. 1298.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 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 the title and Tables.

PRIOR PROVISIONS

A prior section 1323, Pub. L. 93-406, title IV, § 4023, Sept. 2, 1974, 88 Stat. 1019, related to contingent liability coverage, prior to repeal by Pub. L. 96-364, title I, § 107, Sept. 26, 1980, 94 Stat. 1267.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

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

SUBTITLE C—TERMINATIONS

§ 1341. Termination of single-employer plans

(a) General rules governing single-employer plan terminations

(1) Exclusive means of plan termination

Except in the case of a termination for which proceedings are otherwise instituted by the corporation as provided in section 1342 of this title, a single-employer plan may be terminated only in a standard termination under subsection (b) or a distress termination under subsection (c).

(2) 60-day notice of intent to terminate

Not less than 60 days before the proposed termination date of a standard termination under subsection (b) or a distress termination under subsection (c), the plan administrator shall provide to each affected party (other than the corporation in the case of a standard termination) a written notice of intent to terminate stating that such termination is intended and the proposed termination date. The written notice shall include any related additional information required in regulations of the corporation.

(3) Adherence to collective bargaining agreements

The corporation shall not proceed with a termination of a plan under this section if the termination would violate the terms and conditions of an existing collective bargaining agreement. Nothing in the preceding sentence shall be construed as limiting the authority of the corporation to institute proceedings to involuntarily terminate a plan under section 1342 of this title.

(b) Standard termination of single-employer plans

(1) General requirements

A single-employer plan may terminate under a standard termination only if—

(A) the plan administrator provides the 60-day advance notice of intent to terminate to affected parties required under subsection (a)(2),

(B) the requirements of subparagraphs (A) and (B) of paragraph (2) are met,

(C) the corporation does not issue a notice of noncompliance under subparagraph (C) of paragraph (2), and

(D) when the final distribution of assets occurs, the plan is sufficient for benefit liabilities (determined as of the termination date).

(2) Termination procedure

(A) Notice to the corporation

As soon as practicable after the date on which the notice of intent to terminate is provided pursuant to subsection (a)(2), the plan administrator shall send a notice to the corporation setting forth—

(i) certification by an enrolled actuary—

(I) of the projected amount of the assets of the plan (as of a proposed date of final distribution of assets),

(II) of the actuarial present value (as of such date) of the benefit liabilities

(determined as of the proposed termination date) under the plan, and

(III) that the plan is projected to be sufficient (as of such proposed date of final distribution) for such benefit liabilities,

(ii) such information as the corporation may prescribe in regulations as necessary to enable the corporation to make determinations under subparagraph (C), and

(iii) certification by the plan administrator that—

(I) the information on which the enrolled actuary based the certification under clause (i) is accurate and complete, and

(II) the information provided to the corporation under clause (ii) is accurate and complete.

Clause (i) and clause (iii)(I) shall not apply to a plan described in section 412(i)¹ of title 26.

(B) Notice to participants and beneficiaries of benefit commitments²

No later than the date on which a notice is sent by the plan administrator under subparagraph (A), the plan administrator shall send a notice to each person who is a participant or beneficiary under the plan—

(i) specifying the amount of the benefit liabilities (if any) attributable to such person as of the proposed termination date and the benefit form on the basis of which such amount is determined, and

(ii) including the following information used in determining such benefit liabilities:

(I) the length of service,

(II) the age of the participant or beneficiary,

(III) wages,

(IV) the assumptions, including the interest rate, and

(V) such other information as the corporation may require.

Such notice shall be written in such manner as is likely to be understood by the participant or beneficiary and as may be prescribed in regulations of the corporation.

(C) Notice from the corporation of non-compliance

(i) In general

Within 60 days after receipt of the notice under subparagraph (A), the corporation shall issue a notice of noncompliance to the plan administrator if—

(I) it determines, based on the notice sent under paragraph (2)(A) of subsection (b), that there is reason to believe that the plan is not sufficient for benefit liabilities,

(II) it otherwise determines, on the basis of information provided by affected parties or otherwise obtained by the corporation, that there is reason to believe

that the plan is not sufficient for benefit liabilities, or

(III) it determines that any other requirement of subparagraph (A) or (B) of this paragraph or of subsection (a)(2) has not been met, unless it further determines that the issuance of such notice would be inconsistent with the interests of participants and beneficiaries.

(ii) Extension

The corporation and the plan administrator may agree to extend the 60-day period referred to in clause (i) by a written agreement signed by the corporation and the plan administrator before the expiration of the 60-day period. The 60-day period shall be extended as provided in the agreement and may be further extended by subsequent written agreements signed by the corporation and the plan administrator made before the expiration of a previously agreed upon extension of the 60-day period. Any extension may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator.

(D) Final distribution of assets in absence of notice of noncompliance

The plan administrator shall commence the final distribution of assets pursuant to the standard termination of the plan as soon as practicable after the expiration of the 60-day (or extended) period referred to in subparagraph (C), but such final distribution may occur only if—

(i) the plan administrator has not received during such period a notice of non-compliance from the corporation under subparagraph (C), and

(ii) when such final distribution occurs, the plan is sufficient for benefit liabilities (determined as of the termination date).

(3) Methods of final distribution of assets

(A) In general

In connection with any final distribution of assets pursuant to the standard termination of the plan under this subsection, the plan administrator shall distribute the assets in accordance with section 1344 of this title. In distributing such assets, the plan administrator shall—

(i) purchase irrevocable commitments from an insurer to provide all benefit liabilities under the plan, or

(ii) in accordance with the provisions of the plan and any applicable regulations, otherwise fully provide all benefit liabilities under the plan. A transfer of assets to the corporation in accordance with section 1350 of this title on behalf of a missing participant shall satisfy this subparagraph with respect to such participant.

(B) Certification to the corporation of final distribution of assets

Within 30 days after the final distribution of assets is completed pursuant to the standard termination of the plan under this subsection, the plan administrator shall send a

¹ See References in Text note below.

² So in original. Probably should be "benefit liabilities".

notice to the corporation certifying that the assets of the plan have been distributed in accordance with the provisions of subparagraph (A) so as to pay all benefit liabilities under the plan.

(4) Continuing authority

Nothing in this section shall be construed to preclude the continued exercise by the corporation, after the termination date of a plan terminated in a standard termination under this subsection, of its authority under section 1303 of this title with respect to matters relating to the termination. A certification under paragraph (3)(B) shall not affect the corporation's obligations under section 1322 of this title.

(5) Special rule for certain plans where cessation or change in membership of a controlled group

(A) In general

Except as provided in subparagraphs (B) and (D), if—

(i) there is³ transaction or series of transactions which result in a person ceasing to be a member of a controlled group, and

(ii) such person immediately before the transaction or series of transactions maintained a single-employer plan which is a defined benefit plan which is fully funded,

then the interest rate used in determining whether the plan is sufficient for benefit liabilities or to otherwise assess plan liabilities for purposes of this subsection or section 1342(a)(4) of this title shall be not less than the interest rate used in determining whether the plan is fully funded.

(B) Limitations

Subparagraph (A) shall not apply to any transaction or series of transactions unless—

(i) any employer maintaining the plan immediately before or after such transaction or series of transactions—

(I) has an outstanding senior unsecured debt instrument which is rated investment grade by each of the nationally recognized statistical rating organizations for corporate bonds that has issued a credit rating for such instrument, or

(II) if no such debt instrument of such employer has been rated by such an organization but 1 or more of such organizations has made an issuer credit rating for such employer, all such organizations which have so rated the employer have rated such employer investment grade, and

(ii) the employer maintaining the plan after the transaction or series of transactions employs at least 20 percent of the employees located in the United States who were employed by such employer immediately before the transaction or series of transactions.

(C) Fully funded

For purposes of subparagraph (A), a plan shall be treated as fully funded with respect

to any transaction or series of transactions if—

(i) in the case of a transaction or series of transactions which occur in a plan year beginning before January 1, 2008, the funded current liability percentage determined under section 1082(d) of this title for the plan year is at least 100 percent, and

(ii) in the case of a transaction or series of transactions which occur in a plan year beginning on or after such date, the funding target attainment percentage determined under section 1083 of this title is, as of the valuation date for such plan year, at least 100 percent.

(D) 2 year limitation

Subparagraph (A) shall not apply to any transaction or series of transactions if the plan referred to in subparagraph (A)(ii) is terminated under subsection (c) or section 1342 of this title after the close of the 2-year period beginning on the date on which the first such transaction occurs.

(c) Distress termination of single-employer plans

(1) In general

A single-employer plan may terminate under a distress termination only if—

(A) the plan administrator provides the 60-day advance notice of intent to terminate to affected parties required under subsection (a)(2),

(B) the requirements of subparagraph (A) of paragraph (2) are met, and

(C) the corporation determines that the requirements of subparagraphs (B) and (D) of paragraph (2) are met.

(2) Termination requirements

(A) Information submitted to the corporation

As soon as practicable after the date on which the notice of intent to terminate is provided pursuant to subsection (a)(2), the plan administrator shall provide the corporation, in such form as may be prescribed by the corporation in regulations, the following information:

(i) such information as the corporation may prescribe by regulation as necessary to make determinations under subparagraph (B) and paragraph (3);

(ii) unless the corporation determines the information is not necessary for purposes of paragraph (3)(A) or section 1362 of this title, certification by an enrolled actuary of—

(I) the amount (as of the proposed termination date and, if applicable, the proposed distribution date) of the current value of the assets of the plan,

(II) the actuarial present value (as of such dates) of the benefit liabilities under the plan,

(III) whether the plan is sufficient for benefit liabilities as of such dates,

(IV) the actuarial present value (as of such dates) of benefits under the plan guaranteed under section 1322 of this title, and

(V) whether the plan is sufficient for guaranteed benefits as of such dates;

³So in original. The word "a" probably should appear.

(iii) in any case in which the plan is not sufficient for benefit liabilities as of such date—

(I) the name and address of each participant and beneficiary under the plan as of such date, and

(II) such other information as shall be prescribed by the corporation by regulation as necessary to enable the corporation to be able to make payments to participants and beneficiaries as required under section 1322(c) of this title; and

(iv) certification by the plan administrator that—

(I) the information on which the enrolled actuary based the certifications under clause (ii) is accurate and complete, and

(II) the information provided to the corporation under clauses (i) and (iii) is accurate and complete.

Clause (ii) and clause (iv)(I) shall not apply to a plan described in section 412(i)¹ of title 26.

(B) Determination by the corporation of necessary distress criteria

Upon receipt of the notice of intent to terminate required under subsection (a)(2) and the information required under subparagraph (A), the corporation shall determine whether the requirements of this subparagraph are met as provided in clause (i), (ii), or (iii). The requirements of this subparagraph are met if each person who is (as of the proposed termination date) a contributing sponsor of such plan or a member of such sponsor's controlled group meets the requirements of any of the following clauses:

(i) Liquidation in bankruptcy or insolvency proceedings

The requirements of this clause are met by a person if—

(I) such person has filed or has had filed against such person, as of the proposed termination date, a petition seeking liquidation in a case under title 11 or under any similar Federal law or law of a State or political subdivision of a State (or a case described in clause (ii) filed by or against such person has been converted, as of such date, to a case in which liquidation is sought), and

(II) such case has not, as of the proposed termination date, been dismissed.

(ii) Reorganization in bankruptcy or insolvency proceedings

The requirements of this clause are met by a person if—

(I) such person has filed, or has had filed against such person, as of the proposed termination date, a petition seeking reorganization in a case under title 11 or under any similar law of a State or political subdivision of a State (or a case described in clause (i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought),

(II) such case has not, as of the proposed termination date, been dismissed,

(III) such person timely submits to the corporation any request for the approval of the bankruptcy court (or other appropriate court in a case under such similar law of a State or political subdivision) of the plan termination, and

(IV) the bankruptcy court (or such other appropriate court) determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination.

(iii) Termination required to enable payment of debts while staying in business or to avoid unreasonably burdensome pension costs caused by declining workforce

The requirements of this clause are met by a person if such person demonstrates to the satisfaction of the corporation that—

(I) unless a distress termination occurs, such person will be unable to pay such person's debts when due and will be unable to continue in business, or

(II) the costs of providing pension coverage have become unreasonably burdensome to such person, solely as a result of a decline of such person's workforce covered as participants under all single-employer plans of which such person is a contributing sponsor.

(C) Notification of determinations by the corporation

The corporation shall notify the plan administrator as soon as practicable of its determinations made pursuant to subparagraph (B).

(D) Disclosure of termination information

(i) In general

A plan administrator that has filed a notice of intent to terminate under subsection (a)(2) shall provide to an affected party any information provided to the corporation under subparagraph (A) or the regulations under subsection (a)(2) not later than 15 days after—

(I) receipt of a request from the affected party for the information; or

(II) the provision of new information to the corporation relating to a previous request.

(ii) Confidentiality

(I) In general

The plan administrator shall not provide information under clause (i) in a form that includes any information that may directly or indirectly be associated with, or otherwise identify, an individual participant or beneficiary.

(II) Limitation

A court may limit disclosure under this subparagraph of confidential information described in section 552(b) of title

5 to any authorized representative of the participants or beneficiaries that agrees to ensure the confidentiality of such information.

(iii) Form and manner of information; charges

(I) Form and manner

The corporation may prescribe the form and manner of the provision of information under this subparagraph, which shall include delivery in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to individuals to whom the information is required to be provided.

(II) Reasonable charges

A plan administrator may charge a reasonable fee for any information provided under this subparagraph in other than electronic form.

(iv) Authorized representative

For purposes of this subparagraph, the term “authorized representative” means any employee organization representing participants in the pension plan.

(3) Termination procedure

(A) Determinations by the corporation relating to plan sufficiency for guaranteed benefits and for benefit liabilities

If the corporation determines that the requirements for a distress termination set forth in paragraphs (1) and (2) are met, the corporation shall—

(i) determine that the plan is sufficient for guaranteed benefits (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation,

(ii) determine that the plan is sufficient for benefit liabilities (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation, and

(iii) notify the plan administrator of the determinations made pursuant to this subparagraph as soon as practicable.

(B) Implementation of termination

After the corporation notifies the plan administrator of its determinations under subparagraph (A), the termination of the plan shall be carried out as soon as practicable, as provided in clause (i), (ii), or (iii).

(i) Cases of sufficiency for benefit liabilities

In any case in which the corporation determines that the plan is sufficient for benefit liabilities, the plan administrator shall proceed to distribute the plan’s assets, and make certification to the corporation with respect to such distribution, in the manner described in subsection (b)(3), and shall take such other actions as may be appropriate to carry out the termination of the plan.

(ii) Cases of sufficiency for guaranteed benefits without a finding of sufficiency for benefit liabilities

In any case in which the corporation determines that the plan is sufficient for guaranteed benefits, but further determines that it is unable to determine that the plan is sufficient for benefit liabilities on the basis of the information made available to it, the plan administrator shall proceed to distribute the plan’s assets in the manner described in subsection (b)(3), make certification to the corporation that the distribution has occurred, and take such actions as may be appropriate to carry out the termination of the plan.

(iii) Cases without any finding of sufficiency

In any case in which the corporation determines that it is unable to determine that the plan is sufficient for guaranteed benefits on the basis of the information made available to it, the corporation shall commence proceedings in accordance with section 1342 of this title.

(C) Finding after authorized commencement of termination that plan is unable to pay benefits

(i) Finding with respect to benefit liabilities which are not guaranteed benefits

If, after the plan administrator has begun to terminate the plan as authorized under subparagraph (B)(i), the plan administrator finds that the plan is unable, or will be unable, to pay benefit liabilities which are not benefits guaranteed by the corporation under section 1322 of this title, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter.

(ii) Finding with respect to guaranteed benefits

If, after the plan administrator has begun to terminate the plan as authorized by subparagraph (B)(i) or (ii), the plan administrator finds that the plan is unable, or will be unable, to pay all benefits under the plan which are guaranteed by the corporation under section 1322 of this title, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation concurs in the finding of the plan administrator (or the corporation itself makes such a finding), the corporation shall institute appropriate proceedings under section 1342 of this title.

(D) Administration of the plan during interim period

(i) In general

The plan administrator shall—

(I) meet the requirements of clause (ii) for the period commencing on the date on which the plan administrator provides a notice of distress termination to the corporation under subsection (a)(2)

and ending on the date on which the plan administrator receives notification from the corporation of its determinations under subparagraph (A), and

(ii) meet the requirements of clause (i) commencing on the date on which the plan administrator or the corporation makes a finding under subparagraph (C)(ii).

(ii) Requirements

The requirements of this clause are met by the plan administrator if the plan administrator—

(I) refrains from distributing assets or taking any other actions to carry out the proposed termination under this subsection,

(II) pays benefits attributable to employer contributions, other than death benefits, only in the form of an annuity,

(III) does not use plan assets to purchase irrevocable commitments to provide benefits from an insurer, and

(IV) continues to pay all benefit liabilities under the plan, but, commencing on the proposed termination date, limits the payment of benefits under the plan to those benefits which are guaranteed by the corporation under section 1322 of this title or to which assets are required to be allocated under section 1344 of this title.

In the event the plan administrator is later determined not to have met the requirements for distress termination, any benefits which are not paid solely by reason of compliance with subclause (IV) shall be due and payable immediately (together with interest, at a reasonable rate, in accordance with regulations of the corporation).

(d) Sufficiency

For purposes of this section—

(1) Sufficiency for benefit liabilities

A single-employer plan is sufficient for benefit liabilities if there is no amount of unfunded benefit liabilities under the plan.

(2) Sufficiency for guaranteed benefits

A single-employer plan is sufficient for guaranteed benefits if there is no amount of unfunded guaranteed benefits under the plan.

(e) Limitation on the conversion of a defined benefit plan to a defined contribution plan

The adoption of an amendment to a plan which causes the plan to become a plan described in section 1321(b)(1) of this title constitutes a termination of the plan. Such an amendment may take effect only after the plan satisfies the requirements for standard termination under subsection (b) or distress termination under subsection (c).

(Pub. L. 93-406, title IV, §4041, Sept. 2, 1974, 88 Stat. 1020; Pub. L. 96-364, title IV, §403(d), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99-272, title XI, §§11007, 11008(a), (b), 11009, Apr. 7, 1986, 100 Stat. 244, 247, 248; Pub. L. 100-203, title IX, §§9312(c)(1), (2), 9313(a)(1)-(2)(E), (b)(1)-(5), 9314(a), Dec. 22,

1987, 101 Stat. 1330-363 to 1330-366; Pub. L. 101-239, title VII, §§7881(f)(7), (g)(1)-(6), 7893(c), (d), Dec. 19, 1989, 103 Stat. 2440, 2441, 2447; Pub. L. 103-465, title VII, §§776(b)(3), 778(a)(1), (b)(1), Dec. 8, 1994, 108 Stat. 5048-5050; Pub. L. 109-280, title IV, §409(a), title V, §506(a), Aug. 17, 2006, 120 Stat. 933, 946; Pub. L. 110-458, title I, §§104(d), 105(e)(1), Dec. 23, 2008, 122 Stat. 5104, 5105.)

Editorial Notes

REFERENCES IN TEXT

Section 412, referred to in subsecs. (b)(2)(A) and (c)(2)(A), was amended generally by Pub. L. 109-280, title I, §111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, no longer contains a subsec. (i).

Chapter 11, referred to in subsec. (c)(2)(B)(ii)(IV), probably means chapter 11 of Title 11, Bankruptcy.

AMENDMENTS

2008—Subsec. (b)(5)(A). Pub. L. 110-458, §104(d), substituted “subparagraphs (B) and (D)” for “subparagraph (B)” in introductory provisions.

Subsec. (c)(2)(D)(i). Pub. L. 110-458, §105(e)(1), substituted “subparagraph (A) or the regulations under subsection (a)(2)” for “subsection (a)(2)”.

2006—Subsec. (b)(5). Pub. L. 109-280, §409(a), added par. (5).

Subsec. (c)(1)(C). Pub. L. 109-280, §506(a)(2), substituted “subparagraphs (B) and (D)” for “subparagraph (B)”.

Subsec. (c)(2)(D). Pub. L. 109-280, §506(a)(1), added subpar. (D).

1994—Subsec. (b)(2)(C)(i)(I). Pub. L. 103-465, §778(a)(1)(A), added subcl. (I) and struck out former subcl. (I) which read as follows: “It has reason to believe that any requirement of subsection (a)(2) or subparagraph (A) or (B) has not been met, or”.

Subsec. (b)(2)(C)(i)(III). Pub. L. 103-465, §778(a)(1)(B), (C), added subcl. (III).

Subsec. (b)(3)(A)(ii). Pub. L. 103-465, §776(b)(3), inserted at end “A transfer of assets to the corporation in accordance with section 1350 of this title on behalf of a missing participant shall satisfy this subparagraph with respect to such participant.”

Subsec. (c)(2)(B)(i)(I). Pub. L. 103-465, §778(b)(1), inserted “Federal law or” after “under any similar”.

1989—Subsec. (b)(2)(A). Pub. L. 101-239, §7881(g)(6), realigned margin of last sentence.

Subsec. (b)(2)(B). Pub. L. 101-239, §7893(c), realigned margin of last sentence.

Subsec. (b)(3)(B). Pub. L. 101-239, §7881(g)(4), inserted period at end.

Subsec. (c)(2)(A)(ii). Pub. L. 101-239, §7881(g)(3), in introductory provisions, inserted “unless the corporation determines the information is not necessary for purposes of paragraph (3)(A) or section 1362 of this title,” before “certification”, in subcl. (I), inserted “and, if applicable, the proposed distribution date” after “termination date”, and in subcls. (II) to (V), substituted “dates” for “date”.

Subsec. (c)(2)(A)(iii)(II). Pub. L. 101-239, §7881(f)(7)(A), (B), struck out “(or its designee under section 1349(b) of this title)” before “to be able” and substituted “section 1322(c) of this title” for “section 1349 of this title”.

Subsec. (c)(2)(B). Pub. L. 101-239, §7881(g)(2), substituted “(as of the proposed termination date)” for “(as of the termination date)”.

Subsec. (c)(2)(B)(i), (ii). Pub. L. 101-239, §7881(g)(5), made clarifying amendment to directory language of Pub. L. 100-203, §9313(b)(3), see 1987 Amendment note below.

Subsec. (c)(3)(C)(i). Pub. L. 101-239, §7881(f)(7)(C), struck out at end “If the corporation concurs in the finding of the plan administrator (or the corporation itself makes such a finding) the corporation shall take the actions set forth in subparagraph (B)(ii)(II) relating to the trust established for purposes of section 1349 of this title.”

Subsec. (c)(3)(D). Pub. L. 101-239, § 7893(d)(1), realigned margins.

Subsec. (c)(3)(D)(ii)(I). Pub. L. 101-239, § 7893(d)(2), substituted “under this subsection” for “of this subsection”.

Subsec. (d)(1). Pub. L. 101-239, § 7881(g)(1), substituted “sufficient for benefit liabilities” for “sufficient for benefit commitments”.

1987—Subsec. (b)(1)(D). Pub. L. 100-203, § 9313(a)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “when the final distribution of assets occurs, the plan is sufficient for benefit commitments (determined as of the termination date).”

Subsec. (b)(2)(A). Pub. L. 100-203, § 9314(a)(1)(B), inserted at end “Clause (i) and clause (iii)(I) shall not apply to a plan described in section 412(i) of title 26.”

Subsec. (b)(2)(A)(i). Pub. L. 100-203, § 9313(a)(2)(A), substituted “benefit liabilities” for “benefit commitments” in subcls. (II) and (III).

Subsec. (b)(2)(A)(iii). Pub. L. 100-203, § 9314(a)(1)(A), added cl. (iii) and struck out former cl. (iii) which read as follows: “certification by the plan administrator that the information on which the enrolled actuary based the certification under clause (i) and the information provided to the corporation under clause (ii) are accurate and complete.”

Subsec. (b)(2)(B). Pub. L. 100-203, § 9313(a)(2)(B), substituted “the amount of the benefit liabilities (if any) attributable to such person” for “the amount of such person’s benefit commitments (if any)” in cl. (i), and “such benefit liabilities” for “such benefit commitments” in cl. (ii).

Subsec. (b)(2)(C)(i)(II), (D)(ii). Pub. L. 100-203, § 9313(a)(2)(A), substituted “benefit liabilities” for “benefit commitments”.

Subsec. (b)(3)(A)(i). Pub. L. 100-203, § 9313(a)(2)(C)(i), added cl. (i) and struck out former cl. (i) which read as follows: “purchase irrevocable commitments from an insurer to provide the benefit liabilities under the plan and all other benefits (if any) under the plan to which assets are required to be allocated under section 1344 of this title, or”.

Pub. L. 100-203, § 9313(a)(2)(A), substituted “benefit liabilities” for “benefit commitments”.

Subsec. (b)(3)(A)(ii). Pub. L. 100-203, § 9313(a)(2)(C)(i), added cl. (ii) and struck out former cl. (ii) which read as follows: “in accordance with the provisions of the plan and any applicable regulations of the corporation, otherwise fully provide the benefit liabilities under the plan and all other benefits (if any) under the plan to which assets are required to be allocated under section 1344 of this title.”

Pub. L. 100-203, § 9313(a)(2)(A), substituted “benefit liabilities” for “benefit commitments”.

Subsec. (b)(3)(B). Pub. L. 100-203, § 9313(a)(2)(C)(ii), substituted “so as to pay all benefit liabilities under the plan” for “so as to pay the benefit liabilities under the plan and all other benefits under the plan to which assets are required to be allocated under section 1344 of this title.”

Pub. L. 100-203, § 9313(a)(2)(A), substituted “benefit liabilities” for “benefit commitments”.

Subsec. (c)(2)(A). Pub. L. 100-203, § 9314(a)(1)(B), inserted at end “Clause (ii) and clause (iv)(I) shall not apply to a plan described in section 412(i) of title 26.”

Subsec. (c)(2)(A)(ii). Pub. L. 100-203, § 9313(a)(2)(D), substituted “benefit liabilities” for “benefit commitments” in subcls. (II) and (III).

Subsec. (c)(2)(A)(iii). Pub. L. 100-203, § 9313(a)(2)(D), substituted “benefit liabilities” for “benefit commitments” in introductory provision.

Subsec. (c)(2)(A)(iv). Pub. L. 100-203, § 9314(a)(2)(A), added cl. (iv) and struck out former cl. (iv) which read as follows: “certification by the plan administrator that the information on which the enrolled actuary based the certifications under clause (ii) and the information provided to the corporation under clauses (i) and (iii) are accurate and complete.”

Subsec. (c)(2)(B). Pub. L. 100-203, § 9313(b)(1)(A), substituted “a member” for “a substantial member” in introductory provisions.

Subsec. (c)(2)(B)(i). Pub. L. 100-203, § 9313(b)(3), as amended by Pub. L. 101-239, § 7881(g)(5), substituted “proposed termination date” for “termination date” in subcls. (I) and (II).

Pub. L. 100-203, § 9313(b)(4), inserted “(or a case described in clause (ii) filed by or against such person has been converted, as of such date, to a case in which liquidation is sought)” in subcl. (I).

Subsec. (c)(2)(B)(ii)(I). Pub. L. 100-203, § 9313(b)(3), as amended by Pub. L. 101-239, § 7881(g)(5), substituted “proposed termination date” for “termination date”.

Subsec. (c)(2)(B)(ii)(II). Pub. L. 100-203 § 9313(b)(5)(A), struck out “and” at end.

Pub. L. 100-203, § 9313(b)(3), as amended by Pub. L. 101-239, § 7881(g)(5), substituted “proposed termination date” for “termination date”.

Subsec. (c)(2)(B)(ii)(III). Pub. L. 100-203, § 9313(b)(5)(C), added subcl. (III). Former subcl. (III) redesignated (IV).

Subsec. (c)(2)(B)(ii)(IV). Pub. L. 100-203, § 9313(b)(2), (5)(B), (D), redesignated former subcl. (III) as (IV) and substituted “(or such other appropriate court) determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination” for “(or other appropriate court in a case under such similar law of a State or political subdivision) approves the termination”.

Subsec. (c)(2)(C), (D). Pub. L. 100-203, § 9313(b)(1)(B), redesignated former subpar. (D) as (C) and struck out former subpar. (C) which read as follows: “For purposes of subparagraph (B), the term ‘substantial member’ of a controlled group means a person whose assets comprise 5 percent or more of the total assets of the controlled group as a whole.”

Subsec. (c)(3)(A). Pub. L. 100-203, § 9313(a)(2)(D), substituted “benefit liabilities” for “benefit commitments” in heading and in cl. (ii).

Subsec. (c)(3)(B)(i). Pub. L. 100-203, § 9313(a)(2)(D), substituted in heading and text “benefit liabilities” for “benefit commitments”.

Subsec. (c)(3)(B)(ii). Pub. L. 100-203, § 9313(a)(2)(D), substituted in heading and text “benefit liabilities” for “benefit commitments”.

Pub. L. 100-203, § 9312(c)(1), struck out former subcl. (I) designation and substituted comma for dash before “the plan administrator”, substituted period for “, and” after “termination of the plan”, and struck out former subcl. (II) which read as follows: “the corporation shall establish a separate trust in connection with the plan for purposes of section 1349 of this title.”

Subsec. (c)(3)(B)(iii). Pub. L. 100-203, § 9312(c)(2), struck out former subcl. (I) designation and substituted comma for dash before “the corporation shall commence”, substituted period for “, and” after “section 1342 of this title”, and struck out former subcl. (II) which read as follows: “the corporation shall establish a separate trust in connection with the plan for purposes of section 1349 of this title unless the corporation determines that all benefit commitments under the plan are benefits guaranteed by the corporation under section 1322 of this title.”

Subsec. (c)(3)(C)(i). Pub. L. 100-203, § 9313(a)(2)(D), substituted in heading and text “benefit liabilities” for “benefit commitments”.

Subsec. (c)(3)(D)(ii)(IV). Pub. L. 100-203, § 9313(a)(2)(D), substituted “benefit liabilities” for “benefit commitments”.

Subsec. (d)(1). Pub. L. 100-203, § 9313(a)(2)(E), substituted in text, “no amount of unfunded benefit liabilities” for “no amount of unfunded benefit commitments” and in heading, “benefit liabilities” for “benefit commitments”.

1986—Subsec. (a). Pub. L. 99-272, § 11007(a), added subsec. (a) relating to general rules governing single-employer plan terminations and struck out former subsec. (a) relating to filing of notice that the plan is to be terminated.

Subsec. (b). Pub. L. 99-272, §§ 11007(a), 11008(a), added subsec. (b) relating to standard termination of single-

employer plans and struck out former subsec. (b) relating to notice of sufficiency of plan assets.

Subsec. (c). Pub. L. 99-272, §§11007(a), 11009(a), added subsec. (c) relating to distress termination of single-employer plans and struck out former subsec. (c) relating to a finding and notice of inability to determine that the assets of a plan are sufficient.

Subsec. (d). Pub. L. 99-272, §11007(b), amended subsec. (d) generally, substituting provisions relating to sufficiency for benefit commitments and for guaranteed benefits, for provisions relating to an extension of the 90-day period upon written agreement.

Subsec. (e). Pub. L. 99-272, §11009(b), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to notification and appropriate proceedings upon a finding after authorized commencement of termination that the plan is unable to pay basic benefits when due.

Subsec. (f). Pub. L. 99-272, §11009(b)(2), redesignated subsec. (f) as (e).

Pub. L. 99-272, §11008(b), amended subsec. (f) generally, substituting provisions relating to limitation on the conversion of a defined benefit plan to a defined contribution plan, for provisions relating to amendment of a plan with respect to which basic benefits are guaranteed.

1980—Subsec. (a). Pub. L. 96-364, §403(d)(2), inserted “single-employer” after “termination of a”.

Subsec. (g). Pub. L. 96-364, §403(d)(3), struck out subsec. (g) which related to petition to the appropriate court for appointment of a trustee.

Statutory Notes and Related Subsidiaries

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 IV, §409(b), Aug. 17, 2006, 120 Stat. 934, provided that: “The amendments made by this section [amending this section] shall apply to any transaction or series of transactions occurring on and after the date of the enactment of this Act [Aug. 17, 2006].”

Pub. L. 109-280, title V, §506(c), Aug. 17, 2006, 120 Stat. 948, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 1342 of this title] shall apply to any plan termination under title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301 et seq.) with respect to which the notice of intent to terminate (or in the case of a termination by the Pension Benefit Guaranty Corporation, a notice of determination under section 4042 of such Act (29 U.S.C. 1342)) occurs after the date of enactment of this Act [Aug. 17, 2006].

“(2) TRANSITION RULE.—If notice under section 4041(c)(2)(D) or 4042(c)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1341(c)(2)(D), 1342(c)(3)] (as added by this section) would otherwise be required to be provided before the 90th day after the date of the enactment of this Act [Aug. 17, 2006], such notice shall not be required to be provided until such 90th day.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 776(b)(3) of Pub. L. 103-465 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 a note under section 1056 of this title.

Pub. L. 103-465, title VII, §778(a)(2), Dec. 8, 1994, 108 Stat. 5049, provided that: “The amendments made by this subsection [amending this section] shall apply to any plan termination under section 4041(b) of the Em-

ployee Retirement Income Security Act of 1974 [subsec. (b) of this section] with respect to which the Pension Benefit Guaranty Corporation has not, as of the date of enactment of this Act [Dec. 8, 1994], issued a notice of noncompliance that has become final, or otherwise issued a final determination that the plan termination is nullified.”

Pub. L. 103-465, title VII, §778(b)(2), Dec. 8, 1994, 108 Stat. 5050, provided that: “The amendment made by this subsection [amending this section] shall be effective as if included in the Single-Employer Pension Plan Amendments Act of 1986 [Pub. L. 99-272, title XI].”

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(7), (g)(1)–(6) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100-203, §§9302-9346, to which such amendment relates, see section 7882 of Pub. L. 101-239, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 7893(c), (d) of Pub. L. 101-239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99-272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101-239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9312(c)(1), (2) of Pub. L. 100-203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100-203, as amended, set out as a note under section 1301 of this title.

Amendment by section 9313(a)(1)–(2)(E), (b)(1)–(5) of Pub. L. 100-203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, see section 9313(c) of Pub. L. 100-203, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-272, title XI, §11019, Apr. 7, 1986, 100 Stat. 280, provided that:

“(a) IN GENERAL.—Except as otherwise provided in this title, the amendments made by this title [see Short Title of 1986 Amendment note set out under section 1001 of this title] shall be effective as of January 1, 1986, except that such amendments shall not apply with respect to terminations for which—

“(1) notices of intent to terminate were filed with the Pension Benefit Guaranty Corporation under section 4041 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1341] before such date, or

“(2) proceedings were commenced under section 4042 of such Act [29 U.S.C. 1342] before such date.

“(b) TRANSITIONAL RULES.—

“(1) IN GENERAL.—In the case of a single-employer plan termination for which a notice of intent to terminate was filed with the Pension Benefit Guaranty Corporation under section 4041 of the Employee Retirement Income Security Act of 1974 (as in effect before the amendments made by this title) [29 U.S.C. 1341] on or after January 1, 1986, but before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this title [see Short Title of 1986 Amendment note set out under section 1001 of this title] shall apply with respect to such termination, as modified by paragraphs (2) and (3).

“(2) DEEMED COMPLIANCE WITH NOTICE REQUIREMENTS.—The requirements of subsections (a)(2), (b)(1)(A), and (c)(1)(A) of section 4041 of the Employee Retirement Income Security Act of 1974 (as amended

by this title) [29 U.S.C. 1341] shall be considered to have been met with respect to a termination described in paragraph (1) if—

“(A) the plan administrator provided notice to the participants in the plan regarding the termination in compliance with applicable regulations of the Pension Benefit Guaranty Corporation as in effect on the date of the notice, and

“(B) the notice of intent to terminate provided to the Pension Benefit Guaranty Corporation in connection with the termination was filed with the Corporation not less than 10 days before the proposed date of termination specified in the notice.

For purposes of section 4041 of such Act (as amended by this title), the proposed date of termination specified in the notice of intent to terminate referred to in subparagraph (B) shall be considered the proposed termination date.

“(3) SPECIAL TERMINATION PROCEDURES.—

“(A) IN GENERAL.—This paragraph shall apply with respect to any termination described in paragraph (1) if, within 90 days after the date of enactment of this Act [Apr. 7, 1986], the plan administrator notifies the Corporation in writing—

“(i) that the plan administrator wishes the termination to proceed as a standard termination under section 4041(b) of the Employee Retirement Income Security Act of 1974 (as amended by this title) [29 U.S.C. 1341(b)] in accordance with subparagraph (B),

“(ii) that the plan administrator wishes the termination to proceed as a distress termination under section 4041(c) of such Act (as amended by this title) in accordance with subparagraph (C), or

“(iii) that the plan administrator wishes to stop the termination proceedings in accordance with subparagraph (D).

“(B) TERMINATIONS PROCEEDING AS STANDARD TERMINATION.—

“(i) TERMINATIONS FOR WHICH SUFFICIENCY NOTICES HAVE NOT BEEN ISSUED.—

“(I) IN GENERAL.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(i) and with respect to which a notice of sufficiency has not been issued by the Corporation before the date of the enactment of this Act, if, during the 90-day period commencing on the date of the notice required in subclause (II), all benefit commitments under the plan have been satisfied, the termination shall be treated as a standard termination under section 4041(b) of such Act (as amended by this title).

“(II) SPECIAL NOTICE REGARDING SUFFICIENCY FOR TERMINATIONS FOR WHICH NOTICES OF SUFFICIENCY HAVE NOT BEEN ISSUED AS OF DATE OF ENACTMENT.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(i) and with respect to which a notice of sufficiency has not been issued by the Corporation before the date of the enactment of this Act, the Corporation shall make the determinations described in section 4041(c)(3)(A)(i) and (ii) (as amended by this title) and notify the plan administrator of such determinations as provided in section 4041(c)(3)(A)(iii) (as amended by this title).

“(ii) TERMINATIONS FOR WHICH NOTICES OF SUFFICIENCY HAVE BEEN ISSUED.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(i) and with respect to which a notice of sufficiency has been issued by the Corporation before the date of the enactment of this Act, clause (i)(I) shall apply, except that the 90-day period referred to in clause (i)(I) shall begin on the date of the enactment of this Act.

“(C) TERMINATIONS PROCEEDING AS DISTRESS TERMINATION.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(ii), if the requirements of section 4041(c)(2)(B) of such Act (as amended by this title) are met, the termination shall be treated as a distress termination under section 4041(c) of such Act (as amended by this title).

“(D) TERMINATION OF PROCEEDINGS BY PLAN ADMINISTRATOR.—

“(i) IN GENERAL.—Except as provided in clause (ii), in the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(iii), the termination shall not take effect.

“(ii) TERMINATIONS WITH RESPECT TO WHICH FINAL DISTRIBUTION OF ASSETS HAS COMMENCED.—Clause (i) shall not apply with respect to a termination with respect to which the final distribution of assets has commenced before the date of the enactment of this Act unless, within 90 days after the date of the enactment of this Act, the plan has been restored in accordance with procedures issued by the Corporation pursuant to subsection (c).

“(E) AUTHORITY OF CORPORATION TO EXTEND 90-DAY PERIODS TO PERMIT STANDARD TERMINATION.—The Corporation may, on a case-by-case basis in accordance with subsection (c), provide for extensions of the applicable 90-day period referred to in clause (i) or (ii) of subparagraph (B) if it is demonstrated to the satisfaction of the Corporation that—

“(i) the plan could not otherwise, pursuant to the preceding provisions of this paragraph, terminate in a termination treated as a standard termination under section 4041(b) of the Employee Retirement Income Security Act of 1974 (as amended by this title), and

“(ii) the extension would result in a greater likelihood that benefit commitments under the plan would be paid in full,

except that any such period may not be so extended beyond one year after the date of the enactment of this Act.

“(c) AUTHORITY TO PRESCRIBE TEMPORARY PROCEDURES.—The Pension Benefit Guaranty Corporation may prescribe temporary procedures for purposes of carrying out the amendments made by this title [see Short Title of 1986 Amendment note set out under section 1001 of this title] during the 180-day period beginning on the date described in subsection (a).”

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.

60-DAY EXTENSION BY PENSION BENEFIT GUARANTY CORPORATION FOR NOTICE OF NONCOMPLIANCE

Pub. L. 99-272, title XI, § 11008(c), Apr. 7, 1986, 100 Stat. 247, provided that: “In the case of a standard termination of a plan under section 4041(b) of the Employee Retirement Income Security Act of 1974 (as amended by this section) [29 U.S.C. 1341(b)] with respect to which a notice of intent to terminate is filed before 120 days after the date of the enactment of this Act [Apr. 7, 1986], the Pension Benefit Guaranty Corporation may, without the consent of the plan administrator, extend the 60-day period under section 4041(b)(2)(C)(i) of such Act (as so amended) for a period not to exceed 60 days.”

SPECIAL TEMPORARY RULE FOR TERMINATION OF SINGLE-EMPLOYER PLAN

Pub. L. 99-272, title XI, § 11008(d), Apr. 7, 1986, 100 Stat. 247, provided that:

“(1) REQUIREMENTS TO BE MET BEFORE FINAL DISTRIBUTION OF ASSETS.—In the case of the termination of a

single-employer plan described in paragraph (2) with respect to which the amount payable to the employer pursuant to section 4044(d) [29 U.S.C. 1344(d)] exceeds \$1,000,000 (determined as of the proposed date of final distribution of assets), the final distribution of assets pursuant to such termination may not occur unless the Pension Benefit Guaranty Corporation—

“(A) determines that the assets of the plan are sufficient for benefit commitments (within the meaning of section 4041(d)(1) of the Employee Retirement Income Security Act of 1974 (as amended by section 11007) [29 U.S.C. 1341(d)(1)]) under the plan, and

“(B) issues to the plan administrator a written notice setting forth the determination described in subparagraph (A).

“(2) PLANS TO WHICH SUBSECTION APPLIES.—A single-employer plan is described in this paragraph if—

“(A) the plan administrator has filed a notice of intent to terminate with the Pension Benefit Guaranty Corporation, and—

“(i) the filing was made before January 1, 1986, and the Corporation has not issued a notice of sufficiency for such plan before the date of the enactment of this Act [Apr. 7, 1986], or

“(ii) the filing is made on or after January 1, 1986, and before 60 days after the date of the enactment of this Act and the Corporation has not issued a notice of sufficiency for such plan before the date of the enactment of this Act, and

“(B) of the persons who are (as of the termination date) participants in the plan, the lesser of 10 percent or 200 have filed complaints with the Corporation regarding such termination—

“(i) in the case of plans described in subparagraph (A)(i), before 15 days after the date of the enactment of this Act, or

“(ii) in any other case, before the later of 15 days after the date of the enactment of this Act or 45 days after the date of the filing of such notice.

“(3) CONSIDERATION OF COMPLAINTS.—The Corporation shall consider and respond to such complaints not later than 90 days after the date on which the Corporation makes the determination described in paragraph (1)(A). The Corporation may hold informal hearings to expedite consideration of such complaints. Any such hearing shall be exempt from the requirements of chapter 5 of title 5, United States Code.

“(4) DELAY ON ISSUANCE OF NOTICE.—

“(A) GENERAL RULE.—Except as provided in subparagraph (B), the Corporation shall not issue any notice described in paragraph (1)(B) until 90 days after the date on which the Corporation makes the determination described in paragraph (1)(A).

“(B) EXCEPTION IN CASES OF SUBSTANTIAL BUSINESS HARDSHIP.—Except in the case of an acquisition, takeover, or leveraged buyout, the preceding provisions of this subsection shall not apply if the contributing sponsor demonstrates to the satisfaction of the Corporation that the contributing sponsor is experiencing substantial business hardship. For purposes of this subparagraph, a contributing sponsor shall be considered as experiencing substantial business hardship if the contributing sponsor has been operating, and can demonstrate that the contributing sponsor will continue to operate, at an economic loss.”

§ 1341a. Termination of multiemployer plans

(a) Determinative factors

Termination of a multiemployer plan under this section occurs as a result of—

(1) the adoption after September 26, 1980, of a plan amendment which provides that participants will receive no credit for any purpose under the plan for service with any employer after the date specified by such amendment;

(2) the withdrawal of every employer from the plan, within the meaning of section 1383 of this title, or the cessation of the obligation of all employers to contribute under the plan; or

(3) the adoption of an amendment to the plan which causes the plan to become a plan described in section 1321(b)(1) of this title.

(b) Date of termination

(1) The date on which a plan terminates under paragraph (1) or (3) of subsection (a) is the later of—

(A) the date on which the amendment is adopted, or

(B) the date on which the amendment takes effect.

(2) The date on which a plan terminates under paragraph (2) of subsection (a) is the earlier of—

(A) the date on which the last employer withdraws, or

(B) the first day of the first plan year for which no employer contributions were required under the plan.

(c) Duties of plan sponsor of amended plan

Except as provided in subsection (f)(1), the plan sponsor of a plan which terminates under paragraph (2) of subsection (a) shall—

(1) limit the payment of benefits to benefits which are nonforfeitable under the plan as of the date of the termination, and

(2) pay benefits attributable to employer contributions, other than death benefits, only in the form of an annuity, unless the plan assets are distributed in full satisfaction of all nonforfeitable benefits under the plan.

(d) Duties of plan sponsor of nonoperative plan

The plan sponsor of a plan which terminates under paragraph (2) of subsection (a) shall reduce benefits and suspend benefit payments in accordance with section 1441 of this title.

(e) Amount of contribution of employer under amended plan for each plan year subsequent to plan termination date

In the case of a plan which terminates under paragraph (1) or (3) of subsection (a), the rate of an employer's contributions under the plan for each plan year beginning on or after the plan termination date shall equal or exceed the highest rate of employer contributions at which the employer had an obligation to contribute under the plan in the 5 preceding plan years ending on or before the plan termination date, unless the corporation approves a reduction in the rate based on a finding that the plan is or soon will be fully funded.

(f) Payment of benefits; reporting requirements for terminated plans and rules and standards for administration of such plans

(1) The plan sponsor of a terminated plan may authorize the payment other than in the form of an annuity of a participant's entire nonforfeitable benefit attributable to employer contributions, other than a death benefit, if the value of the entire nonforfeitable benefit does not exceed \$1,750. The corporation may authorize the payment of benefits under the terms of a terminated plan other than nonforfeitable benefits, or the payment other than in the form of an annuity of benefits having a value greater than \$1,750, if the corporation determines that such payment is not adverse to the interest of the plan's participants and beneficiaries generally