

PART 3—INSOLVENT PLANS

Editorial Notes

CODIFICATION

Pub. L. 113-235, div. O, title I, §108(a)(3)(C), Dec. 16, 2014, 128 Stat. 2787, which directed amendment of part 3 of subtitle D of title IV of the Employee Retirement Income Security Act of 1974 by striking the heading and inserting “insolvent plans”, was executed in this part, which is part 3 of subtitle E of title IV of the Act, to reflect the probable intent of Congress.

§§ 1421 to 1425. Repealed. Pub. L. 113-235, div. O, title I, § 108(a)(1), Dec. 16, 2014, 128 Stat. 2786

Section 1421, Pub. L. 93-406, title IV, §4241, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1249; amended Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445, related to reorganization status.

Section 1422, Pub. L. 93-406, title IV, §4242, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1251, related to notice of reorganization and funding requirements.

Section 1423, Pub. L. 93-406, title IV, §4243, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1252; amended Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 109-280, title I, §108(b)(6)-(9), formerly §107(b)(6)-(9), Aug. 17, 2006, 120 Stat. 820, renumbered Pub. L. 111-192, title II, §202(a), June 25, 2010, 124 Stat. 1297, related to minimum contribution requirement.

Section 1424, Pub. L. 93-406, title IV, §4244, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1255, related to overburden credit against minimum contribution requirement.

Section 1425, Pub. L. 93-406, title IV, §4244A, as added Pub. L. 96-364, title I, §104(2), Sept. 26, 1980, 94 Stat. 1257; amended Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445, related to adjustments in accrued benefits.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to plan years beginning after Dec. 31, 2014, see section 108(c) of div. O of Pub. L. 113-235, set out as a note under section 418 of Title 26, Internal Revenue Code.

§ 1426. Insolvent plans**(a) Suspension of payments of benefits; conditions, amount, etc.**

Notwithstanding sections 1053 and 1054 of this title, in any case in which benefit payments under an insolvent multiemployer plan exceed the resource benefit level, any such payments of benefits which are not basic benefits shall be suspended, in accordance with this section, to the extent necessary to reduce the sum of such payments and the payments of such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the corporation under section 1322a(g)(5) of this title.

(b) Determination of insolvency status for plan year; definitions

For purposes of this section, for a plan year—

(1) a multiemployer plan is insolvent if the plan’s available resources are not sufficient to pay benefits under the plan when due for the plan year, or if the plan is determined to be insolvent under subsection (d);

(2) “resource benefit level” means the level of monthly benefits determined under sub-

sections (c)(1) and (3) and (d)(3) to be the highest level which can be paid out of the plan’s available resources;

(3) “available resources” means the plan’s cash, marketable assets, contributions, withdrawal liability payments, and earnings, less reasonable administrative expenses and amounts owed for such plan year to the corporation under section 1431(b)(2) of this title; and

(4) “insolvency year” means a plan year in which a plan is insolvent.

(c) Determination by plan sponsor of plan in critical status of resource benefit level of plan for each insolvency year; uniform application of suspension of benefits; adjustments of benefit payments

(1) The plan sponsor of a plan in critical status, as described in subsection¹ 1085(b)(2) of this title, shall determine in writing the plan’s resource benefit level for each insolvency year, based on the plan sponsor’s reasonable projection of the plan’s available resources and the benefits payable under the plan.

(2)(A) The suspension of benefit payments under this section shall, in accordance with regulations prescribed by the Secretary of the Treasury, apply in substantially uniform proportions to the benefits of all persons in pay status under the plan, except that the Secretary of the Treasury may prescribe rules under which benefit suspensions for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors including differences in negotiated levels of financial support for plan benefit obligations.

(B) For purposes of this paragraph—

(i) the term “person in pay status” means—

(I) a participant or beneficiary on the last day of the base plan year who, at any time during such year, was paid an early, late, normal, or disability retirement benefit (or a death benefit related to a retirement benefit), and

(II) to the extent provided in regulations prescribed by the Secretary of the Treasury, any other person who is entitled to such a benefit under the plan.

(ii) the base plan year for any plan year is—

(I) if there is a relevant collective bargaining agreement, the last plan year ending at least 6 months before the relevant effective date, or

(II) if there is no relevant collective bargaining agreement, the last plan year ending at least 12 months before the beginning of the plan year.

(iii) a relevant collective bargaining agreement is a collective bargaining agreement—

(I) which is in effect for at least 6 months during the plan year, and

(II) which has not been in effect for more than 36 months as of the end of the plan year.

(iv) the relevant effective date is the earliest of the effective dates for the relevant collective bargaining agreements.

¹ So in original. Probably should be “section”.

(3) Notwithstanding paragraph (2), if a plan sponsor determines in writing a resource benefit level for a plan year which is below the level of basic benefits, the payment of all benefits other than basic benefits must be suspended for that plan year.

(4)(A) If, by the end of an insolvency year, the plan sponsor determines in writing that the plan's available resources in that insolvency year could have supported benefit payments above the resource benefit level for that insolvency year, the plan sponsor shall distribute the excess resources to the participants and beneficiaries who received benefit payments from the plan in that insolvency year, in accordance with regulations prescribed by the Secretary of the Treasury.

(B) For purposes of this paragraph, the term "excess resources" means available resources above the amount necessary to support the resource benefit level, but no greater than the amount necessary to pay benefits for the plan year at the benefit levels under the plan.

(5) If, by the end of an insolvency year, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level which were unpaid shall be distributed to the participants and beneficiaries, in accordance with regulations prescribed by the Secretary of the Treasury, to the extent possible taking into account the plan's total available resources in that insolvency year.

(6) Except as provided in paragraph (4) or (5), a plan is not required to make retroactive benefit payments with respect to that portion of a benefit which was suspended under this section.

(d) Applicability and determinations respecting plan assets; time for determinations of resource benefit level and level of basic benefits

(1) As of the end of the first plan year in which a plan is in critical status, as described in subsection¹ 1085(b)(2) of this title,² and at least every 3 plan years thereafter (unless the plan is no longer in critical status, as described in subsection¹ 1085(b)(2) of this title),² the plan sponsor shall compare the value of plan assets for that plan year with the total amount of benefit payments made under the plan for that plan year. Unless the plan sponsor determines that the value of plan assets exceeds 3 times the total amount of benefit payments, the plan sponsor shall determine whether the plan will be insolvent in any of the next 5 plan years. If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.

(2) If, at any time, the plan sponsor of a plan in critical status, as described in subsection¹ 1085(b)(2) of this title, reasonably determines, taking into account the plan's recent and anticipated financial experience, that the plan's available resources are not sufficient to pay benefits under the plan when due for the next plan year,

the plan sponsor shall make such determination available to interested parties.

(3) The plan sponsor of a plan in critical status, as described in subsection¹ 1085(b)(2) of this title, shall determine in writing for each insolvency year the resource benefit level and the level of basic benefits no later than 3 months before the insolvency year.

(4) For purposes of this subsection, the value of plan assets shall be the value of the available plan assets determined under regulations prescribed by the Secretary of the Treasury.

(e) Notice, etc., requirements of plan sponsor of plan in critical status regarding insolvency and resource benefit levels

(1) If the plan sponsor of a plan in critical status, as described in subsection¹ 1085(b)(2) of this title, determines under subsection (d)(1) or (2) that the plan may become insolvent (within the meaning of subsection (b)(1)), the plan sponsor shall—

(A) notify the Secretary of the Treasury,³ the parties described in section 1021(f)(1) of this title of that determination, and

(B) inform the parties described in section 1021(f)(1) of this title that if insolvency occurs certain benefit payments will be suspended, but that basic benefits will continue to be paid.

(2) No later than 2 months before the first day of each insolvency year, the plan sponsor of a plan in critical status, as described in subsection¹ 1085(b)(2) of this title, shall notify the Secretary of the Treasury, the corporation, and the parties described in paragraph (1)(B) of the resource benefit level determined in writing for that insolvency year.

(3) In any case in which the plan sponsor anticipates that the resource benefit level for an insolvency year may not exceed the level of basic benefits, the plan sponsor shall notify the corporation.

(4) Notice required by this subsection shall be given in accordance with regulations prescribed by the corporation, except that notice to the Secretary of the Treasury shall be given in accordance with regulations prescribed by the Secretary of the Treasury.

(5) The corporation may prescribe a time other than the time prescribed by this section for the making of a determination or the filing of a notice under this section.

(f) Financial assistance from corporation; conditions and criteria applicable

(1) If the plan sponsor of an insolvent plan, for which the resource benefit level is above the level of basic benefits, anticipates that, for any month in an insolvency year, the plan will not have funds sufficient to pay basic benefits, the plan sponsor may apply for financial assistance from the corporation under section 1431 of this title.

(2) A plan sponsor who has determined a resource benefit level for an insolvency year which is below the level of basic benefits shall apply for financial assistance from the corporation under section 1431 of this title.

² So in original.

³ So in original. The comma probably should be "and".

(g) Application of subsections (a) and (c)

Subsections (a) and (c) shall not apply to a plan that, for the plan year, is operating under section 1085(e)(9) of this title, regarding benefit suspensions by certain multiemployer plans in critical and declining status.

(Pub. L. 93-406, title IV, § 4245, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1259; amended Pub. L. 109-280, title II, § 203(a), Aug. 17, 2006, 120 Stat. 886; Pub. L. 113-235, div. O, title I, § 108(a)(2), Dec. 16, 2014, 128 Stat. 2786.)

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AMENDMENTS

2014—Subsec. (c)(1). Pub. L. 113-235, § 108(a)(2)(A), substituted “critical status, as described in subsection 1085(b)(2) of this title,” for “reorganization”.

Subsec. (c)(2). Pub. L. 113-235, § 108(a)(2)(B), designated existing provisions as subpar. (A), struck out “(within the meaning of section 1421(b)(6) of this title)” after “pay status”, and added subpar. (B).

Subsec. (d). Pub. L. 113-235, § 108(a)(2)(A), substituted “critical status, as described in subsection 1085(b)(2) of this title,” for “reorganization” wherever appearing.

Subsec. (d)(1). Pub. L. 113-235, § 108(a)(2)(C)(i), struck out “(determined in accordance with section 1423(b)(3)(B)(ii) of this title)” after “compare the value of plan assets”.

Subsec. (d)(4). Pub. L. 113-235, § 108(a)(2)(C)(ii), added par. (4).

Subsec. (e). Pub. L. 113-235, § 108(a)(2)(A), substituted “critical status, as described in subsection 1085(b)(2) of this title,” for “reorganization” in pars. (1) and (2).

Subsec. (e)(1)(A). Pub. L. 113-235, § 108(a)(2)(D)(i), substituted “the parties described in section 1021(f)(1) of this title” for “the corporation, the parties described in section 1422(a)(2) of this title, and the plan participants and beneficiaries”.

Subsec. (e)(1)(B). Pub. L. 113-235, § 108(a)(2)(D)(ii), substituted “section 1021(f)(1) of this title” for “section 1422(a)(2) of this title and the plan participants and beneficiaries”.

Subsec. (g). Pub. L. 113-235, § 108(a)(2)(E), added subsec. (g).

2006—Subsec. (d)(1). Pub. L. 109-280 substituted “5 plan years” for “3 plan years” the second place it appeared and inserted at end “If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-235 applicable with respect to plan years beginning after Dec. 31, 2014, see section 108(c) of div. O of Pub. L. 113-235, set out as an Effective Date of Repeal note under section 418 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title II, § 203(b), Aug. 17, 2006, 120 Stat. 886, provided that: “The amendments made by this section [amending this section] shall apply with respect to determinations made in plan years beginning after 2007.”

WITHDRAWAL LIABILITY OF EMPLOYER FROM PLAN TERMINATING WHILE PLAN INSOLVENT WITHIN THIS SECTION: DETERMINATIONS, FACTORS, ETC.

Pub. L. 96-364, title I, § 108(c)(3), Sept. 26, 1980, 94 Stat. 1268, provided that:

“(A) For the purpose of determining the withdrawal liability of an employer under title IV of the Employee Retirement Income Security Act of 1974 [this subchapter] from a plan that terminates while the plan is insolvent (within the meaning of section 4245 of such Act [this section]), the plan’s unfunded vested benefits shall be reduced by an amount equal to the sum of all overburden credits that were applied in determining the plan’s accumulated funding deficiency for all plan years preceding the first plan year in which the plan is insolvent, plus interest thereon.

“(B) The provisions of subparagraph (A) apply only if—

“(i) the plan would have been eligible for the overburden credit in the last plan year beginning before the date of the enactment of this Act [Sept. 26, 1980], if section 4243 of the Employee Retirement Income Security Act of 1974 [former section 1423 of this title] had been in effect for that plan year, and

“(ii) the Pension Benefit Guaranty Corporation determines that the reduction of unfunded vested benefits under subparagraph (A) would not significantly increase the risk of loss to the corporation.”

PART 4—FINANCIAL ASSISTANCE

§ 1431. Assistance by corporation**(a) Authority; procedure applicable; amount**

If, upon receipt of an application for financial assistance under section 1426(f) of this title or section 1441(d) of this title, the corporation verifies that the plan is or will be insolvent and unable to pay basic benefits when due, the corporation shall provide the plan financial assistance in an amount sufficient to enable the plan to pay basic benefits under the plan.

(b) Conditions; repayment terms

(1) Financial assistance shall be provided under such conditions as the corporation determines are equitable and are appropriate to prevent unreasonable loss to the corporation with respect to the plan.

(2) A plan which has received financial assistance shall repay the amount of such assistance to the corporation on reasonable terms consistent with regulations prescribed by the corporation.

(c) Assistance pending final determination of application

Pending determination of the amount described in subsection (a), the corporation may provide financial assistance in such amounts as it considers appropriate in order to avoid undue hardship to plan participants and beneficiaries.

(Pub. L. 93-406, title IV, § 4261, as added Pub. L. 96-364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1261.)

Editorial Notes

EFFECTIVE DATE

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

§ 1432. Special financial assistance by the corporation**(a) Special financial assistance****(1) In general**

The corporation shall provide special financial assistance to an eligible multiemployer plan under this section, upon the application