Public Law 96-364
96th Congress

An Act

Sept. 26, 1980
[H.R. 3904]

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, to authorize plan preservation measures for financially troubled multiemployer pension plans, and to revise the manner in which the pension plan termination insurance provisions apply to multiemployer plans, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Multiemployer Pension Plan Amendments Act of 1980.
29 USC 1001 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Multiemployer Pension Plan Amendments Act of 1980".

SEC. 2. TABLE OF CONTENTS.

The table of contents is as follows:

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SEC. 3. FINDINGS AND DECLARATION OF POLICY. 29 USC 1001a.

(a) The Congress finds that—

(1) multiemployer pension plans have a substantial impact on interstate commerce and are affected with a national public interest;

(2) multiemployer pension plans have accounted for a substantial portion of the increase in private pension plan coverage over the past three decades;

(3) the continued well-being and security of millions of employees, retirees, and their dependents are directly affected by multiemployer pension plans; and

(4)(A) withdrawals of contributing employers from a multiemployer pension plan frequently result in substantially increased funding obligations for employers who continue to contribute to the plan, adversely affecting the plan, its participants and beneficiaries, and labor-management relations, and

(B) in a declining industry, the incidence of employer withdrawals is higher and the adverse effects described in subparagraph (A) are exacerbated.

(b) The Congress further finds that—

(1) it is desirable to modify the current multiemployer plan termination insurance provisions in order to increase the likelihood of protecting plan participants against benefit losses; and

(2) it is desirable to replace the termination insurance program for multiemployer pension plans with an insolvency-based benefit protection program that will enhance the financial soundness of such plans, place primary emphasis on plan continuation, and contain program costs within reasonable limits.

(c) It is hereby declared to be the policy of this Act—

(1) to foster and facilitate interstate commerce,

(2) to alleviate certain problems which tend to discourage the maintenance and growth of multiemployer pension plans,

(3) to provide reasonable protection for the interests of participants and beneficiaries of financially distressed multiemployer pension plans, and

(4) to provide a financially self-sufficient program for the guarantee of employee benefits under multiemployer plans.

TITLE I—AMENDMENTS TO TITLE IV OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SEC. 101. AMENDMENT OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Whenever in this title an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference is to a section or other provision of the Employee Retirement Income Security Act of 1974.

29 USC 1001 note.

SEC. 102. MULTIEMPLOYER GUARANTEES; AGGREGATE LIMIT ON GUARANTEES.

Subtitle B of title IV is amended by inserting at the end thereof the following new sections:

"MULTIEMPLOYER PLAN BENEFITS GUARANTEED

29 USC 1322a.

"SEC. 4022A. (a) The corporation shall guarantee, in accordance with this section, the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under a multiemployer plan—

29 USC 1321.

"(1) to which section 4021 applies, and

Post, pp. 1259, 1261.

"(2) which is insolvent under section 4245(b) or 4281(d)(2).

"(b)(1)(A) For purposes of this section, a benefit or benefit increase which has been in effect under a plan for less than 60 months is not eligible for the corporation's guarantee. For purposes of this paragraph, any month of any plan year during which the plan was insolvent or terminated (within the meaning of section 4041A(a)(2)) shall not be taken into account.

Post, p. 1216.

"(B) For purposes of this section, a benefit or benefit increase which has been in effect under a plan for less than 60 months before the first day of the plan year for which an amendment reducing the benefit or the benefit increase is taken into account under section 4244A(a)(2) in determining the minimum contribution requirement for the plan year under section 4243(b) is not eligible for the corporation's guarantee.

Post, p. 1257.

Post, p. 1252.

"(2) For purposes of this section—

"(A) the date on which a benefit or a benefit increase under a plan is first in effect is the later of—

"(i) the date on which the documents establishing or increasing the benefit were executed, or

"(ii) the effective date of the benefit or benefit increase;

"(B) the period of time for which a benefit or a benefit increase has been in effect under a successor plan includes the period of time for which the benefit or benefit increase was in effect under a previously established plan; and

29 USC 1321.

"(C) in the case of a plan to which section 4021 did not apply on September 3, 1974, the time periods referred to in this section are computed beginning on the date on which section 4021 first applies to the plan.

"(c)(1) Except as provided in subsection (g), the monthly benefit of a participant or a beneficiary which is guaranteed under this section by the corporation with respect to a plan is the product of—

"(A) 100 percent of the accrual rate up to $5, plus 75 percent of the lesser of—

"(i) $15, or

"(ii) the accrual rate, if any, in excess of $5, and

"(B) the number of the participant's years of credited service.

"(2) Except as provided in paragraph (6) of this subsection and in subsection (g), in applying paragraph (1) with respect to a plan described in paragraph (5)(A), the term '65 percent' shall be substituted in paragraph (1)(A) for the term '75 percent'.

"(3) For purposes of this section, the accrual rate is— Accrual rate.

"(A) the monthly benefit of the participant or beneficiary which is described in subsection (a) and which is eligible for the corporation's guarantee under subsection (b), except that such benefit shall be—

"(i) no greater than the monthly benefit which would be payable under the plan at normal retirement age in the form of a single life annuity, and

"(ii) determined without regard to any reduction under section 411(a)(3)(E) of the Internal Revenue Code of 1954; *Post*, p. 1287.
divided by

"(B) the participant's years of credited service.

"(4) For purposes of this subsection— Credited service.

"(A) a year of credited service is a year in which the participant completed—

"(i) a full year of participation in the plan, or

"(ii) any period of service before participation which is credited for purposes of benefit accrual as the equivalent of a full year of participation;

"(B) any year for which the participant is credited for purposes of benefit accrual with a fraction of the equivalent of a full year of participation shall be counted as such a fraction of a year of credited service; and

"(C) years of credited service shall be determined by including service which may otherwise be disregarded by the plan under section 411(a)(3)(E) of the Internal Revenue Code of 1954.

"(5)(A) A plan is described in this subparagraph if—

"(i) the first plan year—

"(I) in which the plan is insolvent under section 4245(b) or 4281(d)(2), and *Post*, p. 1259. *Post*, p. 1261.

"(II) for which benefits are required to be suspended under section 4245, or reduced or suspended under section 4281, until they do not exceed the levels provided in this subsection,

begins before the year 2000; and

"(ii) the plan sponsor has not established to the satisfaction of the corporation that, during the period of 10 consecutive plan years (or of such lesser number of plan years for which the plan was maintained) immediately preceding the first plan year to which the minimum funding standards of section 412 of the Internal Revenue Code of 1954 apply, the total amount of the contributions required under the plan for each plan year was at least equal to the sum of— 26 USC 412.

"(I) the normal cost for that plan year, and

"(II) the interest for the plan year (determined under the plan) on the unfunded past service liability for that plan year, determined as of the beginning of that plan year.

"(B) A plan shall not be considered to be described in subparagraph (A) if—

"(i) it is established to the satisfaction of the corporation that—

"(I) the total amount of the contributions received under the plan for the plan years for which the actuarial valuations (performed during the period described in subparagraph (A)(ii)) were performed was at least equal to the sum described in subparagraph (A)(ii); or

"(II) the rates of contribution to the plan under the collective bargaining agreements negotiated when the findings of such valuations were available were reasonably expected to provide such contributions;

"(ii) the number of actuarial valuations performed during the period described in subparagraph (A)(ii) is—

"(I) at least 2, in any case in which such period consists of more than 6 plan years, and

"(II) at least 1, in any case in which such period consists of 6 or fewer plan years; and

"(iii) if the proposition described in clause (i)(I) is to be established, the plan sponsor certifies that to the best of the plan sponsor's knowledge there is no information available which establishes that the total amount of the contributions received under the plan for any plan year during the period described in subparagraph (A)(ii) for which no valuation was performed is less than the sum described in subparagraph (A)(ii).

"(6) Notwithstanding paragraph (2), in the case of a plan described in paragraph (5)(A), if for any period of 3 consecutive plan years beginning with the first plan year to which the minimum funding standards of section 412 of the Internal Revenue Code of 1954 apply, the value of the assets of the plan for each such plan year is an amount equal to at least 8 times the benefit payments for such plan year—

26 USC 412.

"(A) paragraph (2) shall not apply to such plan; and

"(B) the benefit of a participant or beneficiary guaranteed by the corporation with respect to the plan shall be an amount determined under paragraph (1).

"(d) In the case of a benefit which has been reduced under section 411(a)(3)(E) of the Internal Revenue Code of 1954, the corporation shall guarantee the lesser of—

Post, p. 1287.

"(1) the reduced benefit, or

"(2) the amount determined under subsection (c).

"(e) The corporation shall not guarantee benefits under a multiemployer plan which, under section 4022(b)(6), would not be guaranteed under a single-employer plan.

29 USC 1322.

Study.

"(f)(1) No later than 5 years after the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, and at least every fifth year thereafter, the corporation shall—

Ante, p. 1208.

"(A) conduct a study to determine—

"(i) the premiums needed to maintain the basic-benefit guarantee levels for multiemployer plans described in subsection (c), and

"(ii) whether the basic-benefit guarantee levels for multiemployer plans may be increased without increasing the basic-benefit premiums for multiemployer plans under this title; and

"(B) report such determinations to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

Report to congressional committees.

"(2)(A) If the last report described in paragraph (1) indicates that a premium increase is necessary to support the existing basic-benefit guarantee levels for multiemployer plans, the corporation shall transmit to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate by March 31 of any calendar year in which congressional action under this subsection is requested—

Revised schedules, transmittal to congressional committees.

"(i) a revised schedule of basic-benefit guarantees for multiemployer plans which would be necessary in the absence of an increase in premiums approved in accordance with section 4006(b),

Post, p. 1266.

"(ii) a revised schedule of basic-benefit premiums for multiemployer plans which is necessary to support the existing basic-benefit guarantees for such plans, and

"(iii) a revised schedule of basic-benefit guarantees for multiemployer plans for which the schedule of premiums necessary is higher than the existing premium schedule for such plans but lower than the revised schedule of premiums for such plans specified in clause (ii), together with such schedule of premiums.

"(B) The revised schedule of increased premiums referred to in subparagraph (A)(ii) or (A)(iii) shall go into effect as approved by the Congress by concurrent resolution.

"(C) If an increase in premiums is not approved, the revised guarantee schedule described in subparagraph (A)(i) shall go into effect on the first day of the second calendar year following the year in which such revised guarantee schedule was submitted to the Congress.

"(3)(A) If the last report described in paragraph (1) indicates that basic-benefit guarantees for multiemployer plans can be increased without increasing the basic-benefit premiums for multiemployer plans under this title, the corporation shall submit to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate by March 31 of the calendar year in which congressional action under this paragraph is requested—

Revised schedules, submittal to congressional committees.

"(i) a revised schedule of increases in the basic-benefit guarantees which can be supported by the existing schedule of basic-benefit premiums for multiemployer plans, and

"(ii) a revised schedule of basic-benefit premiums sufficient to support the existing basic-benefit guarantees.

"(B) The revised schedules referred to in subparagraph (A)(i) or subparagraph (A)(ii) shall go into effect as approved by the Congress by a concurrent resolution.

Congressional approval.

"(4)(A) The succeeding subparagraphs of this paragraph are enacted by the Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of concurrent resolutions (as defined in subparagraph (B)). Such subparagraphs shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either

Congressional rulemaking power.

House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any rule of that House.

"Concurrent resolution."

"(B) For purposes of this subsection, 'concurrent resolution' means only a concurrent resolution, the matter after the resolving clause of which is as follows: 'That the Congress favors the proposed schedule described in transmitted to the Congress by the Pension Benefit Guaranty Corporation on .', the first blank space therein being filled with 'section 4022A(f)(2)(A)(ii) of the Employee Retirement Income Security Act of 1974', 'section 4022A(f)(2)(A)(iii) of the Employee Retirement Income Security Act of 1974', 'section 4022A(f)(3)(A)(i) of the Employee Retirement Income Security Act of 1974', or 'section 4022A(f)(3)(A)(ii) of the Employee Retirement Income Security Act of 1974' (whichever is applicable), and the second blank space therein being filled with the date on which the corporation's message proposing the revision was submitted.

"(C) The procedure for disposition of a concurrent resolution shall be the procedure described in section 4006(b)(4) through (7).

Post, p. 1266.

"(g)(1) The corporation may guarantee the payment of such other classes of benefits under multiemployer plans, and establish the terms and conditions under which those other classes of benefits are guaranteed, as it determines to be appropriate.

Regulations.

"(2)(A) The corporation shall prescribe regulations to establish a supplemental program to guarantee benefits under multiemployer plans which would be guaranteed under this section but for the limitations in subsection (c). Such regulations shall be proposed by the corporation no later than the end of the 18th calendar month following the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980. The regulations shall make coverage under the supplemental program available no later than January 1, 1983. Any election to participate in the supplemental program shall be on a voluntary basis, and a plan electing such coverage shall continue to pay the premiums required under section 4006(a)(2)(B) to the revolving fund used pursuant to section 4005 in connection with benefits otherwise guaranteed under this section. Any such election shall be irrevocable, except to the extent otherwise provided by regulations prescribed by the corporation.

Ante, p. 1208.

Post, p. 1264.
29 USC 1305.

"(B) The regulations prescribed under this paragraph shall provide—

"(i) that a plan must elect coverage under the supplemental program within the time permitted by the regulations;

"(ii) unless the corporation determines otherwise, that a plan may not elect supplemental coverage unless the value of the assets of the plan as of the end of the plan year preceding the plan year in which the election must be made is an amount equal to 15 times the total amount of the benefit payments made under the plan for that year; and

"(iii) such other reasonable terms and conditions for supplemental coverage, including funding standards and any other reasonable limitations with respect to plans or benefits covered or to means of program financing, as the corporation determines are necessary and appropriate for a feasible supplemental program consistent with the purposes of this title.

"(3) Any benefits guaranteed under this subsection shall be considered nonbasic benefits for purposes of this title.

Revised schedule, submittal to Congress.

"(4)(A) No revised schedule of premiums under this subsection, after the initial schedule, shall go into effect unless—

"(i) the revised schedule is submitted to the Congress, and

"(ii) a concurrent resolution described in subparagraph (B) is not adopted before the close of the 60th legislative day after such schedule is submitted to the Congress.

"(B) For purposes of subparagraph (A), a concurrent resolution described in this subparagraph is a concurrent resolution the matter after the resolving clause of which is as follows: 'That the Congress disapproves the revised premium schedule transmitted to the Congress by the Pension Benefit Guaranty Corporation under section 4022A(g)(4) of the Employee Retirement Income Security Act of 1974 on .', the blank space therein being filled with the date on which the revised schedule was submitted. Concurrent resolution.

"(C) For purposes of subparagraph (A), the term 'legislative day' means any calendar day other than a day on which either House is not in session because of a sine die adjournment or an adjournment of more than 3 days to a day certain. "Legislative day."

"(D) The procedure for disposition of a concurrent resolution described in subparagraph (B) shall be the procedure described in paragraphs (4) through (7) of section 4006(b). *Post*, p. 1266.

"(5) Regulations prescribed by the corporation to carry out the provisions of this subsection, may, to the extent provided therein, supersede the requirements of sections 4245, 4261, and 4281, and the requirements of section 418E of the Internal Revenue Code of 1954, but only with respect to benefits guaranteed under this subsection. *Post*, pp. 1259, 1261. *Post*, p. 1282.

"(h)(1) Except as provided in paragraph (3), subsections (b) and (c) shall not apply with respect to the nonforfeitable benefits accrued as of July 29, 1980, with respect to a participant or beneficiary under a multiemployer plan—

"(1) who is in pay status on July 29, 1980, or

"(2) who is within 36 months of the normal retirement age and has a nonforfeitable right to a pension as of that date.

"(2) The benefits described in paragraph (1) shall be guaranteed by the corporation in the same manner and to the same extent as benefits are guaranteed by the corporation under section 4022 (without regard to this section). 29 USC 1322.

"(3) This subsection does not apply with respect to a plan for plan years following a plan year—

"(A) in which the plan has terminated within the meaning of section 4041A(a)(2), or *Post*, p. 1216.

"(B) in which it is determined by the corporation that substantially all the employers have withdrawn from the plan pursuant to an agreement or arrangement to withdraw.

"AGGREGATE LIMIT ON BENEFITS GUARANTEED

"SEC. 4022B. (a) Notwithstanding sections 4022 and 4022A, 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 4022(b)(3)(B) as of the date of the last plan termination. 29 USC 1322b. 29 USC 1322.

"(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

Plan termination.

"(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.".

SEC. 103. TERMINATION FOR MULTIEMPLOYER PLANS.

Subtitle C of title IV is amended by inserting after section 4041 the following new section:

"TERMINATION OF MULTIEMPLOYER PLANS

29 USC 1341a.

"SEC. 4041A. (a) Termination of a multiemployer plan under this section occurs as a result of—

Ante, p. 1208.

"(1) the adoption after the date of enactment of the Multiemployer Pension Plan Amendments Act of 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;

Post, p. 1218.

"(2) the withdrawal of every employer from the plan, within the meaning of section 4203, or the cessation of the obligation of all employers to contribute under the plan; or

29 USC 1321.

"(3) the adoption of an amendment to the plan which causes the plan to become a plan described in section 4021(b)(1).

"(b)(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) 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) 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 4281.

Post, p. 1261.

"(e) 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.

Benefits, payment.

"(f)(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 and does not unreasonably increase the corporation's risk of loss with respect to the plan.

"(2) The corporation may prescribe reporting requirements for terminated plans, and rules and standards for the administration of such plans, which the corporation considers appropriate to protect the interests of plan participants and beneficiaries or to prevent unreasonable loss to the corporation.". Reporting requirements.

SEC. 104. EMPLOYER WITHDRAWALS; MERGER OR TRANSFER OF PLAN ASSETS OR LIABILITIES; REORGANIZATION; MINIMUM CONTRIBUTION REQUIREMENT FOR MULTIEMPLOYER PLANS; FINANCIAL ASSISTANCE; BENEFITS AFTER TERMINATION; ENFORCEMENT.

Title IV is amended—

(1) by striking out the heading for subtitle E and inserting in lieu thereof the following:

"Subtitle F—Transition Rules and Effective Dates";

and

(2) by inserting after subtitle D the following new subtitle:

"Subtitle E—Special Provisions for Multiemployer Plans

"PART 1—EMPLOYER WITHDRAWALS

"WITHDRAWAL LIABILITY ESTABLISHED

"SEC. 4201. (a) If an employer withdraws from a multiemployer plan in a complete withdrawal or a partial withdrawal, then the employer is liable to the plan in the amount determined under this part to be the withdrawal liability. 29 USC 1381.

"(b) For purposes of subsection (a)—

"(1) The withdrawal liability of an employer to a plan is the amount determined under section 4211 to be the allocable amount of unfunded vested benefits, adjusted—

"(A) first, by any de minimis reduction applicable under section 4209,

"(B) next, in the case of a partial withdrawal, in accordance with section 4206,

"(C) then, to the extent necessary to reflect the limitation on annual payments under section 4219(c)(1)(B), and

"(D) finally, in accordance with section 4225. *Post*, p. 1243.

"(2) The term 'complete withdrawal' means a complete withdrawal described in section 4203. "Complete withdrawal."

"(3) The term 'partial withdrawal' means a partial withdrawal described in section 4205. "Partial withdrawal."

"DETERMINATION AND COLLECTION OF LIABILITY; NOTIFICATION OF EMPLOYER

29 USC 1382.

"SEC. 4202. When an employer withdraws from a multiemployer plan, the plan sponsor, in accordance with this part, shall—

"(1) determine the amount of the employer's withdrawal liability,

"(2) notify the employer of the amount of the withdrawal liability, and

"(3) collect the amount of the withdrawal liability from the employer.

"COMPLETE WITHDRAWAL

29 USC 1383.

"SEC. 4203. (a) For purposes of this part, a complete withdrawal from a multiemployer plan occurs when an employer—

"(1) permanently ceases to have an obligation to contribute under the plan, or

"(2) permanently ceases all covered operations under the plan.

"(b)(1) Notwithstanding subsection (a), in the case of an employer that has an obligation to contribute under a plan for work performed in the building and construction industry, a complete withdrawal occurs only as described in paragraph (2), if—

"(A) substantially all the employees with respect to whom the employer has an obligation to contribute under the plan perform work in the building and construction industry, and

"(B) the plan—

"(i) primarily covers employees in the building and construction industry, or

"(ii) is amended to provide that this subsection applies to employers described in this paragraph.

"(2) A withdrawal occurs under this paragraph if—

"(A) an employer ceases to have an obligation to contribute under the plan, and

"(B) the employer—

"(i) continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or

"(ii) resumes such work within 5 years after the date on which the obligation to contribute under the plan ceases, and does not renew the obligation at the time of the resumption.

"(3) In the case of a plan terminated by mass withdrawal (within the meaning of section 4041A(a)(2)), paragraph (2) shall be applied by substituting '3 years' for '5 years' in subparagraph (B)(ii).

Ante, p. 1216.

"(c)(1) Notwithstanding subsection (a), in the case of an employer that has an obligation to contribute under a plan for work performed in the entertainment industry, primarily on a temporary or project-by-project basis, if the plan primarily covers employees in the entertainment industry, a complete withdrawal occurs only as described in subsection (b)(2) applied by substituting 'plan' for 'collective bargaining agreement' in subparagraph (B)(i) thereof.

"Entertainment industry."

"(2) For purposes of this subsection, the term 'entertainment industry' means—

"(A) theater, motion picture (except to the extent provided in regulations prescribed by the corporation), radio, television, sound or visual recording, music, and dance, and

"(B) such other entertainment activities as the corporation may determine to be appropriate.

"(3) The corporation may by regulation exclude a group or class of employers described in the preceding sentence from the application of this subsection if the corporation determines that such exclusion is necessary—

"(A) to protect the interest of the plan's participants and beneficiaries, or

"(B) to prevent a significant risk of loss to the corporation with respect to the plan.

"(4) A plan may be amended to provide that this subsection shall not apply to a group or class of employers under the plan.

"(d)(1) Notwithstanding subsection (a), in the case of an employer who—

"(A) has an obligation to contribute under a plan described in paragraph (2) primarily for work described in such paragraph, and

"(B) does not continue to perform work within the jurisdiction of the plan,

a complete withdrawal occurs only as described in paragraph (3).

"(2) A plan is described in this paragraph if substantially all of the contributions required under the plan are made by employers primarily engaged in the long and short haul trucking industry, the household goods moving industry, or the public warehousing industry.

"(3) A withdrawal occurs under this paragraph if—

"(A) an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan, and

"(B) either—

"(i) the corporation determines that the plan has suffered substantial damage to its contribution base as a result of such cessation, or

"(ii) the employer fails to furnish a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412, or an amount held in escrow by a bank or similar financial institution satisfactory to the plan, in an amount equal to 50 percent of the withdrawal liability of the employer. 29 USC 1112.

"(4) If, after an employer furnishes a bond or escrow to a plan under paragraph (3)(B)(ii), the corporation determines that the cessation of the employer's obligation to contribute under the plan (considered together with any cessations by other employers), or cessation of covered operations under the plan, has resulted in substantial damage to the contribution base of the plan, the employer shall be treated as having withdrawn from the plan on the date on which the obligation to contribute or covered operations ceased, and such bond or escrow shall be paid to the plan. The corporation shall not make a determination under this paragraph more than 60 months after the date on which such obligation to contribute or covered operations ceased. Bond or escrow.

"(5) If the corporation determines that the employer has no further liability under the plan either—

"(A) because it determines that the contribution base of the plan has not suffered substantial damage as a result of the cessation of the employer's obligation to contribute or cessation of covered operations (considered together with any cessation of contribution obligation, or of covered operations, with respect to other employers), or

"(B) because it may not make a determination under paragraph (4) because of the last sentence thereof,

then the bond shall be cancelled or the escrow refunded.

"(6) Nothing in this subsection shall be construed as a limitation on the amount of the withdrawal liability of any employer.

"(e) For purposes of this part, the date of a complete withdrawal is the date of the cessation of the obligation to contribute or the cessation of covered operations.

"(f)(1) The corporation may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules similar to the rules described in subsections (b) and (c).

"(2) Regulations under paragraph (1) shall permit use of special withdrawal liability rules—

"(A) only in industries (or portions thereof) in which, as determined by the corporation, the characteristics that would make use of such rules appropriate are clearly shown, and

"(B) only if the corporation determines, in each instance in which special withdrawal liability rules are permitted, that use of such rules will not pose a significant risk to the corporation under this title.

"SALE OF ASSETS

29 USC 1384.

"SEC. 4204. (a)(1) A complete or partial withdrawal of an employer (hereinafter in this section referred to as the 'seller') under this section does not occur solely because, as a result of a bona fide, arm's-length sale of assets to an unrelated party (hereinafter in this section referred to as the 'purchaser'), the seller ceases covered operations or ceases to have an obligation to contribute for such operations, if—

"(A) the purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller had an obligation to contribute to the plan;

Bond or escrow.

"(B) the purchaser provides to the plan for a period of 5 plan years commencing with the first plan year beginning after the sale of assets, a bond issued by a corporate surety company that is

29 USC 1112.

an acceptable surety for purposes of section 412 of this Act, or an amount held in escrow by a bank or similar financial institution satisfactory to the plan, in an amount equal to the greater of—

"(i) the average annual contribution required to be made by the seller with respect to the operations under the plan for the 3 plan years preceding the plan year in which the sale of the employer's assets occurs, or

"(ii) the annual contribution that the seller was required to make with respect to the operations under the plan for the last plan year before the plan year in which the sale of the assets occurs,

which bond or escrow shall be paid to the plan if the purchaser withdraws from the plan, or fails to make a contribution to the plan when due, at any time during the first 5 plan years beginning after the sale; and

Withdrawal liability.

"(C) the contract for sale provides that, if the purchaser withdraws in a complete withdrawal, or a partial withdrawal with respect to operations, during such first 5 plan years, the seller is secondarily liable for any withdrawal liability it would have had to the plan with respect to the operations (but for this section) if the liability of the purchaser with respect to the plan is not paid.

"(2) If the purchaser—

"(A) withdraws before the last day of the fifth plan year beginning after the sale, and

"(B) fails to make any withdrawal liability payment when due, then the seller shall pay to the plan an amount equal to the payment that would have been due from the seller but for this section.

Distribution or liquidation.

"(3)(A) If all, or substantially all, of the seller's assets are distributed, or if the seller is liquidated before the end of the 5 plan year period described in paragraph (1)(C), then the seller shall provide a bond or amount in escrow equal to the present value of the withdrawal liability the seller would have had but for this subsection.

"(B) If only a portion of the seller's assets are distributed during such period, then a bond or escrow shall be required, in accordance with regulations prescribed by the corporation, in a manner consistent with subparagraph (A).

"(4) The liability of the party furnishing a bond or escrow under this subsection shall be reduced, upon payment of the bond or escrow to the plan, by the amount thereof.

Purchaser liability.

"(b)(1) For the purposes of this part, the liability of the purchaser shall be determined as if the purchaser had been required to contribute to the plan in the year of the sale and the 4 plan years preceding the sale the amount the seller was required to contribute for such operations for such 5 plan years.

"(2) If the plan is in reorganization in the plan year in which the sale of assets occurs, the purchaser shall furnish a bond or escrow in an amount equal to 200 percent of the amount described in subsection (a)(1)(B).

Individual or class variances.

"(c) The corporation may by regulation vary the standards in subparagraphs (B) and (C) of subsection (a)(1) if the variance would more effectively or equitably carry out the purposes of this title. Before it promulgates such regulations, the corporation may grant individual or class variances or exemptions from the requirements of such subparagraphs if the particular case warrants it. Before granting such an individual or class variance or exemption, the corporation—

Publication in Federal Register.

"(1) shall publish notice in the Federal Register of the pendency of the variance or exemption,

"(2) shall require that adequate notice be given to interested persons, and

"(3) shall afford interested persons an opportunity to present their views.

"Unrelated party."

"(d) For purposes of this section, the term 'unrelated party' means a purchaser or seller who does not bear a relationship to the seller or purchaser, as the case may be, that is described in section 267(b) of the Internal Revenue Code of 1954, or that is described in regulations prescribed by the corporation applying principles similar to the principles of such section.

26 USC 267.

"PARTIAL WITHDRAWALS

29 USC 1385.

"SEC. 4205. (a) Except as otherwise provided in this section, there is a partial withdrawal by an employer from a plan on the last day of a plan year if for such plan year—

"(1) there is a 70-percent contribution decline, or

"(2) there is a partial cessation of the employer's contribution obligation.

"(b) For purposes of subsection (a)—

"(1)(A) There is a 70-percent contribution decline for any plan year if during each plan year in the 3-year testing period the employer's contribution base units do not exceed 30 percent of the employer's contribution base units for the high base year.

"(B) For purposes of subparagraph (A)—

"3-year testing period."

"(i) The term '3-year testing period' means the period consisting of the plan year and the immediately preceding 2 plan years.

"(ii) The number of contribution base units for the high base year is the average number of such units for the 2 plan years for which the employer's contribution base units were the highest within the 5 plan years immediately preceding the beginning of the 3-year testing period.

Employer's contribution obligation, partial cessation.

"(2)(A) There is a partial cessation of the employer's contribution obligation for the plan year if, during such year—

"(i) the employer permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan but continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location, or

"(ii) an employer permanently ceases to have an obligation to contribute under the plan with respect to work performed at one or more but fewer than all of its facilities, but continues to perform work at the facility of the type for which the obligation to contribute ceased.

"(B) For purposes of subparagraph (A), a cessation of obligations under a collective bargaining agreement shall not be considered to have occurred solely because, with respect to the same plan, one agreement that requires contributions to the plan has been substituted for another agreement.

Retail food industry employees.

"(c)(1) In the case of a plan in which a majority of the covered employees are employed in the retail food industry, the plan may be amended to provide that this section shall be applied with respect to such plan—

"(A) by substituting '35 percent' for '70 percent' in subsections (a) and (b), and

"(B) by substituting '65 percent' for '30 percent' in subsection (b).

"(2) Any amendment adopted under paragraph (1) shall provide rules for the equitable reduction of withdrawal liability in any case in which the number of the plan's contribution base units, in the 2 plan years following the plan year of withdrawal of the employer, is higher than such number immediately after the withdrawal.

"(3) Section 4208 shall not apply to a plan which has been amended under paragraph (1).

"(d) In the case of a plan described in section 404(c) of the Internal Revenue Code of 1954, or a continuation thereof, the plan may be amended to provide rules setting forth other conditions consistent with the purposes of this Act under which an employer has liability for partial withdrawal.

26 USC 404.

"ADJUSTMENT FOR PARTIAL WITHDRAWAL

29 USC 1386.

"SEC. 4206. (a) The amount of an employer's liability for a partial withdrawal, before the application of sections 4219(c)(1) and 4225, is equal to the product of—

"(1) the amount determined under section 4211, and adjusted under section 4209 if appropriate, determined as if the employer had withdrawn from the plan in a complete withdrawal—

"(A) on the date of the partial withdrawal, or

"(B) in the case of a partial withdrawal described in section 4205(a)(1) (relating to 70-percent contribution decline), on the last day of the first plan year in the 3-year testing period,

multiplied by

"(2) a fraction which is 1 minus a fraction—

"(A) the numerator of which is the employer's contribution base units for the plan year following the plan year in which the partial withdrawal occurs, and

"(B) the denominator of which is the average of the employer's contribution base units for—

"(i) except as provided in clause (ii), the 5 plan years immediately preceding the plan year in which the partial withdrawal occurs, or

"(ii) in the case of a partial withdrawal described in section 4205(a)(1) (relating to 70-percent contribution decline), the 5 plan years immediately preceding the beginning of the 3-year testing period.

"(b)(1) In the case of an employer that has withdrawal liability for a partial withdrawal from a plan, any withdrawal liability of that employer for a partial or complete withdrawal from that plan in a subsequent plan year shall be reduced by the amount of any partial withdrawal liability (reduced by any abatement or reduction of such liability) of the employer with respect to the plan for a previous plan year.

"(2) The corporation shall prescribe such regulations as may be necessary to provide for proper adjustments in the reduction provided by paragraph (1) for— Regulations.

"(A) changes in unfunded vested benefits arising after the close of the prior year for which partial withdrawal liability was determined,

"(B) changes in contribution base units occurring after the close of the prior year for which partial withdrawal liability was determined, and

"(C) any other factors for which it determines adjustment to be appropriate,

so that the liability for any complete or partial withdrawal in any subsequent year (after the application of the reduction) properly reflects the employer's share of liability with respect to the plan.

"REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

"SEC. 4207. (a) The corporation shall provide by regulation for the reduction or waiver of liability for a complete withdrawal in the event that an employer who has withdrawn from a plan subsequently resumes covered operations under the plan or renews an obligation to contribute under the plan, to the extent that the corporation determines that reduction or waiver of withdrawal liability is consistent with the purposes of this Act. Regulations. 29 USC 1387.

"(b) The corporation shall prescribe by regulation a procedure and standards for the amendment of plans to provide alternative rules for the reduction or waiver of liability for a complete withdrawal in the event that an employer who has withdrawn from the plan subsequently resumes covered operations or renews an obligation to

contribute under the plan. The rules may apply only to the extent that the rules are consistent with the purposes of this Act.

"REDUCTION OF PARTIAL WITHDRAWAL LIABILITY

29 USC 1388.

"SEC. 4208. (a)(1) If, for any 2 consecutive plan years following the plan year in which an employer has partially withdrawn from a plan under section 4205(a)(1) (referred to elsewhere in this section as the 'partial withdrawal year'), the number of contribution base units with respect to which the employer has an obligation to contribute under the plan for each such year is not less than 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the high base year (within the meaning of section 4205(b)(1)(B)(ii)), then the employer shall have no obligation to make payments with respect to such partial withdrawal (other than delinquent payments) for plan years beginning after the second consecutive plan year following the partial withdrawal year.

Bonds.

"(2)(A) For any plan year for which the number of contribution base units with respect to which an employer who has partially withdrawn under section 4205(a)(1) has an obligation to contribute under the plan equals or exceeds the number of units for the highest year determined under paragraph (1) without regard to '90 percent of', the employer may furnish (in lieu of payment of the partial withdrawal liability determined under section 4206) a bond to the plan in the amount determined by the plan sponsor (not exceeding 50 percent of the annual payment otherwise required).

"(B) If the plan sponsor determines under paragraph (1) that the employer has no further liability to the plan for the partial withdrawal, then the bond shall be cancelled.

"(C) If the plan sponsor determines under paragraph (1) that the employer continues to have liability to the plan for the partial withdrawal, then—

"(i) the bond shall be paid to the plan,

"(ii) the employer shall immediately be liable for the outstanding amount of liability due with respect to the plan year for which the bond was posted, and

"(iii) the employer shall continue to make the partial withdrawal liability payments as they are due.

"(b) If—

"(1) for any 2 consecutive plan years following a partial withdrawal under section 4205(a)(1), the number of contribution base units with respect to which the employer has an obligation to contribute for each such year exceeds 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute for the high base year (within the meaning of section 4205(b)(1)(B)(ii), and

"(2) the total number of contribution base units with respect to which all employers under the plan have obligations to contribute in each of such 2 consecutive years is not less than 90 percent of the total number of contribution base units for which all employers had obligations to contribute in the partial withdrawal plan year;

then, the employer shall have no obligation to make payments with respect to such partial withdrawal (other than delinquent payments) for plan years beginning after the second such consecutive plan year.

"(c) In any case in which, in any plan year following a partial withdrawal under section 4205(a)(1), the number of contribution base

units with respect to which the employer has an obligation to contribute for such year equals or exceeds 110 percent (or such other percentage as the plan may provide by amendment and which is not prohibited under regulations prescribed by the corporation) of the number of contribution base units with respect to which the employer had an obligation to contribute in the partial withdrawal year, then the amount of the employer's partial withdrawal liability payment for such year shall be reduced pro rata, in accordance with regulations prescribed by the corporation.

"(d)(1) An employer to whom section 4202(b) (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.

"(2) An employer to whom section 4202(c) (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by the corporation by regulation.

"(e)(1) The corporation may prescribe regulations providing for the reduction or elimination of partial withdrawal liability under any conditions with respect to which the corporation determines that reduction or elimination of partial withdrawal liability is consistent with the purposes of this Act.

"(2) Under such regulations, reduction of withdrawal liability shall be provided only with respect to subsequent changes in the employer's contributions for the same operations, or under the same collective bargaining agreement, that gave rise to the partial withdrawal, and changes in the employer's contribution base units with respect to other facilities or other collective bargaining agreements shall not be taken into account.

"(3) The corporation shall prescribe by regulation a procedure by which a plan may by amendment adopt rules for the reduction or elimination of partial withdrawal liability under any other conditions, subject to the approval of the corporation based on its determination that adoption of such rules by the plan is consistent with the purposes of this Act. Regulations.

"DE MINIMIS RULE

"SEC. 4209. (a) Except in the case of a plan amended under subsection (b), the amount of the unfunded vested benefits allocable under section 4211 to an employer who withdraws from a plan shall be reduced by the smaller of— Unfunded vested benefits. 29 USC 1389.

"(1) ¾ 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) A plan may be amended to provide for the reduction of the amount determined under section 4211 by not more than the greater of—

"(1) the amount determined under subsection (a), or

"(2) the lesser of—

"(A) the amount determined under subsection (a)(1), or

"(B) $100,000,

reduced by the amount, if any, by which the amount determined under section 4211 for the employer, determined without regard to this subsection, exceeds $150,000.

"(c) 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) 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.

"NO WITHDRAWAL LIABILITY FOR CERTAIN TEMPORARY CONTRIBUTION OBLIGATION PERIODS

29 USC 1390.

"SEC. 4210. (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 the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980,

Ante, p. 1208.

"(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) shall apply to an employer with respect to a plan only if—

"(1) the plan is not a plan which primarily covers employees in the building and construction industry;

"(2) the plan is amended to provide that subsection (a) applies;

"(3) the plan provides, or is amended to provide, that the reduction under section 411(a)(3)(E) of the Internal Revenue Code of 1954 applies with respect to the employees of the employer; and

Post, p. 1287.

"(4) 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.

"METHODS FOR COMPUTING WITHDRAWAL LIABILITY

Unfunded vested benefits.
29 USC 1391.

"SEC. 4211. (a) The amount of the unfunded vested benefits allocable to an employer that withdraws from a plan shall be determined in accordance with subsection (b), (c), or (d) of this section.

Allocation determination.

"(b)(1) Except as provided in subsections (c) and (d), the amount of unfunded vested benefits allocable to an employer that withdraws is the sum of—

"(A) the employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after April 28, 1980, as determined under paragraph (2),

"(B) the employer's proportional share, if any, of the unamortized amount of the plan's unfunded vested benefits at the end of the plan year ending before April 29, 1980, as determined under paragraph (3); and

"(C) the employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits (if any) as determined under paragraph (4).

If the sum of the amounts determined with respect to an employer under paragraphs (2), (3), and (4) is negative, the unfunded vested benefits allocable to the employer shall be zero.

"(2)(A) An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after April 28, 1980, is the sum of the employer's proportional shares of the unamortized amount of the change in unfunded vested benefits for each plan year in which the employer has an obligation to contribute under the plan ending—

"(i) after such date, and

"(ii) before the plan year in which the withdrawal of the employer occurs.

"(B) The change in a plan's unfunded vested benefits for a plan year is the amount by which—

"(i) the unfunded vested benefits at the end of the plan year; exceeds

"(ii) the sum of—

"(I) the unamortized amount of the unfunded vested benefits for the last plan year ending before April 29, 1980, and

"(II) the sum of the unamortized amounts of the change in unfunded vested benefits for each plan year ending after April 28, 1980, and preceding the plan year for which the change is determined.

"(C) The unamortized amount of the change in a plan's unfunded vested benefits with respect to a plan year is the change in unfunded vested benefits for the plan year, reduced by 5 percent of such change for each succeeding plan year.

"(D) The unamortized amount of the unfunded vested benefits for the last plan year ending before April 29, 1980, is the amount of the unfunded vested benefits as of the end of that plan year reduced by 5 percent of such amount for each succeeding plan year.

"(E) An employer's proportional share of the unamortized amount of a change in unfunded vested benefits is the product of—

"(i) the unamortized amount of such change (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

"(ii) a fraction—

"(I) the numerator of which is the sum of the contributions required to be made under the plan by the employer for the year in which such change arose and for the 4 preceding plan years, and

"(II) the denominator of which is the sum for the plan year in which such change arose and the 4 preceding plan years of all contributions made by employers who had an obligation

to contribute under the plan for the plan year in which such change arose reduced by the contributions made in such years by employers who had withdrawn from the plan in the year in which the change arose.

"(3) An employer's proportional share of the unamortized amount of the plan's unfunded vested benefits for the last plan year ending before April 29, 1980, is the product of—

"(A) such unamortized amount; multiplied by—

"(B) a fraction—

"(i) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the most recent 5 plan years ending before April 29, 1980, and

"(ii) the denominator of which is the sum of all contributions made for the most recent 5 plan years ending before April 29, 1980, by all employers—

"(I) who had an obligation to contribute under the plan for the first plan year ending on or after such date, and

"(II) who had not withdrawn from the plan before such date.

"(4)(A) An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits is the sum of the employer's proportional shares of the unamortized amount of the reallocated unfunded vested benefits for each plan year ending before the plan year in which the employer withdrew from the plan.

"(B) Except as otherwise provided in regulations prescribed by the corporation, the reallocated unfunded vested benefits for a plan year is the sum of—

"(i) any amount which the plan sponsor determines in that plan year to be uncollectible for reasons arising out of cases or proceedings under title 11, United States Code, or similar proceedings.

11 USC 101.

"(ii) any amount which the plan sponsor determines in that plan year will not be assessed as a result of the operation of section 4209, 4219(c)(1)(B), or section 4225 against an employer to whom a notice described in section 4219 has been sent, and

"(iii) any amount which the plan sponsor determines to be uncollectible or unassessable in that plan year for other reasons under standards not inconsistent with regulations prescribed by the corporation.

"(C) The unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the reallocated unfunded vested benefits for the plan year, reduced by 5 percent of such reallocated unfunded vested benefits for each succeeding plan year.

"(D) An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the product of—

"(i) the unamortized amount of the reallocated unfunded vested benefits (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

"(ii) the fraction defined in paragraph (2)(E)(ii).

Multiemployer plan, amendment procedures.

"(c)(1) A multiemployer plan, other than a plan which primarily covers employees in the building and construction industry, may be amended to provide that the amount of unfunded vested benefits allocable to an employer that withdraws from the plan is an amount determined under paragraph (2), (3), (4), or (5) of this subsection, rather than under subsection (b) or (d). A plan described in section 4203(b)(1)(B)(i) (relating to the building and construction industry)

may be amended, to the extent provided in regulations prescribed by the corporation, to provide that the amount of the unfunded vested benefits allocable to an employer not described in section 4203(b)(1)(A) shall be determined in a manner different from that provided in subsection (b).

"(2)(A) The amount of the unfunded vested benefits allocable to any employer under this paragraph is the sum of the amounts determined under subparagraphs (B) and (C).

"(B) The amount determined under this subparagraph is the product of—

"(i) the plan's unfunded vested benefits as of the end of the last plan year ending before April 29, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning with the first plan year ending on or after such date; multiplied by

"(ii) a fraction—

"(I) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the last 5 plan years ending before April 29, 1980, and

"(II) the denominator of which is the sum of all contributions made for the last 5 plan years ending before April 29, 1980, by all employers who had an obligation to contribute under the plan for the first plan year ending after April 28, 1980, and who had not withdrawn from the plan before such date.

"(C) The amount determined under this subparagraph is the product of—

"(i) an amount equal to—

"(I) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less

"(II) the sum of the value as of such date of all outstanding claims for withdrawal liability which can reasonably be expected to be collected, with respect to employers withdrawing before such plan year, and that portion of the amount determined under subparagraph (B)(i) which is allocable to employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws and who also had an obligation to contribute under the plan for the first plan year ending after April 28, 1980; multiplied by

"(ii) a fraction—

"(I) the numerator of which is the total amount required to be contributed under the plan by the employer for the last 5 plan years ending before the date on which the employer withdraws, and

"(II) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the date on which the employer withdraws, increased by the amount of any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed by an employer who withdrew from the plan under this part during those plan years.

"(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this title, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

"(3) The amount of the unfunded vested benefits allocable to an employer under this paragraph is the product of—

"(A) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less the value as of the end of such year of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from employers withdrawing before such year; multiplied by

"(B) a fraction—

"(i) the numerator of which is the total amount required to be contributed by the employer under the plan for the last 5 plan years ending before the withdrawal, and

"(ii) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the withdrawal, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed to the plan during those plan years by employers who withdrew from the plan under this section during those plan years.

"(4)(A) The amount of the unfunded vested benefits allocable to an employer under this paragraph is equal to the sum of—

"(i) the plan's unfunded vested benefits which are attributable to participants' service with the employer (determined as of the end of the plan year preceding the plan year in which the employer withdraws), and

"(ii) the employer's proportional share of any unfunded vested benefits which are not attributable to service with the employer or other employers who are obligated to contribute under the plan in the plan year preceding the plan year in which the employer withdraws (determined as of the end of the plan year preceding the plan year in which the employer withdraws).

"(B) The plan's unfunded vested benefits which are attributable to participants' service with the employer is the amount equal to the value of nonforfeitable benefits under the plan which are attributable to participants' service with such employer (determined under plan rules not inconsistent with regulations of the corporation) decreased by the share of plan assets determined under subparagraph (C) which is allocated to the employer as provided under subparagraph (D).

Plan assets, value.

"(C) The value of plan assets determined under this subparagraph is the value of plan assets allocated to nonforfeitable benefits which are attributable to service with the employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws, which is determined by multiplying—

"(i) the value of the plan assets as of the end of the plan year preceding the plan year in which the employer withdraws, by

"(ii) a fraction—

"(I) the numerator of which is the value of nonforfeitable benefits which are attributable to service with such employers, and

"(II) the denominator of which is the value of all nonforfeitable benefits under the plan

as of the end of the plan year.

"(D) The share of plan assets, determined under subparagraph (C), which is allocated to the employer shall be determined in accordance

with one of the following methods which shall be adopted by the plan by amendment:

"(i) by multiplying the value of plan assets determined under subparagraph (C) by a fraction—

"(I) the numerator of which is the value of the nonforfeitable benefits which are attributable to service with the employer, and

"(II) the denominator of which is the value of the nonforfeitable benefits which are attributable to service with all employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws;

"(ii) by multiplying the value of plan assets determined under subparagraph (C) by a fraction—

"(I) the numerator of which is the sum of all contributions (accumulated with interest) which have been made to the plan by the employer for the plan year preceding the plan year in which the employer withdraws and all preceding plan years; and

"(II) the denominator of which is the sum of all contributions (accumulated with interest) which have been made to the plan (for the plan year preceding the plan year in which the employer withdraws and all preceding plan years) by all employers who have an obligation to contribute to the plan for the plan year preceding the plan year in which the employer withdraws; or

"(iii) by multiplying the value of plan assets under subparagraph (C) by a fraction—

"(I) the numerator of which is the amount determined under clause (ii)(I) of this subparagraph, less the sum of benefit payments (accumulated with interest) made to participants (and their beneficiaries) for the plan years described in such clause (ii)(I) which are attributable to service with the employer; and

"(II) the denominator of which is the amount determined under clause (ii)(II) of this subparagraph, reduced by the sum of benefit payments (accumulated with interest) made to participants (and their beneficiaries) for the plan years described in such clause (ii)(II) which are attributable to service with respect to the employers described in such clause (ii)(II).

"(E) The amount of the plan's unfunded vested benefits for a plan year preceding the plan year in which an employer withdraws, which is not attributable to service with employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which such employer withdraws, is equal to—

"(i) an amount equal to—

"(I) the value of all nonforfeitable benefits under the plan at the end of such plan year, reduced by

"(II) the value of nonforfeitable benefits under the plan at the end of such plan year which are attributable to participants' service with employers who have an obligation to contribute under the plan for such plan year; reduced by

"(ii) an amount equal to—

"(I) the value of the plan assets as of the end of such plan year, reduced by

"(II) the value of plan assets as of the end of such plan year as determined under subparagraph (C); reduced by

"(iii) the value of all outstanding claims for withdrawal liability which can reasonably be expected to be collected with respect to employers withdrawing before the year preceding the plan year in which the employer withdraws.

"(F) The employer's proportional share described in subparagraph (A)(ii) for a plan year is the amount determined under subparagraph (E) for the employer, but not in excess of an amount which bears the same ratio to the sum of the amounts determined under subparagraph (E) for all employers under the plan as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan.

"(G) The corporation may prescribe by regulation other methods which a plan may adopt for allocating assets to determine the amount of the unfunded vested benefits attributable to service with the employer and to determine the employer's share of unfunded vested benefits not attributable to service with employers who have an obligation to contribute under the plan in the plan year in which the employer withdraws.

Regulations.

"(5)(A) The corporation shall prescribe by regulation a procedure by which a plan may, by amendment, adopt any other alternative method for determining an employer's allocable share of unfunded vested benefits under this section, subject to the approval of the corporation based on its determination that adoption of the method by the plan would not significantly increase the risk of loss to plan participants and beneficiaries or to the corporation.

"(B) The corporation may prescribe by regulation standard approaches for alternative methods, other than those set forth in the preceding paragraphs of this subsection, which a plan may adopt under subparagraph (A), for which the corporation may waive or modify the approval requirements of subparagraph (A). Any alternative method shall provide for the allocation of substantially all of a plan's unfunded vested benefits among employers who have an obligation to contribute under the plan.

"(C) Unless the corporation by regulation provides otherwise, a plan may be amended to provide that a period of more than 5 but not more than 10 plan years may be used for determining the numerator and denominator of any fraction which is used under any method authorized under this section for determining an employer's allocable share of unfunded vested benefits under this section.

"(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this title, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

"(d)(1) The method of calculating an employer's allocable share of unfunded vested benefits set forth in subsection (c)(3) shall be the method for calculating an employer's allocable share of unfunded vested benefits under a plan to which section 404(c) of the Internal Revenue Code of 1954, or a continuation of such a plan, applies, unless the plan is amended to adopt another method authorized under subsection (b) or (c).

26 USC 404.

"(2) Sections 4204, 4209, 4219(c)(1)(B), and 4225 shall not apply with respect to the withdrawal of an employer from a plan described in paragraph (1) unless the plan is amended to provide that any of such sections apply.

Liabilities, transfer.

"(e) In the case of a transfer of liabilities to another plan incident to an employer's withdrawal or partial withdrawal, the withdrawn employer's liability under this part shall be reduced in an amount

equal to the value, as of the end of the last plan year ending on or before the date of the withdrawal, of the transferred unfunded vested benefits.

"(f) In the case of a withdrawal following a merger of multiemployer plans, subsection (b), (c), or (d) shall be applied in accordance with regulations prescribed by the corporation; except that, if a withdrawal occurs in the first plan year beginning after a merger of multiemployer plans, the determination under this section shall be made as if each of the multiemployer plans had remained separate plans.

"OBLIGATION TO CONTRIBUTE; SPECIAL RULES

"SEC. 4212. (a) For purposes of this part, the term 'obligation to contribute' means an obligation to contribute arising— 29 USC 1392.

"(1) under one or more collective bargaining (or related) agreements, or

"(2) as a result of a duty under applicable labor-management relations law, but

does not include an obligation to pay withdrawal liability under this section or to pay delinquent contributions.

"(b) Payments of withdrawal liability under this part shall not be considered contributions for purposes of this part.

"(c) If a principal purpose of any transaction is to evade or avoid liability under this part, this part shall be applied (and liability shall be determined and collected) without regard to such transaction.

"ACTUARIAL ASSUMPTIONS, ETC.

"SEC. 4213. (a) The corporation may prescribe by regulation actuarial assumptions which may be used by a plan actuary in determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part. Withdrawal liability under this part shall be determined by each plan on the basis of— 29 USC 1393.

"(1) actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan, or

"(2) actuarial assumptions and methods set forth in the corporation's regulations for purposes of determining an employer's withdrawal liability.

"(b) In determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part, the plan actuary may—

"(1) rely on the most recent complete actuarial valuation used for purposes of section 412 of the Internal Revenue Code of 1954 and reasonable estimates for the interim years of the unfunded vested benefits, and 26 USC 412.

"(2) in the absence of complete data, rely on the data available or on data secured by a sampling which can reasonably be expected to be representative of the status of the entire plan.

"(c) For purposes of this part, the term 'unfunded vested benefits' means with respect to a plan, an amount equal to— "Unfunded vested benefits."

"(A) the value of nonforfeitable benefits under the plan, less

"(B) the value of the assets of the plan.

"APPLICATION OF PLAN AMENDMENTS

29 USC 1394. "SEC. 4214. (a) No plan rule or amendment adopted after January 31, 1981, under section 4209 or 4211(c) may be applied without the employer's consent with respect to liability for a withdrawal or partial withdrawal which occurred before the date on which the rule or amendment was adopted.

"(b) All plan rules and amendments authorized under this part shall operate and be applied uniformly with respect to each employer, except that special provisions may be made to take into account the creditworthiness of an employer. The plan sponsor shall give notice to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan of any plan rules or amendments adopted pursuant to this section.

"PLAN NOTIFICATION TO CORPORATION OF POTENTIALLY SIGNIFICANT WITHDRAWALS

29 USC 1395. "SEC. 4215. The corporation may, by regulation, require the plan sponsor of a multiemployer plan to provide notice to the corporation when the withdrawal from the plan by any employer has resulted, or will result, in a significant reduction in the amount of aggregate contributions under the plan made by employers.

"SPECIAL RULES FOR SECTION 404(C) PLANS

29 USC 1396. "SEC. 4216. (a) In the case of a plan described in subsection (b)—

"(1) if an employer withdraws prior to a termination described in section 4041A(a)(2), the amount of withdrawal liability to be paid in any year by such employer shall be an amount equal to the greater of—

Ante, p. 1216.

"(A) the amount determined under section 4219(c)(1)(C)(i), or

"(B) the product of—

"(i) the number of contribution base units for which the employer would have been required to make contributions for the prior plan year if the employer had not withdrawn, multiplied by

"(ii) the contribution rate for the plan year which would be required to meet the amortization schedules contained in section 4243(d)(3)(B)(ii) (determined without regard to any limitation on such rate otherwise provided by this title)

Post, p. 1252.

except that an employer shall not be required to pay an amount in excess of the withdrawal liability computed with interest; and

"(2) the withdrawal liability of an employer who withdraws after December 31, 1983, as a result of a termination described in section 4041A(a)(2) which is agreed to by the labor organization that appoints the employee representative on the joint board of trustees which sponsors the plan, shall be determined under subsection (c) if—

"(A) as a result of prior employer withdrawals in any plan year commencing after January 1, 1980, the number of contribution base units is reduced to less than 67 percent of the average number of such units for the calendar years 1974 through 1979; and

"(B) at least 50 percent of the withdrawal liability attributable to the first 33 percent decline described in subparagraph (A) has been determined by the plan sponsor to be uncollectible within the meaning of regulations of the corporation of general applicability; and

"(C) the rate of employer contributions under the plan for each plan year following the first plan year beginning after the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980 and preceding the termination date equals or exceeds the rate described in section 4243(d)(3).

Ante, p. 1208.

Post, p. 1252.

"(b) A plan is described in this subsection if—

"(1) it is a plan described in section 404(c) of the Internal Revenue Code of 1954 or a continuation thereof; and

26 USC 404.

"(2) participation in the plan is substantially limited to individuals who retired prior to January 1, 1976.

"(c)(1) The amount of an employer's liability under this paragraph is the product of—

Employer's liability.

"(A) the amount of the employer's withdrawal liability determined without regard to this section, and

"(B) the greater of 90 percent, or a fraction—

"(i) the numerator of which is an amount equal to the portion of the plan's unfunded vested benefits that is attributable to plan participants who have a total of 10 or more years of signatory service, and

"(ii) the denominator of which is an amount equal to the total unfunded vested benefits of the plan.

"(2) For purposes of paragraph (1), the term 'a year of signatory service' means a year during any portion of which a participant was employed for an employer who was obligated to contribute in that year, or who was subsequently obligated to contribute.

"A year of signatory service."

"APPLICATION OF PART IN CASE OF CERTAIN PRE-1980 WITHDRAWALS

"SEC. 4217. (a) For the purpose of determining the amount of unfunded vested benefits allocable to an employer for a partial or complete withdrawal from a plan which occurs after April 28, 1980, and for the purpose of determining whether there has been a partial withdrawal after such date, the amount of contributions, and the number of contribution base units, of such employer properly allocable—

29 USC 1397.

"(1) to work performed under a collective bargaining agreement for which there was a permanent cessation of the obligation to contribute before April 29, 1980, or

"(2) to work performed at a facility at which all covered operations permanently ceased before April 29, 1980, or for which there was a permanent cessation of the obligation to contribute before that date,

shall not be taken into account.

"(b) A plan may, in a manner not inconsistent with regulations, which shall be prescribed by the corporation, adjust the amount of unfunded vested benefits allocable to other employers under a plan maintained by an employer described in subsection (a).

"WITHDRAWAL NOT TO OCCUR MERELY BECAUSE OF CHANGE IN BUSINESS FORM OR SUSPENSION OF CONTRIBUTIONS DURING LABOR DISPUTE

29 USC 1398.

"SEC. 4218. Notwithstanding any other provision of this part, an employer shall not be considered to have withdrawn from a plan solely because—

"(1) an employer ceases to exist by reason of—

"(A) a change in corporate structure described in section 4062(d), or

29 USC 1362.

"(B) a change to an unincorporated form of business enterprise,

if the change causes no interruption in employer contributions or obligations to contribute under the plan, or

"(2) an employer suspends contributions under the plan during a labor dispute involving its employees.

For purposes of this part, a successor or parent corporation or other entity resulting from any such change shall be considered the original employer.

"NOTICE, COLLECTION, ETC., OF WITHDRAWAL LIABILITY

29 USC 1399.

"SEC. 4219. (a) An employer shall, within 30 days after a written request from the plan sponsor, furnish such information as the plan sponsor reasonably determines to be necessary to enable the plan sponsor to comply with the requirements of this part.

Plan sponsor, responsibilities.

"(b)(1) As soon as practicable after an employer's complete or partial withdrawal, the plan sponsor shall—

"(A) notify the employer of—

"(i) the amount of the liability, and

"(ii) the schedule for liability payments, and

"(B) demand payment in accordance with the schedule.

"(2)(A) No later than 90 days after the employer receives the notice described in paragraph (1), the employer—

"(i) may ask the plan sponsor to review any specific matter relating to the determination of the employer's liability and the schedule of payments,

"(ii) may identify any inaccuracy in the determination of the amount of the unfunded vested benefits allocable to the employer, and

"(iii) may furnish any additional relevant information to the plan sponsor.

"(B) After a reasonable review of any matter raised, the plan sponsor shall notify the employer of—

"(i) the plan sponsor's decision,

"(ii) the basis for the decision, and

"(iii) the reason for any change in the determination of the employer's liability or schedule of liability payments.

"(c)(1)(A)(i) Except as provided in subparagraphs (B) and (D) of this paragraph and in paragraphs (4) and (5), an employer shall pay the amount determined under section 4211, adjusted if appropriate first under section 4209 and then under section 4206 over the period of years necessary to amortize the amount in level annual payments determined under subparagraph (C), calculated as if the first payment were made on the first day of the plan year following the plan year in which the withdrawal occurs and as if each subsequent payment were made on the first day of each subsequent plan year. Actual payment shall commence in accordance with paragraph (2).

"(ii) The determination of the amortization period described in clause (i) shall be based on the assumptions used for the most recent actuarial valuation for the plan.

"(B) In any case in which the amortization period described in subparagraph (A) exceeds 20 years, the employer's liability shall be limited to the first 20 annual payments determined under subparagraph (C).

"(C)(i) Except as provided in subparagraph (E), the amount of each annual payment shall be the product of— Annual payment.

"(I) the average annual number of contribution base units for the period of 3 consecutive plan years, during the period of 10 consecutive plan years ending before the plan year in which the withdrawal occurs, in which the number of contribution base units for which the employer had an obligation to contribute under the plan is the highest, and

"(II) the highest contribution rate at which the employer had an obligation to contribute under the plan during the 10 plan years ending with the plan year in which the withdrawal occurs.

For purposes of the preceding sentence, a partial withdrawal described in section 4205(a)(1) shall be deemed to occur on the last day of the first year of the 3-year testing period described in section 4205(b)(1)(B)(i).

"(ii)(I) A plan may be amended to provide that for any plan year ending before 1986 the amount of each annual payment shall be (in lieu of the amount determined under clause (i)) the average of the required employer contributions under the plan for the period of 3 consecutive plan years (during the period of 10 consecutive plan years ending with the plan year preceding the plan year in which the withdrawal occurs) for which such required contributions were the highest.

"(II) Subparagraph (B) shall not apply to any plan year to which this clause applies.

"(III) This clause shall not apply in the case of any withdrawal described in subparagraph (D).

"(IV) If under a plan this clause applies to any plan year but does not apply to the next plan year, this clause shall not apply to any plan year after such next plan year.

"(V) For purposes of this clause, the term 'required contributions' means, for any period, the amounts which the employer was obligated to contribute for such period (not taking into account any delinquent contribution for any other period). "Required contributions."

"(iii) A plan may be amended to provide that for the first plan year ending on or after April 29, 1980, the number '5' shall be substituted for the number '10' each place it appears in clause (i) or clause (ii) (whichever is appropriate). If the plan is so amended, the number '5' shall be increased by one for each succeeding plan year until the number '10' is reached.

"(D) In any case in which a multiemployer plan terminates by the withdrawal of every employer from the plan, or in which substantially all the employers withdraw from a plan pursuant to an agreement or arrangement to withdraw from the plan—

"(i) the liability of each such employer who has withdrawn shall be determined (or redetermined) under this paragraph without regard to subparagraph (B), and

"(ii) notwithstanding any other provision of this part, the total unfunded vested benefits of the plan shall be fully allocated among all such employers in a manner not inconsistent with regulations which shall be prescribed by the corporation.

Withdrawal by an employer from a plan, during a period of 3 consecutive plan years within which substantially all the employers who have an obligation to contribute under the plan withdraw, shall be presumed to be a withdrawal pursuant to an agreement or arrangement, unless the employer proves otherwise by a preponderance of the evidence.

"(E) In the case of a partial withdrawal described in section 4205(a), the amount of each annual payment shall be the product of—

"(i) the amount determined under subparagraph (C) (determined without regard to this subparagraph), multiplied by

"(ii) the fraction determined under section 4206 (a)(2).

"(2) Withdrawal liability shall be payable in accordance with the schedule set forth by the plan sponsor under subsection (b)(1) beginning no later than 60 days after the date of the demand notwithstanding any request for review or appeal of determinations of the amount of such liability or of the schedule.

Annual payment.

"(3) Each annual payment determined under paragraph (1)(C) shall be payable in 4 equal installments due quarterly, or at other intervals specified by plan rules. If a payment is not made when due, interest on the payment shall accrue from the due date until the date on which the payment is made.

"(4) The employer shall be entitled to prepay the outstanding amount of the unpaid annual withdrawal liability payments determined under paragraph (1)(C), plus accrued interest, if any, in whole or in part, without penalty. If the prepayment is made pursuant to a withdrawal which is later determined to be part of a withdrawal described in paragraph (1)(D), the withdrawal liability of the employer shall not be limited to the amount of the prepayment.

Default.

"(5) In the event of a default, a plan sponsor may require immediate payment of the outstanding amount of an employer's withdrawal liability, plus accrued interest on the total outstanding liability from the due date of the first payment which was not timely made. For purposes of this section, the term 'default' means—

"(A) the failure of an employer to make, when due, any payment under this section, if the failure is not cured within 60 days after the employer receives written notification from the plan sponsor of such failure, and

"(B) any other event defined in rules adopted by the plan which indicates a substantial likelihood that an employer will be unable to pay its withdrawal liability.

"(6) Except as provided in paragraph (1)(A)(ii), interest under this subsection shall be charged at rates based on prevailing market rates for comparable obligations, in accordance with regulations prescribed by the corporation.

"(7) A multiemployer plan may adopt rules for other terms and conditions for the satisfaction of an employer's withdrawal liability if such rules—

"(A) are consistent with this Act, and

"(B) are not inconsistent with regulations of the corporation.

"(8) In the case of a terminated multiemployer plan, an employer's obligation to make payments under this section ceases at the end of the plan year in which the assets of the plan (exclusive of withdrawal liability claims) are sufficient to meet all obligations of the plan, as determined by the corporation.

29 USC 1106.

"(d) The prohibitions provided in section 406(a) do not apply to any action required or permitted under this part.

"APPROVAL OF AMENDMENTS

"SEC. 4220. (a) Except as provided in subsection (b), if an amendment to a multiemployer plan authorized by any preceding section of this part is adopted more than 36 months after the effective date of this section, the amendment shall be effective only if the corporation approves the amendment, or, within 90 days after the corporation receives notice and a copy of the amendment from the plan sponsor, fails to disapprove the amendment. 29 USC 1400.

"(b) An amendment permitted by section 4211(c)(5) may be adopted only in accordance with that section.

"(c) The corporation shall disapprove an amendment referred to in subsection (a) or (b) only if the corporation determines that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the corporation.

"RESOLUTION OF DISPUTES

"SEC. 4221. (a)(1) Any dispute between an employer and the plan sponsor of a multiemployer plan concerning a determination made under sections 4201 through 4219 shall be resolved through arbitration. Either party may initiate the arbitration proceeding within a 60-day period after the earlier of— 29 USC 1401.

Ante, p. 1217.

"(A) the date of notification to the employer under section 4219(b)(2)(B), or

"(B) 120 days after the date of the employer's request under section 4219(b)(2)(A).

The parties may jointly initiate arbitration within the 180-day period after the date of the plan sponsor's demand under section 4219(b)(1).

"(2) An arbitration proceeding under this section shall be conducted in accordance with fair and equitable procedures to be promulgated by the corporation. The plan sponsor may purchase insurance to cover potential liability of the arbitrator. If the parties have not provided for the costs of the arbitration, including arbitrator's fees, by agreement, the arbitrator shall assess such fees. The arbitrator may also award reasonable attorney's fees. Arbitration, proceedings.

"(3)(A) For purposes of any proceeding under this section, any determination made by a plan sponsor under sections 4201 through 4219 and section 4225 is presumed correct unless the party contesting the determination shows by a preponderance of the evidence that the determination was unreasonable or clearly erroneous.

"(B) In the case of the determination of a plan's unfunded vested benefits for a plan year, the determination is presumed correct unless a party contesting the determination shows by a preponderance of evidence that—

"(i) the actuarial assumptions and methods used in the determination were, in the aggregate, unreasonable (taking into account the experience of the plan and reasonable expectations), or

"(ii) the plan's actuary made a significant error in applying the actuarial assumptions or methods.

"(b)(1) If no arbitration proceeding has been initiated pursuant to subsection (a), the amounts demanded by the plan sponsor under section 4219(b)(1) shall be due and owing on the schedule set forth by the plan sponsor. The plan sponsor may bring an action in a State or Federal court of competent jurisdiction for collection.

"(2) Upon completion of the arbitration proceedings in favor of one of the parties, any party thereto may bring an action, no later than 30

days after the issuance of an arbitrator's award, in an appropriate United States district court in accordance with section 4301 to enforce, vacate, or modify the arbitrator's award.

Post, p. 1263.

"(3) Any arbitration proceedings under this section shall, to the extent consistent with this title, be conducted in the same manner, subject to the same limitations, carried out with the same powers (including subpena power), and enforced in United States courts as an arbitration proceeding carried out under title 9, United States Code.

9 USC 1.

"(c) In any proceeding under subsection (b), there shall be a presumption, rebuttable only by a clear preponderance of the evidence, that the findings of fact made by the arbitrator were correct.

Employer payments.

"(d) Payments shall be made by an employer in accordance with the determinations made under this part until the arbitrator issues a final decision with respect to the determination submitted for arbitration, with any necessary adjustments in subsequent payments for overpayments or underpayments arising out of the decision of the arbitrator with respect to the determination. If the employer fails to make timely payment in accordance with such final decision, the employer shall be treated as being delinquent in the making of a contribution required under the plan (within the meaning of section 515).

Post, p. 1295.

Information request.

"(e) If any employer requests in writing that the plan sponsor make available to the employer general information necessary for the employer to compute its withdrawal liability with respect to the plan (other than information which is unique to that employer), the plan sponsor shall furnish the information to the employer without charge. If any employer requests in writing that the plan sponsor make an estimate of such employer's potential withdrawal liability with respect to the plan or to provide information unique to that employer, the plan sponsor may require the employer to pay the reasonable cost of making such estimate or providing such information.

"REIMBURSEMENTS FOR UNCOLLECTIBLE WITHDRAWAL LIABILITY

Supplemental reimbursement program.

29 USC 1402.

"SEC. 4222. (a) By May 1, 1982, the corporation shall establish by regulation a supplemental program to reimburse multiemployer plans for withdrawal liability payments which are due from employers and which are determined to be uncollectible for reasons arising out of cases or proceedings involving the employers under title 11, United States Code, or similar cases or proceedings. Participation in the supplemental program shall be on a voluntary basis, and a plan which elects coverage under the program shall pay premiums to the corporation in accordance with a premium schedule which shall be prescribed from time to time by the corporation. The premium schedule shall contain such rates and bases for the application of such rates as the corporation considers to be appropriate.

11 USC 101.

"(b) The corporation may provide under the program for reimbursement of amounts of withdrawal liability determined to be uncollectible for any other reasons the corporation considers appropriate.

Cost.

"(c) The cost of the program (including such administrative and legal costs as the corporation considers appropriate) may be paid only out of premiums collected under such program.

"(d) The supplemental program may be offered to eligible plans on such terms and conditions, and with such limitations with respect to the payment of reimbursements (including the exclusion of de minimis amounts of uncollectible employer liability, and the reduction or

elimination of reimbursements which cannot be paid from collected premiums) and such restrictions on withdrawal from the program, as the corporation considers necessary and appropriate.

"(e) The corporation may enter into arrangements with private insurers to carry out in whole or in part the program authorized by this section and may require plans which elect coverage under the program to elect coverage by those private insurers.

"WITHDRAWAL LIABILITY PAYMENT FUND

"SEC. 4223. (a) The plan sponsors of multiemployer plans may establish or participate in a withdrawal liability payment fund. 29 USC 1403.

"(b) For purposes of this section, the term 'withdrawal liability payment fund', and the term 'fund', mean a trust which— Definitions.

"(1) is established and maintained under section 501(c)(22) of the Internal Revenue Code of 1954, *Post*, p. 1290.

"(2) maintains agreements which cover a substantial portion of the participants who are in multiemployer plans which (under the rules of the trust instrument) are eligible to participate in the fund,

"(3) is funded by amounts paid by the plans which participate in the fund, and

"(4) is administered by a Board of Trustees, and in the administration of the fund there is equal representation of—

"(A) trustees representing employers who are obligated to contribute to the plans participating in the fund, and

"(B) trustees representing employees who are participants in plans which participate in the fund.

"(c)(1) If an employer withdraws from a plan which participates in a withdrawal liability payment fund, then, to the extent provided in the trust, the fund shall pay to that plan—

"(A) the employer's unattributable liability,

"(B) the employer's withdrawal liability payments which would have been due but for section 4208, 4209, 4219, or 4225,

"(C) the employer's withdrawal liability payments to the extent they are uncollectible.

"(2) The fund may provide for the payment of the employer's attributable liability if the fund—

"(A) provides for the payment of both the attributable and the unattributable liability of the employer in a single payment, and

"(B) is subrogated to all rights of the plan against the employer.

"(3) For purposes of this section, the term—

"(A) 'attributable liability' means the excess, if any, determined under the provisions of a plan not inconsistent with regulations of the corporation, of— "Attributable liability."

"(i) the value of vested benefits accrued as a result of service with the employer, over

"(ii) the value of plan assets attributed to the employer, and

"(B) 'unattributable liability' means the excess of withdrawal liability over attributable liability. "Unattributable liability."

Such terms may be further defined, and the manner in which they shall be applied may be prescribed, by the corporation by regulation.

"(4)(A) The trust of a fund shall be maintained for the exclusive purpose of paying—

"(i) any amount described in paragraph (1) and paragraph (2), and

"(ii) reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the fund.

"(B) The amounts paid by a plan to a fund shall be deemed a reasonable expense of administering the plan under sections 403(c)(1) and 404(a)(1)(A)(ii), and the payments made by a fund to a participating plan shall be deemed services necessary for the operation of the plan within the meaning of section 408(b)(2) or within the meaning of section 4975(d)(2) of the Internal Revenue Code of 1954.

29 USC 1103, 1104.
29 USC 1108.
26 USC 4975.

"(d)(1) For purposes of this part—

"(A) only amounts paid by the fund to a plan under subsection (c)(1)(A) shall be credited to withdrawal liability otherwise payable by the employer, unless the plan otherwise provides, and

"(B) any amounts paid by the fund under subsection (c) to a plan shall be treated by the plan as a payment of withdrawal liability to such plan.

"(2) For purposes of applying provisions relating to the funding standard accounts (and minimum contribution requirements), amounts paid from the plan to the fund shall be applied to reduce the amount treated as contributed to the plan.

"(e) The fund shall be subrogated to the rights of the plan against the employer that has withdrawn from the plan for amounts paid by a fund to a plan under—

"(1) subsection (c)(1)(A), to the extent not credited under subsection (d)(1)(A), and

"(2) subsection (c)(1)(C).

Fiduciary.

"(f) Notwithstanding any other provision of this Act, a fiduciary of the fund shall discharge the fiduciary's duties with respect to the fund in accordance with the standards for fiduciaries prescribed by this Act (to the extent not inconsistent with the purposes of this section), and in accordance with the documents and instruments governing the fund insofar as such documents and instruments are consistent with the provisions of this Act (to the extent not inconsistent with the purposes of this section). The provisions of the preceding sentence shall supersede any and all State laws relating to fiduciaries insofar as they may now or hereafter relate to a fund to which this section applies.

"(g) No payments shall be made from a fund to a plan on the occasion of a withdrawal or partial withdrawal of an employer from such plan if the employees representing the withdrawn contribution base units continue, after such withdrawal, to be represented under section 9 of the National Labor Relations Act (or other applicable labor laws) in negotiations with such employer by the labor organization which represented such employees immediately preceding such withdrawal.

29 USC 159.

Insurance purchase.

"(h) Nothing in this section shall be construed to prohibit the purchase of insurance by an employer from any other person, to limit the circumstances under which such insurance would be payable, or to limit in any way the terms and conditions of such insurance.

"(i) The corporation may provide by regulation rules not inconsistent with this section governing the establishment and maintenance of funds, but only to the extent necessary to carry out the purposes of this part (other than section 4222).

"ALTERNATIVE METHOD OF WITHDRAWAL LIABILITY PAYMENTS

29 USC 1404.

"SEC. 4224. A multiemployer plan may adopt rules providing for other terms and conditions for the satisfaction of an employer's

withdrawal liability if such rules are consistent with this Act and with such regulations as may be prescribed by the corporation.

"LIMITATION ON WITHDRAWAL LIABILITY

"SEC. 4225. (a)(1) In the case of bona fide sale of all or substantially all of the employer's assets in an arm's-length transaction to an unrelated party (within the meaning of section 4204(d)), the unfunded vested benefits allocable to an employer (after the application of all sections of this part having a lower number designation than this section), other than an employer undergoing reorganization under title 11, United States Code, or similar provisions of State law, shall not exceed the greater of— 29 USC 1405. *Ante*, p. 1220. 11 USC 101.

"(A) a portion (determined under paragraph (2)) of the liquidation or dissolution value of the employer (determined after the sale or exchange of such assets), or

"(B) the unfunded vested benefits attributable to employees of the employer.

"(2) For purposes of paragraph (1), the portion shall be determined in accordance with the following table:

"If the liquidation or dissolution value of the employer after the sale or exchange is—	The portion is—
Not more than $2,000,000	30 percent of the amount.
More than $2,000,000, but not more than $4,000,000.	$600,000, plus 35 percent of the amount in excess of $2,000,000.
More than $4,000,000, but not more than $6,000,000.	$1,300,000, plus 40 percent of the amount in excess of $4,000,000.
More than $6,000,000, but not more than $7,000,000.	$2,100,000, plus 45 percent of the amount in excess of $6,000,000.
More than $7,000,000, but not more than $8,000,000.	$2,550,000, plus 50 percent of the amount in excess of $7,000,000.
More than $8,000,000, but not more than $9,000,000.	$3,050,000, plus 60 percent of the amount in excess of $8,000,000.
More than $9,000,000, but not more than $10,000,000.	$3,650,000, plus 70 percent of the amount in excess of $9,000,000.
More than $10,000,000	$4,350,000, plus 80 percent of the amount in excess of $10,000,000.

"(b) In the case of an insolvent employer undergoing liquidation or dissolution, the unfunded vested benefits allocable to that employer shall not exceed an amount equal to the sum of— Insolvent employer.

"(1) 50 percent of the unfunded vested benefits allocable to the employer (determined without regard to this section), and

"(2) that portion of 50 percent of the unfunded vested benefits allocable to the employer (as determined under paragraph (1)) which does not exceed the liquidation or dissolution value of the employer determined—

"(A) as of the commencement of liquidation or dissolution, and

"(B) after reducing the liquidation or dissolution value of the employer by the amount determined under paragraph (1).

"(c) To the extent that the withdrawal liability of an employer is attributable to his obligation to contribute to or under a plan as an individual (whether as a sole proprietor or as a member of a partnership), property which may be exempt from the estate under section 522 of title 11, United States Code, or under similar provisions of law, shall not be subject to enforcement of such liability.

"(d) For purposes of this section—

Insolvency.

"(1) an employer is insolvent if the liabilities of the employer, including withdrawal liability under the plan (determined without regard to subsection (b)), exceed the assets of the employer (determined as of the commencement of the liquidation or dissolution), and

"(2) the liquidation or dissolution value of the employer shall be determined without regard to such withdrawal liability.

"(e) In the case of one or more withdrawals of an employer attributable to the same sale, liquidation, or dissolution, under regulations prescribed by the corporation—

"(1) all such withdrawals shall be treated as a single withdrawal for the purpose of applying this section, and

"(2) the withdrawal liability of the employer to each plan shall be an amount which bears the same ratio to the present value of the withdrawal liability payments to all plans (after the application of the preceding provisions of this section) as the withdrawal liability of the employer to such plan (determined without regard to this section) bears to the withdrawal liability of the employer to all such plans (determined without regard to this section).

"PART 2—MERGER OR TRANSFER OF PLAN ASSETS OR LIABILITIES

"MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

29 USC 1411.

"SEC. 4231. (a) Unless otherwise provided in regulations prescribed by the corporation, a plan sponsor may not cause a multiemployer plan to merge with one or more multiemployer plans, or engage in a transfer of assets and liabilities to or from another multiemployer plan, unless such merger or transfer satisfies the requirements of subsection (b).

Conditions.

"(b) A merger or transfer satisfies the requirements of this section if—

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

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

"(3) the benefits of participants and beneficiaries are not reasonably expected to be subject to suspension under section 4245; and

"(4) an actuarial valuation of the assets and liabilities of each of the affected plans has been performed during the plan year preceding the effective date of the merger or transfer, based upon the most recent data available as of the day before the start of that plan year, or other valuation of such assets and liabilities performed under such standards and procedures as the corporation may prescribe by regulation.

"(c) The merger of multiemployer plans or the transfer of assets or liabilities between multiemployer plans, shall be deemed not to constitute a violation of the provisions of section 406(a) or section 406(b)(2) if the corporation determines that the merger or transfer otherwise satisfies the requirements of this section.

29 USC 1106.

Successor plan.

"(d) A plan to which liabilities are transferred under this section is a successor plan for purposes of section 4022A(b)(2)(B).

Ante, p. 1210.

"TRANSFERS BETWEEN A MULTIEMPLOYER PLAN AND A SINGLE-EMPLOYER PLAN

"SEC. 4232. (a) A transfer of assets or liabilities between, or a merger of, a multiemployer plan and a single-employer plan shall satisfy the requirements of this section. 29 USC 1412.

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

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

"(A) the amount of the plan asset insufficiency of the terminated single-employer plan, less 30 percent of the net worth of the employer who maintained the single-employer plan, determined in accordance with section 4062 or 4064, or 29 USC 1362, 1364.

"(B) the value, on the effective date of the transfer, of the unfunded benefits transferred to the single-employer plan which are guaranteed under section 4022. 29 USC 1322.

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

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

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

If, after the receipt of such application, the corporation requests from the plan sponsor additional information necessary for the determination, the running of the 180-day period shall be suspended from the date of such request until the receipt by the corporation of the additional information requested. The corporation may by regulation prescribe procedures and standards for the issuance of determinations under this paragraph. This paragraph shall not apply to any application submitted less than 180 days after the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980. Procedures and standards. *Ante*, p. 1208.

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

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

"(d) Benefits under a single-employer plan to which liabilities are transferred in accordance with this section are guaranteed under Guaranteed benefits.

29 USC 1322.

section 4022 to the extent provided in that section as of the effective date of the transfer and the plan is a successor plan.

Transfer agreement.

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

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

Additional requirements.

"(f)(1) The corporation may prescribe by regulation such additional requirements with respect to the transfer of assets or liabilities as may be necessary to protect the interests of plan participants and beneficiaries and the corporation.

Transfer approval.

"(2) Except as otherwise determined by the corporation, a transfer of assets or liabilities to a single-employer plan from a plan in reorganization under section 4241 is not effective unless the corporation approves such transfer.

"(3) No transfer to which this section applies, in connection with a termination described in section 4041A(a)(2) shall be effective unless the transfer meets such requirements as may be established by the corporation to prevent an increase in the risk of loss to the corporation.

Ante, p. 1216.

"PARTITION

29 USC 1413.

"SEC. 4233. (a) The corporation may order the partition of a multiemployer plan in accordance with this section.

Notice and findings.

"(b) A plan sponsor may apply to the corporation for an order partitioning a plan. The corporation may not order the partition of a plan except upon notice to the plan sponsor and the participants and beneficiaries whose vested benefits will be affected by the partition of the plan, and upon finding that—

"(1) a substantial reduction in the amount of aggregate contributions under the plan has resulted or will result from a case or proceeding under title 11, United States Code, with respect to an employer;

11 USC 101.

"(2) the plan is likely to become insolvent;

"(3) contributions will have to be increased significantly in reorganization to meet the minimum contribution requirement and prevent insolvency; and

"(4) partition would significantly reduce the likelihood that the plan will become insolvent.

"(c) The corporation may order the partition of a plan notwithstanding the pendency of a proceeding described in subsection (b)(1).

"(d) The corporation's partition order shall provide for a transfer of no more than the nonforfeitable benefits directly attributable to service with the employer referred to in subsection (b)(1) and an equitable share of assets.

"(e) The plan created by the partition is—

Ante, p. 1210.

"(1) a successor plan to which section 4022A applies, and

"(2) a terminated multiemployer plan to which section 4041A(d) applies, with respect to which only the employer described in subsection (b)(1) has withdrawal liability, and to which section 4068 applies.

29 USC 1368.

29 USC 1342.

"(f) The corporation may proceed under section 4042 (c) through (h) for a decree partitioning a plan and appointing a trustee for the terminated portion of a partitioned plan. The court may order the partition of a plan upon making the findings described in subsection

(b) (1) through (4), and subject to the conditions set forth in subsections (c) through (e).

"ASSET TRANSFER RULES

"SEC. 4234. (a) A transfer of assets from a multiemployer plan to another plan shall comply with asset-transfer rules which shall be adopted by the multiemployer plan and which— 29 USC 1414.

"(1) do not unreasonably restrict the transfer of plan assets in connection with the transfer of plan liabilities, and

"(2) operate and are applied uniformly with respect to each proposed transfer, except that the rules may provide for reasonable variations taking into account the potential financial impact of a proposed transfer on the multiemployer plan.

Plan rules authorizing asset transfers consistent with the requirements of section 4232(c)(3) shall be considered to satisfy the requirements of this subsection.

"(b) The corporation shall prescribe regulations which exempt de minimis transfers of assets from the requirements of this part. Regulations.

"(c) This part shall not apply to transfers of assets pursuant to written reciprocity agreements, except to the extent provided in regulations prescribed by the corporation.

"TRANSFERS PURSUANT TO CHANGE IN BARGAINING REPRESENTATIVE

"SEC. 4235. (a) In any case in which an employer has completely or partially withdrawn from a multiemployer plan (hereafter in this section referred to as the 'old plan') as a result of a certified change of collective bargaining representative occurring after April 28, 1980, if participants of the old plan who are employed by the employer will, as a result of that change, participate in another multiemployer plan (hereafter in this section referred to as the 'new plan'), the old plan shall transfer assets and liabilities to the new plan in accordance with this section. New plan assets and liabilities. 29 USC 1415.

"(b)(1) The employer shall notify the plan sponsor of the old plan of a change in multiemployer plan participation described in subsection (a) no later than 30 days after the employer determines that the change will occur. Notification.

"(2) The plan sponsor of the old plan shall— Plan sponsor, functions.

"(A) notify the employer of—

"(i) the amount of the employer's withdrawal liability determined under part 1 with respect to the withdrawal,

"(ii) the old plan's intent to transfer to the new plan the nonforfeitable benefits of the employees who are no longer working in covered service under the old plan as a result of the change of bargaining representative, and

"(iii) the amount of assets and liabilities which are to be transferred to the new plan, and

"(B) notify the plan sponsor of the new plan of the benefits, assets, and liabilities which will be transferred to the new plan.

"(3) Within 60 days after receipt of the notice described in paragraph (2)(B), the new plan may file an appeal with the corporation to prevent the transfer. The transfer shall not be made if the corporation determines that the new plan would suffer substantial financial harm as a result of the transfer. Upon notification described in paragraph (2), if— Transfer prevention, appeal.

"(A) the employer fails to object to the transfer within 60 days after receipt of the notice described in paragraph (2)(A), or

"(B) the new plan either—

"(i) fails to file such an appeal, or

"(ii) the corporation, pursuant to such an appeal, fails to find that the new plan would suffer substantial financial harm as a result of the transfer described in the notice under paragraph (2)(B) within 180 days after the date on which the appeal is filed,

then the plan sponsor of the old plan shall transfer the appropriate amount of assets and liabilities to the new plan.

Employer's withdrawal liability amount, reduction.
Ante, p. 1217.

"(c) If the plan sponsor of the old plan transfers the appropriate amount of assets and liabilities under this section to the new plan, then the amount of the employer's withdrawal liability (as determined under section 4201(b) without regard to such transfer and this section) with respect to the old plan shall be reduced by the amount by which—

"(1) the value of the unfunded vested benefits allocable to the employer which were transferred by the plan sponsor of the old plan to the new plan, exceeds

"(2) the value of the assets transferred.

"(d) In any case in which there is a complete or partial withdrawal described in subsection (a), if—

"(1) the new plan files an appeal with the corporation under subsection (b)(3), and

"(2) the employer is required by section 4219 to begin making payments of withdrawal liability before the earlier of—

"(A) the date on which the corporation finds that the new plan would not suffer substantial financial harm as a result of the transfer, or

"(B) the last day of the 180-day period beginning on the date on which the new plan files its appeal,

Escrow payments.

then the employer shall make such payments into an escrow held by a bank or similar financial institution satisfactory to the old plan. If the transfer is made, the amounts paid into the escrow shall be returned to the employer. If the transfer is not made, the amounts paid into the escrow shall be paid to the old plan and credited against the employer's withdrawal liability.

"(e)(1) Notwithstanding subsection (b), the plan sponsor shall not transfer any assets to the new plan if—

"(A) the old plan is in reorganization (within the meaning of section 4241(a)), or

"(B) the transfer of assets would cause the old plan to go into reorganization (within the meaning of section 4241(a)).

"(2) In any case in which a transfer of assets from the old plan to the new plan is prohibited by paragraph (1), the plan sponsor of the old plan shall transfer—

"(A) all nonforfeitable benefits described in subsection (b)(2), if the value of such benefits does not exceed the withdrawal liability of the employer with respect to such withdrawal, or

"(B) such nonforfeitable benefits having a value equal to the withdrawal liability of the employer, if the value of such benefits exceeds the withdrawal liability of the employer.

"(f)(1) Notwithstanding subsections (b) and (e), the plan sponsors of the old plan and the new plan may agree to a transfer of assets and liabilities that complies with sections 4231 and 4234, rather than this section, except that the employer's liability with respect to the withdrawal from the old plan shall be reduced under subsection (c) as if assets and liabilities had been transferred in accordance with this section.

"(2) If the employer withdraws from the new plan within 240 months after the effective date of a transfer of assets and liabilities described in this section, the amount of the employer's withdrawal liability to the new plan shall be the greater of—

"(A) the employer's withdrawal liability determined under part 1 with respect to the new plan, or

"(B) the amount by which the employer's withdrawal liability to the old plan was reduced under subsection (c), reduced by 5 percent for each 12-month period following the effective date of the transfer and ending before the date of the withdrawal from the new plan.

"(g) For purposes of this section— Definitions.

"(1) 'appropriate amount of assets' means the amount by which the value of the nonforfeitable benefits to be transferred exceeds the amount of the employer's withdrawal liability to the old plan (determined under part 1 without regard to section 4211(e)), and *Ante*, p. 1226.

"(2) 'certified change of collective bargaining representative' means a change of collective bargaining representative certified under the Labor-Management Relations Act, 1947, or the Railway Labor Act. 29 USC 141. 45 USC 151.

"PART 3—REORGANIZATION; MINIMUM CONTRIBUTION REQUIREMENT FOR MULTIEMPLOYER PLANS

"REORGANIZATION STATUS

"SEC. 4241. (a) A multiemployer plan is in reorganization for a plan year if the plan's reorganization index for that year is greater than zero. 29 USC 1421.

"(b)(1) A plan's reorganization index for any plan year is the excess of— Reorganization index.

"(A) the vested benefits charge for such year, over

"(B) the net charge to the funding standard account for such year.

"(2) For purposes of this part, the net charge to the funding standard account for any plan year is the excess (if any) of— Funding standard account.

"(A) the charges to the funding standard account for such year under section 412(b)(2) of the Internal Revenue Code of 1954, over 26 USC 412.

"(B) the credits to the funding standard account under section 412(b)(3)(B) of such Code.

"(3) For purposes of this part, the vested benefits charge for any plan year is the amount which would be necessary to amortize the plan's unfunded vested benefits as of the end of the base plan year in equal annual installments— Vested benefits charge.

"(A) over 10 years, to the extent such benefits are attributable to persons in pay status, and

"(B) over 25 years, to the extent such benefits are attributable to other participants.

"(4)(A) The vested benefits charge for a plan year shall be based on an actuarial valuation of the plan as of the end of the base plan year, adjusted to reflect— Actuarial valuation.

"(i) any—

"(I) decrease of 5 percent or more in the value of plan assets, or increase of 5 percent or more in the number of persons in pay status, during the period beginning on the first day of the plan year following the base plan year and ending on the adjustment date, or

"(II) at the election of the plan sponsor, actuarial valuation of the plan as of the adjustment date or any later date not later than the last day of the plan year for which the determination is being made,

"(ii) any change in benefits under the plan which is not otherwise taken into account under this subparagraph and which is pursuant to any amendment—

"(I) adopted before the end of the plan year for which the determination is being made, and

"(II) effective after the end of the base plan year and on or before the end of the plan year referred to in subclause (I), and

"(iii) any other event (including an event described in subparagraph (B)(i)(I)) which, as determined in accordance with regulations prescribed by the Secretary, would substantially increase the plan's vested benefit charge.

"(B)(i) In determining the vested benefits charge for a plan year following a plan year in which the plan was not in reorganization, any change in benefits which—

"(I) results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits as a result of changes in a collective bargaining agreement, or

"(II) results from any other change in a collective bargaining agreement,

shall not be taken into account except to the extent provided in regulations prescribed by the Secretary of the Treasury.

"(ii) Except as otherwise determined by the Secretary of the Treasury, in determining the vested benefits charge for any plan year following any plan year in which the plan was in reorganization, any change in benefits—

"(I) described in clause (i)(I), or

"(II) described in clause (i)(II) as determined under regulations prescribed by the Secretary of the Treasury,

shall, for purposes of subparagraph (A)(ii), be treated as a change in benefits pursuant to an amendment to a plan.

Base plan year.

"(5)(A) For purposes of this part, 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.

Relevant collective bargaining agreement.

"(B) For purposes of this part, 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.

Relevant effective date.

"(C) For purposes of this part, the relevant effective date is the earliest of the effective dates for the relevant collective bargaining agreements.

Adjustment date.

"(D) For purposes of this part, the adjustment date is the date which is—

"(i) 90 days before the relevant effective date, or

"(ii) if there is no relevant effective date, 90 days before the beginning of the plan year.

"(6) For purposes of this part, the term 'person in pay status' means— "Person in pay status."

"(A) 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

"(B) 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.

"(7) For purposes of paragraph (3)—

"(A) in determining the plan's unfunded vested benefits, plan assets shall first be allocated to the vested benefits attributable to persons in pay status, and

"(B) the vested benefits charge shall be determined without regard to reductions in accrued benefits under section 4244A which are first effective in the plan year.

"(8) For purposes of this part, any outstanding claim for withdrawal liability shall not be considered a plan asset, except as otherwise provided in regulations prescribed by the Secretary of the Treasury.

"(9) For purposes of this part, the term 'unfunded vested benefits' means with respect to a plan, an amount (determined in accordance with regulations prescribed by the Secretary of the Treasury) equal to— "Unfunded vested benefits."

"(A) the value of nonforfeitable benefits under the plan, less

"(B) the value of assets of the plan.

"(c) Except as provided in regulations prescribed by the corporation, while a plan is in reorganization a benefit with respect to a participant (other than a death benefit) which is attributable to employer contributions and which has a value of more than $1,750 may not be paid in a form other than an annuity which (by itself or in combination with social security, railroad retirement, or workers' compensation benefits) provides substantially level payments over the life of the participant.

"(d) Any multiemployer plan which terminates under section 4041A(a)(2) shall not be considered in reorganization after the last day of the plan year in which the plan is treated as having terminated. *Ante*, p. 1216.

"NOTICE OF REORGANIZATION AND FUNDING REQUIREMENTS

"SEC. 4242. (a)(1) If— 29 USC 1422.

"(A) a multiemployer plan is in reorganization for a plan year, and

"(B) section 4243 would require an increase in contributions for such plan year,

the plan sponsor shall notify the persons described in paragraph (2) that the plan is in reorganization and that, if contributions to the plan are not increased, accrued benefits under the plan may be reduced or an excise tax may be imposed (or both such reduction and imposition may occur).

"(2) The persons described in this paragraph are—

"(A) each employer who has an obligation to contribute under the plan (within the meaning of section 4201(h)(5)), and *Ante*, p. 1217.

"(B) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

"(3) The determination under paragraph (1)(B) shall be made without regard to the overburden credit provided by section 4244.

Additional or alternative requirements.

"(b) The corporation may prescribe additional or alternative requirements for assuring, in the case of a plan with respect to which notice is required by subsection (a)(1), that the persons described in subsection (a)(2)—

"(1) receive appropriate notice that the plan is in reorganization,

"(2) are adequately informed of the implications of reorganization status, and

"(3) have reasonable access to information relevant to the plan's reorganization status.

"MINIMUM CONTRIBUTION REQUIREMENT

29 USC 1423.

"SEC. 4243. (a)(1) For any plan year for which a plan is in reorganization—

"(A) the plan shall continue to maintain its funding standard account while it is in reorganization, and

Accumulated funding deficiency.

"(B) the plan's accumulated funding deficiency under section 302(a) for such plan year shall be equal to the excess (if any) of—

"(i) the sum of the minimum contribution requirement for such plan year (taking into account any overburden credit under section 4244(a)) plus the plan's accumulated funding deficiency for the preceding plan year (determined under this section if the plan was in reorganization during such year or under section 302(a) if the plan was not in reorganization), over

29 USC 1082.

"(ii) amounts considered contributed by employers to or under the plan for the plan year (increased by any amount waived under subsection (f) for the plan year).

Withdrawal liability payments.

"(2) For purposes of paragraph (1), withdrawal liability payments (whether or not received) which are due with respect to withdrawals before the end of the base plan year shall be considered amounts contributed by the employer to or under the plan if, as of the adjustment date, it was reasonable for the plan sponsor to anticipate that such payments would be made during the plan year.

"(b)(1) Except as otherwise provided in this section, for purposes of this part the minimum contribution requirement for a plan year in which a plan is in reorganization is an amount equal to the excess of—

"(A) the sum of—

"(i) the plan's vested benefits charge for the plan year, and

"(ii) the increase in normal cost for the plan year determined under the entry age normal funding method which is attributable to plan amendments adopted while the plan was in reorganization, over

"(B) the amount of the overburden credit (if any) determined under section 4244 for the plan year.

"(2) If the plan's current contribution base for the plan year is less than the plan's valuation contribution base for the plan year, the minimum contribution requirement for such plan year shall be equal to the product of the amount determined under paragraph (1) (after any adjustment required by this part other than this paragraph) and a fraction—

"(A) the numerator of which is the plan's current contribution base for the plan year, and

"(B) the denominator of which is the plan's valuation contribution base for the plan year.

"(3)(A) If the vested benefits charge for a plan year of a plan in reorganization is less than the plan's cash-flow amount for the plan year, the plan's minimum contribution requirement for the plan year is the amount determined under paragraph (1) (determined before the application of paragraph (2)) after substituting the term 'cash-flow amount' for the term 'vested benefits charge' in paragraph (1)(A).

Cash-flow amount.

"(B) For purposes of subparagraph (A), a plan's cash-flow amount for a plan year is an amount equal to—

"(i) the amount of the benefits payable under the plan for the base plan year, plus the amount of the plan's administrative expenses for the base plan year, reduced by

"(ii) the value of the available plan assets for the base plan year determined under regulations prescribed by the Secretary of the Treasury,

adjusted in a manner consistent with section 4241(b)(4).

Current contribution base.

"(c)(1) For purposes of this part, a plan's current contribution base for a plan year is the number of contribution base units with respect to which contributions are required to be made under the plan for that plan year, determined in accordance with regulations prescribed by the Secretary of the Treasury.

Valuation countribution base.

"(2)(A) Except as provided in subparagraph (B), for purposes of this part a plan's valuation contribution base is the number of contribution base units for which contributions were received for the base plan year—

"(i) adjusted to reflect declines in the contribution base which have occurred (or could reasonably be anticipated) as of the adjustment date for the plan year referred to in paragraph (1),

"(ii) adjusted upward (in accordance with regulations prescribed by the Secretary of the Treasury) for any contribution base reduction in the base plan year caused by a strike or lockout or by unusual events, such as fire, earthquake, or severe weather conditions, and

"(iii) adjusted (in accordance with regulations prescribed by the Secretary of the Treasury) for reductions in the contribution base resulting from transfers of liabilities.

"(B) For any plan year—

"(i) in which the plan is insolvent (within the meaning of section 4245(b)(1)), and

"(ii) beginning with the first plan year beginning after the expiration of all relevant collective bargaining agreements which were in effect in the plan year in which the plan became insolvent,

the plan's valuation contribution base is the greater of the number of contribution base units for which contributions were received for the first or second plan year preceding the first plan year in which the plan is insolvent, adjusted as provided in clause (ii) or (iii) of subparagraph (A).

"(d)(1) Under regulations prescribed by the Secretary of the Treasury, the minimum contribution requirement applicable to any plan for any plan year which is determined under subsection (b) (without regard to subsection (b)(2)) shall not exceed an amount which is equal to the sum of—

"(A) the greater of—

"(i) the funding standard requirement for such plan year, or

"(ii) 107 percent of—

"(I) if the plan was not in reorganization in the preceding plan year, the funding standard requirement for such preceding plan year, or

"(II) if the plan was in reorganization in the preceding plan year, the sum of the amount determined under this subparagraph for the preceding plan year and the amount (if any) determined under subparagraph (B) for the preceding plan year, plus

"(B) if for the plan year a change in benefits is first required to be considered in computing the charges under section 412(b)(2) (A) or (B) of the Internal Revenue Code of 1954, the sum of—

26 USC 412.

"(i) the increase in normal cost for a plan year determined under the entry age normal funding method due to increases in benefits described in section 4241(b)(4)(A)(ii) (determined without regard to section 4241(b)(4)(B)(i)), and

"(ii) the amount necessary to amortize in equal annual installments the increase in the value of vested benefits under the plan due to increases in benefits described in clause (i) over—

"(I) 10 years, to the extent such increase in value is attributable to persons in pay status, or

"(II) 25 years, to the extent such increase in value is attributable to other participants.

Funding standard requirement.

"(2) For purposes of paragraph (1), the funding standard requirement for any plan year is an amount equal to the net charge to the funding standard account for such plan year (as defined in section 4241(b)(2)).

Ante, p. 1234.

"(3)(A) In the case of a plan described in section 4216(b), if a plan amendment which increases benefits is adopted after January 1, 1980—

"(i) paragraph (1) shall apply only if the plan is a plan described in subparagraph (B), and

"(ii) the amount under paragraph (1) shall be determined without regard to paragraph (1)(B).

"(B) A plan is described in this subparagraph if—

"(i) the rate of employer contributions under the plan for the first plan year beginning on or after the date on which an amendment increasing benefits is adopted, multiplied by the valuation contribution base for that plan year, equals or exceeds the sum of—

"(I) the amount that would be necessary to amortize fully, in equal annual installments, by July 1, 1986, the unfunded vested benefits attributable to plan provisions in effect on July 1, 1977 (determined as of the last day of the base plan year); and

"(II) the amount that would be necessary to amortize fully, in equal annual installments, over the period described in subparagraph (C), beginning with the first day of the first plan year beginning on or after the date on which the amendment is adopted, the unfunded vested benefits (determined as of the last day of the base plan year) attributable to each plan amendment after July 1, 1977; and

"(ii) the rate of employer contributions for each subsequent plan year is not less than the lesser of—

"(I) the rate which when multiplied by the valuation contribution base for that subsequent plan year produces the

annual amount that would be necessary to complete the amortization schedule described in clause (i), or

"(II) the rate for the plan year immediately preceding such subsequent plan year, plus 5 percent of such rate.

"(C) The period determined under this subparagraph is the lesser of—

"(i) 12 years, or

"(ii) a period equal in length to the average of the remaining expected lives of all persons receiving benefits under the plan.

"(4) Paragraph (1) shall not apply with respect to a plan, other than a plan described in paragraph (3), for the period of consecutive plan years in each of which the plan is in reorganization, beginning with a plan year in which occurs the earlier of the date of the adoption or the effective date of any amendment of the plan which increases benefits with respect to service performed before the plan year in which the adoption of the amendment occurred.

"(e) In determining the minimum contribution requirement with respect to a plan for a plan year under subsection (b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under section 412(c)(8) of the Internal Revenue Code of 1954. 26 USC 412.

"(f)(1) The Secretary of the Treasury may waive any accumulated funding deficiency under this section in accordance with the provisions of section 303(a). 29 USC 1083.

"(2) Any waiver under paragraph (1) shall not be treated as a waived funding deficiency (within the meaning of section 303(c)).

"(g) For purposes of making any determination under this part, the requirements of section 302(c)(3) shall apply. 29 USC 1082.

"OVERBURDEN CREDIT AGAINST MINIMUM CONTRIBUTION REQUIREMENT

"SEC. 4244. (a) For purposes of determining the minimum contribution requirement under section 4243 (before the application of section 4243 (b)(2) or (d)) the plan sponsor of a plan which is overburdened for the plan year shall apply an overburden credit against the plan's minimum contribution requirement for the plan year (determined without regard to section 4243 (b)(2) or (d) and without regard to this section). 29 USC 1424.

"(b) A plan is overburdened for a plan year if—

"(1) the average number of pay status participants under the plan in the base plan year exceeds the average of the number of active participants in the base plan year and the 2 plan years preceding the base plan year, and

"(2) the rate of employer contributions under the plan equals or exceeds the greater of—

"(A) such rate for the preceding plan year, or

"(B) such rate for the plan year preceding the first year in which the plan is in reorganization.

"(c) The amount of the overburden credit for a plan year is the product of— Amount, determination factors.

"(1) one-half of the average guaranteed benefit paid for the base plan year, and

"(2) the overburden factor for the plan year.

The amount of the overburden credit for a plan year shall not exceed the amount of the minimum contribution requirement for such year (determined without regard to this section).

"(d) For purposes of this section, the overburden factor of a plan for the plan year is an amount equal to—

"(1) the average number of pay status participants for the base plan year, reduced by

"(2) the average of the number of active participants for the base plan year and for each of the 2 plan years preceding the base plan year.

"(e) For purposes of this section—

"Pay status participant."

"(1) The term 'pay status participant' means, with respect to a plan, a participant receiving retirement benefits under the plan.

Active participants, numerical determination.

"(2) The number of active participants for a plan year shall be the sum of—

"(A) the number of active employees who are participants in the plan and on whose behalf contributions are required to be made during the plan year;

"(B) the number of active employees who are not participants in the plan but who are in an employment unit covered by a collective bargaining agreement which requires the employees' employer to contribute to the plan, unless service in such employment unit was never covered under the plan or a predecessor thereof, and

"(C) the total number of active employees attributed to employers who made payments to the plan for the plan year of withdrawal liability pursuant to part 1, determined by dividing—

"(i) the total amount of such payments, by

"(ii) the amount equal to the total contributions received by the plan during the plan year divided by the average number of active employees who were participants in the plan during the plan year.

Alternate methods.

The Secretary of the Treasury shall by regulation provide alternative methods of determining active participants where (by reason of irregular employment, contributions on a unit basis, or otherwise) this paragraph does not yield a representative basis for determining the credit.

"Average number."

"(3) The term 'average number' means, with respect to pay status participants for a plan year, a number equal to one-half the sum of—

"(A) the number with respect to the plan as of the beginning of the plan year, and

"(B) the number with respect to the plan as of the end of the plan year.

Average guaranteed benefit.

"(4) The average guaranteed benefit paid is 12 times the average monthly pension payment guaranteed under section 4022A(c)(1) determined under the provisions of the plan in effect at the beginning of the first plan year in which the plan is in reorganization and without regard to section 4022A(c)(2).

Ante, p. 1210.

"(5) The first year in which the plan is in reorganization is the first of a period of 1 or more consecutive plan years in which the plan has been in reorganization not taking into account any plan years the plan was in reorganization prior to any period of 3 or more consecutive plan years in which the plan was not in reorganization.

"(f)(1) Notwithstanding any other provision of this section, a plan is not eligible for an overburden credit for a plan year if the Secretary of the Treasury finds that the plan's current contribution base for the plan year was reduced, without a corresponding reduction in the plan's unfunded vested benefits attributable to pay status partici-

pants, as a result of a change in an agreement providing for employer contributions under the plan.

"(2) For purposes of paragraph (1), a complete or partial withdrawal of an employer (within the meaning of part 1) does not impair a plan's eligibility for an overburden credit, unless the Secretary of the Treasury finds that a contribution base reduction described in paragraph (1) resulted from a transfer of liabilities to another plan in connection with the withdrawal.

"(g) Notwithstanding any other provision of this section, if 2 or more multiemployer plans merge, the amount of the overburden credit which may be applied under this section with respect to the plan resulting from the merger for any of the 3 plan years ending after the effective date of the merger shall not exceed the sum of the used overburden credit for each of the merging plans for its last plan year ending before the effective date of the merger. For purposes of the preceding sentence, the used overburden credit is that portion of the credit which does not exceed the excess of the minimum contribution requirement (determined without regard to any overburden requirement under this section) over the employer contributions required under the plan.

Used overburden credit.

"ADJUSTMENTS IN ACCRUED BENEFITS

"SEC. 4244A. (a)(1) Notwithstanding sections 203 and 204, a multiemployer plan in reorganization may be amended in accordance with this section, to reduce or eliminate accrued benefits attributable to employer contributions which, under section 4022A(b), are not eligible for the corporation's guarantee. The preceding sentence shall only apply to accrued benefits under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980.

29 USC 1425.
29 USC 1053, 1054.

"(2) In determining the minimum contribution requirement with respect to a plan for a plan year under section 4243(b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under this section or section 412(c)(8) of the Internal Revenue Code of 1954, but only if the amendment is adopted and effective no later than 2½ months after the end of the plan year, or within such extended period as the Secretary of the Treasury may prescribe by regulation under section 412(c)(10) of such Code.

26 USC 412.

"(b)(1) Accrued benefits may not be reduced under this section unless—

Reduction conditions.

"(A) notice has been given, at least 6 months before the first day of the plan year in which the amendment reducing benefits is adopted, to—

"(i) plan participants and beneficiaries,

"(ii) each employer who has an obligation to contribute (within the meaning of section 4212(a)) under the plan, and

Ante, p. 1233.

"(iii) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer,

that the plan is in reorganization and that, if contributions under the plan are not increased, accrued benefits under the plan will be reduced or an excise tax will be imposed on employers;

"(B) in accordance with regulations prescribed by the Secretary of the Treasury—

"(i) any category of accrued benefits is not reduced with respect to inactive participants to a greater extent propor-

tionally than such category of accrued benefits is reduced with respect to active participants,

"(ii) benefits attributable to employer contributions other than accrued benefits and the rate of future benefit accruals are reduced at least to an extent equal to the reduction in accrued benefits of inactive participants, and

"(iii) in any case in which the accrued benefit of a participant or beneficiary is reduced by changing the benefit form or the requirements which the participant or beneficiary must satisfy to be entitled to the benefit, such reduction is not applicable to—

"(I) any participant or beneficiary in pay status on the effective date of the amendment, or the beneficiary of such a participant, or

"(II) any participant who has attained normal retirement age, or who is within 5 years of attaining normal retirement age, on the effective date of the amendment, or the beneficiary of any such participant; and

"(C) the rate of employer contributions for the plan year in which the amendment becomes effective and for all succeeding plan years in which the plan is in reorganization equals or exceeds the greater of—

"(i) the rate of employer contributions, calculated without regard to the amendment, for the plan year in which the amendment becomes effective, or

"(ii) the rate of employer contributions for the plan year preceding the plan year in which the amendment becomes effective.

"(2) The plan sponsors shall include in any notice required to be sent to plan participants and beneficiaries under paragraph (1) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

"(c) A plan may not recoup a benefit payment which is in excess of the amount payable under the plan because of an amendment retroactively reducing accrued benefits under this section.

Amended plans.

"(d)(1)(A) A plan which has been amended to reduce accrued benefits under this section may be amended to increase or restore accrued benefits, or the rate of future benefit accruals, only if the plan is amended to restore levels of previously reduced accrued benefits of inactive participants and of participants who are within 5 years of attaining normal retirement age to at least the same extent as any such increase in accrued benefits or in the rate of future benefit accruals.

"(B) For purposes of this subsection, in the case of a plan which has been amended under this section to reduce accrued benefits—

"(i) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit increase to the extent that the benefit, or the accrual rate, is thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan before the effective date of the amendment reducing accrued benefits, and

"(ii) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit restoration to the extent that the benefit, or the accrual rate, is not thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan immediately before the effective date of the amendment reducing accrued benefits.

"(2) If a plan is amended to partially restore previously reduced accrued benefit levels, or the rate of future benefit accruals, the benefits of inactive participants shall be restored in at least the same proportions as other accrued benefits which are restored.

"(3) No benefit increase under a plan may take effect in a plan year in which an amendment reducing accrued benefits under the plan, in accordance with this section, is adopted or first becomes effective.

"(4) A plan is not required to make retroactive benefit payments with respect to that portion of an accrued benefit which was reduced and subsequently restored under this section.

"(e) For purposes of this section, 'inactive participant' means a person not in covered service under the plan who is in pay status under the plan or who has a nonforfeitable benefit under the plan. "Inactive participant."

"(f) The Secretary of the Treasury may prescribe rules under which, notwithstanding any other provision of this section, accrued benefit reductions or benefit increases for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors reflecting differences in negotiated levels of financial support for plan benefit obligations.

"INSOLVENT PLANS

"SEC. 4245. (a) Notwithstanding sections 203 and 204, 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 4022A(g)(5). Non-basic benefits, payment suspension. 29 USC 1426. 29 USC 1053, 1054. *Ante*, p. 1210.

"(b) For purposes of this section, for a plan year— Definitions.

"(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 subsections (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 4261(b)(2); and

"(4) 'insolvency year' means a plan year in which a plan is insolvent.

"(c)(1) The plan sponsor of a plan in reorganization 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. Resource benefit level.

"(2) 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 (within the meaning of section 4241(b)(6)) 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 contribu- Benefit payments, suspension.

tion rates and other relevant factors including differences in negotiated levels of financial support for plan benefit obligations.

Benefit payments, suspension.

"(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.

Excess resources, distribution.

"(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.

"Excess resources."

"(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)(1) As of the end of the first plan year in which a plan is in reorganization, and at least every 3 plan years thereafter (unless the plan is no longer in reorganization), the plan sponsor shall compare the value of plan assets (determined in accordance with section 4243(b)(3)(B)(ii)) 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 3 plan years.

"(2) If, at any time, the plan sponsor of a plan in reorganization 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.

Benefit levels.

"(3) The plan sponsor of a plan in reorganization 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.

Reorganization plan sponsor, duties.

"(e)(1) If the plan sponsor of a plan in reorganization 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, the corporation, the parties described in section 4242(a)(2), and the plan participants and beneficiaries of that determination, and

"(B) inform the parties described in section 4242(a)(2) and the plan participants and beneficiaries 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 reorganization 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.

Financial assistance.

"(f)(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 4261.

Infra.

"(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 4261.

"PART 4—FINANCIAL ASSISTANCE

"FINANCIAL ASSISTANCE

29 USC 1431.
Infra.

"SEC. 4261. (a) If, upon receipt of an application for financial assistance under section 4245(f) or section 4281(d), 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)(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) 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.

"PART 5—BENEFITS AFTER TERMINATION

"BENEFITS UNDER CERTAIN TERMINATED PLANS

Payment reduction and suspension.
29 USC 1441.
29 USC 1053, 1054.

"SEC. 4281. (a) Notwithstanding sections 203 and 204, the plan sponsor of a terminated multiemployer plan to which section 4041A(d) applies shall amend the plan to reduce benefits, and shall suspend benefit payments, as required by this section.

"(b)(1) The value of nonforfeitable benefits under a terminated plan referred to in subsection (a), and the value of the plan's assets, shall be determined in writing, in accordance with regulations prescribed by the corporation, as of the end of the plan year during which section 4041A(d) becomes applicable to the plan, and each plan year thereafter.

Ante, p. 1216.

Plan assets.

"(2) For purposes of this section, plan assets include outstanding claims for withdrawal liability (within the meaning of section 4001(a)(12)).

Post, p. 1296.

"(c)(1) If, according to the determination made under subsection (b), the value of nonforfeitable benefits exceeds the value of the plan's assets, the plan sponsor shall amend the plan to reduce benefits under the plan to the extent necessary to ensure that the plan's assets are sufficient, as determined and certified in accordance with regulations prescribed by the corporation, to discharge when due all of the plan's obligations with respect to nonforfeitable benefits.

"(2) Any plan amendment required by this subsection shall, in accordance with regulations prescribed by the Secretary of the Treasury—

"(A) reduce benefits only to the extent necessary to comply with paragraph (1);

"(B) reduce accrued benefits only to the extent that those benefits are not eligible for the corporation's guarantee under section 4022A(b);

Ante, p. 1210.

"(C) comply with the rules for and limitations on benefit reductions under a plan in reorganization, as prescribed in section 4244A, except to the extent that the corporation prescribes other rules and limitations in regulations under this section; and

"(D) take effect no later than 6 months after the end of the plan year for which it is determined that the value of nonforfeitable benefits exceeds the value of the plan's assets.

"(d)(1) In any case in which benefit payments under a plan which is insolvent under paragraph (2)(A) exceed the resource benefit level, any such payments which are not basic benefits shall be suspended, in accordance with this subsection, to the extent necessary to reduce the sum of such payments and 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 in connection with a supplemental guarantee program established under section 4022A(g)(2).

Ante, p. 1210.

Insolvent plan.

"(2) For purposes of this subsection, for a plan year—

"(A) a plan is insolvent if—

"(i) the plan has been amended to reduce benefits to the extent permitted by subsection (c), and

"(ii) the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year; and

"(B) 'resource benefit level' and 'available resources' have the meanings set forth in paragraphs (2) and (3), respectively, of section 4245(b).

"(3) The plan sponsor of a plan which is insolvent (within the meaning of paragraph (2)(A)) shall have the powers and duties of the plan sponsor of a plan in reorganization which is insolvent (within the meaning of section 4245(b)(1)), except that regulations governing the plan sponsor's exercise of those powers and duties under this section shall be prescribed by the corporation, and the corporation shall prescribe by regulation notice requirements which assure that plan participants and beneficiaries receive adequate notice of benefit suspensions.

"(4) A plan is not required to make retroactive benefit payments with respect to that portion of a benefit which was suspended under this subsection, except that the provisions of section 4245(c) (4) and (5) shall apply in the case of plans which are insolvent under paragraph (2)(A), in connection with the plan year during which such section

4041A(d) first became applicable to the plan and every year thereafter, in the same manner and to the same extent as such provisions apply to insolvent plans in reorganization under section 4245, in connection with insolvency years under such section 4245.

Ante, p. 1216.

"PART 6—ENFORCEMENT

"CIVIL ACTIONS

"SEC. 4301. (a)(1) A plan fiduciary, employer, plan participant, or beneficiary, who is adversely affected by the act or omission of any party under this subtitle with respect to a multiemployer plan, or an employee organization which represents such a plan participant or beneficiary for purposes of collective bargaining, may bring an action for appropriate legal or equitable relief, or both.

29 USC 1451.

"(2) Notwithstanding paragraph (1), this section does not authorize an action against the Secretary of the Treasury, the Secretary of Labor, or the corporation.

"(b) In any action under this section to compel an employer to pay withdrawal liability, any failure of the employer to make any withdrawal liability payment within the time prescribed shall be treated in the same manner as a delinquent contribution (within the meaning of section 515).

Withdrawal liability payment.

Post, p. 1295.

"(c) The district courts of the United States shall have exclusive jurisdiction of an action under this section without regard to the amount in controversy, except that State courts of competent jurisdiction shall have concurrent jurisdiction over an action brought by a plan fiduciary to collect withdrawal liability.

Concurrent jurisdiction.

"(d) An action under this section may be brought in the district where the plan is administered or where a defendant resides or does business, and process may be served in any district where a defendant resides, does business, or may be found.

"(e) In any action under this section, the court may award all or a portion of the costs and expenses incurred in connection with such action, including reasonable attorney's fees, to the prevailing party.

Costs and expenses.

"(f) An action under this section may not be brought after the later of—

"(1) 6 years after the date on which the cause of action arose, or

"(2) 3 years after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action; except that in the case of fraud or concealment, such action may be brought not later than 6 years after the date of discovery of the existence of such cause of action.

"(g) A copy of the complaint in any action under this section or section 4221 shall be served upon the corporation by certified mail. The corporation may intervene in any such action.

Ante, p. 1239.

"PENALTY FOR FAILURE TO PROVIDE NOTICE

"SEC. 4302. Any person who fails, without reasonable cause, to provide a notice required under this subtitle or any implementing regulations shall be liable to the corporation in an amount up to $100 for each day for which such failure continues. The corporation may bring a civil action against any such person in the United States District Court for the District of Columbia or in any district court of the United States within the jurisdiction of which the plan assets are located, the plan is administered, or a defendant resides or does

29 USC 1452.

Civil action.

business, and process may be served in any district where a defendant resides, does business, or may be found.".

SEC. 105. PREMIUMS.

Rates and bases, schedules.
29 USC 1306.

(a) Section 4006(a) is amended to read as follows:

"(a)(1) The corporation shall prescribe such schedules of premium rates and bases for the application of those rates as may be necessary to provide sufficient revenue to the fund for the corporation to carry out its functions under this title. The premium rates charged by the corporation for any period shall be uniform for all plans, other than multiemployer plans, insured by the corporation with respect to basic benefits guaranteed by it under section 4022, and shall be uniform for all multiemployer plans with respect to basic benefits guaranteed by it under section 4022A. In establishing annual premiums with respect to plans, other than multiemployer plans, paragraphs (5) and (6) of this subsection (as in effect before the enactment of the Multiemployer Pension Plan Amendments Act of 1980) shall continue to apply.

29 USC 1322.

Ante, p. 1210.

Ante, p. 1208.

Separate schedules.

"(2) The corporation shall maintain separate schedules of premium rates, and bases for the application of those rates, for—

"(A) basic benefits guaranteed by it under section 4022 for single-employer plans,

"(B) basic benefits guaranteed by it under section 4022A for multiemployer plans,

"(C) nonbasic benefits guaranteed by it under section 4022 for single-employer plans,

"(D) nonbasic benefits guaranteed by it under section 4022A for multiemployer plans, and

"(E) reimbursements of uncollectible withdrawal liability under section 4222.

Ante, p. 1240.

Revised schedules.

The corporation may revise such schedules whenever it determines that revised schedules are necessary. Except as provided in section 4022A(f), in order to place a revised schedule described in subparagraph (A) or (B) in effect, the corporation shall proceed in accordance with subsection (b)(1), and such schedule shall apply only to plan years beginning more than 30 days after the date on which the Congress approves such revised schedule by a concurrent resolution.

Annual rates payable to Pension Benefit Guaranty Corporation.

"(3)(A) Except as provided in subparagraph (C), the annual premium rate payable to the corporation by all plans for basic benefits guaranteed under this title is—

"(i) in the case of a single-employer plan, for plan years beginning after December 31, 1977, an amount equal to $2.60 for each individual who is a participant in such plan during the plan year;

"(ii) in the case of a multiemployer plan, for the plan year within which the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980 falls, an amount for each individual who is a participant in such plan for such plan year equal to the sum of—

"(I) 50 cents, multiplied by a fraction the numerator of which is the number of months in such year ending on or before such date and the denominator of which is 12, and

"(II) $1.00, multiplied by a fraction equal to 1 minus the fraction determined under clause (i),

"(iii) in the case of a multiemployer plan, for plan years beginning after the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980, an amount equal to—

"(I) $1.40 for each participant, for the first, second, third, and fourth plan years,

"(II) $1.80 for each participant, for the fifth and sixth plan years,

"(III) $2.20 for each participant, for the seventh and eighth plan years, and

"(IV) $2.60 for each participant, for the ninth plan year, and for each succeeding plan year.

"(B) The corporation may prescribe by regulation the extent to which the rate described in subparagraph (A)(i) applies more than once for any plan year to an individual participating in more than one plan maintained by the same employer, and the corporation may prescribe regulations under which the rate described in subparagraph (A)(iii) will not apply to the same participant in any multiemployer plan more than once for any plan year.

"(C)(i) If the sum of—

"(I) the amounts in any fund for basic benefits guaranteed for multiemployer plans, and

"(II) the value of any assets held by the corporation for payment of basic benefits guaranteed for multiemployer plans,

is for any calendar year less than 2 times the amount of basic benefits guaranteed by the corporation under this title for multiemployer plans which were paid out of any such fund or assets during the preceding calendar year, the annual premium rates under subparagraph (A) shall be increased to the next highest premium level necessary to insure that such sum will be at least 2 times greater than such amount during the following calendar year.

"(ii) If the board of directors of the corporation determines that an increase in the premium rates under subparagraph (A) is necessary to provide assistance to plans which are receiving assistance under section 4261 and to plans the board finds are reasonably likely to require such assistance, the board may order such increase in the premium rates.

"(iii) The maximum annual premium rate which may be established under this subparagraph is $2.60 for each participant.

"(iv) The provisions of this subparagraph shall not apply if the annual premium rate is increased to a level in excess of $2.60 per participant under any other provisions of this title.

"(D)(i) Not later than 120 days before the date on which an increase under subparagraph (C)(ii) is to become effective, the corporation shall publish in the Federal Register a notice of the determination described in subparagraph (C)(ii), the basis for the determination, the amount of the increase in the premium, and the anticipated increase in premium income that would result from the increase in the premium rate. The notice shall invite public comment, and shall provide for a public hearing if one is requested. Any such hearing shall be commenced not later than 60 days before the date on which the increase is to become effective.

Publication in Federal Register.

Hearing.

"(ii) The board of directors shall review the hearing record established under clause (i) and shall, not later than 30 days before the date on which the increase is to become effective, determine (after consideration of the comments received) whether the amount of the increase should be changed and shall publish its determination in the Federal Register.

Publication in Federal Register.

"(4) The corporation may prescribe, subject to approval by the Congress in accordance with this section or section 4022A(f), alternative schedules of premium rates, and bases for the application of those rates, for basic benefits guaranteed by it under sections 4022

Ante, p. 1210.

29 USC 1322.

Ante, p. 1210.

and 4022A based, in whole or in part, on the risks insured by the corporation in each plan.

"(5)(A) In carrying out its authority under paragraph (1) to establish schedules of premium rates, and bases for the application of those rates, for nonbasic benefits guaranteed under sections 4022 and 4022A, the premium rates charged by the corporation for any period for nonbasic benefits guaranteed shall—

29 USC 1322.

"(i) be uniform by category of nonbasic benefits guaranteed,

"(ii) be based on the risks insured in each category, and

"(iii) reflect the experience of the corporation (including experience which may be reasonably anticipated) in guaranteeing such benefits.

"(B) Notwithstanding subparagraph (A), premium rates charged to any multiemployer plan by the corporation for any period for supplemental guarantees under section 4022A(g)(2) may reflect any reasonable considerations which the corporation determines to be appropriate.".

29 USC 1306.

(b) Section 4006(b) is amended—

(1) by striking out "Committee on Labor and Public Welfare" each place it appears and inserting in lieu thereof "Committee on Labor and Human Resources";

(2) in paragraph (1)—

(A) by striking out "coverage"; and

(B) by striking out "(B) or (C)" and inserting in lieu thereof "(C), (D), or (E)"; and

(3) in paragraph (3), by striking out "coverage".

(c) Section 4006 is further amended by adding at the end thereof the following new subsection:

"(c)(1) Except as provided in subsection (a)(3), and subject to paragraph (2), the rate for all plans for basic benefits guaranteed under this title with respect to plan years ending after September 2, 1974, is—

"(A) in the case of each plan which was not a multiemployer plan in a plan year, an amount equal to $1 for each individual who was a participant in such plan during the plan year, and

"(B) in the case of each plan which was a multiemployer plan in a plan year, an amount equal to 50 cents for each individual who was a participant in such plan during the plan year.

"(2) The rate applicable under this subsection for the plan year preceding September 1, 1975, is the product of—

"(A) the rate described in the preceding sentence; and

"(B) a fraction—

"(i) the numerator of which is the number of calendar months in the plan year which ends after September 2, 1974, and before the date on which the new plan year commences, and

"(ii) the denominator of which is 12.".

SEC. 106. ANNUAL REPORT OF PLAN ADMINISTRATOR.

29 USC 1365.

Section 4065 is amended—

(1) in paragraph (1), by striking out "and";

(2) in paragraph (2), by striking out the period and inserting in lieu thereof "except to the extent the corporation waives such requirement, and"; and

(3) by adding after paragraph (2) the following new paragraph:

"(3) in the case of a multiemployer plan, information with respect to such plan which the corporation determines is neces-

sary for the enforcement of subtitle E and requires by regulation, which may include— *Ante*, p. 1217.

"(A) a statement certified by the plan's enrolled actuary of—

"(i) the value of all vested benefits under the plan as of the end of the plan year, and

"(ii) the value of the plan's assets as of the end of the plan year;

"(B) a statement certified by the plan sponsor of each claim for outstanding withdrawal liability (within the meaning of section 4001(a)(12)) and its value as of the end of that plan year and as of the end of the preceding plan year; and *Post*, p. 1296.

"(C) the number of employers having an obligation to contribute to the plan and the number of employers required to make withdrawal liability payments.".

SEC. 107. CONTINGENT EMPLOYER LIABILITY INSURANCE.

Section 4023 (as in effect immediately before the date of the enactment of this Act) is repealed. Repeal. 29 USC 1323.

SEC. 108. TRANSITION RULES AND EFFECTIVE DATES.

(a) Sections 4081 and 4082 are redesignated as sections 4401 and 4402, respectively. 26 USC 404, 6511; 29 USC 1461.

(b) Section 4402 (as redesignated) is amended by striking out subsection (d) and inserting in lieu thereof the following new subsection: 29 USC 1461.

"(d) Notwithstanding any other provision of this title, guaranteed benefits payable by the corporation pursuant to its discretionary authority under this section shall continue to be paid at the level guaranteed under section 4022, without regard to any limitation on payment under subparagraph (C) or (D) of subsection (c)(4).". 29 USC 1322.

(c)(1) Section 4402 (as redesignated) is further amended by striking out subsection (e) and adding in lieu thereof the following new subsections:

"(e)(1) Except as provided in paragraphs (2), (3), and (4), the amendments to this Act made by the Multiemployer Pension Plan Amendments Act of 1980 shall take effect on the date of the enactment of that Act. *Ante*, p. 1208.

"(2)(A) Except as provided in this paragraph, part 1 of subtitle E, relating to withdrawal liability, takes effect on April 29, 1980. *Ante*, p. 1217.

"(B) For purposes of determining withdrawal liability under part 1 of subtitle E, an employer who has withdrawn from a plan shall be considered to have withdrawn from a multiemployer plan if, at the time of the withdrawal, the plan was a multiemployer plan as defined in section 4001(a)(3) as in effect at the time of the withdrawal. *Post*, p. 1296.

"(3) Sections 4241 through 4245, relating to multiemployer plan reorganization, shall take effect, with respect to each plan, on the first day of the first plan year beginning on or after the earlier of— *Ante*, p. 1249.

"(A) the date on which the last collective bargaining agreement providing for employer contributions under the plan, which was in effect on the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, expires, without regard to extensions agreed to on or after the date of the enactment of that Act, or

"(B) 3 years after the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980.

"(4) Section 4235 shall take effect on April 29, 1980. Effective date. *Ante*, p. 1247.

"(f)(1) In the event that before the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980, the corporation has determined that—

Ante, p. 1208.

"(A) an employer has withdrawn from a multiemployer plan under section 4063, and

"(B) the employer is liable to the corporation under such section,

the corporation shall retain the amount of liability paid to it or furnished in the form of a bond and shall pay such liability to the plan in the event the plan terminates in accordance with section 4041A(a)(2) before the earlier of April 29, 1985, or the day after the 5-year period commencing on the date of such withdrawal.

Ante, p. 1216.

"(2) In any case in which the plan is not so terminated within the period described in paragraph (1), the liability of the employer is abated and any payment held in escrow shall be refunded without interest to the employer or the employer's bond shall be cancelled.

"(g)(1) In any case in which an employer or employers withdrew from a multiemployer plan before the effective date of part 1 of subtitle E, the corporation may—

Ante, p. 1217.

"(A) apply section 4063(d), as in effect before the amendments made by the Multiemployer Pension Plan Amendments Act of 1980, to such plan,

"(B) assess liability against the withdrawn employer with respect to the resulting terminated plan,

"(C) guarantee benefits under the terminated plan under section 4022, as in effect before such amendments, and

29 USC 1322.

"(D) if necessary, enforce such action through suit brought under section 4003.

29 USC 1303.

"(2) The corporation shall use the revolving fund used by the corporation with respect to basic benefits guaranteed under section 4022A in guaranteeing benefits under a terminated plan described in this subsection.".

Ante, p. 1210.

(2)(A) For the purpose of applying section 4205 of the Employee Retirement Income Security Act of 1974 in the case of an employer described in subparagraph (B)—

29 USC 1385 note.

Ante, p. 1221.

(i) "more than 75 percent" shall be substituted for "70 percent" in subsections (a) and (b) of such section,

(ii) "25 percent or less" shall be substituted for "30 percent" in subsection (b) of such section, and

(iii) the number of contribution units for the high base year shall be the average annual number of such units for calendar years 1970 and 1971.

(B) An employer is described in this subparagraph if—

(i) the employer is engaged in the trade or business of shipping bulk cargoes in the Great Lakes Maritime Industry, and whose fleet consists of vessels the gross registered tonnage of which was at least 7,800, as stated in the American Bureau of Shipping Record, and

(ii) whose fleet during any 5 years from the period 1970 through and including 1979 has experienced a 33 percent or more increase in the contribution units as measured from the average annual contribution units for the calendar years 1970 and 1971.

29 USC 1426 note.

(3)(A) For the purpose of determining the withdrawal liability of an employer under title IV of the Employee Retirement Income Security Act of 1974 from a plan that terminates while the plan is insolvent (within the meaning of section 4245 of such Act), 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

29 USC 1301.

Ante, p. 1259.

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, if section 4243 of the Employee Retirement Income Security Act of 1974 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.

(4) In the case of an employer who withdrew before the date of enactment of this Act from a multiemployer plan covering employees in the seagoing industry (as determined by the corporation), sections 4201 through 4219 of the Employee Retirement Income Security Act of 1974, as added by this Act, are effective as of May 3, 1979. For the purpose of applying section 4217 for purposes of the preceding sentence, the date "May 2, 1979," shall be substituted for "April 28, 1980," and the date "May 3, 1979" shall be substituted for "April 29, 1980". For purposes of this paragraph, terms which are used in title IV of the Employee Retirement Income Security Act of 1974, or in regulations prescribed under that title, and which are used in the preceding sentence have the same meaning as when used in that Act or those regulations. For purposes of this paragraph, the term "employer" includes only a substantial employer covering employees in the seagoing industry (as so determined) in connection with ports on the West Coast of the United States, but does not include an employer who withdrew from a plan because of a change in the collective bargaining representative.

29 USC 1381 note.

Ante, p. 1217.

Ante, p. 1235.

29 USC 1301.

(d) For purposes of section 4205 of the Employee Retirement Income Security Act of 1974—

29 USC 1385 note.

Ante, p. 1221.

(1) subsection (a)(1) of such section shall not apply to any plan year beginning before April 29, 1982,

(2) subsection (a)(2) of such section shall not apply with respect to any cessation of contribution obligations occurring before April 29, 1980, and

(3) in applying subsection (b) of such section, the employer's contribution base units for any plan year ending before April 29, 1980, shall be deemed to be equal to the employer's contribution base units for the last plan year ending before such date.

(e)(1) In the case of a partial withdrawal under section 4205 of the Employee Retirement Income Security Act of 1974, an employer who—

29 USC 1385 note.

(A) before December 13, 1979, had publicly announced the total cessation of covered operations at a facility in a State (and such cessation occurred within 12 months after the announcement),

(B) had not been obligated to make contributions to the plan on behalf of the employees at such facility for more than 8 years before the discontinuance of contributions, and

(C) after the discontinuance of contributions does not within 1 year after the date of the partial withdrawal perform work in the same State of the type for which contributions were previously required,

shall be liable under such section with respect to such partial withdrawal in an amount not greater than the amount determined under paragraph (2).

(2) The amount determined under this paragraph is the excess (if any) of—

(A) the present value (on the withdrawal date) of the benefits under the plan which—

(i) were vested on the withdrawal date (or, if earlier, at the time of separation from service with the employer at the facility),

(ii) were accrued by employees who on December 13, 1979 (or, if earlier, at the time of separation from service with the employer at the facility), were employed at the facility, and

(iii) are attributable to service with the withdrawing employer, over

(B)(i) the sum of—

(I) all employer contributions to the plan on behalf of employees at the facility before the withdrawal date,

(II) interest (to the withdrawal date) on amounts described in subclause (I), and

(III) $100,000, reduced by

(ii) the sum of—

(I) the benefits paid under the plan on or before the withdrawal date with respect to former employees who separated from employment at the facility, and

(II) interest (to the withdrawal date) on amounts described in subclause (I).

(3) For purposes of paragraph (2)—

(A) actuarial assumptions shall be those used in the last actuarial report completed before December 13, 1979,

"Withdrawal date." (B) the term "withdrawal date" means the date on which the employer ceased work at the facility of the type for which contributions were previously required, and

"Facility." (C) the term "facility" means the facility referred to in paragraph (1).

Ante, p. 1263. (f) Title IV is amended by adding at the end thereof the following new section:

"ELECTION OF PLAN STATUS

29 USC 1453. *Ante*, p. 1208. "SEC. 4303. (a) Within one year after the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, a multiemployer plan may irrevocably elect, pursuant to procedures established by the corporation, that the plan shall not be treated as a multiemployer plan for any purpose under this Act or the Internal Revenue Code of 1954, if for each of the last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980—

26 USC 1.

Post, p. 1291. *Post*, p. 1288. "(1) the plan was not a multiemployer plan because the plan was not a plan described in section 3(37)(A)(iii) of this Act and section 414(f)(1)(C) of the Internal Revenue Code of 1954 (as such provisions were in effect on the day before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980); and

"(2) the plan had been identified as a plan that was not a multiemployer plan in substantially all its filings with the corporation, the Secretary of Labor and the Secretary of the Treasury.

Conditions. "(b) An election described in subsection (a) shall be effective only if—

"(1) the plan is amended to provide that it shall not be treated as a multiemployer plan for all purposes under this Act and the Internal Revenue Code of 1954, and

"(2) written notice of the amendment is provided to the corporation within 60 days after the amendment is adopted.

"(c) An election described in subsection (a) shall be treated as being effective as of the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980." *Ante*, p. 1208.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1954

SEC. 201. AMENDMENT OF THE INTERNAL REVENUE CODE OF 1954.

Except as otherwise expressly provided, whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference is to a section or other provision of the Internal Revenue Code of 1954. 26 USC 1.

SEC. 202. MULTIEMPLOYER PLANS IN REORGANIZATION.

(a) GENERAL RULE.—Part I of subchapter D of chapter 1 (relating to pension, profit sharing, stock bonus plans, etc.) is amended by inserting at the end thereof the following new subpart:

"Subpart C—Special Rules for Multiemployer Plans

"SEC. 418. REORGANIZATION STATUS. 26 USC 418.

"(a) GENERAL RULE.—A multiemployer plan is in reorganization for a plan year if the plan's reorganization index for that year is greater than zero.

"(b) REORGANIZATION INDEX.—For purposes of this subpart—

"(1) IN GENERAL.—A plan's reorganization index for any plan year is the excess of—

"(A) the vested benefits charge for such year, over

"(B) the net charge to the funding standard account for such year.

"(2) NET CHARGE TO FUNDING STANDARD ACCOUNT.—The net charge to the funding standard account for any plan year is the excess (if any) of—

"(A) the charges to the funding standard account for such year under section 412(b)(2), over 26 USC 412.

"(B) the credits to the funding standard account under section 412(b)(3)(B).

"(3) VESTED BENEFITS CHARGE.—The vested benefits charge for any plan year is the amount which would be necessary to amortize the plan's unfunded vested benefits as of the end of the base plan year in equal annual installments—

"(A) over 10 years, to the extent such benefits are attributable to persons in pay status, and

"(B) over 25 years, to the extent such benefits are attributable to other participants.

"(4) DETERMINATION OF VESTED BENEFITS CHARGE.—

"(A) IN GENERAL.—The vested benefits charge for a plan year shall be based on an actuarial valuation of the plan as of the end of the base plan year, adjusted to reflect—

"(i) any—

"(I) decrease of 5 percent or more in the value of plan assets, or increase of 5 percent or more in the number of persons in pay status, during the period beginning on the first day of the plan year following the base plan year and ending on the adjustment date, or

"(II) at the election of the plan sponsor, actuarial valuation of the plan as of the adjustment date or any later date not later than the last day of the plan year for which the determination is being made,

"(ii) any change in benefits under the plan which is not otherwise taken into account under this subparagraph and which is pursuant to any amendment—

"(I) adopted before the end of the plan year for which the determination is being made, and

"(II) effective after the end of the base plan year and on or before the end of the plan year referred to in subclause (I), and

"(iii) any other event (including an event described in subparagraph (B)(i)(I)) which, as determined in accordance with regulations prescribed by the Secretary, would substantially increase the plan's vested benefit charge.

"(B) CERTAIN CHANGES IN BENEFIT LEVELS.—

"(i) IN GENERAL.—In determining the vested benefits charge for a plan year following a plan year in which the plan was not in reorganization, any change in benefits which—

"(I) results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits as a result of changes in a collective bargaining agreement, or

"(II) results from any other change in a collective bargaining agreement,

shall not be taken into account except to the extent provided in regulations prescribed by the Secretary.

"(ii) PLAN IN REORGANIZATION.—Except as otherwise determined by the Secretary, in determining the vested benefits charge for any plan year following any plan year in which the plan was in reorganization, any change in benefits—

"(I) described in clause (i)(I), or

"(II) described in clause (i)(II) as determined under regulations prescribed by the Secretary,

shall, for purposes of subparagraph (A)(ii), be treated as a change in benefits pursuant to an amendment to a plan.

"(5) BASE PLAN YEAR.—

"(A) IN GENERAL.—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.

"(B) RELEVANT COLLECTIVE BARGAINING AGREEMENT.—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.

"(C) RELEVANT EFFECTIVE DATE.—The relevant effective date is the earliest of the effective dates for the relevant collective bargaining agreements.

"(D) ADJUSTMENT DATE.—The adjustment date is the date which is—

"(i) 90 days before the relevant effective date, or

"(ii) if there is no relevant effective date, 90 days before the beginning of the plan year.

"(6) PERSON IN PAY STATUS.—The term 'person in pay status' means—

"(A) 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

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

"(7) OTHER DEFINITIONS AND SPECIAL RULES.—

"(A) UNFUNDED VESTED BENEFITS.—The term 'unfunded vested benefits' means, in connection with a plan, an amount (determined in accordance with regulations prescribed by the Secretary) equal to—

"(i) the value of vested benefits under the plan, less

"(ii) the value of the assets of the plan.

"(B) VESTED BENEFITS.—The term 'vested benefits' means any nonforfeitable benefit (within the meaning of section 4001(a)(8) of the Employee Retirement Income Security Act of 1974).

"(C) ALLOCATION OF ASSETS.—In determining the plan's unfunded vested benefits, plan assets shall first be allocated to the vested benefits attributable to persons in pay status.

"(D) TREATMENT OF CERTAIN BENEFIT REDUCTIONS.—The vested benefits charge shall be determined without regard to reductions in accrued benefits under section 418D which are first effective in the plan year.

"(E) WITHDRAWAL LIABILITY.—For purposes of this part, any outstanding claim for withdrawal liability shall not be considered a plan asset, except as otherwise provided in regulations prescribed by the Secretary.

"(c) PROHIBITION OF NONANNUITY PAYMENTS.—Except as provided in regulations prescribed by the Pension Benefit Guaranty Corporation, while a plan is in reorganization a benefit with respect to a participant (other than a death benefit) which is attributable to employer contributions and which has a value of more than $1,750 may not be paid in a form other than an annuity which (by itself or in combination with social security, railroad retirement, or workers' compensation benefits) provides substantially level payments over the life of the participant.

"(d) TERMINATED PLANS.—Any multiemployer plan which terminates under section 4041A(a)(2) of the Employee Retirement Income Security Act of 1974 shall not be considered in reorganization after

Ante, p. 1216.

the last day of the plan year in which the plan is treated as having terminated.

26 USC 418A.

"SEC. 418A. NOTICE OF REORGANIZATION AND FUNDING REQUIREMENTS.

"(a) NOTICE REQUIREMENT.—

"(1) IN GENERAL.—If—

"(A) a multiemployer plan is in reorganization for a plan year, and

Infra.

"(B) section 418B would require an increase in contributions for such plan year,

the plan sponsor shall notify the persons described in paragraph (2) that the plan is in reorganization and that, if contributions to the plan are not increased, accrued benefits under the plan may be reduced or an excise tax may be imposed (or both such reduction and imposition may occur).

"(2) PERSONS TO WHOM NOTICE IS TO BE GIVEN.—The persons described in this paragraph are—

"(A) each employer who has an obligation to contribute under the plan (within the meaning of section 4212(a) of the

Ante, p. 1233.

Employee Retirement Income Security Act of 1974), and

"(B) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

"(3) OVERBURDEN CREDIT NOT TAKEN INTO ACCOUNT.—The determination under paragraph (1)(B) shall be made without regard to the overburden credit provided by section 418C.

"(b) ADDITIONAL REQUIREMENTS.—The Pension Benefit Guaranty Corporation may prescribe additional or alternative requirements for assuring, in the case of a plan with respect to which notice is required by subsection (a)(1), that the persons described in subsection (a)(2)—

"(1) receive appropriate notice that the plan is in reorganization,

"(2) are adequately informed of the implications of reorganization status, and

"(3) have reasonable access to information relevant to the plan's reorganization status.

26 USC 418B.

"SEC. 418B. MINIMUM CONTRIBUTION REQUIREMENT.

"(a) ACCUMULATED FUNDING DEFICIENCY IN REORGANIZATION.—

"(1) IN GENERAL.—For any plan year in which a multiemployer plan is in reorganization—

"(A) the plan shall continue to maintain its funding standard account, and

"(B) the plan's accumulated funding deficiency under

26 USC 412.

section 412(a) for such plan year shall be equal to the excess (if any) of—

"(i) the sum of the minimum contribution requirement for such plan year (taking into account any overburden credit under section 418C(a)) plus the plan's accumulated funding deficiency for the preceding plan year (determined under this section if the plan was in reorganization during such plan year or under section 412(a) if the plan was not in reorganization), over

"(ii) amounts considered contributed by employers to or under the plan for the plan year (increased by any amount waived under subsection (f) for the plan year).

"(2) TREATMENT OF WITHDRAWAL LIABILITY PAYMENTS.—For purposes of paragraph (1), withdrawal liability payments

(whether or not received) which are due with respect to withdrawals before the end of the base plan year shall be considered amounts contributed by the employer to or under the plan if, as of the adjustment date, it was reasonable for the plan sponsor to anticipate that such payments would be made during the plan year.

"(b) MINIMUM CONTRIBUTION REQUIREMENT.—

"(1) IN GENERAL.—Except as otherwise provided in this section for purposes of this subpart the minimum contribution requirement for a plan year in which a plan is in reorganization is an amount equal to the excess of—

"(A) the sum of—

"(i) the plan's vested benefits charge for the plan year; and

"(ii) the increase in normal cost for the plan year determined under the entry age normal funding method which is attributable to plan amendments adopted while the plan was in reorganization, over

"(B) the amount of the overburden credit (if any) determined under section 418C for the plan year.

"(2) ADJUSTMENT FOR REDUCTIONS IN CONTRIBUTION BASE UNITS.—If the plan's current contribution base for the plan year is less than the plan's valuation contribution base for the plan year, the minimum contribution requirement for such plan year shall be equal to the product of the amount determined under paragraph (1) (after any adjustment required by this subpart other than this paragraph) multiplied by a fraction—

"(A) the numerator of which is the plan's current contribution base for the plan year, and

"(B) the denominator of which is the plan's valuation contribution base for the plan year.

"(3) SPECIAL RULE WHERE CASH-FLOW AMOUNT EXCEEDS VESTED BENEFITS CHARGE.—

"(A) IN GENERAL.—If the vested benefits charge for a plan year of a plan in reorganization is less than the plan's cash-flow amount for the plan year, the plan's minimum contribution requirement for the plan year is the amount determined under paragraph (1) (determined before the application of paragraph (2)) after substituting the term 'cash-flow amount' for the term 'vested benefits charge' in paragraph (1)(A).

"(B) CASH-FLOW AMOUNT.—For purposes of subparagraph (A), a plan's cash-flow amount for a plan year is an amount equal to—

"(i) the amount of the benefits payable under the plan for the base plan year, plus the amount of the plan's administrative expenses for the base plan year, reduced by

"(ii) the value of the available plan assets for the base plan year determined under regulations prescribed by the Secretary,

adjusted in a manner consistent with section 418(b)(4).

"(c) CURRENT CONTRIBUTION BASE; VALUATION CONTRIBUTION BASE.—

"(1) CURRENT CONTRIBUTION BASE.—For purposes of this subpart, a plan's current contribution base for a plan year is the number of contribution base units with respect to which contributions are required to be made under the plan for that plan

year, determined in accordance with regulations prescribed by the Secretary.

"(2) VALUATION CONTRIBUTION BASE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), for purposes of this subpart a plan's valuation contribution base is the number of contribution base units for which contributions were received for the base plan year—

"(i) adjusted to reflect declines in the contribution base which have occurred (or could reasonably be anticipated) as of the adjustment date for the plan year referred to in paragraph (1),

"(ii) adjusted upward (in accordance with regulations prescribed by the Secretary) for any contribution base reduction in the base plan year caused by a strike or lockout or by unusual events, such as fire, earthquake, or severe weather conditions, and

"(iii) adjusted (in accordance with regulations prescribed by the Secretary) for reductions in the contribution base resulting from transfers of liabilities.

"(B) INSOLVENT PLANS.—For any plan year—

"(i) in which the plan is insolvent (within the meaning of section 418E(b)(1)), and

"(ii) beginning with the first plan year beginning after the expiration of all relevant collective bargaining agreements which were in effect in the plan year in which the plan became insolvent,

the plan's valuation contribution base is the greater of the number of contribution base units for which contributions were received for the first or second plan year preceding the first plan year in which the plan is insolvent, adjusted as provided in clause (ii) or (iii) of subparagraph (A).

"(3) CONTRIBUTION BASE UNIT.—For purposes of this subpart, the term 'contribution base unit' means a unit with respect to which an employer has an obligation to contribute under a multiemployer plan (as defined in regulations prescribed by the Secretary).

"(d) LIMITATION ON REQUIRED INCREASES IN RATE OF EMPLOYER CONTRIBUTIONS.—

"(1) IN GENERAL.—Under regulations prescribed by the Secretary, the minimum contribution requirement applicable to any plan for any plan year which is determined under subsection (b) (without regard to subsection (b)(2)) shall not exceed an amount which is equal to the sum of—

"(A) the greater of—

"(i) the funding standard requirement for such plan year, or

"(ii) 107 percent of—

"(I) if the plan was not in reorganization in the preceding plan year, the funding standard requirement for such preceding plan year, or

"(II) if the plan was in reorganization in the preceding plan year, the sum of the amount determined under this subparagraph for the preceding plan year and the amount (if any) determined under subparagraph (B) for the preceding plan year, plus

"(B) if for the plan year a change in benefits is first required to be considered in computing the charges under section 412(b)(2) (A) or (B), the sum of—

26 USC 412.

"(i) the increase in normal cost for a plan year determined under the entry age normal funding method due to increases in benefits described in section 418(b)(4)(A)(ii) (determined without regard to section 418(b)(4)(B)(ii)), and

"(ii) the amount necessary to amortize in equal annual installments the increase in the value of vested benefits under the plan due to increases in benefits described in clause (i) over—

"(I) 10 years, to the extent such increase in value is attributable to persons in pay status, or

"(II) 25 years, to the extent such increase in value is attributable to other participants.

"(2) FUNDING STANDARD REQUIREMENT.—For purposes of paragraph (1), the funding standard requirement for any plan year is an amount equal to the net charge to the funding standard account for such plan year (as defined in section 418(b)(2)).

"(3) SPECIAL RULE FOR CERTAIN PLANS.—

"(A) IN GENERAL.—In the case of a plan described in section 4216(b) of the Employee Retirement Income Security Act of 1974, if a plan amendment which increases benefits is adopted after January 1, 1980— *Ante*, p. 1234.

"(i) paragraph (1) shall apply only if the plan is a plan described in subparagraph (B), and

"(ii) the amount under paragraph (1) shall be determined without regard to subparagraph (1)(B).

"(B) ELIGIBLE PLANS.—A plan is described in this subparagraph if—

"(i) the rate of employer contributions under the plan for the first plan year beginning on or after the date on which an amendment increasing benefits is adopted, multiplied by the valuation contribution base for that plan year, equals or exceeds the sum of—

"(I) the amount that would be necessary to amortize fully, in equal annual installments, by July 1, 1986, the unfunded vested benefits attributable to plan provisions in effect on July 1, 1977 (determined as of the last day of the base plan year); and

"(II) the amount that would be necessary to amortize fully, in equal annual installments, over the period described in subparagraph (C), beginning with the first day of the first plan year beginning on or after the date on which the amendment is adopted, the unfunded vested benefits (determined as of the last day of the base plan year) attributable to each plan amendment after July 1, 1977; and

"(ii) the rate of employer contributions for each subsequent plan year is not less than the lesser of—

"(I) the rate which when multiplied by the valuation contribution base for that subsequent plan year produces the annual amount that would be necessary to complete the amortization schedule described in clause (i), or

"(II) the rate for the plan year immediately preceding such subsequent plan year, plus 5 percent of such rate.

"(C) PERIOD.—The period determined under this subparagraph is the lesser of—

"(i) 12 years, or

"(ii) a period equal in length to the average of the remaining expected lives of all persons receiving benefits under the plan.

"(4) EXCEPTION IN CASE OF CERTAIN BENEFIT INCREASES.—Paragraph (1) shall not apply with respect to a plan, other than a plan described in paragraph (3), for the period of consecutive plan years in each of which the plan is in reorganization, beginning with a plan year in which occurs the earlier of the date of the adoption or the effective date of any amendment of the plan which increases benefits with respect to service performed before the plan year in which the adoption of the amendment occurred.

"(e) CERTAIN RETROACTIVE PLAN AMENDMENTS.—In determining the minimum contribution requirement with respect to a plan for a plan year under subsection (b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under section 412(c)(8).

26 USC 412.

"(f) WAIVER OF ACCUMULATED FUNDING DEFICIENCY.—

"(1) IN GENERAL.—The Secretary may waive any accumulated funding deficiency under this section in accordance with the provisions of section 412(d)(1).

"(2) TREATMENT OF WAIVER.—Any waiver under paragraph (1) shall not be treated as a waived funding deficiency (within the meaning of section 412(d)(3)).

"(g) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of making any determination under this subpart, the requirements of section 412(c)(3) shall apply.

26 USC 418C.

"SEC. 418C. OVERBURDEN CREDIT AGAINST MINIMUM CONTRIBUTION REQUIREMENT.

"(a) GENERAL RULE.—For purposes of determining the contribution under section 418B (before the application of section 418B (b)(2) or (d)), the plan sponsor of a plan which is overburdened for the plan year shall apply an overburden credit against the plan's minimum contribution requirement for the plan year (determined without regard to section 418B (b)(2) or (d) and without regard to this section).

"(b) DEFINITION OF OVERBURDENED PLAN.—A plan is overburdened for a plan year if—

"(1) the average number of pay status participants under the plan in the base plan year exceeds the average of the number of active participants in the base plan year and the 2 plan years preceding the base plan year, and

"(2) the rate of employer contributions under the plan equals or exceeds the greater of—

"(A) such rate for the preceding plan year, or

"(B) such rate for the plan year preceding the first year in which the plan is in reorganization.

"(c) AMOUNT OF OVERBURDEN CREDIT.—The amount of the overburden credit for a plan year is the product of—

"(1) one-half of the average guaranteed benefit paid for the base plan year, and

"(2) the overburden factor for the plan year.

The amount of the overburden credit for a plan year shall not exceed the amount of the minimum contribution requirement for such year (determined without regard to this section).

"(d) OVERBURDEN FACTOR.—For purposes of this section, the overburden factor of a plan for the plan year is an amount equal to—

"(1) the average number of pay status participants for the base plan year, reduced by

"(2) the average of the number of active participants for the base plan year and for each of the 2 plan years preceding the base plan year.

"(e) DEFINITIONS.—For purposes of this section—

"(1) PAY STATUS PARTICIPANT.—The term 'pay status participant' means, with respect to a plan, a participant receiving retirement benefits under the plan.

"(2) NUMBER OF ACTIVE PARTICIPANTS.—The number of active participants for a plan year shall be the sum of—

"(A) the number of active employees who are participants in the plan and on whose behalf contributions are required to be made during the plan year;

"(B) the number of active employees who are not participants in the plan but who are in an employment unit covered by a collective bargaining agreement which requires the employees' employer to contribute to the plan unless service in such employment unit was never covered under the plan or a predecessor thereof, and

"(C) the total number of active employees attributed to employers who made payments to the plan for the plan year of withdrawal liability pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974, determined by dividing— *Ante*, p. 1217.

"(i) the total amount of such payments, by

"(ii) the amount equal to the total contributions received by the plan during the plan year divided by the average number of active employees who were participants in the plan during the plan year.

The Secretary shall by regulations provide alternative methods of determining active participants where (by reason of irregular employment, contributions on a unit basis, or otherwise) this paragraph does not yield a representative basis for determining the credit.

"(3) AVERAGE NUMBER.—The term 'average number' means, with respect to pay status participants for a plan year, a number equal to one-half the sum of—

"(A) the number with respect to the plan as of the beginning of the plan year, and

"(B) the number with respect to the plan as of the end of the plan year.

"(4) AVERAGE GUARANTEED BENEFIT.—The average guaranteed benefit paid is 12 times the average monthly pension payment guaranteed under section 4022A(c)(1) of the Employee Retirement Income Security Act of 1974 determined under the provisions of the plan in effect at the beginning of the first plan year in which the plan is in reorganization and without regard to section 4022A(c)(2). *Ante*, p. 1210.

"(5) FIRST YEAR IN REORGANIZATION.—The first year in which the plan is in reorganization is the first of a period of 1 or more consecutive plan years in which the plan has been in reorganization not taking into account any plan years the plan was in reorganization prior to any period of 3 or more consecutive plan years in which the plan was not in reorganization.

"(f) NO OVERBURDEN CREDIT IN CASE OF CERTAIN REDUCTIONS IN CONTRIBUTIONS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this section, a plan is not eligible for an overburden credit for a plan year if the Secretary finds that the plan's current contribution base for any plan year was reduced, without a corresponding reduction in the plan's unfunded vested benefits attributable to pay status participants, as a result of a change in an agreement providing for employer contributions under the plan.

"(2) TREATMENT OF CERTAIN WITHDRAWALS.—For purposes of paragraph (1), a complete or partial withdrawal of an employer (within the meaning of part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974) does not impair a plan's eligibility for an overburden credit, unless the Secretary finds that a contribution base reduction described in paragraph (1) resulted from a transfer of liabilities to another plan in connection with the withdrawal.

Ante, p. 1217.

"(g) MERGERS.—Notwithstanding any other provision of this section, if 2 or more multiemployer plans merge, the amount of the overburden credit which may be applied under this section with respect to the plan resulting from the merger for any of the 3 plan years ending after the effective date of the merger shall not exceed the sum of the used overburden credit for each of the merging plans for its last plan year ending before the effective date of the merger. For purposes of the preceding sentence, the used overburden credit is that portion of the credit which does not exceed the excess of the minimum contribution requirement determined without regard to any overburden credit under this section over the employer contributions required under the plan.

26 USC 418D.

"SEC. 418D. ADJUSTMENTS IN ACCRUED BENEFITS.

"(a) ADJUSTMENTS IN ACCRUED BENEFITS.—

26 USC 411.

"(1) IN GENERAL.—Notwithstanding section 411, a multiemployer plan in reorganization may be amended, in accordance with this section, to reduce or eliminate accrued benefits attributable to employer contributions which, under section 4022A(b) of the Employee Retirement Income Security Act of 1974, are not eligible for the Pension Benefit Guaranty Corporation's guarantee. The preceding sentence shall only apply to accrued benefits under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreement entered into after March 26, 1980.

Ante, p. 1210.

"(2) ADJUSTMENT OF VESTED BENEFITS CHARGE.—In determining the minimum contribution requirement with respect to a plan for a plan year under section 418B(b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under this section or section 412(c)(8), but only if the amendment is adopted and effective no later than 2½ months after the end of the plan year, or within such extended period as the Secretary may prescribe by regulations under section 412(c)(10).

Ante, p. 1274.

26 USC 412.

"(b) LIMITATION ON REDUCTION.—

"(1) IN GENERAL.—Accrued benefits may not be reduced under this section unless—

"(A) notice has been given, at least 6 months before the first day of the plan year in which the amendment reducing benefits is adopted, to—

"(i) plan participants and beneficiaries,

"(ii) each employer who has an obligation to contribute (within the meaning of section 4212(a) of the Em-

ployee Retirement Income Security Act of 1974) under the plan, and *Ante*, p. 1233.

"(iii) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer,

that the plan is in reorganization and that, if contributions under the plan are not increased, accrued benefits under the plan will be reduced or an excise tax will be imposed on employers;

"(B) in accordance with regulations prescribed by the Secretary—

"(i) any category of accrued benefits is not reduced with respect to inactive participants to a greater extent proportionally that such category of accrued benefits is reduced with respect to active participants,

"(ii) benefits attributable to employer contributions other than accrued benefits and the rate of future benefit accruals are reduced at least to an extent equal to the reduction in accrued benefits of inactive participants, and

"(iii) in any case in which the accrued benefit of a participant or beneficiary is reduced by changing the benefit form or the requirements which the participant or beneficiary must satisfy to be entitled to the benefit, such reduction is not applicable to—

"(I) any participant or beneficiary in pay status on the effective date of the amendment, or the beneficiary of such a participant, or

"(II) any participant who has attained normal retirement age, or who is within 5 years of attaining normal retirement age, on the effective date of the amendment, or the beneficiary of any such participant; and

"(C) the rate of employer contributions for the plan year in which the amendment becomes effective and for all succeeding plan years in which the plan is in reorganization equals or exceeds the greater of—

"(i) the rate of employer contributions, calculated without regard to the amendment, for the plan year in which the amendment becomes effective, or

"(ii) the rate of employer contributions for the plan year preceding the plan year in which the amendment becomes effective.

"(2) INFORMATION REQUIRED TO BE INCLUDED IN NOTICE.—The plan sponsors shall include in any notice required to be sent to plan participants and beneficiaries under paragraph (1) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

"(c) NO RECOUPMENT.—A plan may not recoup a benefit payment which is in excess of the amount payable under the plan because of an amendment retroactively reducing accrued benefits under this section.

"(d) BENEFIT INCREASES UNDER MULTIEMPLOYER PLAN IN REORGANIZATION.—

"(1) RESTORATION OF PREVIOUSLY REDUCED BENEFITS.—

"(A) IN GENERAL.—A plan which has been amended to reduce accrued benefits under this section may be amended

to increase or restore accrued benefits, or the rate of future benefit accruals, only if the plan is amended to restore levels of previously reduced accrued benefits of inactive participants and of participants who are within 5 years of attaining normal retirement age to at least the same extent as any such increase in accrued benefits or in the rate of future benefit accruals.

"(B) BENEFIT INCREASES AND BENEFIT RESTORATIONS.—For purposes of this subsection, in the case of a plan which has been amended under this section to reduce accrued benefits—

"(i) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit increase to the extent that the benefit, or the accrual rate, is thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan before the effective date of the amendment reducing accrued benefits, and

"(ii) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit restoration to the extent that the benefit, or the accrual rate, is not thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan immediately before the effective date of the amendment reducing accrued benefits.

"(2) UNIFORMITY IN BENEFIT RESTORATION.—If a plan is amended to partially restore previously reduced accrued benefit levels, or the rate of future benefit accruals, the benefits of inactive participants shall be restored in at least the same proportions as other accrued benefits which are restored.

"(3) NO BENEFIT INCREASES IN YEAR OF BENEFIT REDUCTION.—No benefit increase under a plan may take effect in a plan year in which an amendment reducing accrued benefits under the plan, in accordance with this section, is adopted or first becomes effective.

"(4) RETROACTIVE PAYMENTS.—A plan is not required to make retroactive benefit payments with respect to that portion of an accrued benefit which was reduced and subsequently restored under this section.

"(e) INACTIVE PARTICIPANT.—For purposes of this section, the term 'inactive participant' means a person not in covered service under the plan who is in pay status under the plan or who has a nonforfeitable benefit under the plan.

"(f) REGULATIONS.—The Secretary may prescribe rules under which, notwithstanding any other provision of this section, accrued benefit reductions or benefit increases for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors reflecting differences in negotiated levels of financial support for plan benefit obligations.

26 USC 418E.

"SEC. 418E. INSOLVENT PLANS.

"(a) SUSPENSION OF CERTAIN BENEFIT PAYMENTS.—Notwithstanding section 411, 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

26 USC 411.

basic benefits, unless an alternative procedure is prescribed by the Pension Benefit Guaranty Corporation under section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974. *Ante*, p. 1210.

"(b) DEFINITIONS.—For purposes of this section, for a plan year—

"(1) INSOLVENCY.—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.—The term 'resource benefit level' means the level of monthly benefits determined under subsections (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.—The term '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 Pension Benefit Guaranty Corporation under section 4261(b)(2) of the Employee Retirement Income Security Act of 1974. *Ante*, p. 1261.

"(4) INSOLVENCY YEAR.—The term 'insolvency year' means a plan year in which a plan is insolvent.

"(c) BENEFIT PAYMENTS UNDER INSOLVENT PLANS.—

"(1) DETERMINATION OF RESOURCE BENEFIT LEVEL.—The plan sponsor of a plan in reorganization 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) UNIFORMITY OF THE BENEFIT SUSPENSION.—The suspension of benefit payments under this section shall, in accordance with regulations prescribed by the Secretary, apply in substantially uniform proportions to the benefits of all persons in pay status (within the meaning of section 418(b)(6)) under the plan, except that the Secretary 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.

"(3) RESOURCE BENEFIT LEVEL BELOW LEVEL OF BASIC BENEFITS.—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 shall be suspended for that plan year.

"(4) EXCESS RESOURCES.—

"(A) IN GENERAL.—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.

"(B) EXCESS RESOURCES.—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) UNPAID BENEFITS.—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, to the extent possible taking into account the plan's total available resources in that insolvency year.

"(6) RETROACTIVE PAYMENTS.—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) PLAN SPONSOR DETERMINATION.—

"(1) TRIENNIAL TEST.—As of the end of the first plan year in which a plan is in reorganization, and at least every 3 plan years thereafter (unless the plan is no longer in reorganization), the plan sponsor shall compare the value of plan assets (determined in accordance with section 418B(b)(3)(B)(ii)) 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 3 plan years.

"(2) DETERMINATION OF INSOLVENCY.—If, at any time, the plan sponsor of a plan in reorganization 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) DETERMINATION OF RESOURCE BENEFIT LEVEL.—The plan sponsor of a plan in reorganization 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.

"(e) NOTICE REQUIREMENTS.—

"(1) IMPENDING INSOLVENCY.—If the plan sponsor of a plan in reorganization 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, the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries of that determination, and

"(B) inform the parties described in section 418A(a)(2) and the plan participants and beneficiaries that if insolvency occurs certain benefit payments will be suspended, but that basic benefits will continue to be paid.

"(2) RESOURCE BENEFIT LEVEL.—No later than 2 months before the first day of each insolvency year, the plan sponsor of a plan in reorganization shall notify the Secretary, the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries of the resource benefit level determined in writing for that insolvency year.

"(3) POTENTIAL NEED FOR FINANCIAL ASSISTANCE.—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 Pension Benefit Guaranty Corporation.

"(4) REGULATIONS.—Notice required by this subsection shall be given in accordance with regulations prescribed by the Pension Benefit Guaranty Corporation, except that notice to the Secre-

tary shall be given in accordance with regulations prescribed by the Secretary.

"(5) CORPORATION MAY PRESCRIBE TIME.—The Pension Benefit Guaranty 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.—

"(1) PERMISSIVE APPLICATION.—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 Pension Benefit Guaranty Corporation under section 4261 of the Employee Retirement Income Security Act of 1974. *Ante*, p. 1261.

"(2) MANDATORY APPLICATION.—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 Pension Benefit Guaranty Corporation under section 4261 of the Employee Retirement Income Security Act of 1974.

"(g) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this subpart in such manner as determined by the Secretary.".

(b) CLERICAL AMENDMENT.—The table of subparts for part I of subchapter D of chapter 1 is amended by adding at the end thereof the following new subpart:

"Subpart C. Special rules for multiemployer plans.".

SEC. 203. MINIMUM FUNDING REQUIREMENTS.

Section 412 (relating to minimum funding standards) is amended— 26 USC 412.

(1) in subsection (b), by striking out "(40 plan years in the case of a multiemployer plan)" and "(20 plan years in the case of a multiemployer plan)" each place they appear;

(2) by adding at the end of subsection (b) the following new paragraphs:

"(6) CERTAIN AMORTIZATION CHARGES AND CREDITS.—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 414(f) as in effect immediately before such date)— *Ante*, p. 1208. *Post*, p. 1288.

"(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose;

"(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose;

"(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments

(until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

"(D) any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits which—

"(i) was adopted before such date, and

"(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

"(7) SPECIAL RULES FOR MULTIEMPLOYER PLANS.—For purposes of this section—

"(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

Ante, p. 1217.

"(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

"(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

"(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 418B(a) as of the end of the last plan year that the plan was in reorganization.

Ante, p. 1274.

"(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of such Act or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

Ante, p. 1240.
Post, p. 1290.
Ante, p. 1241.

"(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

Ante, p. 1217.

"(E) For purposes of the full funding limitation under subsection (c)(7), unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not

include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3))."; and 26 USC 411.

(3) by adding at the end thereof the following new subsection:

"(j) CERTAIN TERMINATED MULTIEMPLOYER PLANS.—This section applies with respect to a terminated multiemployer plan to which section 4021 of the Employee Retirement Income Security Act of 1974 29 USC 1321. applies, until the last day of the plan year in which the plan terminates, within the meaning of section 4041A(a)(2) of that Act. *Ante*, p. 1216.

"(k) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section in such manner as determined by the Secretary.".

SEC. 204. EXCISE TAXES.

Section 4971 (relating to taxes on failure to meet minimum funding standard) is amended— 26 USC 4971.

(1) by striking out "last sentence" in subsection (c) and inserting in lieu thereof "last two sentences"; and

(2) by adding at the end of subsection (d) the following new sentence: "In the case of a multiemployer plan which is in reorganization under section 418, the same notice and opportunity shall be provided to the Pension Benefit Guaranty Corporation.". *Ante*, p. 1271.

SEC. 205. DEDUCTIBILITY OF EMPLOYER LIABILITY PAYMENTS.

Subsection (g) of section 404 (relating to certain employer liability payments considered as contributions) is amended to read as follows: 26 USC 404.

"(g) CERTAIN EMPLOYER LIABILITY PAYMENTS CONSIDERED AS CONTRIBUTIONS.—

"(1) IN GENERAL.—For purposes of this section, any amount paid by an employer under section 4062, 4063, or 4064, or part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which this section applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan. 29 USC 1362-1364, *ante*, p. 1217.

"(2) CONTROLLED GROUP DEDUCTIONS.—In the case of a payment described in paragraph (1) made by an entity which is liable because it is a member of a commonly controlled group of corporations, trades, or businesses, within the meaning of subsection (b) or (c) of section 414, the fact that the entity did not directly employ participants of the plan with respect to which the liability payment was made shall not affect the deductibility of a payment which otherwise satisfies the conditions of section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income). 26 USC 414. 26 USC 162. 26 USC 212.

"(3) COORDINATION WITH SUBSECTION (a).—Any payment described in paragraph (1) shall (subject to the last sentence of subsection (a)(1)(A)) be deductible under this section when paid.".

SEC. 206. MINIMUM VESTING REQUIREMENTS.

Section 411 (relating to minimum vesting standards) is amended— 26 USC 411.

(1) by adding at the end of subsection (a)(3) the following new subparagraphs:

"(E) CESSATION OF CONTRIBUTIONS UNDER A MULTIEMPLOYER PLAN.—A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because the plan provides

that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contribute under the plan may not be payable if the employer ceases contributions to the multiemployer plan.

"(F) REDUCTION AND SUSPENSION OF BENEFITS BY A MULTIEMPLOYER PLAN.—A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because—

"(i) the plan is amended to reduce benefits under section 418D or under section 4281 of the Employee Retirement Income Security Act of 1974, or

Ante, p. 1280.
Ante, p. 1261.

"(ii) benefit payments under the plan may be suspended under section 418E or under section 4281 of the Employee Retirement Income Security Act of 1974.";

Ante, p. 1282.

(2) in subsection (a)(4)(E), by striking out "and";

(3) in subsection (a)(4)(F), by striking out the period and inserting in lieu thereof "; and";

(4) by adding at the end of subsection (a)(4) the following new subparagraph:

"(G) in the case of a multiemployer plan, years of service—

"(i) with an employer after—

"(I) a complete withdrawal of that employer from the plan (within the meaning of section 4203 of the Employee Retirement Income Security Act of 1974), or

Ante, p. 1218.

"(II) to the extent permitted in regulations prescribed by the Secretary, a partial withdrawal described in section 4205(b)(2)(A)(i) of such Act in conjunction with the decertification of the collective bargaining representative, and

Ante, p. 1221.

"(ii) with any employer under the plan after the termination date of the plan under section 4048 of such Act."; and

(5) in subsection (d)(6), by striking out "section 412(c)(8)" and inserting in lieu thereof "section 412(c)(8), or section 4281 of the Employee Retirement Income Security Act of 1974".

26 USC 412.
Ante, p. 1261.

SEC. 207. DEFINITION OF MULTIEMPLOYER PLAN.

26 USC 414.

(a) Section 414 (relating to definitions and special rules) is amended by striking out subsection (f) and inserting in lieu thereof the following:

"(f) MULTIEMPLOYER PLAN.—

"(1) DEFINITION.—For purposes of this part, the term 'multiemployer plan' means a plan—

"(A) to which more than one employer is required to contribute,

"(B) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

"(C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation.

"(2) CASES OF COMMON CONTROL.—For purposes of this subsection, all trades or businesses (whether or not incorporated) which are under common control within the meaning of subsection (c) are considered a single employer.

"(3) CONTINUATION OF STATUS AFTER TERMINATION.—Notwithstanding paragraph (1), a plan is a multiemployer plan on and

after its termination date under title IV of the Employee Retirement Income Security Act of 1974 if the plan was a multiemployer plan under this subsection for the plan year preceding its termination date. 29 USC 1301.

"(4) TRANSITIONAL RULE.—For any plan year which began before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, the term 'multiemployer plan' means a plan described in this subsection as in effect immediately before that date. "Multiemployer plan." *Ante*, p. 1208.

"(5) SPECIAL ELECTION.—Within one year after the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, a multiemployer plan may irrevocably elect, pursuant to procedures established by the Pension Benefit Guaranty Corporation and subject to the provisions of section 4403 (b) and (c) of the Employee Retirement Income Security Act of 1974, that the plan shall not be treated as a multiemployer plan for any purpose under such Act or this title, if for each of the last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980—

"(A) the plan was not a multiemployer plan because the plan was not a plan described in section 3(37)(A)(iii) of the Employee Retirement Income Security Act of 1974 and section 414(f)(1)(C) (as such provisions were in effect on the day before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980); and *Post*, p. 1291.

"(B) the plan had been identified as a plan that was not a multiemployer plan in substantially all its filings with the Pension Benefit Guaranty Corporation, the Secretary of Labor and the Secretary.".

SEC. 208. RELATED TECHNICAL AMENDMENTS.

(a) Sections 401(a)(12) and 414(l) are each amended by striking out the last sentence and inserting in lieu thereof the following: "The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies." 26 USC 401, 414. 29 USC 1301.

(b) Subsection (d) of section 4975 is amended— 26 USC 4975.

(1) by striking out "or" at the end of paragraph (12);

(2) by striking out the period at the end of paragraph (13) and inserting in lieu thereof a semicolon; and

(3) by inserting after paragraph (13) the following new paragraphs:

"(14) any transaction required or permitted under part 1 of subtitle E of title IV or section 4223 of the Employee Retirement Income Security Act of 1974, but this paragraph shall not apply with respect to the application of subsection (c)(1) (E) or (F); or *Ante*, pp. 1217, 1241.

"(15) a merger of multiemployer plans, or the transfer of assets or liabilities between multiemployer plans, determined by the Pension Benefit Guaranty Corporation to meet the requirements of section 4231 of such Act, but this paragraph shall not apply with respect to the application of subsection (c)(1) (E) or (F).". *Ante*, p. 1244.

(c) Section 412(a) is amended by adding at the end thereof the following new sentence: "In any plan year in which a multiemployer plan is in reorganization, the accumulated funding deficiency of the plan shall be determined under section 418B.". 26 USC 412. *Ante*, p. 1274.

26 USC 413.

(d) Section 413(b)(6) is amended by adding at the end thereof the following new sentence: "For purposes of this subsection and the last sentence of section 4971(a), an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall not be treated as a liability for contributions under the plan.".

26 USC 4971.

Ante, p. 1217.

26 USC 401.

(e) Section 401(a)(2), as amended by section 411(b) of this Act, is amended by inserting ", or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination" after "501(a)".

Post, p. 1308.

SEC. 209. WITHDRAWAL LIABILITY PAYMENT FUNDS.

26 USC 501.

(a) Subsection (c) of section 501 (relating to list of exempt organizations) is amended by adding at the end thereof the following new paragraph:

"(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

"(A) the purpose of such trust is exclusively—

"(i) to pay any amount described in section 4223 (c) or (h) of the Employee Retirement Income Security Act of 1974, and

Ante, p. 1241.

"(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

"(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

"(i) the purposes described in subparagraph (A), or

"(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(B),

"(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

"(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.".

26 USC 4975.

(b) Subsection (e) of section 4975 (relating to tax on prohibited transactions) is amended by adding at the end thereof the following new paragraph:

"(9) SECTION MADE APPLICABLE TO WITHDRAWAL LIABILITY PAYMENT FUNDS.—For purposes of this section—

"Plan."
Supra.

"(A) IN GENERAL.—The term 'plan' includes a trust described in section 501(c)(22).

"(B) DISQUALIFIED PERSON.—In the case of any trust to which this section applies by reason of subparagraph (A), the term 'disqualified person' includes any person who is a disqualified person with respect to any plan to which such trust is permitted to make payments under section 4223 of the Employee Retirement Income Security Act of 1974.".

Ante, p. 1241.

(c)(1) Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

"SEC. 194. CONTRIBUTIONS TO EMPLOYER LIABILITY TRUSTS. 26 USC 194.

"(a) ALLOWANCE OF DEDUCTION.—There shall be allowed as a deduction for the taxable year an amount equal to the amount—

"(1) which is contributed by an employer to a trust described in section 501(c)(22) (relating to withdrawal liability payment fund) which meets the requirements of section 4223(h) of the Employee Retirement Income Security Act of 1974, and *Ante*, p. 1290. *Ante*, p. 1241.

"(2) which is properly allocable to such taxable year.

"(b) ALLOCATION TO TAXABLE YEAR.—In the case of a contribution described in subsection (a) which relates to any specified period of time which includes more than one taxable year, the amount properly allocable to any taxable year in such period shall be determined by prorating such amounts to such taxable years under regulations prescribed by the Secretary.

"(c) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed under subsection (a) with respect to any contribution described in subsection (a) which does not relate to any specified period of time.".

(2) The table of sections for such part VI is amended by adding at the end thereof the following new item:

"Sec. 194. Contributions to employer liability trusts.".

SEC. 210. EFFECTIVE DATE. 26 USC 418 note.

(a) Except as otherwise provided in this section, the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) Subpart C of part I of subchapter D of chapter 1 of such Code (as added by this Act) shall take effect, with respect to each plan, on the first day of the first plan year beginning on or after the earlier of— *Ante*, p. 1271.

(1) the date on which the last collective-bargaining agreement providing for employer contributions under the plan, which was in effect on the date of the enactment of this Act, expires, without regard to extensions agreed to after such date of enactment, or

(2) 3 years after the date of the enactment of this Act.

(c) The amendments made by section 209 shall apply to taxable years ending after the date of the enactment of this Act.

TITLE III—AMENDMENTS TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SEC. 301. AMENDMENT OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference is to a section or other provision of the Employee Retirement Income Security Act of 1974. 29 USC 1001 note.

SEC. 302. DEFINITION OF MULTIEMPLOYER PLAN.

(a) Section 3 is amended by striking out paragraph (37) and inserting in lieu thereof the following: 29 USC 1002.

"(37)(A) The term 'multiemployer plan' means a plan—

"(i) to which more than one employer is required to contribute,

"(ii) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

"(iii) which satisfies such other requirements as the Secretary may prescribe by regulation.

"(B) For purposes of this paragraph, all trades or businesses (whether or not incorporated) which are under common control within the meaning of section 4001(c)(1) are considered a single employer.

29 USC 1301.

"(C) Notwithstanding subparagraph (A), a plan is a multiemployer plan on and after its termination date if the plan was a multiemployer plan under this paragraph for the plan year preceding its termination date.

"Multiemployer plan."

"(D) For purposes of this title, notwithstanding the preceding provisions of this paragraph, for any plan year which began before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, the term 'multiemployer plan' means a plan described in section 3(37) of this Act as in effect immediately before such date.

Ante, p. 1208.

"(E) Within one year after the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, a multiemployer plan may irrevocably elect, pursuant to procedures established by the corporation and subject to the provisions of sections 4403 (b) and (c), that the plan shall not be treated as a multiemployer plan for all purposes under this Act or the Internal Revenue Code of 1954 if for each of the last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980—

26 USC 1.

"(i) the plan was not a multiemployer plan because the plan was not a plan described in section 3(37)(A)(iii) of this Act and section 414(f)(1)(C) of the Internal Revenue Code of 1954 (as such provisions were in effect on the day before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980); and

Ante, p. 1288.

"(ii) the plan had been identified as a plan that was not a multiemployer plan in substantially all its filings with the corporation, the Secretary of Labor and the Secretary of the Treasury.".

SEC. 303. MINIMUM VESTING REQUIREMENTS.

29 USC 1053.

Section 203 is amended—

(1) by inserting after subsection (a)(3)(D) the following new subparagraph:

"(E)(i) A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because the plan provides that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contribute under the plan may not be payable if the employer ceases contributions to the multiemployer plan.

"(ii) A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because—

"(I) the plan is amended to reduce benefits under section 4244A or 4281, or

Ante, pp. 1257, 1261.

"(II) benefit payments under the plan may be suspended under section 4245 or 4281.";

Ante, p. 1259.

(2) in subsection (b)(1)(E), by striking out "and";

(3) in subsection (b)(1)(F), by striking out the period and inserting in lieu thereof "; and"; and

(4) by inserting after subsection (b)(1)(F) the following new subparagraph:

"(G) in the case of a multiemployer plan, years of service—

"(i) with an employer after—

"(I) a complete withdrawal of such employer from the plan (within the meaning of section 4203), or

Ante, p. 1218.

"(II) to the extent permitted by regulations prescribed by the Secretary of the Treasury, a partial withdrawal described in section 4205(b)(2)(A)(i) in connection with the decertification of the collective bargaining representative; and

Ante, p. 1221.

"(ii) with any employer under the plan after the termination date of the plan under section 4048.".

29 USC 1348.

SEC. 304. MINIMUM FUNDING REQUIREMENTS.

(a) Section 301 is amended by adding at the end thereof the following new subsections:

29 USC 1081.

"(c) This part applies, with respect to a terminated multiemployer plan to which section 4021 applies, until the last day of the plan year in which the plan terminates, within the meaning of section 4041A(a)(2).

29 USC 1321.

Ante, p. 1216.

"(d) Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section in such manner as determined by the Secretary of the Treasury.".

(b) Section 302 is amended—

29 USC 1082.

(1) in subsection (b), by striking out "(40 plan years in the case of a multiemployer plan)" and "(20 plan years in the case of a multiemployer plan)" each place they appear;

(2) by inserting at the end of subsection (b) the following new paragraphs:

"(6) In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 3(37) as in effect immediately before such date)—

Ante, p. 1208.
Ante, p. 1291.

"(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose;

"(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose;

"(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

"(D) any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits which—

"(i) was adopted before such date, and

"(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the increase arises.

"(7) For purposes of this part—

"(A) Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

Ante, p. 1217.

"(B) If a plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

"(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

"(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 418B(a) of the Internal Revenue Code of 1954 as of the end of the last plan year that the plan was in reorganization.

Ante, p. 1274.

"(C) Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 or to a fund exempt under section 501(c)(22) of such Code pursuant to section 4223 shall reduce the amount of contributions considered received by the plan for the plan year.

Ante, p. 1240.
Ante, p. 1290.
Ante, p. 1241.

"(D) Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

"(E) For purposes of the full funding limitation under subsection (c)(7), unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of the Internal Revenue Code of 1954).".

26 USC 411.

(3) by adding at the end of subsection (a) the following new paragraph:

"(3) In any plan year in which a multiemployer plan is in reorganization, the accumulated funding deficiency of the plan shall be determined under section 4243.".

Ante, p. 1252.

SEC. 305. APPLICATION OF INTERESTED PARTY RULES TO WITHDRAWAL LIABILITY PAYMENT FUNDS.

29 USC 1002.

Paragraph (14) of section 3 is amended by adding at the end thereof the following new sentence: "Any person who is a party in interest with respect to a plan to which a trust described in section 501(c)(22) of the Internal Revenue Code of 1954 is permitted to make payments under section 4223 shall be treated as a party in interest with respect to such trust.".

Ante, p. 1290.
Ante, p. 1241.

SEC. 306. LIQUIDATED DAMAGES WITH RESPECT TO DELINQUENT CONTRIBUTIONS.

(a) Part 5 of subtitle B of title I is amended by adding after section 514 the following new section:

"DELINQUENT CONTRIBUTIONS

"SEC. 515. Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.". 29 USC 1145.

(b) Section 502 is amended by— 29 USC 1132.

(1) redesignating subsection (b) (1) and (2) as subsection (b)(1) (A) and (B), and adding at the end thereof the following new paragraph:

"(2) The Secretary shall not initiate an action to enforce section 515.";

(2) redesignating subsection (g) as paragraph (1) of such subsection and inserting "(other than an action described in paragraph (2))" between "title" and "by" in such redesignated paragraph (1), and adding at the end thereof the following new paragraph:

"(2) In any action under this title by a fiduciary for or on behalf of a plan to enforce section 515 in which a judgment in favor of the plan is awarded, the court shall award the plan—

"(A) the unpaid contributions,

"(B) interest on the unpaid contributions,

"(C) an amount equal to the greater of—

"(i) interest on the unpaid contributions, or

"(ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),

"(D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and

"(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of the Internal Revenue Code of 1954.". 26 USC 6621.

SEC. 307. ACTUARIAL STANDARDS.

Section 103(d) is amended by redesignating paragraphs (10) and (11) as paragraphs (11) and (12) and by adding after paragraph (9) the following new paragraph: 29 USC 1023.

"(10) A statement by the actuary which discloses—

"(A) any event which the actuary has not taken into account, and

"(B) any trend which, for purposes of the actuarial assumptions used, was not assumed to continue in the future, but only if, to the best of the actuary's knowledge, such event or trend may require a material increase in plan costs or required contribution rates.".

SEC. 308. EXEMPTIONS FROM PROHIBITED TRANSACTIONS.

(a) Section 408(b) is amended by adding at the end thereof the following: 29 USC 1108.

"(10) Any transaction required or permitted under part 1 of subtitle E of title IV.

Ante, p. 1217.

"(11) A merger of multiemployer plans, or the transfer of assets or liabilities between multiemployer plans, determined by the Pension Benefit Guaranty Corporation to meet the requirements of section 4231.".

Ante, p. 1244.

29 USC 1108.

(b) Section 408 is amended by adding at the end thereof the following new subsection:

29 USC 1106.

"(f) Section 406(b)(2) shall not apply to any merger or transfer described in subsection (b)(11).".

SEC. 309. FIDUCIARY DUTIES.

29 USC 1104.

Section 404(a)(1)(D) is amended by inserting "or title IV" after "this title".

SEC. 310. REFUND OF CERTAIN WITHDRAWAL LIABILITY PAYMENTS.

29 USC 1103.

Section 403(c) is amended—

(1) by striking out "or (3)" in paragraph (1) and inserting in lieu thereof ", (3), or (4)"; and

(2) by adding at the end thereof the following new paragraph:

"(4) In the case of a withdrawal liability payment which has been determined to be an overpayment, paragraph (1) shall not prohibit the return of such payment to the employer within 6 months after the date of such determination.".

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. AMENDMENT OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference is to a section or other provision of the Employee Retirement Income Security Act of 1974.

29 USC 1001 note.

SEC. 402. RELATED TECHNICAL AMENDMENTS.

29 USC 1301.

(a)(1) Section 4001 is amended—

(A) in subsection (a)(2), by inserting "(other than a multiemployer plan)" after "more than one employer";

(B) by striking out subsection (a)(3) and inserting in lieu thereof the following:

"Multiemployer plan."

"(3) 'multiemployer plan' means a plan—

"(A) to which more than one employer is required to contribute,

"(B) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

"(C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation,

except that, in applying this paragraph—

"(i) a plan shall be considered a multiemployer plan on and after its termination date if the plan was a multiemployer plan under this paragraph for the plan year preceding such termination, and

"(ii) for any plan year which began before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, the term 'multiemployer plan' means a plan described in section 414(f) of the Internal Revenue Code of 1954 as in effect immediately before such date;";

Ante, p. 1208.

Ante, p. 1288.

(C) by striking out subsection (a)(6) and inserting in lieu thereof the following:

"(6) 'basic benefits' means benefits guaranteed under section 4022 (other than under section 4022(c)), or under section 4022A (other than under section 4022A(g));"; "Basic benefits." 29 USC 1322. *Ante*, p. 1210.

(D) in subsection (a)(7), by striking out the period and inserting in lieu thereof "or 4022A(g);";

(E) by inserting at the end of subsection (a) the following new paragraphs: Definitions.

"(8) 'nonforfeitable benefit' means, with respect to a plan, a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of this Act (other than submission of a formal application, retirement, completion of a required waiting period, or death in the case of a benefit which returns all or a portion of a participant's accumulated mandatory employee contributions upon the participant's death), whether or not the benefit may subsequently be reduced or suspended by a plan amendment, an occurrence of any condition, or operation of this Act or the Internal Revenue Code of 1954; 26 USC 1.

"(9) 'reorganization index' means the amount determined under section 4241(b); *Ante*, p. 1249.

"(10) 'plan sponsor' means, with respect to a multiemployer plan—

"(A) the plan's joint board of trustees, or

"(B) if the plan has no joint board of trustees, the plan administrator;

"(11) 'contribution base unit' means a unit with respect to which an employer has an obligation to contribute under a multiemployer plan, as defined in regulations prescribed by the Secretary of the Treasury; and

"(12) 'outstanding claim for withdrawal liability' means a plan's claim for the unpaid balance of the liability determined under part 1 of subtitle E for which demand has been made, valued in accordance with regulations prescribed by the corporation."; *Ante*, p. 1217.

(F) by adding the following new paragraphs at the end of subsection (c)(1) (as redesignated):

"(2) For purposes of this title, 'single-employer plan' means, except as otherwise specifically provided in this title, any plan which is not a multiemployer plan. "Single-employer plan."

"(3) For purposes of this title, except as otherwise provided in this title, contributions or other payments shall be considered made under a plan for a plan year if they are made within the period prescribed under section 412(c)(10) of the Internal Revenue Code of 1954. 26 USC 412.

"(4) For purposes of subtitle E, 'Secretary of the Treasury' means the Secretary of the Treasury or such Secretary's delegate.". "Secretary of the Treasury." *Ante*, p. 1217.

(2) Section 4003 is amended— 29 USC 1303.

(A) in subsection (a), by striking out "determine whether any person has violated or is about to violate" and inserting in lieu thereof "enforce";

(B) in subsection (e)(1), by striking out "redress violations of" and inserting in lieu thereof "enforce", and

(C) in subsection (f) by inserting at the end thereof the following new sentence: "In any suit, action, or proceeding in which the corporation is a party, or intervenes under section 4301, in any State court, the corporation may, without bond or security, *Ante*, p. 1263.

remove such suit, action, or proceeding from the State court to the United States District Court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect."

29 USC 1307. (3) Section 4007(a) is amended by inserting at the end thereof the following new sentence: "The corporation may waive or reduce premiums for a multiemployer plan for any plan year during which such plan receives financial assistance from the corporation under section 4261, except that any amount so waived or reduced shall be treated as financial assistance under such section.".

Ante, p. 1261.

29 USC 1321. (4) Section 4021(a) is amended by inserting in the last sentence "unless otherwise specifically indicated in this title," before "a successor plan".

(5) Subtitle B of title IV is amended by inserting after section 4022B (as added by section 102 of this Act) the following new section:

"PLAN FIDUCIARIES

29 USC 1323. 29 USC 1321. "SEC. 4023. Notwithstanding any other provision of this Act, a fiduciary of a plan to which section 4021 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 title.".

29 USC 1342. (6) Section 4042 is amended—

(A) in the last sentence of subsection (a), by striking out "such small" and inserting in lieu thereof "terminated";

(B) by redesignating subsection (b) as subsection (b)(1) and inserting at the end thereof the following new paragraphs:

"(2) Notwithstanding any other provision of this title—

"(A) upon the petition of a plan administrator or the corporation, the appropriate United States district court may appoint a trustee in accordance with the provisions of this section if the interests of the plan participants would be better served by the appointment of the trustee, and

"(B) upon the petition of the corporation, the appropriate United States district court shall appoint a trustee proposed by the corporation for a multiemployer plan which is in reorganization or to which section 4041A(d) applies, unless such appointment would be adverse to the interests of the plan participants and beneficiaries in the aggregate.

Ante, p. 1216.

"(3) The corporation and plan administrator may agree to the appointment of a trustee without proceeding in accordance with the requirements of paragraphs (1) and (2).";

(C) in the first sentence of subsection (c), by striking out "and" after "interests of the participants" and inserting in lieu thereof "or";

(D) in subsection (c), by striking out "further" each place it appears and inserting in lieu thereof "unreasonable";

(E) in subsection (d)(1)(A)—

(i) by striking out "and" in clause (iv);

(ii) by redesignating clause (v) as clause (vi) and by striking out the period at the end of such clause and inserting in lieu thereof "; and";

(iii) by inserting after clause (iv) the following new clause:

"(v) in the case of a multiemployer plan, to reduce benefits or suspend benefit payments under the plan, give appropriate notices, amend the plan, and perform other acts required or authorized by subtitle (E) to be performed by the plan sponsor or administrator;"; and

Ante, p. 1217.

(iv) by inserting after clause (vi) (as redesignated) the following new clause:

"(vii) to require the plan sponsor, the plan administrator, any contributing or withdrawn employer, and any employee organization representing plan participants to furnish any information with respect to the plan which the trustee may reasonably need in order to administer the plan.";

(F) in subsection (d)(1)(B)(i), by striking out "allocation requirements of section 4044" and inserting in lieu thereof "requirements of this title"; 29 USC 1344.

(G) in subsection (d)(1)(B)(iv), by striking out ", except to the extent that the corporation is an adverse party in a suit or proceeding";

(H) in subsection (d)(2)(B), by striking out "and";

(I) in subsection (d)(2)(C), by striking out the period and inserting in lieu thereof a comma; and

(J) by inserting after subsection (d)(2)(C) the following new subparagraphs;

"(D) each employer who is or may be liable to the plan under section part 1 of subtitle E, *Ante*, p. 1217.

"(E) each employer who has an obligation to contribute, within the meaning of section 4212(a), under a multiemployer plan, and *Ante*, p. 1233.

"(F) each employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer described in subparagraph (C), (D), or (E).".

(7) Section 4044 is amended— 29 USC 1344.

(A) in subsection (a), by inserting "single-employer" before "defined benefit plan";

(B) in subsection (c), by inserting "single-employer" before "plan occurring during" and before "plan occurring after"; and

(C) in subsection (d)(1), by inserting "single-employer" before "plan may be distributed".

(8) Section 4048 is amended— 29 USC 1348.

(A) by inserting "(a)" before "For";

(B) by inserting "of a single-employer plan" after "date of termination"; and

(C) by adding at the end thereof the following new subsection:

"(b) For purposes of this title, the date of termination of a multiemployer plan is—

"(1) in the case of a plan terminated in accordance with the provisions of section 4041A, the date determined under subsection (b) of that section; or *Ante*, p. 1216.

"(2) in the case of a plan terminated in accordance with the provisions of section 4042, the date agreed to between the plan administrator and the corporation (or the trustee appointed under section 4042(b)(2), if any), or, if no agreement is reached, the date established by the court.". 29 USC 1342.

(b)(1) Section 208 is amended by striking out the last sentence and inserting in lieu thereof the following: "The preceding sentence shall not apply to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of this Act applies.". 29 USC 1058. 29 USC 1301.

(2) Section 403(a)(1) is amended by striking out "title" and inserting in lieu thereof "Act". 29 USC 1103.

(3) Section 3002 is amended by adding at the end thereof the following new subsection: 29 USC 1202.

"(e) The Secretary of the Treasury shall consult with the Pension Benefit Guaranty Corporation with respect to any proposed or final Consultation.

regulation authorized by subpart C of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954, or by sections 4241 through 4245 of this Act, before publishing any such proposed or final regulation.".

Ante, p. 1271.
Ante, p. 1249.

SEC. 403. CONFORMING AMENDMENTS.

29 USC 1305.

(a) Section 4005 is amended—

(1) by striking out the second sentence of subsection (a) and inserting in lieu thereof the following: "One of the funds shall be used with respect to basic benefits guaranteed under section 4022, one of the funds shall be used with respect to basic benefits guaranteed under section 4022A, one of the funds shall be used with respect to nonbasic benefits guaranteed under section 4022 (if any), and the remaining fund shall be used with respect to nonbasic benefits guaranteed under section 4022A (if any), other than subsection (g)(2) thereof (if any).";

29 USC 1322.
Ante, p. 1210.

(2) in subsection (b)(2)(A), by inserting "or 4022A" after "4022";

(3) by striking out subparagraph (B) of subsection (b)(2) and redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively; and

(4) by adding at the end thereof the following new subsections:

"(d)(1) A fifth fund shall be established for the reimbursement of uncollectible withdrawal liability under section 4222, and shall be credited with the appropriate—

"(A) premiums, penalties, and interest charges collected under this title, and

"(B) earnings on investments of the fund or on assets credited to the fund.

The fund shall be available to make payments pursuant to the supplemental program established under section 4222, including those expenses and other charges determined to be appropriate by the corporation.

"(2) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

"(e)(1) A sixth fund shall be established for the supplemental benefit guarantee program provided under section 4022A(g)(2).

"(2) Such fund shall be credited with the appropriate—

"(A) premiums, penalties, and interest charges collected under section 4022A(g)(2), and

"(B) earnings on investments of the fund or on assets credited to the fund.

The fund shall be available for making payments pursuant to the supplemental benefit guarantee program established under section 4022A(g)(2), including those expenses and other charges determined to be appropriate by the corporation.

"(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

"(f)(1) Amounts in any fund established under this section may be used only for the purposes for which such fund was established and may not be used to make loans to (or on behalf of) any other fund or to finance any other activity of the corporation.

"(2) None of the funds borrowed under subsection (c) may be used to make loans to (or on behalf of) any fund other than a fund described in the second sentence of subsection (a).

"(3) Any repayment to the corporation of any amount paid out of any fund in connection with a multiemployer plan shall be deposited in such fund.".

29 USC 1307.

(b) Section 4007(a) is amended by striking out the second sentence.

(c) Section 4022 is amended— 29 USC 1322.

(1) in the section heading, by inserting "SINGLE-EMPLOYER PLAN" before "BENEFITS GUARANTEED";

(2) in subsection (a)—

(A) by inserting ", in accordance with this section," after "guarantee"; and

(B) by inserting "single-employer" before "plan which terminates"; and

(C) by striking out the words "the terms of";

(3) in subsection (b)(1), by striking out "(8)" and inserting in lieu thereof "(7)"; and

(4) by striking out paragraph (5) of subsection (b) and redesignating paragraphs (6), (7), and (8) of such subsection as paragraphs (5), (6), and (7), respectively.

(d) Section 4041 is amended— 29 USC 1341.

(1) in the section heading, by striking out "TERMINATION BY PLAN ADMINISTRATOR" and inserting in lieu thereof "TERMINATION OF SINGLE-EMPLOYER PLANS";

(2) in subsection (a), by inserting "single-employer" after "termination of a"; and

(3) by striking out subsection (g).

(e) Section 4046 is amended— 29 USC 1346.

(1) in paragraphs (2) and (3)—

(A) by inserting "or 4022A" after "4022"; and

(B) by inserting "basic" before "benefits"; and

(2) in paragraph (3), by striking out "4022(b)(5)" and inserting in lieu thereof "4022B".

(f) Section 4061 is amended to read as follows:

"AMOUNTS PAYABLE BY THE CORPORATION

"SEC. 4061. The corporation shall pay benefits under a single-employer plan terminated under this title subject to the limitations and requirements of subtitle B of this title. The corporation shall provide financial assistance to pay benefits under a multiemployer plan which is insolvent under section 4245 or 4281(d)(2)(A), subject to the limitations and requirements of subtitles B, C, and E of this title. Amounts guaranteed by the corporation under sections 4022 and 4022A 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 4005(e).". 29 USC 1361. 29 USC 1321. *Ante*, pp. 1259, 1261. 29 USC 1321, 1341, *ante*, p. 1217. *Ante*, p. 1210. *Ante*, p. 1300.

(g) Section 4062(a) is amended by striking out "plan (other than a multiemployer plan)" and inserting in lieu thereof "single-employer plan". 29 USC 1362.

(h) Section 4063 is amended— 29 USC 1363.

(1) in the first sentence of subsection (a), by inserting "(other than a multiemployer plan)" after "makes contributions"; and

(2) in the second sentence of subsection (d), by inserting "(other than a multiemployer plan)" after "of a plan".

(i) Section 4064(a) is amended by inserting "(other than a multiemployer plan)" after "plan under which more than one employer makes contributions". 29 USC 1364.

(j) Section 4066 is amended by inserting "(other than a multiemployer plan)" after "more than one employer". 29 USC 1366.

29 USC 1303. (k) Subsection (f) of section 4003 is amended by striking out "Any" and inserting in lieu thereof "Except as provided in section 4301(a)(2), any".

29 USC 1302. (l) Section 4002(b)(3) is amended by inserting "and such other bylaws, rules, and regulations as may be necessary to carry out the purposes of this title" after "Act".

SEC. 404. CLERICAL AMENDMENTS.

The table of contents in section 1 is amended—

(1) by striking out the items relating to sections 4022 and 4023 and inserting in lieu thereof the following new items:

"Sec. 4022. Single-employer plan benefits guaranteed.
"Sec. 4022A. Multiemployer plan benefits guaranteed.
"Sec. 4022B. Aggregate limit on benefits guaranteed.
"Sec. 4023. Plan fiduciaries.";

(2) by striking out the item relating to section 4041 and inserting in lieu thereof the following new items:

"Sec. 4041. Termination of single-employer plans.
"Sec. 4041A. Termination of multiemployer plans.";

and

(3) by striking out all after the item relating to section 4068 and inserting in lieu thereof the following new items:

"Subtitle E—Special Provisions for Multiemployer Plans

"Part 1—Employer Withdrawals

"Sec. 4201. Withdrawal liability established.
"Sec. 4202. Determination and collection of liability; notification of employer.
"Sec. 4203. Complete withdrawal.
"Sec. 4204. Sale of assets.
"Sec. 4205. Partial withdrawals.
"Sec. 4206. Adjustment for partial withdrawal.
"Sec. 4207. Reduction or waiver of complete withdrawal liability.
"Sec. 4208. Reduction or abatement of partial withdrawal liability.
"Sec. 4209. De minimis rule.
"Sec. 4210. No withdrawal liability for certain temporary contribution obligation periods.
"Sec. 4211. Methods for computing withdrawal liability.
"Sec. 4212. Obligation to contribute; special rules.
"Sec. 4213. Actuarial assumptions, etc.
"Sec. 4214. Application of plan amendments.
"Sec. 4215. Plan notification to corporation of potentially significant withdrawals.
"Sec. 4216. Special rules for section 404(c) plans.
"Sec. 4217. Application of part in case of certain pre-1980 withdrawals.
"Sec. 4218. Withdrawal not to occur merely because of change in business form or suspension of contributions during labor dispute.
"Sec. 4219. Notice, collection, etc., of withdrawal liability.
"Sec. 4220. Approval of amendments.
"Sec. 4221. Resolution of disputes.
"Sec. 4222. Reimbursements for uncollectible withdrawal liability.
"Sec. 4223. Withdrawal liability payment fund.
"Sec. 4224. Alternative method of withdrawal liability payments.
"Sec. 4225. Limitation on withdrawal liability.

"Part 2—Merger or Transfer of Plan Assets or Liabilities

"Sec. 4231. Mergers and transfers between multiemployer plans.
"Sec. 4232. Transfers between a multiemployer plan and a single-employer plan.
"Sec. 4233. Partition.
"Sec. 4234. Asset transfer rules.
"Sec. 4235. Transfers pursuant to change in bargaining representative.

"PART 3—REORGANIZATION; MINIMUM CONTRIBUTION REQUIREMENT FOR MULTIEMPLOYER PLANS

"Sec. 4241. Reorganization status.
"Sec. 4242. Notice of reorganization and funding requirements.
"Sec. 4243. Minimum contribution requirement.
"Sec. 4244. Overburden credit against minimum contribution requirement.
"Sec. 4244A. Adjustments in accrued benefits.
"Sec. 4245. Insolvent plans.

"PART 4—FINANCIAL ASSISTANCE

"Sec. 4261. Financial assistance.

"PART 5—BENEFITS AFTER TERMINATION

"Sec. 4281. Benefits under certain terminated plans.

"PART 6—ENFORCEMENT

"Sec. 4301. Civil actions.
"Sec. 4302. Penalty for failure to provide notice.
"Sec. 4303. Election of plan status.

"Subtitle F—Transition Rules and Effective Dates

"Sec. 4401. Amendment to Internal Revenue Code of 1954.
"Sec. 4402. Transition rules and effective dates.
"Sec. 4403. Election of plan status.".

SEC. 405. ACTION TAKEN BEFORE REGULATIONS ARE PRESCRIBED. 29 USC 1461 note.

(a) Except as otherwise provided in the amendments made by this Act and in subsection (b), if the way in which any such amendment will apply to a particular circumstance is to be set forth in regulations, any reasonable action during the period before such regulations take effect shall be treated as complying with such regulations for such period.

(b) Subsection (a) shall not apply to any action which violates any instruction issued, or temporary rule prescribed, by the agency having jurisdiction but only if such instruction or rule was published, or furnished to the party taking the action, before such action was taken.

SEC. 406. PENSION BENEFIT GUARANTY CORPORATION PUT ON BUDGET.

(a) Paragraph (2) of section 4002(g) is amended to read as follows: 29 USC 1302.

"(2) The receipts and disbursements of the corporation in the discharge of its functions shall be included in the totals of the budget of the United States Government. The United States is not liable for any obligation or liability incurred by the corporation.".

(b) The amendment made by subsection (a) shall apply to fiscal years beginning after September 30, 1980. Effective date. 29 USC 1302 note.

SEC. 407. CHURCH PLANS. 29 USC 1002.

(a) Section 3(33) is amended to read as follows:

"(33)(A) The term 'church plan' means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954. "Church plan." 26 USC 501.

"(B) The term 'church plan' does not include a plan—

"(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in

connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Internal Revenue Code of 1954), or

26 USC 513.

"(ii) if less than substantially all of the individuals included in the plan are individuals described in subparagraph (A) or in clause (ii) of subparagraph (C) (or their beneficiaries).

"(C) For purposes of this paragraph—

"(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

"(ii) The term employee of a church or a convention or association of churches includes—

"(I) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

"(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Internal Revenue Code of 1954 and which is controlled by or associated with a church or a convention or association of churches; and

26 USC 501.

"(III) an individual described in clause (v).

"(iii) A church or a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954 shall be deemed the employer of any individual included as an employee under clause (ii).

"(iv) An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

"(v) If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Internal Revenue Code of 1954 and which is controlled by or associated with a church or a convention or association of churches, the church plan shall not fail to meet the requirements of this paragraph merely because the plan—

"(I) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan; or

"(II) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section 72(m)(7) of the Internal Revenue Code of 1954) at the time of such separation from service.

26 USC 72.

"(D)(i) If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of

churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954 fails to meet one or more of the requirements of this paragraph and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this paragraph for the year in which the correction was made and for all prior years. 26 USC 501.

"(ii) If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this paragraph beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

"(iii) For purposes of this subparagraph, the term 'correction period' means— "Correction period."

"(I) the period ending 270 days after the date of mailing by the Secretary of a notice of default with respect to the plan's failure to meet one or more of the requirements of this paragraph; or

"(II) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

"(III) any additional period which the Secretary determines is reasonable or necessary for the correction of the default,

whichever has the latest ending date.".

(b) Section 414(e) of the Internal Revenue Code of 1954 (defining church plan) is amended to read as follows: 26 USC 414.

"(e) CHURCH PLAN.—

"(1) IN GENERAL.—For purposes of this part, the term 'church plan' means a plan established and maintained (to the extent required in paragraph (2)(B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501.

"(2) CERTAIN PLANS EXCLUDED.—The term 'church plan' does not include a plan—

"(A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513); or 26 USC 513.

"(B) if less than substantially all of the individuals included in the plan are individuals described in paragraph (1) or (3)(B) (or their beneficiaries).

"(3) DEFINITIONS AND OTHER PROVISIONS.—For purposes of this subsection—

"(A) TREATMENT AS CHURCH PLAN.—A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

"(B) EMPLOYEE DEFINED.—The term employee of a church or a convention or association of churches shall include—

"(i) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

"(ii) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 and which is controlled by or associated with a church or a convention or association of churches; and

26 USC 501.

"(iii) an individual described in subparagraph (E).

"(C) CHURCH TREATED AS EMPLOYER.—A church or a convention or association of churches which is exempt from tax under section 501 shall be deemed the employer of any individual included as an employee under subparagraph (B).

"(D) ASSOCIATION WITH CHURCH.—An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

"(E) SPECIAL RULE IN CASE OF SEPARATION FROM PLAN.—If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization described in clause (ii) of paragraph (3)(B), the church plan shall not fail to meet the requirements of this subsection merely because the plan—

"(i) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan; or

"(ii) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section 72(m)(7)) at the time of such separation from service.

26 USC 72.

"(4) CORRECTION OF FAILURE TO MEET CHURCH PLAN REQUIREMENTS.—

"(A) IN GENERAL.—If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 fails to meet one or more of the requirements of this subsection and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this subsection for the year in which the correction was made and for all prior years.

"(B) FAILURE TO CORRECT.—If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this subsection beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

"(C) CORRECTION PERIOD DEFINED.—The term 'correction period' means—

"(i) the period ending 270 days after the date of mailing by the Secretary of a notice of default with respect to the plan's failure to meet one or more of the requirements of this subsection;

"(ii) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

"(iii) any additional period which the Secretary determines is reasonable or necessary for the correction of the default,

whichever has the latest ending date.".

(c) The amendments made by this section shall be effective as of January 1, 1974. Effective date. 26 USC 414 note.

SEC. 408. DEDUCTIBILITY OF PAYMENTS TO PLAN BY A CORPORATION OPERATING PUBLIC TRANSPORTATION SYSTEM ACQUIRED BY A STATE. 26 USC 404 note.

(a) For purposes of subsection (g) of section 404 of the Internal Revenue Code of 1954 (relating to certain employer liability payments considered as contributions), as amended by section 205 of this Act, any payment made to a plan covering employees of a corporation operating a public transportation system shall be treated as a payment described in paragraph (1) of such subsection if—

(1) such payment is made to fund accrued benefits under the plan in conjunction with an acquisition by a State (or agency or instrumentality thereof) of the stock or assets of such corporation, and

(2) such acquisition is pursuant to a State public transportation law enacted after June 30, 1979, and before January 1, 1980.

(b) The provisions of this section shall apply to payments made after June 29, 1980.

SEC. 409. TREATMENT OF CERTAIN SEVERANCE PAY ARRANGEMENTS AND SUPPLEMENTAL RETIREMENT INCOME PAYMENTS AS WELFARE PLANS.

Paragraph (2) of section 3 is amended— 29 USC 1002.

(1) by striking out "The" and inserting in lieu thereof "(A) Except as provided in subparagraph (B), the",

(2) by striking out "(A)" and inserting in lieu thereof "(i)",

(3) by striking out "(B)" and inserting in lieu thereof "(ii)", and

(4) by adding at the end thereof the following new subparagraph:

"(B) The Secretary may by regulation prescribe rules consistent with the standards and purposes of this Act providing one or more exempt categories under which—

"(i) severance pay arrangements, and

"(ii) supplemental retirement income payments, under which the pension benefits of retirees or their beneficiaries are supplemented to take into account some portion or all of the increases in the cost of living (as determined by the Secretary of Labor) since retirement,

shall, for purposes of this title, be treated as welfare plans rather than pension plans. In the case of any arrangement or payment a principal effect of which is the evasion of the standards or purposes of this Act applicable to pension plans, such arrangement or payment shall be treated as a pension plan.".

29 USC 1103.

SEC. 410. REFUND OF MISTAKEN CONTRIBUTIONS.

(a) Paragraph (2)(A) of section 403(c) is amended to read as follows:

Ante, p. 1217.

"(2)(A) In the case of a contribution, or a payment of withdrawal liability under part 1 of subtitle E of part iv—

"(i) made by an employer to a plan (other than a multiemployer plan) by a mistake of fact, paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the payment of the contribution, and

"(ii) made by an employer to a multiemployer plan by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) of the Internal Revenue Code of 1954 or the trust which is part of such plan is exempt from taxation under section 501(a) of such Code), paragraph (1) shall not prohibit the return of such contribution or payment to the employer within 6 months after the plan administrator determines that the contribution was made by such a mistake.".

26 USC 401.

26 USC 501.

(b) Paragraph (2) of section 401(a) of the Internal Revenue Code of 1954 (relating to exclusive benefit of employees and beneficiaries) is amended by inserting before the semicolon at the end thereof the following: "(but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a))".

26 USC 401.

Effective date.

(c) The amendment made by this section shall take effect on January 1, 1975, except that in the case of contributions received by a collectively bargained plan maintained by more than one employer before the date of enactment of this Act, any determination by the plan administrator that any such contribution was made by mistake of fact or law before such date shall be deemed to have been made on such date of enactment.

26 USC 401 note.

SEC. 411. DEFINITION OF EMPLOYEE PENSION BENEFIT PLAN.

(a) Section 201 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following new subsection:

29 USC 1051.

"(8) Any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this Act.".

(b) Section 301(a) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following new paragraph:

29 USC 1081.

"(10) Any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this Act.".

29 USC 1103.

(c) Section 403(b) of ERISA is amended by adding at the end thereof the following new paragraph (6):

"(6) Any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this Act.".

SEC. 412. STUDIES BY PENSION BENEFIT GUARANTY CORPORATION AND SECRETARY OF LABOR.

29 USC 1306 note.

(a)(1) The Pension Benefit Guaranty Corporation shall conduct a separate study with respect to—

(A) the advantages and disadvantages of establishing a graduated premium rate schedule under section 4006 of the Employee Retirement Income and Security Act of 1974 which is based on risk, and

Ante, p. 1264.

(B) the necessity of adopting special rules in cases of union-mandated withdrawal from multiemployer pension plans.

Report to Congress.

(2) The Corporation shall report to the Congress the results of the studies conducted under paragraph (1), including its recommendations with respect thereto.

29 USC 1001a note.

(b)(1) The Secretary of Labor shall study the feasibility of requiring collective bargaining on both the issues of contributions to, and benefits from, multiemployer plans.

Report to Congress.

(2) The Secretary shall submit a report on the study conducted under paragraph (1) to the Congress within 3 years of the date of the enactment of this Act.

SEC. 413. STUDY BY GENERAL ACCOUNTING OFFICE; HEARINGS REQUIRED.

29 USC 1001 note.

(a)(1) The Comptroller General of the United States shall conduct a study of the effects of the amendments made by, and the provisions of, this Act on—

(A) participants, beneficiaries, employers, employee organizations, and other parties affected by this Act, and

(B) the self-sufficiency of the fund established under section 4005 of the Employee Retirement Income Security Act of 1974 with respect to benefits guaranteed under section 4022A of such Act, taking into account the financial conditions of multiemployer plans and employers.

Ante, p. 1300.

Ante, p. 1210.

Report to Congress.

(2)(A) The Comptroller General shall report to the Congress no later than June 30, 1985, the results of the study conducted under paragraph (1), including his recommendations with respect thereto.

Public availability.

(B) The report submitted under subparagraph (A) shall be made available to the public.

Consultation with congressional committees.

(b) In conducting the study under subsection (a)(1), the Comptroller General shall consult with the Committees on Finance and Labor and Human Resources of the Senate and the Committees on Education and Labor and Ways and Means of the House of Representatives.

(c) The committees described in subsection (b) shall conduct hearings on the report and recommendations submitted under subsection (a)(2).

Information accessibility.

(d) For purposes of conducting the study required by this section, the Comptroller General, or any of his duly authorized representatives, shall have access to and the right to examine and copy any books, documents, papers, records, or other recorded information—

(1) within the possession or control of the administrator or the sponsor of any plan, and

(2) which the Comptroller General or his representative finds, in his own judgment, pertinent to such study.

Confidentiality.

The Comptroller General shall not disclose the identity of any individual in making any information obtained under this subsection available to the public.

SEC. 414. TREATMENT OF CERTAIN RETIREMENT BENEFITS.

26 USC 3304.

(a) GENERAL RULE.—Paragraph (15) of section 3304(a) of the Internal Revenue Code of 1954 (relating to requirements for approval of State laws) is amended by striking out the semicolon at the end thereof and inserting in lieu thereof the following:

"except that—

"(A) the requirements of this paragraph shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if—

"(i) such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer or chargeable employer (as determined under applicable law), and

"(ii) in the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment, and

42 USC 1305.
45 USC 231t.

"(B) the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment;".

26 USC 3304 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to certifications of States for 1981 and subsequent years.

SEC. 415. INCREASE IN LENGTH OF SERVICE IN ARMED FORCES REQUIRED FOR EX-SERVICEMEN TO BE ELIGIBLE FOR UNEMPLOYMENT BENEFITS.

(a) GENERAL RULE.—Subparagraph (A) of section 8521(a)(1) of title 5 of the United States Code is amended by striking out "90 days or more" and inserting in lieu thereof "365 days or more".

5 USC 8521 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to determinations of Federal service in the case of individuals filing claims for unemployment compensation on or after October 1, 1980.

SEC. 416. CESSATION OF EXTENDED BENEFITS WHEN PAID UNDER AN INTERSTATE CLAIM IN A STATE WHERE EXTENDED BENEFIT PERIOD IS NOT IN EFFECT.

26 USC 3304 note.

(a) GENERAL RULE.—Section 202 of the Federal-State Extended Unemployment Compensation Act of 1970 is amended by adding at the end thereof the following new subsection:

"Cessation of Extended Benefits When Paid Under an Interstate Claim in a State Where Extended Benefit Period Is Not in Effect

"(c)(1) Except as provided in paragraph (2), payment of extended compensation shall not be made to any individual for any week if—

"(A) extended compensation would (but for this subsection) have been payable for such week pursuant to an interstate claim filed in any State under the interstate benefit payment plan, and

"(B) an extended benefit period is not in effect for such week in such State.

"(2) Paragraph (1) shall not apply with respect to the first 2 weeks for which extended compensation is payable (determined without regard to this subsection) pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended compensation account established for the benefit year.

"(3) Section 3304(a)(9)(A) of the Internal Revenue Code of 1954 shall not apply to any denial of compensation required under this subsection." 26 USC 3304.

(b) EFFECTIVE DATE.— 26 USC 3304 note.

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to weeks of unemployment beginning after October 1, 1980; except that such amendment shall not be a requirement of any State law under section 3304(a)(11) of the Internal Revenue Code of 1954 for any week which begins before June 1, 1981.

(2) SPECIAL RULE FOR CERTAIN STATES.—In the case of any State the legislature of which does not meet in a regular session which begins during calendar year 1981 and before April 1, 1981, paragraph (1) shall be applied by substituting "June 1, 1982" for "June 1, 1981".

Approved September 26, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORTS No. 96-869, pt. I (Comm. on Education and Labor), pt. II (Comm. on Ways and Means) and No. 96-1343 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 126 (1980):

May 21, 22, considered and passed House.

July 29, considered and passed Senate, amended, in lieu of S. 1076.

July 31, Aug. 1, 25, House concurred in Senate amendment with an amendment.

Aug. 26, Senate concurred in House amendment with amendments.

Aug. 28, House disagreed to Senate amendments.

Sept. 18, Senate agreed to conference report.

Sept. 19, House agreed to conference report.