

## **Subtitle B**

### **Coverage**

#### **1321. Coverage**

(a) Plans covered

Except as provided in subsection (b) of this section, this subchapter applies to any plan (including a successor plan) which, for a plan year—

(1) is an employee pension benefit plan (as defined in paragraph (2) of section 1002 of this title) established or maintained—

(A) by an employer engaged in commerce or in any industry or activity affecting commerce, or

(B) by any employee organization, or organization representing employees, engaged in commerce or in any industry or activity affecting commerce, or

(C) by both,

which has, in practice, met the requirements of part I of subchapter D of chapter 1 of title 26 (as in effect for the preceding 5 plan years of the plan) applicable to the plans described in paragraph (2) for the preceding 5 plan years; or

(2) is, or has been determined by the Secretary of the Treasury to be, a plan described in section 401 (a) of title 26, or which meets, or has been determined by the Secretary of the Treasury to meet, the requirements of section 404 (a)(2) of title 26.

For purposes of this subchapter, a successor plan is considered to be a continuation of a predecessor plan. For this purpose, unless otherwise specifically indicated in this subchapter, a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided.

(b) Plans not covered

This section does not apply to any plan—

(1) which is an individual account plan, as defined in paragraph (34) of section 1002 of this title,

(2) established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or to which the Railroad Retirement Act of 1935 or 1937 [45 U.S.C. 231 et seq.] applies and which is financed by contributions required under that Act,

(3) which is a church plan as defined in section 414 (e) of title 26, unless that plan has made an election under section 410 (d) of title 26, and has notified the corporation in accordance with procedures prescribed by the corporation, that it wishes to have the provisions of this part apply to it,

(4)

(A) established and maintained by a society, order, or association described in section 501 (c)(8) or (9) of title 26, if no part of the contributions to or under the plan is made by employers of participants in the plan, or

- (B) of which a trust described in section 501 (c)(18) of title 26 is a part;
- (5) which has not at any time after September 2, 1974, provided for employer contributions;
- (6) which is unfunded and which is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;
- (7) which is established and maintained outside of the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens;
- (8) which is maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of title 26 on plans to which that section applies, without regard to whether the plan is funded, and, to the extent that a separable part of a plan (as determined by the corporation) maintained by an employer is maintained for such purpose, that part shall be treated for purposes of this subchapter, as a separate plan which is an excess benefit plan;
- (9) which is established and maintained exclusively for substantial owners as defined in section 1322 (b)(6) <sup>[1]</sup> of this title;
- (10) of an international organization which is exempt from taxation under the International Organizations Immunities Act [22 U.S.C. 288 et seq.];
- (11) maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;
- (12) which is a defined benefit plan, to the extent that it is treated as an individual account plan under paragraph (35)(B) of section 1002 of this title; or
- (13) established and maintained by a professional service employer which does not at any time after September 2, 1974, have more than 25 active participants in the plan.

(c) Definitions

(1) For purposes of subsection (b)(1) of this section, the term "individual account plan" does not include a plan under which a fixed benefit is promised if the employer or his representative participated in the determination of that benefit.

(2) For purposes of this paragraph and for purposes of subsection (b)(13) of this section—

(A) the term "professional service employer" means any proprietorship, partnership, corporation, or other association or organization

(i) owned or controlled by professional individuals or by executors or administrators of professional individuals,

(ii) the principal business of which is the performance of professional services, and

(B) the term "professional individuals" includes but is not limited to, physicians, dentists, chiropractors, osteopaths, optometrists, other licensed practitioners of the healing arts, attorneys at law, public accountants, public engineers, architects, draftsmen, actuaries, psychologists, social or physical scientists, and performing artists.

(3) In the case of a plan established and maintained by more than one professional service employer, the plan shall not be treated as a plan described

in subsection (b)(13) of this section if, at any time after September 2, 1974, the plan has more than 25 active participants.

### **1322. Single-employer plan benefits guaranteed**

How Current is This?

#### **(a) Nonforfeitable benefits**

Subject to the limitations contained in subsection (b) of this section, 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 single-employer plan which terminates at a time when this subchapter applies to it.

#### **(b) Exceptions**

(1) Except to the extent provided in paragraph (7)—

(A) no benefits provided by a plan which has been in effect for less than 60 months at the time the plan terminates shall be guaranteed under this section, and

(B) any increase in the amount of benefits under a plan resulting from a plan amendment which was made, or became effective, whichever is later, within 60 months before the date on which the plan terminates shall be disregarded.

(2) For purposes of this subsection, the time a successor plan (within the meaning of section 1321 (a) of this title) has been in effect includes the time a previously established plan (within the meaning of section 1321 (a) of this title) was in effect. For purposes of determining what benefits are guaranteed under this section in the case of a plan to which section 1321 of this title does not apply on September 3, 1974, the 60-month period referred to in paragraph (1) shall be computed beginning on the first date on which such section does apply to the plan.

(3) The amount of monthly benefits described in subsection (a) of this section provided by a plan, which are guaranteed under this section with respect to a participant, shall not have 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 lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income from that employer was greater than during any other such period with that employer determined by dividing 1/12 of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) \$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act [42 U.S.C. 430]) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974.

The provisions of this paragraph do not apply to non-basic benefits. The maximum guaranteed monthly benefit shall not be reduced solely on account of the age of a participant in the case of a benefit payable by reason of disability

that occurred on or before the termination date, if the participant demonstrates to the satisfaction of the corporation that the Social Security Administration has determined that the participant satisfies the definition of disability under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq.; 1381 et seq.], and the regulations thereunder. If a benefit payable by reason of disability is converted to an early or normal retirement benefit for reasons other than a change in the health of the participant, such early or normal retirement benefit shall be treated as a continuation of the benefit payable by reason of disability and this subparagraph shall continue to apply.

(4)

(A) The actuarial value of a benefit, for purposes of this subsection, shall be determined in accordance with regulations prescribed by the corporation.

(B) For purposes of paragraph (3)—

(i) the term “gross income” means “earned income” within the meaning of section 911 (b) of title 26 (determined without regard to any community property laws),

(ii) in the case of a participant in a plan under which contributions are made by more than one employer, amounts received as gross income from any employer under that plan shall be aggregated with amounts received from any other employer under that plan during the same period, and

(iii) any non-basic benefit shall be disregarded.

(5)

(A) For purposes of this subchapter, the term “substantial owner” means an individual who—

(i) owns the entire interest in an unincorporated trade or business,

(ii) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

(iii) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii) the constructive ownership rules of section 1563 (e) of title 26 shall apply (determined without regard to section 1563 (e)(3)(C)). For purposes of this subchapter an individual is also treated as a substantial owner with respect to a plan if, at any time within the 60 months preceding the date on which the determination is made, he was a substantial owner under the plan.

(B) In the case of a participant in a plan under which benefits have not been increased by reason of any plan amendments and who is covered by the plan as a substantial owner, the amount of benefits guaranteed under this section shall not exceed the product of—

(i) a fraction (not to exceed 1) the numerator of which is the number of years the substantial owner was an active participant in the plan, and the denominator of which is 30, and

(ii) the amount of the substantial owner’s monthly benefits guaranteed under subsection (a) of this section (as limited under paragraph (3) of this subsection).

(C) In the case of a participant in a plan, other than a plan described in subparagraph (B), who is covered by the plan as a substantial owner, the amount

of the benefit guaranteed under this section shall, under regulations prescribed by the corporation, treat each benefit increase attributable to a plan amendment as if it were provided under a new plan. The benefits guaranteed under this section with respect to all such amendments shall not exceed the amount which would be determined under subparagraph (B) if subparagraph (B) applied.

(6)

(A) No benefits accrued under a plan after the date on which the Secretary of the Treasury issues notice that he has determined that any trust which is a part of a plan does not meet the requirements of section 401 (a) of title 26, or that the plan does not meet the requirements of section 404 (a)(2) of title 26, are guaranteed under this section unless such determination is erroneous. This subparagraph does not apply if the Secretary subsequently issues a notice that such trust meets the requirements of section 401 (a) of title 26 or that the plan meets the requirements of section 404 (a)(2) of title 26 and if the Secretary determines that the trust or plan has taken action necessary to meet such requirements during the period between the issuance of the notice referred to in the preceding sentence and the issuance of the notice referred to in this sentence.

(B) No benefits accrued under a plan after the date on which an amendment of the plan is adopted which causes the Secretary of the Treasury to determine that any trust under the plan has ceased to meet the requirements of section 401 (a) of title 26 or that the plan has ceased to meet the requirements of section 404 (a)(2) of title 26, are guaranteed under this section unless such determination is erroneous. This subparagraph shall not apply if the amendment is revoked as of the date it was first effective or amended to comply with such requirements.

(7) Benefits described in paragraph (1) are guaranteed only to the extent of the greater of—

(A) 20 percent of the amount which, but for the fact that the plan or amendment has not been in effect for 60 months or more, would be guaranteed under this section, or

(B) \$20 per month,

multiplied by the number of years (but not more than 5) the plan or amendment, as the case may be, has been in effect. In determining how many years a plan or amendment has been in effect for purposes of this paragraph, the first 12 months beginning with the date on which the plan or amendment is made or first becomes effective (whichever is later) constitutes one year, and each consecutive period of 12 months thereafter constitutes an additional year. This paragraph does not apply to benefits payable under a plan unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this subchapter.

(c) Payment by corporation to participants and beneficiaries of recovery percentage of outstanding amount of benefit liabilities

(1) In addition to benefits paid under the preceding provisions of this section with respect to a terminated plan, the corporation shall pay the portion of the amount determined under paragraph (2) which is allocated with respect to each participant under section 1344 (a) of this title. Such payment shall be made to

such participant or to such participant's beneficiaries (including alternate payees, within the meaning of section 1056 (d)(3)(K) of this title).

(2) The amount determined under this paragraph is an amount equal to the product derived by multiplying—

(A) the outstanding amount of benefit liabilities under the plan (including interest calculated from the termination date), by

(B) the applicable recovery ratio.

(3)

(A) Except as provided in subparagraph (C), for purposes of this subsection, the term "recovery ratio" means the average ratio, with respect to prior plan terminations described in subparagraph (B), of—

(i) the value of the recovery of the corporation under section 1362, 1363, or 1364 of this title in connection with such prior terminations, to

(ii) the amount of unfunded benefit liabilities under such plans as of the termination date in connection with such prior terminations.

(B) A plan termination described in this subparagraph is a termination with respect to which—

(i) the corporation has determined the value of recoveries under section 1362, 1363, or 1364 of this title, and

(ii) notices of intent to terminate were provided after December 17, 1987, and during the 5-Federal fiscal year period ending with the fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate with respect to the plan termination for which the recovery ratio is being determined.

(C) In the case of a terminated plan with respect to which the outstanding amount of benefit liabilities exceeds \$20,000,000, for purposes of this section, the term "recovery ratio" means, with respect to the termination of such plan, the ratio of—

(i) the value of the recoveries of the corporation under section 1362, 1363, or 1364 of this title in connection with such plan, to

(ii) the amount of unfunded benefit liabilities under such plan as of the termination date.

(4) Determinations under this subsection shall be made by the corporation. Such determinations shall be binding unless shown by clear and convincing evidence to be unreasonable.

(d) Authorization to guarantee other classes of benefits

The corporation is authorized to guarantee the payment of such other classes of benefits and to establish the terms and conditions under which such other classes of benefits are guaranteed as it determines to be appropriate.

(e) Nonforfeiture of preretirement survivor annuity

For purposes of subsection (a) of this section, a qualified preretirement survivor annuity (as defined in section 1055 (e)(1) of this title) with respect to a participant under a terminated single-employer plan shall not be treated as forfeitable solely because the participant has not died as of the termination date.

(f) Effective date of plan amendments

For purposes of this section, the effective date of a plan amendment described in section 1054 (i)(1) of this title shall be the effective date of the plan of

reorganization of the employer described in section 1054 (i)(1) of this title or, if later, the effective date stated in such amendment.

### **1322a. Multiemployer plan benefits guaranteed**

#### (a) Benefits of covered plans subject to guarantee

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—

- (1) to which this subchapter applies, and
- (2) which is insolvent under section 1426 (b) or 1441 (d)(2) of this title.

#### (b) Benefits or benefit increases not eligible for guarantee

##### (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 1341a (a)(2) of this title) shall not be taken into account.

(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 1425 (a)(2) of this title in determining the minimum contribution requirement for the plan year under section 1423 (b) of this title is not eligible for the corporation's guarantee.

##### (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

(C) in the case of a plan to which section 1321 of this title did not apply on September 3, 1974, the time periods referred to in this section are computed beginning on the date on which section 1321 of this title first applies to the plan.

#### (c) Determinations respecting amount of guarantee

(1) Except as provided in subsection (g) of this section, 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 \$11, plus 75 percent of the lesser of—

(i) \$33, or

(ii) the accrual rate, if any, in excess of \$11, and

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

(2) For purposes of this section, the accrual rate is—

(A) the monthly benefit of the participant or beneficiary which is described in subsection (a) of this section and which is eligible for the corporation's guarantee under subsection (b) of this section, 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 title 26; divided by

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

(3) For purposes of this subsection—

(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 title 26.

(d) Amount of guarantee of reduced benefit

In the case of a benefit which has been reduced under section 411 (a)(3)(E) of title 26, the corporation shall guarantee the lesser of—

(1) the reduced benefit, or

(2) the amount determined under subsection (c) of this section.

(e) Ineligibility of benefits for guarantee

The corporation shall not guarantee benefits under a multiemployer plan which, under section 1322 (b)(6) of this title, would not be guaranteed under a single-employer plan.

(f) Study, report, etc., respecting premium increase in existing basic-benefit guarantee levels; Congressional procedures applicable for revision of schedules

(1) No later than 5 years after September 26, 1980, and at least every fifth year thereafter, the corporation shall—

(A) conduct a study to determine—

(i) the premiums needed to maintain the basic-benefit guarantee levels for multiemployer plans described in subsection (c) of this section, 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 subchapter; 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.

(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—

(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 1306 (b) of this title,

(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 enactment of a joint resolution.

(C) If an increase in premiums is not so enacted, 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 subchapter, 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—

(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 enactment of a joint resolution.

(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 joint 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 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.

(B) For purposes of this subsection, "joint resolution" means only a joint resolution, the matter after the resolving clause of which is as follows: - transmitted to the Congress by the "The proposed schedule described in is hereby approved.", the first Pension Benefit Guaranty Corporation on 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 joint resolution shall be the procedure described in section 1306 (b)(4) through (7) of this title.

(g) Guarantee of payment of other classes of benefits and establishment of terms and conditions of guarantee; promulgation of regulations for establishment of supplemental program to guarantee benefits otherwise ineligible; status of benefits; applicability of revised schedule of premiums

(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.

(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) of this section. Such regulations shall be proposed by the corporation no later than the end of the 18th calendar month following September 26, 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 1306 (a)(2)(B) of this title to the revolving fund used pursuant to section 1305 of this title 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.

(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 subchapter.

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

(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 joint resolution described in subparagraph (B) is not enacted before the close of the 60th legislative day after such schedule is submitted to the Congress.

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

(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.

(D) The procedure for disposition of a joint resolution described in subparagraph (B) shall be the procedure described in paragraphs (4) through (7) of section 1306 (b) of this title.

(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 1426, 1431, and 1441 of this title, and the requirements of section 418E of title 26, but only with respect to benefits guaranteed under this subsection.

(h) Applicability to nonforfeitable benefits accrued as of July 30, 1980; manner and extent of guarantee

(1) Except as provided in paragraph (3), subsections (b) and (c) of this section 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 1322 of this title (without regard to this section).

(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 1341a (a)(2) of this title, or

(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.

### **1322b. Aggregate limit on benefits guaranteed; criteria applicable**

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

(b) For purposes of this section—

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

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

### **1323. Plan fiduciaries**

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