

**§ 4219.13**

**29 CFR Ch. XL (7-1-06 Edition)**

(b) *Liability for 20-year-limitation amounts.* An employer shall be liable for 20-year-limitation amounts to the extent provided in section 4219(c)(1)(D) of ERISA.

(c) *Liability for reallocation liability.* An employer shall be liable for reallocation liability if the employer withdrew pursuant to an agreement or arrangement to withdraw from a multi-employer plan from which substantially all employers withdrew pursuant to an agreement or arrangement to withdraw, or if the employer withdrew after the beginning of the second full plan year preceding the termination date from a plan that terminated by the withdrawal of every employer, and, as of the reallocation record date—

(1) The employer has not been completely liquidated or dissolved;

(2) The employer is not the subject of a case or proceeding under title 11, United States Code, or any case or proceeding under similar provisions of state insolvency laws, except that a plan sponsor may determine that such an employer is liable for reallocation liability if the plan sponsor determines that the employer is reasonably expected to be able to pay its initial withdrawal liability and its redetermination liability in full and on time to the plan; and

(3) The plan sponsor has not determined that the employer's initial withdrawal liability or its redetermination liability is limited by section 4225 of ERISA.

(d) *General exclusion.* In the event that a plan experiences successive mass withdrawals, an employer that has been determined to be liable under this subpart for any component of mass withdrawal liability shall not be liable as a result of the same withdrawal for that component of mass withdrawal liability with respect to a subsequent mass withdrawal.

(e) *Free-look rule.* An employer that is not liable for initial withdrawal liability pursuant to a plan amendment adopting section 4210(a) of ERISA shall not be liable for *de minimis* amounts or for 20-year-limitation amounts, but shall be liable for reallocation liability in accordance with paragraph (c) of this section.

(f) *Payment of initial withdrawal liability.* An employer's payment of its total initial withdrawal liability, whether by prepayment or otherwise, for a withdrawal which is later determined to be part of a mass withdrawal shall not exclude the employer from or otherwise limit the employer's mass withdrawal liability under this subpart.

(g) *Agreement presumed.* Withdrawal by an employer during a period of three consecutive plan years within which substantially all employers withdraw from a plan shall be presumed to be a withdrawal pursuant to an agreement or arrangement to withdraw unless the employer proves otherwise by a preponderance of the evidence.

**§ 4219.13 Amount of liability for *de minimis* amounts.**

An employer that is liable for *de minimis* amounts shall be liable to the plan for the amount by which the employer's allocable share of unfunded vested benefits for the purpose of determining its initial withdrawal liability was reduced pursuant to section 4209 (a) or (b) of ERISA. Any liability for *de minimis* amounts determined under this section shall be limited by section 4225 of ERISA to the extent that section would have been limiting had the employer's initial withdrawal liability been determined without regard to the *de minimis* reduction.

**§ 4219.14 Amount of liability for 20-year-limitation amounts.**

An employer that is liable for 20-year-limitation amounts shall be liable to the plan for an amount equal to the present value of all initial withdrawal liability payments for which the employer was not liable pursuant to section 4219(c)(1)(B) of ERISA. The present value of such payments shall be determined as of the end of the plan year preceding the plan year in which the employer withdrew, using the assumptions that were used to determine the employer's payment schedule for initial withdrawal liability pursuant to section 4219(c)(1)(A)(ii) of ERISA. Any liability for 20-year-limitation amounts determined under this section shall be limited by section 4225 of ERISA to the extent that section

would have been limiting had the employer's initial withdrawal liability been determined without regard to the 20-year limitation.

**§ 4219.15 Determination of reallocation liability.**

(a) *General rule.* In accordance with the rules in this section, the plan sponsor shall determine the amount of unfunded vested benefits to be reallocated and shall fully allocate those unfunded vested benefits among all employers liable for reallocation liability.

(b) *Amount of unfunded vested benefits to be reallocated.* For purposes of this section, the amount of a plan's unfunded vested benefits to be reallocated shall be the amount of the plan's unfunded vested benefits, determined as of the mass withdrawal valuation date, adjusted to exclude from plan assets the value of the plan's claims for unpaid initial withdrawal liability and unpaid redetermination liability that are deemed to be uncollectible under § 4219.12(c)(1) or (c)(2).

(c) *Amount of reallocation liability.* An employer's reallocation liability shall be equal to the sum of the employer's initial allocable share of the plan's unfunded vested benefits, as determined under paragraph (c)(1) of this section, plus any unassessable amounts allocated to the employer under paragraph (c)(2), limited by section 4225 of ERISA to the extent that section would have been limiting had the employer's reallocation liability been included in the employer's initial withdrawal liability. If a plan is determined to have no unfunded vested benefits to be reallocated, the reallocation liability of each liable employer shall be zero.

(1) *Initial allocable share.* Except as otherwise provided in rules adopted by the plan pursuant to paragraph (d) of this section, and in accordance with paragraph (c)(3) of this section, an employer's initial allocable share shall be equal to the product of the plan's unfunded vested benefits to be reallocated, multiplied by a fraction—

(i) The numerator of which is the sum of the employer's initial withdrawal liability and the employer's redetermination liability, if any; and

(ii) The denominator of which is the sum of all initial withdrawal liabilities

and all the redetermination liabilities of all employers liable for reallocation liability.

(2) *Allocation of unassessable amounts.* If after computing each employer's initial allocable share of unfunded vested benefits, the plan sponsor knows that any portion of an employer's initial allocable share is unassessable as withdrawal liability because of the limitations in section 4225 of ERISA, the plan sponsor shall allocate any such unassessable amounts among all other liable employers. This allocation shall be done by prorating the unassessable amounts on the basis of each such employer's initial allocable share. No employer shall be liable for unfunded vested benefits allocated under paragraph (c)(1) or this paragraph to another employer that are determined to be unassessable or uncollectible subsequent to the plan sponsor's demand for payment of reallocation liability.

(3) *Special rule for certain employers with no or reduced initial withdrawal liability.* If an employer has no initial withdrawal liability because of the application of the free-look rule in section 4210 of ERISA, then, in computing the fraction prescribed in paragraph (c)(1), the plan sponsor shall use the employer's allocable share of unfunded vested benefits, determined under section 4211 of ERISA at the time of the employer's withdrawal and adjusted in accordance with section 4225 of ERISA, if applicable. If an employer's initial withdrawal liability was reduced pursuant to section 4209(a) or (b) of ERISA and the employer is not liable for *de minimis* amounts pursuant to § 4219.13, then, in computing the fraction prescribed in paragraph (c)(1) of this section, the plan sponsor shall use the employer's allocable share of unfunded vested benefits, determined under section 4211 of ERISA at the time of the employer's withdrawal and adjusted in accordance with section 4225 of ERISA, if applicable.

(d) *Plan rules.* Plans may adopt rules for calculating an employer's initial allocable share of the plan's unfunded vested benefits in a manner other than that prescribed in paragraph (c)(1) of this section, provided that those rules allocate the plan's unfunded vested