

ments', of a participant or beneficiary under a terminated single-employer plan, means the excess of—

“(A) the actuarial present value (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title) of the benefit commitments to such participant or beneficiary under the plan, over

“(B) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title) of the benefits of such participant or beneficiary which are guaranteed under section 1322 of this title or to which assets of the plan are required to be allocated under section 1344 of this title;”.

1986—Subsec. (a)(2). Pub. L. 99-272, § 11004(a)(1), amended par. (2) generally, substituting provisions defining “substantial employer” for any plan year of a single-employer plan for provisions defining “substantial employer” for any plan year as an employer, treating employers who are members of the same affiliated group as one employer, who has made contributions to or under a plan under which more than one employer, other than a multi-employer plan, makes contributions for each of the two immediately preceding plan years or the second and third preceding plan years equaling or exceeding 10 percent of all employer contributions paid to or under that plan for such year.

Subsec. (a)(13). Pub. L. 99-272, § 11004(a)(2)–(4), added par. (13).

Subsec. (a)(14). Pub. L. 99-272, § 11004(a)(2)–(4), added par. (14).

Subsec. (a)(15) to (21). Pub. L. 99-272, § 11004(a)(2)–(4), added pars. (15) to (21).

Subsec. (b). Pub. L. 99-272, § 11004(b), designated existing provisions as par. (1), added par. (2), and struck out amendments by Pub. L. 96-364, § 402(a)(1)(F), which had been executed by designating existing provisions as par. (1) and adding pars. (2) to (4). See 1980 Amendment note below. For successor provisions to former pars. (2), (3), and (4), see subsecs. (a)(15), (b)(2)(A), and (b)(2)(B), respectively.

1980—Subsec. (a)(2). Pub. L. 96-364, § 402(a)(1)(A), inserted provision excepting multiemployer plan.

Subsec. (a)(3). Pub. L. 96-364, § 402(a)(1)(B), substantially revised definition of term “multiemployer plan” by, among other changes, adding subpars. (A) to (C) and cl. (i), and restating existing provisions as cl. (ii) with respect to plan years beginning before Sept. 26, 1980.

Subsec. (a)(6). Pub. L. 96-364, § 402(a)(1)(C), inserted references to section 1322a of this title.

Subsec. (a)(7). Pub. L. 96-364, § 402(a)(1)(D), inserted reference to section 1322a(g) of this title.

Subsec. (a)(8) to (12). Pub. L. 96-364, § 402(a)(1)(E), added pars. (8) to (12).

Subsec. (b). Pub. L. 96-364, § 402(a)(1)(F), which was executed by designating existing provisions as par. (1) and adding pars. (2) to (4), notwithstanding directory language that pars. (2) to (4) be added at end of subsec. (c)(1) as redesignated, was struck out by Pub. L. 99-272, § 11004(b). See 1986 Amendment note above.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to plan years beginning after 2007, see section 108(e) of Pub. L. 109-280, set out as a note under section 1021 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective as if included in the Pension Protection Act, Pub. L. 100-203, §§ 9302-9346, see section 761(b)(2) of Pub. L. 103-465, set out as a note under section 1056 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7891(f) of Pub. L. 101-239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9312(d)(1) of Pub. L. 100-203, as amended by Pub. L. 101-239, title VII, § 7881(f)(9), Dec. 19, 1989, 103

Stat. 2440, provided that: “The amendments made by this section [amending this section and sections 1305, 1322, 1341, 1342, 1349, 1362, 1364, and 1368 of this title and repealing section 1349 of this title] shall apply with respect to—

“(A) plan terminations under section 4041 of ERISA [29 U.S.C. 1341] with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987, and

“(B) plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of ERISA [29 U.S.C. 1342] after December 17, 1987.”

Section 9313(c) of Pub. L. 100-203 provided that: “The amendments made by this section [amending this section and sections 1341 and 1367 of this title] shall apply with respect to plan terminations under section 4041 of ERISA [29 U.S.C. 1341] with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99-272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109-280

For special rules on applicability of amendments by subtitles A (§§ 101-108) and B (§§ 111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of Title 26, Internal Revenue Code.

COORDINATION OF INTERNAL REVENUE CODE OF 1986 WITH EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

This subchapter not applicable in interpreting Internal Revenue Code of 1986, except to the extent specifically provided in such Code, or as determined by the Secretary of the Treasury, see section 9343(a) of Pub. L. 100-203, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1302. Pension Benefit Guaranty Corporation

(a) Establishment within Department of Labor

There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation. In carrying out its functions under this subchapter, the corporation shall be administered by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall act in accordance with the policies established by the board. The purposes of this subchapter, which are to be carried out by the corporation, are—

(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

(2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this subchapter applies, and

(3) to maintain premiums established by the corporation under section 1306 of this title at the lowest level consistent with carrying out its obligations under this subchapter.

(b) Powers of corporation

To carry out the purposes of this subchapter, the corporation has the powers conferred on a nonprofit corporation under the District of Columbia Nonprofit Corporation Act and, in addition to any specific power granted to the corporation elsewhere in this subchapter or under that Act, the corporation has the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by the board of directors, bylaws, rules, and regulations relating to the conduct of its business and the exercise of all other rights and powers granted to it by this chapter and such other bylaws, rules, and regulations as may be necessary to carry out the purposes of this subchapter;

(4) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this chapter in any State or other jurisdiction without regard to qualification, licensing, or other requirements imposed by law in such State or other jurisdiction;

(5) to lease, purchase, accept gifts or donations of, or otherwise to acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of, any property, real, personal, or mixed, or any interest therein wherever situated;

(6) to appoint and fix the compensation of such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, and, to the extent desired by the corporation, require bonds for them and fix the penalty thereof, and to appoint and fix the compensation of experts and consultants in accordance with the provisions of section 3109 of title 5;

(7) to utilize the personnel and facilities of any other agency or department of the United States Government, with or without reimbursement, with the consent of the head of such agency or department; and

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to the corporation by this chapter.

(c) Omitted**(d) Board of directors; compensation; reimbursement for expenses**

The board of directors of the corporation consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce. Members of the Board shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the board. The Secretary of Labor is the chairman of the board of directors.

(e) Meetings

The board of directors shall meet at the call of its chairman, or as otherwise provided by the bylaws of the corporation.

(f) Adoption of bylaws; amendment, alteration; publication in the Federal Register

As soon as practicable, but not later than 180 days after September 2, 1974, the board of directors shall adopt initial bylaws and rules relating to the conduct of the business of the corporation. Thereafter, the board of directors may alter, supplement, or repeal any existing bylaw or rule, and may adopt additional bylaws and rules from time to time as may be necessary. The chairman of the board shall cause a copy of the bylaws of the corporation to be published in the Federal Register not less often than once each year.

(g) Exemption from taxation

(1) The corporation, its property, its franchise, capital, reserves, surplus, and its income (including, but not limited to, any income of any fund established under section 1305 of this title), shall be exempt from all taxation now or hereafter imposed by the United States (other than taxes imposed under chapter 21 of title 26, relating to Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.], and chapter 23 of title 26, relating to Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.]), or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of the corporation shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed.

(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.

(3) Omitted.

(h) Advisory committee to corporation

(1) There is established an advisory committee to the corporation, for the purpose of advising the corporation as to its policies and procedures relating to (A) the appointment of trustees in termination proceedings, (B) investment of moneys, (C) whether plans being terminated should be liquidated immediately or continued in operation under a trustee, and (D) such other issues as the corporation may request from time to time. The advisory committee may also recommend persons for appointment as trustees in termination proceedings, make recommendations with respect to the investment of moneys in the funds, and advise the corporation as to whether a plan subject to being terminated should be liquidated immediately or continued in operation under a trustee.

(2) The advisory committee consists of seven members appointed, from among individuals recommended by the board of directors, by the President. Of the seven members, two shall represent the interests of employee organizations, two shall represent the interests of employers who maintain pension plans, and three shall represent the interests of the general public. The

President shall designate one member as chairman at the time of the appointment of that member.

(3) Members shall serve for terms of 3 years each, except that, of the members first appointed, one of the members representing the interests of employee organizations, one of the members representing the interests of employers, and one of the members representing the interests of the general public shall be appointed for terms of 2 years each, one of the members representing the interests of the general public shall be appointed for a term of 1 year, and the other members shall be appointed to full 3-year terms. The advisory committee shall meet at least six times each year and at such other times as may be determined by the chairman or requested by any three members of the advisory committee.

(4) Members shall be chosen on the basis of their experience with employee organizations, with employers who maintain pension plans, with the administration of pension plans, or otherwise on account of outstanding demonstrated ability in related fields. Of the members serving on the advisory committee at any time, no more than four shall be affiliated with the same political party.

(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. Any vacancy occurring in the office of a member of the advisory committee shall be filled in the manner in which that office was originally filled.

(6) The advisory committee shall appoint and fix the compensation of such employees as it determines necessary to discharge its duties, including experts and consultants in accordance with the provisions of section 3109 of title 5. The corporation shall furnish to the advisory committee such professional, secretarial, and other services as the committee may request.

(7) Members of the advisory committee shall, for each day (including traveltime) during which they are attending meetings or conferences of the committee or otherwise engaged in the business of the committee, be compensated at a rate fixed by the corporation which is not in excess of the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(8) The Federal Advisory Committee Act does not apply to the advisory committee established by this subsection.

(i) Special rules regarding disasters, etc.

In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1033(h)(3) of title 26) or a terroristic or military action (as defined in section 692(c)(2) of such title), the corporation may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a

period of up to 1 year which may be disregarded in determining the date by which any action is required or permitted to be completed under this chapter. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.

(Pub. L. 93-406, title IV, §4002, Sept. 2, 1974, 88 Stat. 1004; Pub. L. 94-455, title XV, §1510(a), Oct. 4, 1976, 90 Stat. 1741; Pub. L. 96-364, title IV, §§403(l), 406(a), Sept. 26, 1980, 94 Stat. 1302, 1303; Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 107-134, title I, §112(c)(2), Jan. 23, 2002, 115 Stat. 2434; Pub. L. 109-280, title IV, §411(a)(1), Aug. 17, 2006, 120 Stat. 935.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b), is Pub. L. 87-569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

This chapter, referred to in subsecs. (b)(3), (4), (8) and (i), was in original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Federal Insurance Contributions Act, referred to in subsec. (g)(1), is act Aug. 16, 1954, ch. 736, §§3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§3101 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3128 of Title 26 and Tables.

The Federal Unemployment Tax Act, referred to in subsec. (g)(1), is act Aug. 16, 1954, ch. 736, §§3301 to 3311, 68A Stat. 454, as amended, which is classified generally to chapter 23 (§3301 et seq.) of Title 26. For complete classification of this Act to the Code, see section 3311 of Title 26 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (h)(8), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Subsec. (c) amended section 5108 of Title 5, Government Organization and Employees, and subsec. (g)(3) amended section 846 of former Title 31, Money and Finance.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-280 in introductory provisions substituted "In carrying out its functions under this subchapter, the corporation shall be administered by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall act in accordance with the policies established by the board" for "In carrying out its functions under this subchapter, the corporation shall be administered by the chairman of the board of directors in accordance with policies established by the board".

2002—Subsec. (i). Pub. L. 107-134 added subsec. (i).

1989—Subsec. (g)(1). Pub. L. 101-239 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1980—Subsec. (b)(3). Pub. L. 96-364, §403(l), inserted provisions respecting bylaws, etc., to carry out this subchapter.

Subsec. (g)(2). Pub. L. 96-364, §406(a), substituted provisions relating to inclusion of receipts and disbursements in United States budget totals and nonliability of United States for obligation or liability of corpora-

tion, for provisions relating to noninclusion of receipts and disbursements in United States budget totals, exemption from limitations with respect to budget outlays, and restrictions on liability for obligation or liability incurred by the corporation.

1976—Subsec. (g)(1). Pub. L. 94-455 exempted corporation from all taxation now or hereafter imposed by United States (other than taxes imposed under chapter 21 of title 26, relating to Federal Insurance Contributions Act, and chapter 23 of title 26, relating to Federal Unemployment Tax Act).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-134 applicable to disasters and terroristic or military actions occurring on or after Sept. 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after Jan. 23, 2002, see section 112(f) of Pub. L. 107-134, set out as a note under section 6081 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7891(f) of Pub. L. 101-239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

Section 406(b) of Pub. L. 96-364 provided that: “The amendment made by subsection (a) [amending this section] shall apply to fiscal years beginning after September 30, 1980.”

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1510(b) of Pub. L. 94-455 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on September 2, 1974.”

TRANSITION

Pub. L. 109-280, title IV, §411(d), Aug. 17, 2006, 120 Stat. 936, provided that: “The term of the individual serving as Executive Director of the Pension Benefit Guaranty Corporation on the date of enactment of this Act [Aug. 17, 2006] shall expire on such date of enactment. Such individual, or any other individual, may serve as interim Director of such Corporation until an individual is appointed as Director of such Corporation under section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302) (as amended by this Act).”

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 1303. Operation of corporation

(a) Investigatory authority; audit of statistically significant number of terminating plans

The corporation may make such investigations as it deems necessary to enforce any provision of this subchapter or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the corporation shall determine, as to all the facts and circumstances con-

cerning the matter to be investigated. The corporation shall annually audit a statistically significant number of plans terminating under section 1341(b) of this title to determine whether participants and beneficiaries have received their benefit commitments and whether section 1350(a) of this title has been satisfied. Each audit shall include a statistically significant number of participants and beneficiaries.

(b) Discovery powers vested in board members or officers designated by the chairman

For the purpose of any such investigation, or any other proceeding under this subchapter, the Director, any member of the board of directors of the corporation, or any officer designated by the Director or chairman, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the corporation deems relevant or material to the inquiry.

(c) Contempt

In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the corporation may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. The court may issue an order requiring such person to appear before the corporation, or member or officer designated by the corporation, and to produce records or to give testimony related to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district in which such person is an inhabitant or may be found.

(d) Cooperation with other governmental agencies

In order to avoid unnecessary expense and duplication of functions among government agencies, the corporation may make such arrangements or agreements for cooperation or mutual assistance in the performance of its functions under this subchapter as is practicable and consistent with law. The corporation may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment. The head of each department, agency, or establishment of the United States shall cooperate with the corporation and, to the extent permitted by law, provide such information and facilities as it may request for its assistance in the performance of its functions under this subchapter. The Attorney General or his representative shall receive from the corporation for appropriate action such evidence developed in the performance of its functions under this subchapter as may be found to warrant consideration for criminal prosecution under the provisions of this or any other Federal law.