

end of the preceding plan year (as determined under section 1306(a)(3)(E)(iii) of this title) of plans maintained by the contributing sponsor and the members of its controlled group exceed \$50,000,000 (disregarding plans with no unfunded vested benefits):”.

Subsec. (b)(2). Pub. L. 109-280, §108(b)(3), formerly §107(b)(3), as renumbered by Pub. L. 111-192, substituted “1083(k)(1)(A) and (B)” for “1082(f)(1)(A) and (B)” and “430(k)(1)(A) and (B)” for “412(n)(1)(A) and (B)”.

Subsecs. (d), (e). Pub. L. 109-280, §505(b), added subsecs. (d) and (e).

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 108(b)(3) of 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.

Pub. L. 109-280, title V, §505(c), Aug. 17, 2006, 120 Stat. 946, provided that: “The amendments made by this section [amending this section] shall apply with respect to years beginning after 2007.”

#### EFFECTIVE DATE

Section 772(c) of Pub. L. 103-465 provided that: “The amendments made by this section [enacting this section] shall be effective on the date of enactment of this Act [Dec. 8, 1994].”

#### 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.

### § 1311. Repealed. Pub. L. 109-280, title V, § 501(b)(1), Aug. 17, 2006, 120 Stat. 939

Section, Pub. L. 93-406, title IV, §4011, as added Pub. L. 103-465, title VII, §775(a), Dec. 8, 1994, 108 Stat. 5046, related to notice to participants of plan’s funding status and limitations on corporation’s guaranty.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable to plan years beginning after Dec. 31, 2006, see section 501(d)(1) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 1021 of this title.

#### 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,<sup>1</sup>

(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, or which is described in the last sentence of section 1002(32) of this title<sup>2</sup>

(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,<sup>1</sup>

(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

<sup>1</sup> So in original. The comma probably should be a semicolon.

<sup>2</sup> So in original. A semicolon probably should appear.