

ment 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(a)(11) 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 VI, § 601(a)(3), Aug. 17, 2006, 120 Stat. 958, provided that: “The amendments made by this subsection [amending this section] shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(21)(A)(ii)] provided after December 31, 2006.”

Amendment by section 611(a)(1), (c)(1), (d)(1), (e)(1), (g)(1) of Pub. L. 109-280 applicable to transactions occurring after Aug. 17, 2006, see section 611(h)(1) of Pub. L. 109-280, set out as a note under section 4975 of Title 26, Internal Revenue Code.

Amendment by section 612(a) of Pub. L. 109-280 applicable to any transaction which the fiduciary or disqualified person discovers, or reasonably should have discovered, after Aug. 17, 2006, constitutes a prohibited transaction, see section 612(c) of Pub. L. 109-280, set out as a note under section 4975 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to years beginning after Dec. 31, 2001, see section 612(c) of Pub. L. 107-16, set out as a note under section 4975 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to qualified transfers occurring after Dec. 17, 1999, see section 535(c)(1) of Pub. L. 106-170, set out as a note under section 420 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxable years beginning after Dec. 31, 1997, see section 1506(c) of Pub. L. 105-34, set out as a note under section 409 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective as of Dec. 12, 1994, see section 1704(n)(3) of Pub. L. 104-188, set out as a note under section 414 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to qualified transfers under section 420 of title 26 made after Nov. 5, 1990, see section 12012(e) of Pub. L. 101-508, set out as a note under section 1021 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(l)(5) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100-203, §§ 9302-9346, to which such amendment relates, see section 7882 of Pub. L. 101-239, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 7891(a) of 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.

Section 7894(e)(4)(B) of Pub. L. 101-239 provided that: “The amendments made by subparagraph (A) [amending this section] shall take effect as if originally included in section 491(b) of the Deficit Reduction Act of 1984 [Pub. L. 98-369].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(15)(B) of Pub. L. 99-514 applicable to years beginning after Dec. 31, 1988, see

section 1114(c)(3) of Pub. L. 99-514, set out as a note under section 414 of Title 26, Internal Revenue Code.

Section 1898(i)(2) of Pub. L. 99-514 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to transactions after the date of the enactment of this Act [Oct. 22, 1986].”

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as a note under section 1361 of Title 26, Internal Revenue Code.

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.

REGULATIONS

Pub. L. 109-280, title VI, § 611(g)(3), Aug. 17, 2006, 120 Stat. 975, provided that: “No later than 180 days after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of Labor, after consultation with the Securities and Exchange Commission, shall issue regulations regarding the content of policies and procedures required to be adopted by an investment manager under section 408(b)(19) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1108(b)(19)].”

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99-514, see section 1141 of Pub. L. 99-514, set out as a note under section 401 of Title 26, Internal Revenue Code.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031 and 1114 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 2006 AMENDMENT WITH EXISTING EXEMPTIONS

Any exemption under subsec. (b) of this section provided by amendment by section 601(a)(1), (2) of Pub. L. 109-280 not to alter existing individual or class exemptions provided by statute or administrative action, see section 601(c) of Pub. L. 109-280, set out as a note under section 4975 of Title 26, Internal Revenue Code.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1109. Liability for breach of fiduciary duty

(a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary

which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 1111 of this title.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this subchapter if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

(Pub. L. 93-406, title I, § 409, Sept. 2, 1974, 88 Stat. 886.)

§ 1110. Exculpatory provisions; insurance

(a) Except as provided in sections 1105(b)(1) and 1105(d) of this title, any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy.

(b) Nothing in this subpart¹ shall preclude—

(1) a plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;

(2) a fiduciary from purchasing insurance to cover liability under this part from and for his own account; or

(3) an employer or an employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee benefit plan.

(Pub. L. 93-406, title I, § 410, Sept. 2, 1974, 88 Stat. 886.)

§ 1111. Persons prohibited from holding certain positions

(a) Conviction or imprisonment

No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 802(6) of title 21, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 80a-9(a)(1) of title 15, a violation of any provision of this chapter, a violation of section 186 of this title, a violation of chapter 63 of title 18, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan,

(2) as a consultant or adviser to an employee benefit plan, including but not limited to any entity whose activities are in whole or substantial part devoted to providing goods or services to any employee benefit plan, or

(3) in any capacity that involves decision-making authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan,

during or for the period of thirteen years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period, in the case of a person so convicted or imprisoned (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, the United States district court for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements under section 994(a) of title 28, determines that such person's service in any capacity referred to in paragraphs (1) through (3) would not be contrary to the purposes of this subchapter. Prior to making any such determination the court shall hold a hearing and shall give notice to¹ such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The court's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such court that such service would be inconsistent with the intention of this section.

(b) Penalty

Any person who intentionally violates this section shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(c) Definitions

For the purpose of this section—

(1) A person shall be deemed to have been “convicted” and under the disability of “conviction” from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

(2) The term “consultant” means any person who, for compensation, advises, or represents

¹ So in original. This part does not contain subparts.

¹ So in original. Probably should be “of”.