

an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(3) A period of parole or supervised release shall not be considered as part of a period of imprisonment.

(d) Salary of person barred from employee benefit plan office during appeal of conviction

Whenever any person—

(1) by operation of this section, has been barred from office or other position in an employee benefit plan as a result of a conviction, and

(2) has filed an appeal of that conviction,

any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of that person's conviction on appeal, the amounts in escrow shall be returned to the individual or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute² from assuming any position from which such person was previously barred.

(Pub. L. 93-406, title I, § 411, Sept. 2, 1974, 88 Stat. 887; Pub. L. 98-473, title II, §§ 229, 230, 802, Oct. 12, 1984, 98 Stat. 2031, 2131; Pub. L. 100-182, § 15(b), Dec. 7, 1987, 101 Stat. 1269.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the 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 Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (a), is Pub. L. 86-257, Sept. 14, 1959, 73 Stat. 519, as amended, which is classified principally to chapter 11 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title, and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-182, in concluding provisions, substituted "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," for "the United States Parole Commission", "court shall" for "Commission shall", "court's" for "Commission's", "such court" for "such Parole Commission", and "a hearing" for "an administrative hearing".

1984—Subsec. (a). Pub. L. 98-473, § 229, which directed substitution of "if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, on motion of the United States Department of Justice, the district court of the United States for the

district in which the offense was committed, pursuant to sentencing guidelines and policy statements issued pursuant to section 994(a) of title 28," for "the Board of Parole of the United States Justice Department", "court" and "court's" for "Board" and "Board's", respectively, and "a" for "an administrative", was (except for the last substitution) incapable of execution in view of the previous amendment by section 802 of Pub. L. 98-473 which became effective prior to the effective date of the amendment by section 229. See note below.

Pub. L. 98-473, § 802(a), in amending provisions after "the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401)," generally, inserted provisions relating to abuse or misuse of employment in a labor organization or employee benefit plan, in cl. (1) substituted "employee, or representative in any capacity" for "or employee", in cl. (2) substituted "consultant or adviser to an" for "consultant to any", added cl. (3), substituted "the period of thirteen years" for "five years", "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," for "unless prior to the end of such five-year period," in cl. (B) substituted "the United States Parole Commission" for "the Board of Parole of the United States Department of Justice" and "paragraphs (1) through (3)" for "paragraph (1) or (2)", and in provisions following cl. (B) substituted "Commission" and "Commission's" for "Board" and "Board's", respectively, inserted provision of notice to the Secretary of Labor, and substituted "hire, retain, employ, or otherwise place any other person to serve in any capacity" for "permit any other person to serve in any capacity referred to in paragraph (1) or (2)" and "Parole Commission" for "Board of Parole".

Subsec. (b). Pub. L. 98-473, § 802(b), substituted "five years" for "one year".

Subsec. (c)(1). Pub. L. 98-473, § 802(c), substituted "regardless of whether that judgment remains under appeal" for "or the date of the final sustaining of such judgment on appeal, whichever is the later event".

Subsec. (c)(3). Pub. L. 98-473, § 230, inserted "or supervised release" after "parole".

Subsec. (d). Pub. L. 98-473, § 802(d), added subsec. (d).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100-182, set out as a note under section 3006A of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendments by sections 229 and 230 of Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendments, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

Amendment by section 802 of Pub. L. 98-473 effective with respect to any judgment of conviction entered by the trial court after Oct. 12, 1984, except as otherwise provided, see section 804 of Pub. L. 98-473, set out as a note under section 504 of this title.

§ 1112. Bonding

(a) Requisite bonding of plan officials

Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan (hereafter in this section referred to as "plan official") shall be bonded as provided in this section; except that—

(1) where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section,

² So in original. Probably should be "section".

(2) no bond shall be required of any entity which is registered as a broker or a dealer under section 78o(b) of title 15 if the broker or dealer is subject to the fidelity bond requirements of a self-regulatory organization (within the meaning of section 78c(a)(26) of title 15).¹

(3) no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary—

(A) is a corporation organized and doing business under the laws of the United States or of any State;

(B) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(C) is subject to supervision or examination by Federal or State authority; and

(D) has at all times a combined capital and surplus in excess of such a minimum amount as may be established by regulations issued by the Secretary, which amount shall be at least \$1,000,000. Paragraph (2) shall apply to a bank or other financial institution which is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation, only if such bank or institution meets bonding or similar requirements under State law which the Secretary determines are at least equivalent to those imposed on banks by Federal law.

The amount of such bond shall be fixed at the beginning of each fiscal year of the plan. Such amount shall be not less than 10 per centum of the amount of funds handled. In no case shall such bond be less than \$1,000 nor more than \$500,000, except that the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of \$500,000, subject to the 10 per centum limitation of the preceding sentence. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of the plan official, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 9304-9308 of title 31. Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class. In the case of a plan that holds employer securities (within the meaning of section 1107(d)(1) of this title), this subsection shall be applied by substituting “\$1,000,000” for “\$500,000” each place it appears.

¹ So in original. The period probably should be “, and”.

(b) Unlawful acts

It shall be unlawful for any plan official to whom subsection (a) of this section applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee benefit plan, without being bonded as required by subsection (a) of this section and it shall be unlawful for any plan official of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any plan official, with respect to whom the requirements of subsection (a) of this section have not been met.

(c) Conflict of interest prohibited in procuring bonds

It shall be unlawful for any person to procure any bond required by subsection (a) of this section from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any control or significant financial interest, direct or indirect.

(d) Exclusiveness of statutory basis for bonding requirement for persons handling funds or other property of employee benefit plans

Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) of this section because he handles funds or other property of an employee benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section including exempting a plan from the requirements of this section where he finds that (1) other bonding arrangements or (2) the overall financial condition of the plan would be adequate to protect the interests of the beneficiaries and participants. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.

(Pub. L. 93-406, title I, § 412, Sept. 2, 1974, 88 Stat. 888; Pub. L. 109-280, title VI, §§ 611(b), 622(a), Aug. 17, 2006, 120 Stat. 968, 979.)

CODIFICATION

In subsec. (a), “sections 9304-9308 of title 31” substituted for “sections 6 through 13 of title 6, United States Code” on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-280, § 622(a), inserted at end of concluding provisions “In the case of a plan that holds employer securities (within the meaning of section 1107(d)(1) of this title), this subsection shall be applied by substituting ‘\$1,000,000’ for ‘\$500,000’ each place it appears.”

Subsec. (a)(2), (3). Pub. L. 109-280, § 611(b), added par. (2) and redesignated former par. (2) as (3).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 611(b) of Pub. L. 109-280 applicable to plan years beginning after Aug. 17, 2006, see section 611(h)(2) of Pub. L. 109-280, set out as a note under section 4975 of Title 26, Internal Revenue Code.

Pub. L. 109-280, title VI, § 622(b), Aug. 17, 2006, 120 Stat. 979, provided that: "The amendment made by this section [amending this section] shall apply to plan years beginning after December 31, 2007."

REGULATIONS

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.

§ 1113. Limitation of actions

No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of—

(1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation;

except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

(Pub. L. 93-406, title I, § 413, Sept. 2, 1974, 88 Stat. 889; Pub. L. 100-203, title IX, § 9342(b), Dec. 22, 1987, 101 Stat. 1330-371; Pub. L. 101-239, title VII, §§ 7881(j)(4), 7894(e)(5), Dec. 19, 1989, 103 Stat. 2443, 2450.)

AMENDMENTS

1989—Pub. L. 101-239, § 7894(e)(5), struck out "(a)" before "No action".

Par. (2). Pub. L. 101-239, § 7881(j)(4), struck out comma after "violation".

1987—Subsec. (a)(2). Pub. L. 100-203 struck out "(A)" after "date" and struck out "or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Secretary under this subchapter".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(j)(4) 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 7894(e)(5) of Pub. L. 101-239 effective, except as otherwise provided, as if originally included in the provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, to which such amendment relates, see section 7894(i) of Pub. L. 101-239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable with respect to reports required to be filed after Dec. 31, 1987, see section 9342(d)(1) of Pub. L. 100-203, set out as a note under section 1132 of this title.

§ 1114. Effective date

(a) Except as provided in subsections (b), (c), and (d) of this section, this part shall take effect on January 1, 1975.

(b)(1) The provisions of this part authorizing the Secretary to promulgate regulations shall take effect on September 2, 1974.

(2) Upon application of a plan, the Secretary may postpone until not later than January 1, 1976, the applicability of any provision of sections 1102, 1103 (other than 1103(c)), 1105 (other than 1105(a) and (d)), and 1110(a) of this title, as it applies to any plan in existence on September 2, 1974, if he determines such postponement is (A) necessary to amend the instrument establishing the plan under which the plan is maintained and (B) not adverse to the interest of participants and beneficiaries.

(3) This part shall take effect on September 2, 1974, with respect to a plan which terminates after June 30, 1974, and before January 1, 1975, and to which at the time of termination section 1321 of this title applies.

(c) Sections 1106 and 1107(a) of this title (relating to prohibited transactions) shall not apply—

(1) until June 30, 1984, to a loan of money or other extension of credit between a plan and a party in interest under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of title 26 or the corresponding provisions of prior law);

(2) until June 30, 1984, to a lease or joint use of property involving the plan and a party in interest pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of title 26 or the corresponding provisions of prior law);

(3) until June 30, 1984, to the sale, exchange or other disposition of property described in paragraph (2) between a plan and a party in interest if—

(A) in the case of a sale, exchange, or other disposition of the property by the plan to the party in interest, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(B) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition;

(4) until June 30, 1977, to the provision of services, to which paragraphs (1), (2), and (3) do not apply between a plan and a party in interest—

(A) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or

(B) if the party in interest ordinarily and customarily furnished such services on June