

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.

§ 1304. Participant and Plan Sponsor Advocate

(a) In general

The board of directors of the corporation shall select a Participant and Plan Sponsor Advocate from the candidates nominated by the advisory committee to the corporation under section 1302(h)(1) of this title and without regard to the provisions of title 5 relating to appointments in the competitive service or Senior Executive Service.

(b) Duties

The Participant and Plan Sponsor Advocate shall—

- (1) act as a liaison between the corporation, sponsors of defined benefit pension plans insured by the corporation, and participants in pension plans trusteeed by the corporation;
- (2) advocate for the full attainment of the rights of participants in plans trusteeed by the corporation;
- (3) assist pension plan sponsors and participants in resolving disputes with the corporation;
- (4) identify areas in which participants and plan sponsors have persistent problems in dealings with the corporation;
- (5) to the extent possible, propose changes in the administrative practices of the corporation to mitigate problems;
- (6) identify potential legislative changes which may be appropriate to mitigate problems; and
- (7) refer instances of fraud, waste, and abuse, and violations of law to the Office of the Inspector General of the corporation.

(c) Removal

If the Participant and Plan Sponsor Advocate is removed from office or is transferred to another position or location within the corporation or the Department of Labor, the board of the¹ directors of the corporation shall communicate in writing the reasons for any such removal or transfer to Congress not less than 30 days before the removal or transfer. Nothing in this subsection shall prohibit a personnel action otherwise authorized by law, other than transfer or removal.

(d) Compensation

The annual rate of basic pay for the Participant and Plan Sponsor Advocate shall be the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5 or, if the board of directors of the corporation so determines, at a rate fixed under section 9503 of such title.

¹ So in original. The word "the" probably should not appear.

(e) Annual report

(1) In general

Not later than December 31 of each calendar year, the Participant and Plan Sponsor Advocate shall report to the Health, Education, Labor, and Pensions Committee of the Senate, the Committee on Finance of the Senate, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Ways and Means of the House of Representatives on the activities of the Office of the Participant and Plan Sponsor Advocate during the fiscal year ending during such calendar year.

(2) Content

Each report submitted under paragraph (1) shall—

- (A) summarize the assistance requests received from participants and plan sponsors and describe the activities, and evaluate the effectiveness, of the Participant and Plan Sponsor Advocate during the preceding year;
- (B) identify significant problems the Participant and Plan Sponsor Advocate has identified;
- (C) include specific legislative and regulatory changes to address the problems; and
- (D) identify any actions taken to correct problems identified in any previous report.

(3) Concurrent submission

The Participant and Plan Sponsor Advocate shall submit a copy of each report to the Secretary of Labor, the Director of the corporation, and any other appropriate official at the same time such report is submitted to the committees of Congress under paragraph (1).

(Pub. L. 93-406, title IV, §4004, as added Pub. L. 112-141, div. D, title II, §40232(a), July 6, 2012, 126 Stat. 856.)

PRIOR PROVISIONS

A prior section 1304, Pub. L. 93-406, title IV, §4004, Sept. 2, 1974, 88 Stat. 1008, related to appointment, within 270 days after Sept. 2, 1974, and powers and functions of a receiver to assume control of terminated plan and its assets, prior to repeal by Pub. L. 99-272, title XI, §11016(c)(6), Apr. 7, 1986, 100 Stat. 274, effective Jan. 1, 1986, with certain exceptions. See section 11019 of Pub. L. 99-272, set out as an Effective Date of 1986 Amendment note under section 1341 of this title.

§ 1305. Pension benefit guaranty funds

(a) Establishment of four revolving funds on books of Treasury of the United States

There are established on the books of the Treasury of the United States for revolving funds to be used by the corporation in carrying out its duties under this subchapter. One of the funds shall be used with respect to basic benefits guaranteed under section 1322 of this title, one of the funds shall be used with respect to basic benefits guaranteed under section 1322a of this title, one of the funds shall be used with respect to nonbasic benefits guaranteed under section 1322 of this title (if any), and the remaining fund shall be used with respect to nonbasic benefits guaranteed under section 1322a of this title (if any), other than subsection (g)(2) thereof (if any). Whenever in this subchapter reference is

made to the term “fund” the reference shall be considered to refer to the appropriate fund established under this subsection.

(b) Credits to funds; availability of funds; investment of moneys in excess of current needs

(1) Each fund established under this section shall be credited with the appropriate portion of—

(A) premiums, penalties, interest, and charges collected under this subchapter,

(B) the value of the assets of a plan administered under section 1342 of this title by a trustee to the extent that they exceed the liabilities of such plan,

(C) the amount of any employer liability payments under subtitle D of this subchapter, to the extent that such payments exceed liabilities of the plan (taking into account all other plan assets),

(D) earnings on investments of the fund or on assets credited to the fund under this subsection,

(E) attorney’s fees awarded to the corporation, and

(F) receipts from any other operations under this subchapter.

(2) Subject to the provisions of subsection (a) of this section, each fund shall be available—

(A) for making such payments as the corporation determines are necessary to pay benefits guaranteed under section 1322 or 1322a of this title or benefits payable under section 1350 of this title,

(B) to purchase assets from a plan being terminated by the corporation when the corporation determines such purchase will best protect the interests of the corporation, participants in the plan being terminated, and other insured plans,

(C) to pay the operational and administrative expenses of the corporation, including reimbursement of the expenses incurred by the Department of the Treasury in maintaining the funds, and the Comptroller General in auditing the corporation, and

(D) to pay to participants and beneficiaries the estimated amount of benefits which are guaranteed by the corporation under this subchapter and the estimated amount of other benefits to which plan assets are allocated under section 1344 of this title, under single-employer plans which are unable to pay benefits when due or which are abandoned.

(3) Whenever the corporation determines that the moneys of any fund are in excess of current needs, it may request the investment of such amounts as it determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

(c) Repealed. Pub. L. 112-141, div. D, title II, § 40234(a), July 6, 2012, 126 Stat. 858

(d) Establishment of fifth fund; purpose, availability, etc.

(1) A fifth fund shall be established for the reimbursement of uncollectible withdrawal liability under section 1402 of this title, and shall be credited with the appropriate—

(A) premiums, penalties, and interest charges collected under this subchapter, and

(B) earnings on investments of the fund or on assets credited to the fund.

The fund shall be available to make payments pursuant to the supplemental program established under section 1402 of this title, including those expenses and other charges determined to be appropriate by the corporation.

(2) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

(e) Establishment of sixth fund; purpose, availability, etc.

(1) A sixth fund shall be established for the supplemental benefit guarantee program provided under section 1322a(g)(2) of this title.

(2) Such fund shall be credited with the appropriate—

(A) premiums, penalties, and interest charges collected under section 1322a(g)(2) of this title, and

(B) earnings on investments of the fund or on assets credited to the fund.

The fund shall be available for making payments pursuant to the supplemental benefit guarantee program established under section 1322a(g)(2) of this title, including those expenses and other charges determined to be appropriate by the corporation.

(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

(f) Deposit of premiums into separate revolving fund

(1) A seventh fund shall be established and credited with—

(A) premiums, penalties, and interest charges collected under section 1306(a)(3)(A)(i) of this title (not described in subparagraph (B)) to the extent attributable to the amount of the premium in excess of \$8.50,

(B) premiums, penalties, and interest charges collected under section 1306(a)(3)(E) of this title, and

(C) earnings on investments of the fund or on assets credited to the fund.

(2) Amounts in the fund shall be available for transfer to other funds established under this section with respect to a single-employer plan but shall not be available to pay—

(A) administrative costs of the corporation, or

(B) benefits under any plan which was terminated before October 1, 1988,

unless no other amounts are available for such payment.

(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

(g) Other use of funds; deposits of repayments

(1) Amounts in any fund established under this section may be used only for the purposes for which such fund was established and may not be used to make loans to (or on behalf of) any other fund or to finance any other activity of the corporation.

(2) Any repayment to the corporation of any amount paid out of any fund in connection with

a multiemployer plan shall be deposited in such fund.

(h) Voting by corporation of stock paid as liability

Any stock in a person liable to the corporation under this subchapter which is paid to the corporation by such person or a member of such person's controlled group in satisfaction of such person's liability under this subchapter may be voted only by the custodial trustees or outside money managers of the corporation.

(Pub. L. 93-406, title IV, §4005, Sept. 2, 1974, 88 Stat. 1009; Pub. L. 96-364, title IV, §403(a), Sept. 26, 1980, 94 Stat. 1300; Pub. L. 99-272, title XI, §11016(a)(1), (2), (c)(7), Apr. 7, 1986, 100 Stat. 268, 274; Pub. L. 100-203, title IX, §§9312(c)(4), 9331(d), Dec. 22, 1987, 101 Stat. 1330-364, 1330-368; Pub. L. 103-465, title VII, §776(b)(2), Dec. 8, 1994, 108 Stat. 5048; Pub. L. 112-141, div. D, title II, §40234(a), (b)(1), July 6, 2012, 126 Stat. 858.)

AMENDMENTS

2012—Subsec. (b)(1). Pub. L. 112-141, §40234(b)(1)(A)(i), redesignated subpars. (B) to (G) as (A) to (F), respectively, and struck out former subpar. (A) which read as follows: "funds borrowed under subsection (c) of this section,".

Subsec. (b)(2)(C) to (E). Pub. L. 112-141, §40234(b)(1)(A)(ii), redesignated subpars. (D) and (E) as (C) and (D), respectively, and struck out former subpar. (C) which read as follows: "to repay to the Secretary of the Treasury such sums as may be borrowed (together with interest thereon) under subsection (c) of this section,".

Subsec. (b)(3). Pub. L. 112-141, §40234(b)(1)(A)(iii), substituted period at end for "but, until all borrowings under subsection (c) of this section have been repaid, the obligations in which such excess moneys are invested may not yield a rate of return in excess of the rate of interest payable on such borrowings."

Subsec. (c). Pub. L. 112-141, §40234(a), struck out subsec. (c) which related to authority to issue notes or other obligations and purchase by Secretary of the Treasury as public debt transaction.

Subsec. (g)(2), (3). Pub. L. 112-141, §40234(b)(1)(B), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "None of the funds borrowed under subsection (c) of this section may be used to make loans to (or on behalf of) any fund other than a fund described in the second sentence of subsection (a) of this section."

1994—Subsec. (b)(2)(A). Pub. L. 103-465, which directed the amendment of subpar. (A) by inserting "or benefits payable under section 1350 of this title" after "section 1322a of this title", was executed by making the insertion after "section 1322 or 1322a of this title" to reflect the probable intent of Congress.

1987—Subsec. (f). Pub. L. 100-203, §9331(d), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100-203, §9331(d), redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Pub. L. 100-203, §9312(c)(4), struck out "or fiduciaries with respect to trusts to which the requirements of section 1349 of this title apply" after "money managers of the corporation".

Subsec. (h). Pub. L. 100-203, §9331(d), redesignated former subsec. (g) as (h).

1986—Subsec. (b)(1)(F), (G). Pub. L. 99-272, §11016(a)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (b)(2)(E). Pub. L. 99-272, §11016(a)(1), added subpar. (E).

Subsec. (g). Pub. L. 99-272, §11016(c)(7), added subsec. (g).

1980—Subsec. (a). Pub. L. 96-364, §403(a)(1), substituted provisions respecting benefits guaranteed

under sections 1322 and 1322a of this title, for provisions respecting benefits guaranteed under sections 1322 and 1323 of this title.

Subsec. (b)(2). Pub. L. 96-364, §403(a)(2), (3), in subpar. (A) inserted reference to section 1322a of this title, struck out subpar. (B) relating to payments under section 1323 of this title, and redesignated former subpars. (C) to (E) as (B) to (D), respectively.

Subsecs. (d) to (f). Pub. L. 96-364, §403(a)(4), added subsecs. (d) to (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103-465, set out as a note under section 1056 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9312(c)(4) of Pub. L. 100-203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100-203, as amended, set out as a note under section 1301 of this title.

Pub. L. 100-203, title IX, §9331(f), Dec. 22, 1987, 101 Stat. 1330-369, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1306 and 1307 of this title] shall apply to plan years beginning after December 31, 1987.

"(2) SEPARATE ACCOUNTING.—The amendments made by subsection (d) [amending this section] shall apply to fiscal years beginning after September 30, 1988."

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.

§ 1306. Premium rates

(a) Schedules for premium rates and bases for application; establishment, coverage, etc.

(1) The corporation shall prescribe such schedules of premium rates and bases for the application of those rates as may be necessary to provide sufficient revenue to the fund for the corporation to carry out its functions under this subchapter. The premium rates charged by the corporation for any period shall be uniform for all plans, other than multiemployer plans, insured by the corporation with respect to basic benefits guaranteed by it under section 1322 of this title, and shall be uniform for all multiemployer plans with respect to basic benefits guaranteed by it under section 1322a of this title.

(2) The corporation shall maintain separate schedules of premium rates, and bases for the application of those rates, for—

(A) basic benefits guaranteed by it under section 1322 of this title for single-employer plans,

(B) basic benefits guaranteed by it under section 1322a of this title for multiemployer plans,

(C) nonbasic benefits guaranteed by it under section 1322 of this title for single-employer plans,