

may prescribe an alternative method for satisfying any requirement of this part with respect to any pension plan, or class of pension plans, subject to such requirement if he determines—

(1) that the use of such alternative method is consistent with the purposes of this subchapter and that it provides adequate disclosure to the participants and beneficiaries in the plan, and adequate reporting to the Secretary,

(2) that the application of such requirement of this part would—

(A) increase the costs to the plan, or

(B) impose unreasonable administrative burdens with respect to the operation of the plan, having regard to the particular characteristics of the plan or the type of plan involved; and

(3) that the application of this part would be adverse to the interests of plan participants in the aggregate.

(b) An alternative method may be prescribed under subsection (a) of this section by regulation or otherwise. If an alternative method is prescribed other than by regulation, the Secretary shall provide notice and an opportunity for interested persons to present their views, and shall publish in the Federal Register the provisions of such alternative method.

(Pub. L. 93-406, title I, § 110, Sept. 2, 1974, 88 Stat. 851.)

#### REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

#### § 1031. Repeal and effective date

(a)(1) The Welfare and Pension Plans Disclosure Act [29 U.S.C. 301 et seq.] is repealed except that such Act shall continue to apply to any conduct and events which occurred before the effective date of this part.

(2)(A) Section 664 of title 18 is amended by striking out “any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act” and inserting in lieu thereof “any employee benefit plan subject to any provisions of title I of the Employee Retirement Income Security Act of 1974”.

(B)(i) Section 1027 of such title 18 is amended by striking out “Welfare and Pension Plans Disclosure Act” and inserting in lieu thereof “title I of the Employee Retirement Income Security Act of 1974”, and by striking out “Act” each place it appears and inserting in lieu thereof “title”.

(ii) The heading for such section is amended by striking out “WELFARE AND PENSION PLANS DISCLOSURE ACT” and inserting in lieu thereof “EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974”.

(iii) The table of sections of chapter 47 of such title 18 is amended by striking out “Welfare and Pension Plans Disclosure Act” in the item relating to section 1027 and inserting in lieu thereof “Employee Retirement Income Security Act of 1974”.

(C) Section 1954 of such title 18 is amended by striking out “any plan subject to the provisions

of the Welfare and Pension Plans Disclosure Act as amended” and inserting in lieu thereof “any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974”; and by striking out “sections 3(3) and 5(b)(1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended” and inserting in lieu thereof “sections 3(4) and (3)(16)<sup>1</sup> of the Employee Retirement Income Security Act of 1974”.

(D) Section 211 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 441) is amended by striking out “Welfare and Pension Plans Disclosure Act” and inserting in lieu thereof “Employee Retirement Income Security Act of 1974”.

(b)(1) Except as provided in paragraph (2), this part (including the amendments and repeals made by subsection (a) of this section) shall take effect on January 1, 1975.

(2) In the case of a plan which has a plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary may postpone by regulation the effective date of the repeal of any provision of the Welfare and Pension Plans Disclosure Act (and of any amendment made by subsection (a)(2) of this section) and the effective date of any provision of this part, until the beginning of the first plan year of such plan which begins after January 1, 1975.

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

(d) Subsections (b) and (c) of this section shall not apply with respect to amendments made to this part in provisions enacted after September 2, 1974.

(Pub. L. 93-406, title I, § 111, Sept. 2, 1974, 88 Stat. 851; Pub. L. 101-239, title VII, § 7894(h)(1), Dec. 19, 1989, 103 Stat. 2451.)

#### REFERENCES IN TEXT

The Welfare and Pension Plans Disclosure Act, referred to in subsecs. (a) and (b)(2), is Pub. L. 85-836, Aug. 28, 1958, 72 Stat. 997, as amended, which was classified generally to chapter 10 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 301 of this title and Tables.

Title I of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(A) to (C), means title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(B)(ii), (iii), (D), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, as amended. 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.

#### AMENDMENTS

1989—Subsec. (d). Pub. L. 101-239 added subsec. (d).

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if originally included in the pro-

<sup>1</sup> So in original. Probably should be “3(16)”.

vision 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.

#### PART 2—PARTICIPATION AND VESTING

### § 1051. Coverage

This part shall apply to any employee benefit plan described in section 1003(a) of this title (and not exempted under section 1003(b) of this title) other than—

- (1) an employee welfare benefit plan;
- (2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;
- (3)(A) a plan 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 such plan are made by employers of participants in such plan, or
  - (B) a trust described in section 501(c)(18) of title 26;
- (4) a plan which is established and maintained by a labor organization described in section 501(c)(5) of title 26 and which does not at any time after September 2, 1974, provide for employer contributions;
- (5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of title 26;
- (6) an individual retirement account or annuity described in section 408 of title 26, or a retirement bond described in section 409 of title 26 (as effective for obligations issued before January 1, 1984);
- (7) an excess benefit plan; or
- (8) any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this chapter.

(Pub. L. 93-406, title I, § 201, Sept. 2, 1974, 88 Stat. 852; Pub. L. 96-364, title IV, § 411(a), Sept. 26, 1980, 94 Stat. 1308; Pub. L. 101-239, title VII, §§ 7891(a)(1), 7894(c)(1)(A), (11)(A), Dec. 19, 1989, 103 Stat. 2445, 2448, 2449.)

#### REFERENCES IN TEXT

Section 409 of title 26, referred to in par. (6), means section 409 of Title 26, Internal Revenue Code, prior to its repeal by Pub. L. 98-369, div. A, title IV, § 491(b), July 18, 1984, 98 Stat. 848, applicable to obligations issued after Dec. 31, 1983.

This chapter, referred to in par. (8), 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.

#### AMENDMENTS

1989—Pars. (3)(A), (4), (5). Pub. L. 101-239, § 7891(a)(1), substituted "Internal Revenue Code of 1986" for "Inter-

nal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Par. (6). Pub. L. 101-239, § 7891(a)(1), substituted "section 408 of the Internal Revenue Code of 1986" for "section 408 of the Internal Revenue Code of 1954", which for purposes of codification was translated as "section 408 of title 26" thus requiring no change in text.

Pub. L. 101-239, § 7894(c)(11)(A), substituted "section 409 of title 26 (as effective for obligations issued before January 1, 1984)" for "section 409 of title 26".

Pub. L. 101-239, § 7894(c)(1)(A)(i), struck out "or" after semicolon at end.

Par. (7). Pub. L. 101-239, § 7894(c)(1)(A)(ii), substituted "plan; or" for "plan."

Par. (8). Pub. L. 101-239, § 7894(c)(1)(A)(iii), substituted "any plan" for "Any plan".

1980—Par. (8). Pub. L. 96-364 added par. (8).

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7891(a)(1) 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.

Pub. L. 101-239, title VII, § 7894(c)(1)(B), Dec. 19, 1989, 103 Stat. 2449, provided that: "The amendments made by subparagraph (A) [amending this section] shall take effect as if included in section 411 of the Multiemployer Pension Plan Amendments Act of 1980 [Pub. L. 96-364]."

Pub. L. 101-239, title VII, § 7894(c)(11)(B), Dec. 19, 1989, 103 Stat. 2449, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if originally included in section 491(b) of Public Law 98-369."

#### 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.

### § 1052. Minimum participation standards

(a)(1)(A) No pension plan may require, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

- (i) the date on which the employee attains the age of 21; or
- (ii) the date on which he completes 1 year of service.

(B)(i) In the case of any plan which provides that after not more than 2 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting "2 years of service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational organization (as defined in section 170(b)(1)(A)(ii) of title 26) by an employer which is exempt from tax under section 501(a) of title 26, which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting "26" for "21". This clause shall not apply to any plan to which clause (i) applies.

(2) No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age.