

30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if such provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of title 26) or the corresponding provisions of prior law; or

(5) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a party in interest, if such plan is required to dispose of such property in order to comply with the provisions of section 1107(a) of this title (relating to the prohibition against holding excess employer securities and employer real property), and if the plan receives not less than adequate consideration.

(d) Any election, or failure to elect, by a disqualified person under section 2003(c)(1)(B) of this Act shall be treated for purposes of this part (but not for purposes of section 1144 of this title) as an act or omission occurring before the effective date of this part.

(e) The preceding provisions 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, § 414, Sept. 2, 1974, 88 Stat. 889; Pub. L. 101-239, title VII, § 7894(e)(6), (h)(4), Dec. 19, 1989, 103 Stat. 2450, 2451.)

REFERENCES IN TEXT

Section 2003(c)(1)(B) of this Act, referred to in subsec. (d), is section 2003(c)(1)(B) of Pub. L. 93-406, which is set out as an Effective Date; Savings Provisions note under section 4975 of Title 26, Internal Revenue Code.

AMENDMENTS

1989—Subsec. (c)(2). Pub. L. 101-239, § 7894(e)(6), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text, and substituted "or the corresponding provisions of prior law" for "(" or the corresponding provisions of prior law".

Subsec. (e). Pub. L. 101-239, § 7894(h)(4), added subsec. (e).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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.

PART 5—ADMINISTRATION AND ENFORCEMENT

§ 1131. Criminal penalties

(a) Any person who willfully violates any provision of part 1 of this subtitle, or any regulation or order issued under any such provision, shall upon conviction be fined not more than \$100,000 or imprisoned not more than 10 years, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding \$500,000.

(b) Any person that violates section 1149 of this title shall upon conviction be imprisoned not more than 10 years or fined under title 18, or both.

(Pub. L. 93-406, title I, § 501, Sept. 2, 1974, 88 Stat. 891; Pub. L. 107-204, title IX, § 904, July 30, 2002, 116 Stat. 805; Pub. L. 111-148, title VI, § 6601(b), Mar. 23, 2010, 124 Stat. 779.)

AMENDMENTS

2010—Pub. L. 111-148 designated existing provisions as subsec. (a) and added subsec. (b).

2002—Pub. L. 107-204 substituted "\$100,000" for "\$5,000", "10 years" for "one year", and "\$500,000" for "\$100,000".

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.

§ 1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter;

(6) by the Secretary to collect any civil penalty under paragraph (2), (4), (5), (6), (7), (8), or (9) of subsection (c) of this section or under subsection (i) or (l) of this section;

(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 1169(a)(2)(A) of this title);

(8) by the Secretary, or by an employer or other person referred to in section 1021(f)(1) of this title, (A) to enjoin any act or practice which violates subsection (f) of section 1021 of this title, or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection;

(9) in the event that the purchase of an insurance contract or insurance annuity in connection with termination of an individual's status as a participant covered under a pension plan with respect to all or any portion of the participant's pension benefit under such plan constitutes a violation of part 4 of this title¹ or the terms of the plan, by the Sec-

¹ So in original. Probably should be "subtitle".

retary, by any individual who was a participant or beneficiary at the time of the alleged violation, or by a fiduciary, to obtain appropriate relief, including the posting of security if necessary, to assure receipt by the participant or beneficiary of the amounts provided or to be provided by such insurance contract or annuity, plus reasonable prejudgment interest on such amounts; or

(10) in the case of a multiemployer plan that has been certified by the actuary to be in endangered or critical status under section 1085 of this title, if the plan sponsor—

(A) has not adopted a funding improvement or rehabilitation plan under that section by the deadline established in such section, or

(B) fails to update or comply with the terms of the funding improvement or rehabilitation plan in accordance with the requirements of such section,

by an employer that has an obligation to contribute with respect to the multiemployer plan or an employee organization that represents active participants in the multiemployer plan, for an order compelling the plan sponsor to adopt a funding improvement or rehabilitation plan or to update or comply with the terms of the funding improvement or rehabilitation plan in accordance with the requirements of such section and the funding improvement or rehabilitation plan.

(b) Plans qualified under Internal Revenue Code; maintenance of actions involving delinquent contributions

(1) In the case of a plan which is qualified under section 401(a), 403(a), or 405(a)² of title 26 (or with respect to which an application to so qualify has been filed and has not been finally determined) the Secretary may exercise his authority under subsection (a)(5) of this section with respect to a violation of, or the enforcement of, parts 2 and 3 of this subtitle (relating to participation, vesting, and funding), only if—

(A) requested by the Secretary of the Treasury, or

(B) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe by regulation) that he exercise such authority on their behalf. In the case of such a request under this paragraph he may exercise such authority only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefits under the plan.

(2) The Secretary shall not initiate an action to enforce section 1145 of this title.

(3) Except as provided in subsections (c)(9) and (a)(6) (with respect to collecting civil penalties under subsection (c)(9)), the Secretary is not authorized to enforce under this part any requirement of part 7 against a health insurance issuer offering health insurance coverage in connection with a group health plan (as defined in section 1191b(a)(1) of this title). Nothing in this paragraph shall affect the authority of the Secretary to issue regulations to carry out such part.

(c) Administrator's refusal to supply requested information; penalty for failure to provide annual report in complete form

(1) Any administrator (A) who fails to meet the requirements of paragraph (1) or (4) of section 1166² of this title, section 1021(e)(1) of this title, section 1021(f) of this title, or section 1025(a) of this title with respect to a participant or beneficiary, or (B) who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to \$100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper. For purposes of this paragraph, each violation described in subparagraph (A) with respect to any single participant, and each violation described in subparagraph (B) with respect to any single participant or beneficiary, shall be treated as a separate violation.

(2) The Secretary may assess a civil penalty against any plan administrator of up to \$1,000 a day from the date of such plan administrator's failure or refusal to file the annual report required to be filed with the Secretary under section 1021(b)(1) of this title. For purposes of this paragraph, an annual report that has been rejected under section 1024(a)(4) of this title for failure to provide material information shall not be treated as having been filed with the Secretary.

(3) Any employer maintaining a plan who fails to meet the notice requirement of section 1021(d) of this title with respect to any participant or beneficiary or who fails to meet the requirements of section 1021(e)(2) of this title with respect to any person or who fails to meet the requirements of section 1082(d)(12)(E)² of this title with respect to any person may in the court's discretion be liable to such participant or beneficiary or to such person in the amount of up to \$100 a day from the date of such failure, and the court may in its discretion order such other relief as it deems proper.

(4) The Secretary may assess a civil penalty of not more than \$1,000 a day for each violation by any person of subsection (j), (k), or (l) of section 1021 of this title or section 1144(e)(3) of this title.

(5) The Secretary may assess a civil penalty against any person of up to \$1,000 a day from the date of the person's failure or refusal to file the information required to be filed by such person with the Secretary under regulations prescribed pursuant to section 1021(g) of this title.

(6) If, within 30 days of a request by the Secretary to a plan administrator for documents under section 1024(a)(6) of this title, the plan administrator fails to furnish the material requested to the Secretary, the Secretary may assess a civil penalty against the plan administrator of up to \$100 a day from the date of such failure (but in no event in excess of \$1,000 per request). No penalty shall be imposed under this

² See References in Text note below.

paragraph for any failure resulting from matters reasonably beyond the control of the plan administrator.

(7) The Secretary may assess a civil penalty against a plan administrator of up to \$100 a day from the date of the plan administrator's failure or refusal to provide notice to participants and beneficiaries in accordance with subsection (i) or (m) of section 1021 of this title. For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.

(8) The Secretary may assess against any plan sponsor of a multiemployer plan a civil penalty of not more than \$1,100 per day—

(A) for each violation by such sponsor of the requirement under section 1085 of this title to adopt by the deadline established in that section a funding improvement plan or rehabilitation plan with respect to a multiemployer plan which is in endangered or critical status, or

(B) in the case of a plan in endangered status which is not in seriously endangered status, for failure by the plan to meet the applicable benchmarks under section 1085 of this title by the end of the funding improvement period with respect to the plan.

(9)(A) The Secretary may assess a civil penalty against any employer of up to \$100 a day from the date of the employer's failure to meet the notice requirement of section 1181(f)(3)(B)(i)(I) of this title. For purposes of this subparagraph, each violation with respect to any single employee shall be treated as a separate violation.

(B) The Secretary may assess a civil penalty against any plan administrator of up to \$100 a day from the date of the plan administrator's failure to timely provide to any State the information required to be disclosed under section 1181(f)(3)(B)(ii) of this title. For purposes of this subparagraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.

(10)³ SECRETARIAL ENFORCEMENT AUTHORITY RELATING TO USE OF GENETIC INFORMATION.—

(A) GENERAL RULE.—The Secretary may impose a penalty against any plan sponsor of a group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, for any failure by such sponsor or issuer to meet the requirements of subsection (a)(1)(F), (b)(3), (c), or (d) of section 1182 of this title or section 1181 or 1182(b)(1) of this title with respect to genetic information, in connection with the plan.

(B) AMOUNT.—

(i) IN GENERAL.—The amount of the penalty imposed by subparagraph (A) shall be \$100 for each day in the noncompliance period with respect to each participant or beneficiary to whom such failure relates.

(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term “noncompliance period” means, with respect to any failure, the period—

(I) beginning on the date such failure first occurs; and

(II) ending on the date the failure is corrected.

(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

(i) IN GENERAL.—In the case of 1 or more failures with respect to a participant or beneficiary—

(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such participant or beneficiary shall not be less than \$2,500.

(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting “\$15,000” for “\$2,500” with respect to such person.

(D) LIMITATIONS.—

(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

(I) such failure was due to reasonable cause and not to willful neglect; and

(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the plan sponsor (or predecessor plan sponsor) during the preceding taxable year for group health plans; or

(II) \$500,000.

(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.

(F) DEFINITIONS.—Terms used in this paragraph which are defined in section 1191b of this title shall have the meanings provided such terms in such section.

³ So in original. Two pars. (10) have been enacted.

(10)³ The Secretary and the Secretary of Health and Human Services shall maintain such ongoing consultation as may be necessary and appropriate to coordinate enforcement under this subsection with enforcement under section 1320b-14(c)(8)² of title 42.

(d) Status of employee benefit plan as entity

(1) An employee benefit plan may sue or be sued under this subchapter as an entity. Service of summons, subpoena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this subchapter against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this subchapter.

(e) Jurisdiction

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 1021(f)(1) of this title. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

(2) Where an action under this subchapter is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(f) Amount in controversy; citizenship of parties

The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(g) Attorney's fees and costs; awards in actions involving delinquent contributions

(1) In any action under this subchapter (other than an action described in paragraph (2)) by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(2) In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce section 1145 of this title in which a judgment in favor of the plan is awarded, the court shall award the plan—

- (A) the unpaid contributions,
- (B) interest on the unpaid contributions,

(C) an amount equal to the greater of—

- (i) interest on the unpaid contributions, or
- (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),

(D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and

(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of title 26.

(h) Service upon Secretary of Labor and Secretary of the Treasury

A copy of the complaint in any action under this subchapter by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) of this section which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) of this section on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

(i) Administrative assessment of civil penalty

In the case of a transaction prohibited by section 1106 of this title by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of title 26) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe in regulations which shall be consistent with section 4975(f)(5) of title 26) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not apply to a transaction with respect to a plan described in section 4975(e)(1) of title 26.

(j) Direction and control of litigation by Attorney General

In all civil actions under this subchapter, attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28), but all such litigation shall be subject to the direction and control of the Attorney General.

(k) Jurisdiction of actions against the Secretary of Labor

Suits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan

to review a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this chapter, or to compel him to take action required under this subchapter, may be brought in the district court of the United States for the district where the plan has its principal office, or in the United States District Court for the District of Columbia.

(l) Civil penalties on violations by fiduciaries

(1) In the case of—

(A) any breach of fiduciary responsibility under (or other violation of) part 4 of this subtitle by a fiduciary, or

(B) any knowing participation in such a breach or violation by any other person,

the Secretary shall assess a civil penalty against such fiduciary or other person in an amount equal to 20 percent of the applicable recovery amount.

(2) For purposes of paragraph (1), the term “applicable recovery amount” means any amount which is recovered from a fiduciary or other person with respect to a breach or violation described in paragraph (1)—

(A) pursuant to any settlement agreement with the Secretary, or

(B) ordered by a court to be paid by such fiduciary or other person to a plan or its participants and beneficiaries in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5) of this section.

(3) The Secretary may, in the Secretary’s sole discretion, waive or reduce the penalty under paragraph (1) if the Secretary determines in writing that—

(A) the fiduciary or other person acted reasonably and in good faith, or

(B) it is reasonable to expect that the fiduciary or other person will not be able to restore all losses to the plan (or to provide the relief ordered pursuant to subsection (a)(9) of this section) without severe financial hardship unless such waiver or reduction is granted.

(4) The penalty imposed on a fiduciary or other person under this subsection with respect to any transaction shall be reduced by the amount of any penalty or tax imposed on such fiduciary or other person with respect to such transaction under subsection (i) of this section and section 4975 of title 26.

(m) Penalty for improper distribution

In the case of a distribution to a pension plan participant or beneficiary in violation of section 1056(e) of this title by a plan fiduciary, the Secretary shall assess a penalty against such fiduciary in an amount equal to the value of the distribution. Such penalty shall not exceed \$10,000 for each such distribution.

(Pub. L. 93-406, title I, § 502, Sept. 2, 1974, 88 Stat. 891; Pub. L. 96-364, title III, § 306(b), Sept. 26, 1980, 94 Stat. 1295; Pub. L. 99-272, title X, § 10002(b), Apr. 7, 1986, 100 Stat. 231; Pub. L. 100-203, title IX, §§ 9342(c), 9344, Dec. 22, 1987, 101 Stat. 1330-372, 1330-373; Pub. L. 101-239, title II, § 2101(a), (b), title VII, §§ 7881(b)(5)(B), (j)(2), (3), 7891(a)(1), 7894(f)(1), Dec. 19, 1989, 103 Stat. 2123, 2438, 2442, 2445, 2450; Pub. L. 101-508, title XII,

§ 12012(d)(2), Nov. 5, 1990, 104 Stat. 1388-573; Pub. L. 103-66, title IV, § 4301(c)(1)-(3), Aug. 10, 1993, 107 Stat. 376; Pub. L. 103-401, §§ 2, 3, Oct. 22, 1994, 108 Stat. 4172; Pub. L. 103-465, title VII, § 761(a)(9)(B)(ii), Dec. 8, 1994, 108 Stat. 5033; Pub. L. 104-191, title I, § 101(b), (e)(2), Aug. 21, 1996, 110 Stat. 1951, 1952; Pub. L. 104-204, title VI, § 603(b)(3)(E), Sept. 26, 1996, 110 Stat. 2938; Pub. L. 105-34, title XV, § 1503(c)(2)(B), (d)(7), Aug. 5, 1997, 111 Stat. 1062; Pub. L. 107-204, title III, § 306(b)(3), July 30, 2002, 116 Stat. 783; Pub. L. 108-218, title I, §§ 102(d), 103(b), 104(a)(2), Apr. 10, 2004, 118 Stat. 602, 603, 606; Pub. L. 109-280, title I, § 103(b)(2), title II, § 202(b), (c), title V, §§ 502(a)(2), (b)(2), 507(b), 508(a)(2)(C), title IX, § 902(f)(2), Aug. 17, 2006, 120 Stat. 816, 884, 885, 940, 941, 949, 951, 1039; Pub. L. 110-233, title I, § 101(e), May 21, 2008, 122 Stat. 886; Pub. L. 110-458, title I, §§ 101(c)(1)(H), 102(b)(1)(H), (I), Dec. 23, 2008, 122 Stat. 5097, 5101; Pub. L. 111-3, title III, § 311(b)(1)(E), Feb. 4, 2009, 123 Stat. 70.)

AMENDMENT OF SECTION

For termination of amendment by section 221(c) of Pub. L. 109-280, see Effective and Termination Dates of 2006 Amendment note below.

REFERENCES IN TEXT

Section 405(a) of title 26, referred to in subsec. (b)(1), was repealed by Pub. L. 98-369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848.

Paragraphs (1) and (4) of section 1166 of this title, referred to in subsec. (c)(1), were redesignated as pars. (1) and (4) of section 1166(a) of this title by Pub. L. 101-239, title VII, § 7891(d)(1)(A)(ii)(I), Dec. 19, 1989, 103 Stat. 2445.

Section 1082 of this title, referred to in subsec. (c)(3), was repealed and a new section 1082 was enacted by Pub. L. 109-280, title I, § 101(a), (b), Aug. 17, 2006, 120 Stat. 784, and, as so enacted, section 1082 of this title no longer contains a subsec. (d)(12)(E).

Section 1320b-14 of title 42, referred to in subsec. (c)(10), was repealed by Pub. L. 104-226, § 1(a), Oct. 2, 1996, 110 Stat. 3033, and a new section 1320b-14 of title 42, which does not contain a subsec. (c)(8), was enacted by Pub. L. 106-554, § 1(a)(6) [title IX, § 911(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-583.

This chapter, referred to in subsec. (k), 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.

CODIFICATION

Another section 306(b)(3) of Pub. L. 107-204 is classified to section 7244(b)(3) of Title 15, Commerce and Trade.

AMENDMENTS

2009—Subsec. (a)(6). Pub. L. 111-3, § 311(b)(1)(E)(i), which directed the substitution of “(8), or (9)” for “or (8)”, could not be executed because the words “or (8)” did not appear after the amendment by Pub. L. 110-233, § 101(e)(1). See 2008 Amendment note below.

Subsec. (c)(9), (10). Pub. L. 111-3, § 311(b)(1)(E)(ii), added par. (9) and redesignated former par. (9) as (10) relating to Secretarial enforcement authority relating to use of genetic information.

2008—Subsec. (a)(6). Pub. L. 110-233, § 101(e)(1), substituted “(7), (8), or (9)” for “(7), or (8)”.

Subsec. (b)(3). Pub. L. 110-233, § 101(e)(2), substituted “Except as provided in subsections (c)(9) and (a)(6) (with respect to collecting civil penalties under subsection (c)(9)), the Secretary” for “The Secretary”.

Subsec. (c)(2). Pub. L. 110-458, §102(b)(1)(H), substituted “1021(b)(1)” for “1021(b)(4)”.

Subsec. (c)(4). Pub. L. 110-458, §101(c)(1)(H), substituted “by any person of subsection (j), (k), or (l) of section 1021 of this title or section 1144(e)(3) of this title.” for “by any person of subsection (j), (k), or (l) of section 1021 of this title, section 1082(b)(7)(F)(vi) of this title, or section 1144(e)(3) of this title.”

Subsec. (c)(8)(A). Pub. L. 110-458, §102(b)(1)(I), inserted “plan” after “multiemployer”.

Subsec. (c)(9), (10). Pub. L. 110-233, §101(e)(3), added par. (9) and redesignated former par. (9) as (10).

2006—Subsec. (a)(6). Pub. L. 109-280, §§202(b)(1), 221(c), temporarily substituted “(6), (7), or (8)” for “(6), or (7)”. See Effective and Termination Dates of 2006 Amendment note below.

Subsec. (a)(8) to (10). Pub. L. 109-280, §§202(c), 221(c), temporarily amended subsec. (a) by striking out “or” at end of par. (8), substituting “; or” for period at end of par. (9), and adding par. (10). See Effective and Termination Dates of 2006 Amendment note below.

Subsec. (c)(1). Pub. L. 109-280, §508(a)(2)(C), substituted “section 1021(f) of this title, or section 1025(a) of this title” for “or section 1021(f) of this title”.

Subsec. (c)(4). Pub. L. 109-280, §902(f)(2), which directed amendment of par. (4) by substituting “, section 1082(b)(7)(F)(vi) of this title, or section 1144(e)(3) of this title” for “or section 1082(b)(7)(F)(vi) of this title”, was executed by making the substitution for “or 1082(b)(7)(F)(iv) of this title”, to reflect the probable intent of Congress.

Pub. L. 109-280, §502(b)(2), which directed amendment of par. (4) by substituting “subsection (j), (k), or (l) of section 1021 of this title” for “section 1021(j) or (k) of this title”, was executed by making the substitution for “subsection (j) or (k) of section 1021 of this title”, to reflect the probable intent of Congress.

Pub. L. 109-280, §502(a)(2), substituted “subsection (j) or (k) of section 1021 of this title” for “section 1021(j)”.

Pub. L. 109-280, §103(b)(2), which directed amendment of par. (4) by substituting “section 1021(j) or 1082(b)(7)(F)(iv) of this title” for “section 1082(b)(7)(F)(iv) of this title”, was executed by making the substitution for “section 1082(b)(7)(F)(vi) of this title”, to reflect the probable intent of Congress.

Subsec. (c)(7). Pub. L. 109-280, §507(b), substituted “subsection (i) or (m) of section 1021” for “section 1021(i)”.

Subsec. (c)(8), (9). Pub. L. 109-280, §§202(b)(2), (3), 221(c), temporarily added par. (8) and redesignated former par. (8) as (9). See Effective and Termination Dates of 2006 Amendment note below.

2004—Subsec. (c)(1). Pub. L. 108-218, §103(b), substituted “, section 1021(e)(1) of this title, or section 1021(f) of this title” for “or section 1021(e)(1) of this title”.

Subsec. (c)(3). Pub. L. 108-218, §102(d), inserted “or who fails to meet the requirements of section 1082(d)(12)(E) of this title with respect to any person” after “1021(e)(2) of this title with respect to any person”.

Subsec. (c)(4). Pub. L. 108-218, §104(a)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The Secretary may assess a civil penalty of not more than \$1,000 for each violation by any person of section 1021(f)(1) of this title.”

2002—Subsec. (a)(6). Pub. L. 107-204, §306(b)(3)(A), substituted “(5), (6), or (7)” for “(5), or (6)”.

Subsec. (c)(7), (8). Pub. L. 107-204, §306(b)(3)(B), (C), added par. (7) and redesignated former par. (7) as (8).

1997—Subsec. (a)(6). Pub. L. 105-34, §1503(d)(7), substituted “(5), or (6)” for “or (5)”.

Subsec. (c)(6), (7). Pub. L. 105-34, §1503(c)(2)(B), added par. (6) and redesignated former par. (6) as (7).

1996—Subsec. (a)(6). Pub. L. 104-191, §101(e)(2)(A)(i), substituted “under paragraph (2), (4), or (5) of subsection (c) of this section or under subsection (i) or (l) of this section” for “under subsection (c)(2) or (i) or (l) of this section”.

Subsec. (b)(3). Pub. L. 104-204 made technical amendment to reference in original act which appears in text as reference to section 1191b of this title.

Pub. L. 104-191, §101(b), added par. (3).

Subsec. (c)(1). Pub. L. 104-191, §101(e)(2)(B), inserted at end “For purposes of this paragraph, each violation described in subparagraph (A) with respect to any single participant, and each violation described in subparagraph (B) with respect to any single participant or beneficiary, shall be treated as a separate violation.”

Subsec. (c)(4) to (6). Pub. L. 104-191, §101(e)(2)(A)(ii), struck out “For purposes of this paragraph, each violation described in subparagraph (A) with respect to any single participant, and each violation described in subparagraph (B) with respect to any single participant or beneficiary, shall be treated as a separate violation. The Secretary and” after “section 1021(f)(1) of this title”, redesignated “the Secretary of Health and Human Services shall maintain such ongoing consultation as may be necessary and appropriate to coordinate enforcement under this subsection with enforcement under section 1320b-14(c)(8) of title 42.” as par. (6) and inserted “The Secretary and” before “the Secretary of Health and Human Services”, and added par. (5).

1994—Subsec. (a)(9). Pub. L. 103-401, §2, added par. (9).

Subsec. (l)(3)(B). Pub. L. 103-401, §3, inserted “(or to provide the relief ordered pursuant to subsection (a)(9) of this section)” after “to restore all losses to the plan”.

Subsec. (m). Pub. L. 103-465 added subsec. (m).

1993—Subsec. (a)(7), (8). Pub. L. 103-66, §4301(c)(1), added pars. (7) and (8).

Subsec. (c)(4). Pub. L. 103-66, §4301(c)(2), added par. (4).

Subsec. (e)(1). Pub. L. 103-66, §4301(c)(3), substituted in first sentence “fiduciary, or any person referred to in section 1021(f)(1) of this title” for “or fiduciary” and in second sentence “paragraphs (1)(B) and (7) of subsection (a)” for “subsection (a)(1)(B)”.

1990—Subsec. (c)(1). Pub. L. 101-508, §12012(d)(2)(A), inserted “or section 1021(e)(1) of this title” after “section 1166 of this title”.

Subsec. (c)(3). Pub. L. 101-508, §12012(d)(2)(B), inserted “or who fails to meet the requirements of section 1021(e)(2) of this title with respect to any person” after first reference to “beneficiary” and “or to such person” after second reference to “beneficiary”.

1989—Subsec. (a)(6). Pub. L. 101-239, §7881(j)(2), substituted “subsection (c)(2) or (i)” for “subsection (i)”.

Pub. L. 101-239, §2101(b), inserted “or (l)” after “subsection (i)”.

Subsec. (b)(1). Pub. L. 101-239, §7894(f)(1), substituted “respect” for “respet” before “to a violation” in introductory provisions.

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

Subsec. (c)(2). Pub. L. 101-239, §7881(j)(3), inserted “against any plan administrator” after “civil penalty” and substituted “such plan administrator’s” for “a plan administrator’s”.

Subsec. (c)(3). Pub. L. 101-239, §7881(b)(5)(B), added par. (3).

Subsec. (g)(2). Pub. L. 101-239, §7891(a)(1), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (l). Pub. L. 101-239, §2101(a), added subsec. (l).

1987—Subsec. (c). Pub. L. 100-203, §9342(c), designated existing provision as par. (1), redesignated as cls. (A) and (B) former cls. (1) and (2), and added par. (2).

Subsec. (i). Pub. L. 100-203, §9344, amended second sentence generally. Prior to amendment, second sentence read as follows: “The amount of such penalty may not exceed 5 percent of the amount involved (as defined in section 4975(f)(4) of title 26); except that if the transaction is not corrected (in such manner as the Secretary shall prescribe by regulation, which regulations shall be consistent with section 4975(f)(5) of title 26) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such

penalty may be in an amount not more than 100 percent of the amount involved.”

1986—Subsec. (c). Pub. L. 99-272 inserted “(1) who fails to meet the requirements of paragraph (1) or (4) of section 1166 of this title with respect to a participant or beneficiary, or (2)”.

1980—Subsec. (b). Pub. L. 96-364, §306(b)(1), redesignated existing provisions as par. (1)(A) and (B) and added par. (2).

Subsec. (g). Pub. L. 96-364, §306(b)(2), redesignated existing provisions as par. (1), inserted exception for actions under paragraph (2), and added par. (2).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-3 effective Apr. 1, 2009, and applicable to child health assistance and medical assistance provided on or after that date, with certain exceptions, see section 3 of Pub. L. 111-3, set out as an Effective Date note under section 1396 of Title 42, The Public Health and Welfare.

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.

Pub. L. 110-233, title I, §101(f)(2), May 21, 2008, 122 Stat. 888, provided that: “The amendments made by this section [amending this section and sections 1182 and 1191b of this title] shall apply with respect to group health plans for plan years beginning after the date that is 1 year after the date of enactment of this Act [May 21, 2008].”

EFFECTIVE AND TERMINATION DATES OF 2006 AMENDMENT

Amendment by section 103(b)(2) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2007, with collective bargaining exception, see section 103(c) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 1021 of this title.

Amendment by section 202(b), (c) of Pub. L. 109-280 applicable with respect to plan years beginning after 2007, with special rules for certain notices and certain restored benefits, see section 202(f) of Pub. L. 109-280, set out as a note under section 1082 of this title.

Amendment by section 202(b), (c) of Pub. L. 109-280 inapplicable to plan years beginning after Dec. 31, 2014, with exception for certain funding improvement and rehabilitation plans, see section 221(c) of Pub. L. 109-280, set out as a note under section 412 of Title 26, Internal Revenue Code.

Amendment by section 502(a)(2), (b)(2) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2007, see section 502(d) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 4980F of Title 26, Internal Revenue Code.

Amendment by section 507(b) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2006, see section 507(d)(1) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 1021 of this title.

Amendment by section 508(a)(2)(C) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2006, with special rule for collectively bargained agreements that were ratified on or before such date, see section 508(c) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 1025 of this title.

Amendment by section 902(f)(2) effective Aug. 17, 2006, see section 902(g) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 401 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 103(b) of Pub. L. 108-218 applicable to plan years beginning after Dec. 31, 2004, see section 103(d) of Pub. L. 108-218, set out as a note under section 1021 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-204 effective 180 days after July 30, 2002, see section 7244(c) of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104-204 applicable with respect to group health plans for plan years beginning on or after Jan. 1, 1998, see section 603(c) of Pub. L. 104-204 set out as a note under section 1003 of this title.

Amendment by Pub. L. 104-191 applicable with respect to group health plans for plan years beginning after June 30, 1997, except as otherwise provided, see section 101(g) of Pub. L. 104-191, set out as a note under section 1181 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103-465 applicable to plan years beginning after Dec. 31, 1994, see section 761(b)(1) of Pub. L. 103-465, set out as a note under section 1056 of this title.

Pub. L. 103-401, §5, Oct. 22, 1994, 108 Stat. 4173, provided that: “The amendments made by this Act [amending this section] shall apply to any legal proceeding pending, or brought, on or after May 31, 1993.”

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

Pub. L. 101-239, title II, §2101(c), Dec. 19, 1989, 103 Stat. 2123, provided that: “The amendments made by this section [amending this section] shall apply to any breach of fiduciary responsibility or other violation occurring on or after the date of the enactment of this Act [Dec. 19, 1989].”

Amendment by section 7881(b)(5)(B), (j)(2), (3) 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)(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.

Amendment by section 7894(f)(1) 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

Pub. L. 100-203, title IX, §9342(d), Dec. 22, 1987, 101 Stat. 1330-372, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1023, 1024, and 1113 of this title] shall apply with respect to reports required to be filed after December 31, 1987.

“(2) REGULATIONS.—The Secretary of Labor shall issue the regulations required to carry out the amendments made by subsection (c) [amending this section] not later than January 1, 1989.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 applicable to plan years beginning on or after July 1, 1986, with special rule for collective bargaining agreements, see section 10002(d) of Pub. L. 99-272, set out as an Effective Date note under section 1161 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.

REGULATIONS

Pub. L. 110-233, title I, §101(f)(1), May 21, 2008, 122 Stat. 888, provided that: "The Secretary of Labor shall issue final regulations not later than 12 months after the date of enactment of this Act [May 21, 2008] to carry out the amendments made by this section [amending this section and sections 1182 and 1191b of this title]."

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.

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.

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

For applicability of amendment by section 202(b), (c) of Pub. L. 109-280 to a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that increases benefits and provides for certain withdrawal liability rules, see section 206 of Pub. L. 109-280, set out as a note under section 412 of Title 26, Internal Revenue Code.

EFFECT OF PUB. L. 103-401 ON OTHER PROVISIONS

Pub. L. 103-401, §4, Oct. 22, 1994, 108 Stat. 4172, provided that: "Nothing in this Act [amending this section and enacting provisions set out as notes under this section and section 1001 of this title] shall be construed to limit the legal standing of individuals to bring a civil action as participants or beneficiaries under section 502(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)), and nothing in this Act shall affect the responsibilities, obligations, or duties imposed upon fiduciaries by title I of the Employee Retirement Income Security Act of 1974 [this subchapter]."

PLAN AMENDMENTS NOT REQUIRED UNTIL JULY 30, 2002

For provisions directing that if any amendment made by section 306(b) of Pub. L. 107-204 requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after July 30, 2002, see section 7244(b)(3) of Title 15, Commerce and Trade.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions setting forth circumstances under which any amendment to a plan required to be made by an amendment made by section 4301 of Pub. L. 103-66 shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 4301(d) of Pub. L. 103-66, set out as an Effective Date of 1993 Amendment note under section 1021 of this title.

§ 1133. Claims procedure

In accordance with regulations of the Secretary, every employee benefit plan shall—

- (1) provide adequate notice in writing to any participant or beneficiary whose claim for

benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

- (2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

(Pub. L. 93-406, title I, §503, Sept. 2, 1974, 88 Stat. 893.)

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.

§ 1134. Investigative authority**(a) Investigation and submission of reports, books, etc.**

The Secretary shall have the power, in order to determine whether any person has violated or is about to violate any provision of this subchapter or any regulation or order thereunder—

- (1) to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under this subchapter, and

- (2) to enter such places, inspect such books and records and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation, if he has reasonable cause to believe there may exist a violation of this subchapter or any rule or regulation issued thereunder or if the entry is pursuant to an agreement with the plan.

The Secretary may make available to any person actually affected by any matter which is the subject of an investigation under this section, and to any department or agency of the United States, information concerning any matter which may be the subject of such investigation; except that any information obtained by the Secretary pursuant to section 6103(g) of title 26 shall be made available only in accordance with regulations prescribed by the Secretary of the Treasury.

(b) Frequency of submission of books and records

The Secretary may not under the authority of this section require any plan to submit to the Secretary any books or records of the plan more than once in any 12 month period, unless the Secretary has reasonable cause to believe there may exist a violation of this subchapter or any regulation or order thereunder.

(c) Other provisions applicable relating to attendance of witnesses and production of books, records, etc.

For the purposes of any investigation provided for in this subchapter, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, records, and documents) are hereby made applicable (without regard to any limitation in such