

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 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), 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) or under subsection (i) or (l);

(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 title<sup>1</sup> or the terms of the plan, by the Secretary, 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;

(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; or

(11) in the case of a multiemployer plan, by an employee representative, or any employer that has an obligation to contribute to the plan, (A) to enjoin any act or practice which violates subsection (k) of section 1021 of this title (or, in the case of an employer, subsection (l) of such section), or (B) to obtain ap-

propriate equitable relief (i) to redress such violation or (ii) to enforce such subsection.

**(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)<sup>2</sup> 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) 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 1166<sup>2</sup> 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

<sup>1</sup> So in original. Probably should be "subtitle".

<sup>2</sup> See References in Text note below.

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)<sup>2</sup> 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 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) 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.

(11) The Secretary and the Secretary of Health and Human Services shall maintain such on-going consultation as may be necessary and appropriate to coordinate enforcement under this subsection with enforcement under section 1320b-14(c)(8)<sup>2</sup> of title 42.

(12) The Secretary may assess a civil penalty against any sponsor of a CSEC plan of up to \$100 a day from the date of the plan sponsor's failure to comply with the requirements of section 1085a(j)(3) of this title to establish or update a funding restoration plan.

**(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 en-

forceable 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) 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) 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).

(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)) 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; Pub. L. 113-97, title I, §102(b)(6), Apr. 7, 2014, 128 Stat. 1117; Pub. L. 113-235, div. O, title I, §111(d), Dec. 16, 2014, 128 Stat. 2793.)

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)(11), 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

2014—Subsec. (a)(11). Pub. L. 113-235 added par. (11).

Subsec. (c)(10) to (12). Pub. L. 113-97 redesignated par. (10) relating to ongoing consultation by the Secretary and the Secretary of Health and Human Services as par. (11) and added par. (12).

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), substituted “(6), (7), or (8)” for “(6), or (7)”.

Subsec. (a)(8) to (10). Pub. L. 109-280, §202(c), 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).

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), added par. (8) and redesignated former par. (8) as (9).

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) or under subsection (i) or (l)” 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. (j)(3)(B). Pub. L. 103-401, §3, inserted “(or to provide the relief ordered pursuant to subsection (a)(9))” 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 (i)” after “subsection (i)”.

Subsec. (b)(1). Pub. L. 101-239, § 7894(f)(1), substituted “respect” for “respect” 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 2014 AMENDMENT

Amendment by Pub. L. 113-235 applicable with respect to plan years beginning after Dec. 31, 2014, see section 111(e) of Pub. L. 113-235, set out as a note under section 1021 of this title.

Amendment by Pub. L. 113-97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113-97, set out as a note under section 401 of Title 26, Internal Revenue Code.

#### 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 DATE 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 a 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 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 a 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 a 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 a 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 a 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 sections respecting persons, partnerships, banks, or common carriers) to the jurisdiction, powers, and duties of the Secretary or any officers designated by him. To the extent he considers appropriate, the Secretary may delegate his investigative functions under this section with respect to insured banks acting as fiduciaries of employee benefit plans to the appropriate Federal banking agency (as defined in section 1813(q) of title 12).

**(d) Evidentiary privilege; confidentiality of communications**

The Secretary may promulgate a regulation that provides an evidentiary privilege for, and provides for the confidentiality of communications between or among, any of the following entities or their agents, consultants, or employees:

- (1) A State insurance department.
- (2) A State attorney general.
- (3) The National Association of Insurance Commissioners.
- (4) The Department of Labor.
- (5) The Department of the Treasury.
- (6) The Department of Justice.
- (7) The Department of Health and Human Services.

(8) Any other Federal or State authority that the Secretary determines is appropriate for the purposes of enforcing the provisions of this subchapter.

**(e) Application of privilege**

The privilege established under subsection (d) shall apply to communications related to any investigation, audit, examination, or inquiry conducted or coordinated by any of the agencies. A communication that is privileged under subsection (d) shall not waive any privilege otherwise available to the communicating agency or to any person who provided the information that is communicated.

(Pub. L. 93-406, title I, §504, Sept. 2, 1974, 88 Stat. 893; Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 111-148, title VI, §6607, Mar. 23, 2010, 124 Stat. 781.)

AMENDMENTS

2010—Subsecs. (d), (e). Pub. L. 111-148 added subsecs. (d) and (e).

1989—Subsec. (a). Pub. L. 101-239 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.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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.

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.

**§ 1135. Regulations**

Subject to subchapter II and section 1029 of this title, the Secretary may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this subchapter. Among other things, such regulations may define accounting, technical and trade terms used in such provisions; may prescribe forms; and may provide for the keeping of books and records, and for the inspection of such books and records (subject to section 1134(a) and (b) of this title).

(Pub. L. 93-406, title I, §505, Sept. 2, 1974, 88 Stat. 894.)

REGULATIONS

Pub. L. 99-272, title XI, §11018, Apr. 7, 1986, 100 Stat. 277, provided that:

“(a) REGULATORY TREATMENT OF ASSETS OF REAL ESTATE ENTITIES.—

“(1) IN GENERAL.—Except as a defense, no rule or regulation adopted pursuant to the Secretary’s proposed regulation defining ‘plan assets’ for purposes of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] (50 Fed. Reg. 961, January 8, 1985, as modified by 50 Fed. Reg. 6361, February 15, 1985), or any reproposal thereof prior to the adoption of the regulations required to be issued in accordance with subsection (d), shall apply to any asset of a real estate entity in which a plan, account, or arrangement subject to such Act invests if—

“(A) any interest in the entity is first offered to a plan, account, or arrangement subject to such Act investing in the entity (hereinafter in this section referred to as a ‘plan investor’) on or before the date which is 120 days after the date of publication of such rule or regulation as a final rule or regulation;

“(B) no plan investor acquires an interest in the entity from an issuer or underwriter at any time on or after the date which is 270 days after the date of publication of such rule or regulation as a final rule or regulation (except pursuant to a contract or subscription binding on the plan investor and entered into, or tendered, before the expiration of such 270-day period, or pursuant to the exercise, on or before December 31, 1990, of a warrant which was the subject of an effective registration under the Securities Act of 1933 (15 U.S.C. 77q et seq.) [15 U.S.C. 77a et seq.] prior to the date of the enactment of this section [Apr. 7, 1986]); and

“(C) every interest in the entity acquired by a plan investor (or contracted for or subscribed to by a plan investor) before the expiration of such 270-day period is a security—

“(i) which is part of an issue or class of securities which upon such acquisition or at any time during the offering period is held by 100 or more persons;

“(ii) the economic rights of ownership in respect of which are freely transferable;

“(iii) which is registered under the Securities Act of 1933; and

“(iv) which is part of an issue or class of securities which is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) (or is so registered within three years of the effective date of the registration statement of such securities for purposes of the Securities Act of 1933: *Provided*, That the issuer provides plan investors with such reports with respect to the offering period as are required with respect to such period by the Securities and Exchange Commission under such Acts and the rules and regulations promulgated thereunder).

In the case of partnerships organized prior to enactment of this section, the requirements of subparagraphs (iii) and (iv) shall not apply to initial limited partnership interests in an entity otherwise described above: *Provided*, That such entity was the subject of an effective registration under the Securities Act of 1933 prior to the date of the enactment of this section, such interests were issued solely for partnership organizational purposes in compliance with State limited partnership laws, and such interest has a value as of the date of issue of less than \$20,000 and represents less than one percent of the total interests outstanding as of the completion of the offering period.

“(2) MAINTENANCE OF CURRENT REGULATORY TREATMENT.—No asset of any real estate entity described in paragraph (1) shall be treated as an asset of any plan investor for any purpose of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] if the assets of such entity would not have been assets of such plan investor under the provisions of—

“(A) Interpretive Bulletin 75-2 (29 CFR 2509.750-2); or

“(B) the regulations proposed by the Secretary of Labor and published—

“(i) on August 28, 1979, at 44 Fed. Reg. 50363;

“(ii) on June 6, 1980, at 45 Fed. Reg. 38084;

“(iii) on January 8, 1985, at 50 Fed. Reg. 961; or

“(iv) on February 15, 1985, at 50 Fed. Reg. 6361, without regard to any limitation of any effective date proposed therein.

“(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) The term ‘real estate entity’ means an entity which, at any time within two years after the closing of its offering period has invested or has contracted to invest at least 75 percent of the value of its net assets available for investment in direct or indirect ownership of ‘real estate assets’ or ‘interests in real property’.

“(2) The term ‘real estate asset’ means real property (including an interest in real property) and any share of stock or beneficial interest, partnership in-

terest, depository receipt, or any other interest in any other real estate entity.

“(3) The term ‘interest in real property’ includes, directly or indirectly, the following:

“(A) the ownership or co-ownership of land or improvements thereon;

“(B) any mortgage (including an interest in or co-ownership of any mortgage, leasehold mortgage, pool of mortgages, deed of trust, or similar instrument) on land or improvements thereon,

“(C) any leasehold of land or improvements thereon; and

“(D) any option to acquire any of the foregoing, but does not include any mineral, oil, or gas royalty interest.

“(4) Whether the economic rights of ownership with respect to a security are ‘freely transferable’ shall be determined based upon all the facts and circumstances, but ordinarily none of the following, alone or in any combination, shall cause the economic rights of ownership to be considered not freely transferable—

“(A) any requirement that not less than a minimum number of shares or units of such security be transferred or assigned by any investor: *Provided*, That such requirement does not prevent transfer of all of the then remaining shares or units held by an investor;

“(B) any prohibition against transfer or assignment of such security or rights in respect thereof to an ineligible or unsuitable investor;

“(C) any restriction on or prohibition against any transfer or assignment which would either result in a termination or reclassification of the entity for Federal or State tax purposes or which would violate any State or Federal statute, regulation, court order, judicial decree, or rule of law;

“(D) any requirement that reasonable transfer or administrative fees be paid in connection with a transfer or assignment;

“(E) any requirement that advance notice of a transfer or assignment be given to the entity and any requirement regarding execution of documentation evidencing such transfer or assignment (including documentation setting forth representations from either or both of the transferor or transferee as to compliance with any restriction or requirement described in this section or requiring compliance with the entity’s governing instruments);

“(F) any restriction on substitution of an assignee as a limited partner of a partnership, including a general partner consent requirement: *Provided*, That the economic benefits of ownership of the assignor may be transferred or assigned without regard to such restriction or consent (other than compliance with any other restriction described in this section);

“(G) any administrative procedure which establishes an effective date, or an event such as the completion of the offering, prior to which a transfer or assignment will not be effective; and

“(H) any limitation or restriction on transfer or assignment which is not created or imposed by the issuer or any person acting for or on behalf of such issuer.

“(c) NO EFFECT ON SECRETARY’S AUTHORITY OTHER THAN AS PROVIDED.—Except as provided in subsection (a), nothing in this section shall limit the authority of the Secretary of Labor to issue regulations or otherwise interpret section 3(21) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(21)].

“(d) TIME LIMIT FOR FINAL REGULATIONS.—The Secretary of Labor shall adopt final regulations defining ‘plan assets’ by December 31, 1986.

“(e) EFFECTIVE DATE.—The preceding provisions of this section shall take effect on the date of the enactment of this Act [Apr. 7, 1986].”

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this sub-

chapter call for the promulgation of regulations, see section 1031 of this title.

**§ 1136. Coordination and responsibility of agencies enforcing this subchapter and related Federal laws**

**(a) Coordination with other agencies and departments**

In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this subchapter and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize, on a reimbursable or other basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this subchapter. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this subchapter as may be found to warrant consideration for criminal prosecution under the provisions of this subchapter or other Federal law.

**(b) Responsibility for detecting and investigating civil and criminal violations of this subchapter and related Federal laws**

The Secretary shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of this subchapter and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of title 18. Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this subchapter and other related Federal laws.

**(c) Coordination of enforcement with States with respect to certain arrangements**

A State may enter into an agreement with the Secretary for delegation to the State of some or all of the Secretary's authority under sections 1132 and 1134 of this title to enforce the requirements under part 7 in connection with multiple employer welfare arrangements, providing medical care (within the meaning of section 1191b(a)(2) of this title), which are not group health plans.

(Pub. L. 93-406, title I, § 506, Sept. 2, 1974, 88 Stat. 894; Pub. L. 98-473, title II, § 805, Oct. 12, 1984, 98 Stat. 2134; Pub. L. 104-191, title I, § 101(e)(3), Aug. 21, 1996, 110 Stat. 1953; Pub. L. 104-204, title VI, § 603(b)(3)(F), Sept. 26, 1996, 110 Stat. 2938.)

AMENDMENTS

1996—Subsec. (c). 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 added subsec. (c).

1984—Pub. L. 98-473 designated existing provisions as subsec. (a), added subsec. (b), and amended section catchline.

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.

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.

RELATION OF SUBTITLE E OF TITLE II OF PUB. L. 104-191 TO ERISA AUTHORITY

Pub. L. 104-191, title II, § 250, Aug. 21, 1996, 110 Stat. 2021, provided that: "Nothing in this subtitle [subtitle E (§§ 241-250) of title II of Pub. L. 104-191, enacting sections 24, 669, 1035, 1347, 1518, and 3486 of Title 18, Crimes and Criminal Procedure, amending sections 982, 1345, 1510, and 1956 of Title 18, and enacting provisions set out as notes under section 1395i of Title 42, The Public Health and Welfare] shall be construed as affecting the authority of the Secretary of Labor under section 506(b) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1136(b)], including the Secretary's authority with respect to violations of title 18, United States Code (as amended by this subtitle)."

**§ 1137. Administration**

(a) Subchapter II of chapter 5, and chapter 7, of title 5 (relating to administrative procedure), shall be applicable to this subchapter.

(b) Omitted.

(c) No employee of the Department of Labor or the Department of the Treasury shall administer or enforce this subchapter or title 26 with respect to any employee benefit plan under which he is a participant or beneficiary, any employee organization of which he is a member, or any employer organization in which he has an interest. This subsection does not apply to an employee benefit plan which covers only employees of the United States.

(Pub. L. 93-406, title I, § 507, Sept. 2, 1974, 88 Stat. 894; Pub. L. 101-239, title VII, § 7891(a), Dec. 19, 1989, 103 Stat. 2445.)

CODIFICATION

Subsec. (b) of this section amended section 5108 of Title 5, Government Organization and Employees.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101-239 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.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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.

#### 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.

### § 1138. Appropriations

There are hereby authorized to be appropriated such sums as may be necessary to enable the Secretary to carry out his functions and duties under this chapter.

(Pub. L. 93-406, title I, § 508, Sept. 2, 1974, 88 Stat. 895.)

#### REFERENCES IN TEXT

This chapter, referred to in text, 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.

#### 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.

### § 1139. Separability

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Pub. L. 93-406, title I, § 509, Sept. 2, 1974, 88 Stat. 895.)

#### REFERENCES IN TEXT

This chapter, referred to in text, 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.

#### 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.

### § 1140. Interference with protected rights

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C. 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel,

or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this chapter or the Welfare and Pension Plans Disclosure Act. In the case of a multiemployer plan, it shall be unlawful for the plan sponsor or any other person to discriminate against any contributing employer for exercising rights under this chapter or for giving information or testifying in any inquiry or proceeding relating to this chapter before Congress. The provisions of section 1132 of this title shall be applicable in the enforcement of this section.

(Pub. L. 93-406, title I, § 510, Sept. 2, 1974, 88 Stat. 895; Pub. L. 109-280, title II, § 205, Aug. 17, 2006, 120 Stat. 889.)

#### REFERENCES IN TEXT

The Welfare and Pension Plans Disclosure Act, referred to in text, 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, and was repealed by Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851 (Employee Retirement Income Security Act of 1974), effective Jan. 1, 1975. Such section 111(a)(1) also provided that the Welfare and Pension Plans Disclosure Act should continue to apply to any conduct and events which occurred before Jan. 1, 1975 (see section 1031 of this title). For complete classification of the Welfare and Pension Plans Disclosure Act to the Code prior to such repeal, see Tables.

This chapter, referred to in text, 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

2006—Pub. L. 109-280 inserted before last sentence "In the case of a multiemployer plan, it shall be unlawful for the plan sponsor or any other person to discriminate against any contributing employer for exercising rights under this chapter or for giving information or testifying in any inquiry or proceeding relating to this chapter before Congress."

#### 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.

### § 1141. Coercive interference

It shall be unlawful for any person through the use of fraud, force, violence, or threat of the use of force or violence, to restrain, coerce, intimidate, or attempt to restrain, coerce, or intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C. 301 et seq.]. Any person who willfully violates this section shall be fined \$100,000 or imprisoned for not more than 10 years, or both.

(Pub. L. 93-406, title I, § 511, Sept. 2, 1974, 88 Stat. 895; Pub. L. 109-280, title VI, § 623(a), Aug. 17, 2006, 120 Stat. 979.)

#### REFERENCES IN TEXT

The Welfare and Pension Plans Disclosure Act, referred to in text, 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, and was repealed by Pub. L. 93-406, title I, §111(a)(1), Sept. 2, 1974, 88 Stat. 851 (Employee Retirement Income Security Act of 1974), effective Jan. 1, 1975. Such section 111(a)(1) also provided that the Welfare and Pension Plans Disclosure Act should continue to apply to any conduct and events which occurred before Jan. 1, 1975 (see section 1031 of this title). For complete classification of the Welfare and Pension Plans Disclosure Act to the Code prior to such repeal, see Tables.

#### AMENDMENTS

2006—Pub. L. 109-280 substituted “\$100,000” for “\$10,000” and “10 years” for “one year”.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title VI, §623(b), Aug. 17, 2006, 120 Stat. 979, provided that: “The amendments made by this section [amending this section] shall apply to violations occurring on and after the date of the enactment of this Act [Aug. 17, 2006].”

#### 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.

### § 1142. Advisory Council on Employee Welfare and Pension Benefit Plans

#### (a) Establishment; membership; terms; appointment and reappointment; vacancies; quorum

(1) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter in this section referred to as the “Council”) consisting of fifteen members appointed by the Secretary. Not more than eight members of the Council shall be members of the same political party.

(2) Members shall be persons qualified to appraise the programs instituted under this chapter.

(3) Of the members appointed, three shall be representatives of employee organizations (at least one of whom shall be representative of any organization members of which are participants in a multiemployer plan); three shall be representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multi-employer plans); three representatives shall be appointed from the general public, one of whom shall be a person representing those receiving benefits from a pension plan; and there shall be one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and the accounting field.

(4) Members shall serve for terms of three years except that of those first appointed, five shall be appointed for terms of one year, five shall be appointed for terms of two years, and five shall be appointed for terms of three years. A member may be reappointed. A member appointed to fill a vacancy shall be appointed only for the remainder of such term. A majority of members shall constitute a quorum and action shall be taken only by a majority vote of those present and voting.

#### (b) Duties and functions

It shall be the duty of the Council to advise the Secretary with respect to the carrying out

of his functions under this chapter and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least four times each year and at such other times as the Secretary requests. In his annual report submitted pursuant to section 1143(b)<sup>1</sup> of this title, the Secretary shall include each recommendation which he has received from the Council during the preceding calendar year.

#### (c) Executive secretary; secretarial and clerical services

The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to conduct its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

#### (d) Compensation

(1) Members of the Council shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council.

(2) While away from their homes or regular places of business in the performance of services for Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5.<sup>1</sup>

#### (e) Termination

Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

(Pub. L. 93-406, title I, §512, Sept. 2, 1974, 88 Stat. 895.)

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2), (b), 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.

Section 1143(b) of this title, referred to in subsec. (b), was omitted from the Code.

Section 5703 of title 5, referred to in subsec. (d)(2), was amended generally by Pub. L. 94-22, §4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (e), is section 14(a) of Pub. L. 92-463, which is set out in the Appendix to Title 5, Government Organization and Employees.

#### 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.

#### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General

<sup>1</sup> See References in Text note below.

Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

#### § 1143. Research, studies, and reports

##### (a) Authorization to undertake research and surveys

(1) The Secretary is authorized to undertake research and surveys and in connection therewith to collect, compile, analyze and publish data, information, and statistics relating to employee benefit plans, including retirement, deferred compensation, and welfare plans, and types of plans not subject to this chapter.

(2) The Secretary is authorized and directed to undertake research studies relating to pension plans, including but not limited to (A) the effects of this subchapter upon the provisions and costs of pension plans, (B) the role of private pensions in meeting the economic security needs of the Nation, and (C) the operation of private pension plans including types and levels of benefits, degree of reciprocity or portability, and financial and actuarial characteristics and practices, and methods of encouraging the growth of the private pension system.

(3) The Secretary may, as he deems appropriate or necessary, undertake other studies relating to employee benefit plans, the matters regulated by this subchapter, and the enforcement procedures provided for under this subchapter.

(4) The research, surveys, studies, and publications referred to in this subsection may be conducted directly, or indirectly through grant or contract arrangements.

##### (b) Omitted

##### (c) Cooperation with Congress

The Secretary is authorized and directed to cooperate with the Congress and its appropriate committees, subcommittees, and staff in supplying data and any other information, and personnel and services, required by the Congress in any study, examination, or report by the Congress relating to pension benefit plans established or maintained by States or their political subdivisions.

(Pub. L. 93-406, title I, § 513, Sept. 2, 1974, 88 Stat. 896.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), 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

Subsec. (b) of this section, which required the Secretary to submit annually a report to Congress on the administration of this subchapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 123 of House Document No. 103-7.

#### REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this sub-

chapter call for the promulgation of regulations, see section 1031 of this title.

#### § 1143a. Studies by Comptroller General

##### (1) In general

The Comptroller General of the United States may, pursuant to the request of any Member of Congress, study employee benefit plans, including the effects of such plans on employees, participants, and their beneficiaries.

##### (2) Access to books, documents, etc.

For the purpose of conducting studies under this section, the Comptroller General, or any of his duly authorized representatives, shall have access to and the right to examine and copy any books, documents, papers, records, or other recorded information—

(A) within the possession or control of the administrator, sponsor, or employer of and persons providing services to any employee benefit plan, and

(B) which the Comptroller General or his representative finds, in his own judgment, pertinent to such study.

The Comptroller General shall not disclose the identity of any individual or employer in making any information obtained under this section available to the public.

##### (3) Definitions

For purposes of this section, the terms "employee benefit plan", "participant", "administrator", "beneficiary", "plan sponsor", "employee", and "employer" are defined in section 1002 of this title.

##### (4) Effective date

The preceding provisions of this section shall be effective on April 7, 1986.

(Pub. L. 99-272, title XI, § 11016(d), Apr. 7, 1986, 100 Stat. 275.)

#### CODIFICATION

Section was enacted as part of the Single-Employer Pension Plan Amendments Act of 1986, and also as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, and not as part of the Employee Retirement Income Security Act of 1974 which comprises this chapter.

#### § 1144. Other laws

##### (a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

##### (b) Construction and application

(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 1136 of this title.

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State.

(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393-1 through 393-51).

(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a)—

(i) any State tax law relating to employee benefit plans, or

(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after January 14, 1983), but the Secretary may enter into cooperative arrangements under this paragraph and section 1136 of this title with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts 1 and 4 and the preceding sections of this part.

(6)(A) Notwithstanding any other provision of this section—

(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides—

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

(II) provisions to enforce such standards, and

(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this subchapter, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this subchapter.

(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 1002(1) and section 1003 of this title necessary to be considered an employee welfare benefit plan to which this subchapter applies.

(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this subchapter apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

(7) Subsection (a) shall not apply to qualified domestic relations orders (within the meaning of section 1056(d)(3)(B)(i) of this title), qualified medical child support orders (within the meaning of section 1169(a)(2)(A) of this title), and the provisions of law referred to in section 1169(a)(2)(B)(ii) of this title to the extent they apply to qualified medical child support orders.

(8) Subsection (a) of this section shall not be construed to preclude any State cause of action—

(A) with respect to which the State exercises its acquired rights under section 1169(b)(3) of this title with respect to a group health plan (as defined in section 1167(1) of this title), or

(B) for recoupment of payment with respect to items or services pursuant to a State plan for medical assistance approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] which would not have been payable if such acquired rights had been executed before payment with respect to such items or services by the group health plan.

(9) For additional provisions relating to group health plans, see section 1191 of this title.

**(c) Definitions**

For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

**(d) Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of the United States prohibited**

Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1137(b) of this title) or any rule or regulation issued under any such law.

**(e) Automatic contribution arrangements**

(1) Notwithstanding any other provision of this section, this subchapter shall supersede any law of a State which would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. The Secretary may prescribe regulations which would establish minimum standards that such an arrangement would be required to satisfy in order for this subsection to apply in the case of such arrangement.

(2) For purposes of this subsection, the term "automatic contribution arrangement" means an arrangement—

(A) under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

(B) under which a participant is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

(C) under which such contributions are invested in accordance with regulations prescribed by the Secretary under section 1104(c)(5) of this title.

(3)(A) The plan administrator of an automatic contribution arrangement shall, within a reasonable period before such plan year, provide to each participant to whom the arrangement applies for such plan year notice of the participant's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

(B) A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless—

(i) the notice includes an explanation of the participant's right under the arrangement not to have elective contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage),

(ii) the participant has a reasonable period of time, after receipt of the notice described in clause (i) and before the first elective contribution is made, to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.

(Pub. L. 93-406, title I, § 514, Sept. 2, 1974, 88 Stat. 897; Pub. L. 97-473, title III, §§ 301(a), 302(b), Jan.

14, 1983, 96 Stat. 2611, 2613; Pub. L. 98-397, title I, § 104(b), Aug. 23, 1984, 98 Stat. 1436; Pub. L. 99-272, title IX, § 9503(d)(1), Apr. 7, 1986, 100 Stat. 207; Pub. L. 101-239, title VII, § 7894(f)(2)(A), (3)(A), Dec. 19, 1989, 103 Stat. 2450, 2451; Pub. L. 103-66, title IV, § 4301(c)(4), Aug. 10, 1993, 107 Stat. 377; Pub. L. 104-191, title I, § 101(f)(1), Aug. 21, 1996, 110 Stat. 1953; Pub. L. 104-204, title VI, § 603(b)(3)(G), Sept. 26, 1996, 110 Stat. 2938; Pub. L. 105-200, title IV, § 401(h)(2)(A)(i), (ii), July 16, 1998, 112 Stat. 668; Pub. L. 109-280, title IX, § 902(f)(1), Aug. 17, 2006, 120 Stat. 1039.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(8)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2006—Subsec. (e). Pub. L. 109-280 added subsec. (e).

1998—Subsec. (b)(7). Pub. L. 105-200, § 401(h)(2)(A)(ii), substituted "they apply to" for "enforced by".

Pub. L. 105-200, § 401(h)(2)(A)(i), amended directory language of Pub. L. 103-66, § 4301(c)(4)(A). See 1993 Amendment note below.

1996—Subsec. (b)(9). Pub. L. 104-204 made technical amendment to reference in original act which appears in text as reference to section 1191 of this title.

Pub. L. 104-191 added par. (9).

1993—Subsec. (b)(7). Pub. L. 103-66, § 4301(c)(4)(A), as amended by Pub. L. 105-200, § 401(h)(1)(A)(i), inserted "qualified medical child support orders (within the meaning of section 1169(a)(2)(A) of this title), and the provisions of law referred to in section 1169(a)(2)(B)(ii) of this title to the extent enforced by qualified medical child support orders" before period at end.

Subsec. (b)(8). Pub. L. 103-66, § 4301(c)(4)(B), added par. (8) and struck out former par. (8) which read as follows: "Subsection (a) of this section shall not apply to any State law mandating that an employee benefit plan not include any provision which has the effect of limiting or excluding coverage or payment for any health care for an individual who would otherwise be covered or entitled to benefits or services under the terms of the employee benefit plan, because that individual is provided, or is eligible for, benefits or services pursuant to a plan under title XIX of the Social Security Act, to the extent such law is necessary for the State to be eligible to receive reimbursement under title XIX of that Act."

1989—Subsec. (b)(5)(C). Pub. L. 101-239, § 7894(f)(2)(A), substituted "by such parts 1 and 4 and the preceding sections of this part" for "by such parts".

Subsec. (b)(6)(B). Pub. L. 101-239, § 7894(f)(3)(A), substituted "section 1002(1)" for "section 1002(l)".

1986—Subsec. (b)(8). Pub. L. 99-272 added par. (8).

1984—Subsec. (b)(7). Pub. L. 98-397 added par. (7).

1983—Subsec. (b)(5). Pub. L. 97-473, § 301(a), added par. (5).

Subsec. (b)(6). Pub. L. 97-473, § 302(b), added par. (6).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-200, title IV, § 401(h)(2)(C), July 16, 1998, 112 Stat. 668, provided that: "The amendments made by subparagraph (A) [amending this section and section 1169 of this title] shall be effective as if included in the enactment of section 4301(c)(4)(A) of the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103-66]."

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 1989 AMENDMENT

Pub. L. 101-239, title VII, §7894(f)(2)(B), Dec. 19, 1989, 103 Stat. 2451, provided that: "The amendment made by this paragraph [amending this section] shall take effect as if included in section 301 of Public Law 97-473."

Pub. L. 101-239, title VII, §7894(f)(3)(B), Dec. 19, 1989, 103 Stat. 2451, provided that: "The amendments made by this paragraph [amending this section] shall take effect as if included in section 302 of Public Law 97-473."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-272, title IX, §9503(d)(2), Apr. 7, 1986, 100 Stat. 207, provided that:

"(2)(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall become effective on October 1, 1986.

"(B) In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before the date of the enactment of this Act [Apr. 7, 1986], the amendment made by paragraph (1) shall become effective on the later of—

"(i) October 1, 1986; or

"(ii) the earlier of—

"(I) the date on which the last of the collective bargaining agreements under which the plan is maintained, which were in effect on the date of the enactment of this Act, terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act); or

"(II) three years after the date of the enactment of this Act."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98-397, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-473, title III, §301(c), Jan. 14, 1983, 96 Stat. 2612, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Jan. 14, 1983]."

Amendment by section 302(b) of Pub. L. 97-473 effective Jan. 14, 1983, see section 302(c) of Pub. L. 97-473, set out as a note under section 1002 of this title.

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.

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.

TREATMENT OF OTHER STATE LAWS

Pub. L. 97-473, title III, §301(b), Jan. 14, 1983, 96 Stat. 2612, provided that: "The amendment made by this section [amending this section] shall not be considered a precedent with respect to extending such amendment to any other State law."

**§ 1144a. Clarification of church welfare plan status under State insurance law**

**(a) In general**

For purposes of determining the status of a church plan that is a welfare plan under provisions of a State insurance law described in subsection (b), such a church plan (and any trust under such plan) shall be deemed to be a plan sponsored by a single employer that reimburses costs from general church assets, or purchases insurance coverage with general church assets, or both.

**(b) State insurance law**

A State insurance law described in this subsection is a law that—

(1) requires a church plan, or an organization described in section 414(e)(3)(A) of title 26 and section 1002(33)(C)(i) of this title to the extent that it is administering or funding such a plan, to be licensed; or

(2) relates solely to the solvency or insolvency of a church plan (including participation in State guaranty funds and associations).

**(c) Definitions**

For purposes of this section:

**(1) Church plan**

The term "church plan" has the meaning given such term by section 414(e) of title 26 and section 1002(33) of this title.

**(2) Reimburses costs from general church assets**

The term "reimburses costs from general church assets" means engaging in an activity that is not the spreading of risk solely for the purposes of the provisions of State insurance laws described in subsection (b).

**(3) Welfare plan**

The term "welfare plan"—

(A) means any church plan to the extent that such plan provides medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services; and

(B) does not include any entity, such as a health insurance issuer described in section 9832(b)(2) of title 26 or a health maintenance organization described in section 9832(b)(3) of title 26, or any other organization that does business with the church plan or organization sponsoring or maintaining such a plan.

**(d) Enforcement authority**

Notwithstanding any other provision of this section, for purposes of enforcing provisions of State insurance laws that apply to a church plan that is a welfare plan, the church plan shall be subject to State enforcement as if the church plan were an insurer licensed by the State.

**(e) Application of section**

Except as provided in subsection (d), the application of this section is limited to determining the status of a church plan that is a welfare plan

under the provisions of State insurance laws described in subsection (b). This section shall not otherwise be construed to recharacterize the status, or modify or affect the rights, of any plan participant or beneficiary, including participants or beneficiaries who make plan contributions.

(Pub. L. 106-244, §2, July 10, 2000, 114 Stat. 499.)

#### CODIFICATION

Section was not enacted as part of the Employee Retirement Income Security Act of 1974 which comprises this chapter.

#### PURPOSE

Pub. L. 106-244, §1, July 10, 2000, 114 Stat. 499, provided that: "The purpose of this Act [enacting this section] is only to clarify the application to a church plan that is a welfare plan of State insurance laws that require or solely relate to licensing, solvency, insolvency, or the status of such plan as a single employer plan."

### § 1145. Delinquent contributions

Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

(Pub. L. 93-406, title I, §515, as added Pub. L. 96-364, title III, §306(a), Sept. 26, 1980, 94 Stat. 1295.)

#### EFFECTIVE DATE

Section effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

### § 1146. Outreach to promote retirement income savings

#### (a) In general

The Secretary shall maintain an ongoing program of outreach to the public designed to effectively promote retirement income savings by the public.

#### (b) Methods

The Secretary shall carry out the requirements of subsection (a) by means which shall ensure effective communication to the public, including publication of public service announcements, public meetings, creation of educational materials, and establishment of a site on the Internet.

#### (c) Information to be made available

The information to be made available by the Secretary as part of the program of outreach required under subsection (a) shall include the following:

(1) a description of the vehicles currently available to individuals and employers for creating and maintaining retirement income savings, specifically including information explaining to employers, in simple terms, the characteristics and operation of the different retirement savings vehicles, including the steps to establish each such vehicle; and

(2) information regarding matters relevant to establishing retirement income savings, such as—

(A) the forms of retirement income savings;

(B) the concept of compound interest;

(C) the importance of commencing savings early in life;

(D) savings principles;

(E) the importance of prudence and diversification in investing;

(F) the importance of the timing of investments; and

(G) the impact on retirement savings of life's uncertainties, such as living beyond one's life expectancy.

#### (d) Establishment of site on Internet

The Secretary shall establish a permanent site on the Internet concerning retirement income savings. The site shall contain at least the following information:

(1) a means for individuals to calculate their estimated retirement savings needs, based on their retirement income goal as a percentage of their preretirement income;

(2) a description in simple terms of the common types of retirement income savings arrangements available to both individuals and employers (specifically including small employers), including information on the amount of money that can be placed into a given vehicle, the tax treatment of the money, the amount of accumulation possible through different typical investment options and interest rate projections, and a directory of resources of more descriptive information;

(3) materials explaining to employers in simple terms, the characteristics and operation of the different retirement savings arrangements for their workers and what the basic legal requirements are under this chapter and title 26, including the steps to establish each such arrangement;

(4) copies of all educational materials developed by the Department of Labor, and by other Federal agencies in consultation with such Department, to promote retirement income savings by workers and employers; and

(5) links to other sites maintained on the Internet by governmental agencies and non-profit organizations that provide additional detail on retirement income savings arrangements and related topics on savings or investing.

#### (e) Coordination

The Secretary shall coordinate the outreach program under this section with similar efforts undertaken by other public and private entities.

(Pub. L. 93-406, title I, §516, as added Pub. L. 105-92, §3(a), Nov. 19, 1997, 111 Stat. 2139.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(3), 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.

#### FINDINGS AND PURPOSE

Pub. L. 105-92, §2, Nov. 19, 1997, 111 Stat. 2139, provided that:

“(a) FINDINGS.—The Congress finds as follows:

“(1) The impending retirement of the baby boom generation will severely strain our already overburdened entitlement system, necessitating increased reliance on pension and other personal savings.

“(2) Studies have found that less than a third of Americans have even tried to calculate how much they will need to have saved by retirement, and that less than 20 percent are very confident they will have enough money to live comfortably throughout their retirement.

“(3) A leading obstacle to expanding retirement savings is the simple fact that far too many Americans—particularly the young—are either unaware of, or without the knowledge and resources necessary to take advantage of, the extensive benefits offered by our retirement savings system.

“(b) PURPOSE.—It is the purpose of this Act [see Short Title of 1997 Amendment note, set out under section 1001 of this title]—

“(1) to advance the public’s knowledge and understanding of retirement savings and its critical importance to the future well-being of American workers and their families;

“(2) to provide for a periodic, bipartisan national retirement savings summit in conjunction with the White House to elevate the issue of savings to national prominence; and

“(3) to initiate the development of a broad-based, public education program to encourage and enhance individual commitment to a personal retirement savings strategy.”

### § 1147. National Summit on Retirement Savings

#### (a) Authority to call Summit

Not later than July 15, 1998, the President shall convene a National Summit on Retirement Income Savings at the White House, to be co-hosted by the President and the Speaker and the Minority Leader of the House of Representatives and the Majority Leader and Minority Leader of the Senate. Such a National Summit shall be convened thereafter in 2001 and 2005 on or after September 1 of each year involved. Such a National Summit shall—

(1) advance the public’s knowledge and understanding of retirement savings and its critical importance to the future well-being of American workers and their families;

(2) facilitate the development of a broad-based, public education program to encourage and enhance individual commitment to a personal retirement savings strategy;

(3) develop recommendations for additional research, reforms, and actions in the field of private pensions and individual retirement savings; and

(4) disseminate the report of, and information obtained by, the National Summit and exhibit materials and works of the National Summit.

#### (b) Planning and direction

The National Summit shall be planned and conducted under the direction of the Secretary, in consultation with, and with the assistance of, the heads of such other Federal departments and agencies as the President may designate. Such assistance may include the assignment of personnel. The Secretary shall, in planning and conducting the National Summit, consult with the congressional leaders specified in subsection (e)(2). The Secretary shall also, in carrying out the Secretary’s duties under this subsection,

consult and coordinate with at least one organization made up of private sector businesses and associations partnered with Government entities to promote long-term financial security in retirement through savings.

#### (c) Purpose of National Summit

The purpose of the National Summit shall be—

(1) to increase the public awareness of the value of personal savings for retirement;

(2) to advance the public’s knowledge and understanding of retirement savings and its critical importance to the future well-being of American workers and their families;

(3) to facilitate the development of a broad-based, public education program to encourage and enhance individual commitment to a personal retirement savings strategy;

(4) to identify the problems workers have in setting aside adequate savings for retirement;

(5) to identify the barriers which employers, especially small employers, face in assisting their workers in accumulating retirement savings;

(6) to examine the impact and effectiveness of individual employers to promote personal savings for retirement among their workers and to promote participation in company savings options;

(7) to examine the impact and effectiveness of government programs at the Federal, State, and local levels to educate the public about, and to encourage, retirement income savings;

(8) to develop such specific and comprehensive recommendations for the legislative and executive branches of the Government and for private sector action as may be appropriate for promoting private pensions and individual retirement savings; and

(9) to develop recommendations for the coordination of Federal, State, and local retirement income savings initiatives among the Federal, State, and local levels of government and for the coordination of such initiatives.

#### (d) Scope of National Summit

The scope of the National Summit shall consist of issues relating to individual and employer-based retirement savings and shall not include issues relating to the old-age, survivors, and disability insurance program under title II of the Social Security Act [42 U.S.C. 401 et seq.].

#### (e) National Summit participants

##### (1) In general

To carry out the purposes of the National Summit, the National Summit shall bring together—

(A) professionals and other individuals working in the fields of employee benefits and retirement savings;

(B) Members of Congress and officials in the executive branch;

(C) representatives of State and local governments;

(D) representatives of private sector institutions, including individual employers, concerned about promoting the issue of retirement savings and facilitating savings among American workers; and

(E) representatives of the general public.

**(2) Statutorily required participation**

The participants in the National Summit shall include the following individuals or their designees:

- (A) the Speaker and the Minority Leader of the House of Representatives;
- (B) the Majority Leader and the Minority Leader of the Senate;
- (C) the Chairman and ranking Member of the Committee on Education and the Workforce of the House of Representatives;
- (D) the Chairman and ranking Member of the Committee on Labor and Human Resources of the Senate;
- (E) the Chairman and ranking Member of the Special Committee on Aging of the Senate;
- (F) the Chairman and ranking Member of the Subcommittees on Labor, Health and Human Services, and Education of the Senate and House of Representatives; and
- (G) the parties referred to in subsection (b).

**(3) Additional participants****(A) In general**

There shall be not more than 200 additional participants. Of such additional participants—

- (i) one-half shall be appointed by the President, in consultation with the elected leaders of the President's party in Congress (either the Speaker of the House of Representatives or the Minority Leader of the House of Representatives, and either the Majority Leader or the Minority Leader of the Senate;<sup>1</sup> and
- (ii) one-half shall be appointed by the elected leaders of Congress of the party to which the President does not belong (one-half of that allotment to be appointed by either the Speaker of the House of Representatives or the Minority Leader of the House of Representatives, and one-half of that allotment to be appointed by either the Majority Leader or the Minority Leader of the Senate).

**(B) Appointment requirements**

The additional participants described in subparagraph (A) shall be—

- (i) appointed not later than January 31, 1998;
- (ii) selected without regard to political affiliation or past partisan activity; and
- (iii) representative of the diversity of thought in the fields of employee benefits and retirement income savings.

**(4) Presiding officers**

The National Summit shall be presided over equally by representatives of the executive and legislative branches.

**(f) National Summit administration****(1) Administration**

In administering this section, the Secretary shall—

(A) request the cooperation and assistance of such other Federal departments and agencies and other parties referred to in subsection (b) as may be appropriate in the carrying out of this section;

(B) furnish all reasonable assistance to State agencies, area agencies, and other appropriate organizations to enable them to organize and conduct conferences in conjunction with the National Summit;

(C) make available for public comment a proposed agenda for the National Summit that reflects to the greatest extent possible the purposes for the National Summit set out in this section;

(D) prepare and make available background materials for the use of participants in the National Summit that the Secretary considers necessary; and

(E) appoint and fix the pay of such additional personnel as may be necessary to carry out the provisions of this section without regard to provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

**(2) Duties**

The Secretary shall, in carrying out the responsibilities and functions of the Secretary under this section, and as part of the National Summit, ensure that—

(A) the National Summit shall be conducted in a manner that ensures broad participation of Federal, State, and local agencies and private organizations, professionals, and others involved in retirement income savings and provides a strong basis for assistance to be provided under paragraph (1)(B);

(B) the agenda prepared under paragraph (1)(C) for the National Summit is published in the Federal Register; and

(C) the personnel appointed under paragraph (1)(E) shall be fairly balanced in terms of points of views represented and shall be appointed without regard to political affiliation or previous partisan activities.

**(3) Nonapplication of FACA**

The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the National Summit.

**(g) Report**

The Secretary shall prepare a report describing the activities of the National Summit and shall submit the report to the President, the Speaker and Minority Leader of the House of Representatives, the Majority and Minority Leaders of the Senate, and the chief executive officers of the States not later than 90 days after the date on which the National Summit is adjourned.

**(h) "State" defined**

For purposes of this section, the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam,

<sup>1</sup> So in original. A closing parenthesis probably should precede the semicolon.

the Virgin Islands, American Samoa, and any other territory or possession of the United States.

**(i) Authorization of appropriations**

**(1) In general**

There is authorized to be appropriated for fiscal years beginning on or after October 1, 1997, such sums as are necessary to carry out this section.

**(2) Authorization to accept private contributions**

In order to facilitate the National Summit as a public-private partnership, the Secretary may accept private contributions, in the form of money, supplies, or services, to defray the costs of the National Summit.

**(j) Financial obligation for fiscal year 1998**

The financial obligation for the Department of Labor for fiscal year 1998 shall not exceed the lesser of—

- (1) one-half of the costs of the National Summit; or
- (2) \$250,000.

The private sector organization described in subsection (b) and contracted with by the Secretary shall be obligated for the balance of the cost of the National Summit.

**(k) Contracts**

The Secretary may enter into contracts to carry out the Secretary's responsibilities under this section. The Secretary shall enter into a contract on a sole-source basis to ensure the timely completion of the National Summit in fiscal year 1998.

(Pub. L. 93-406, title I, §517, as added Pub. L. 105-92, §4(a), Nov. 19, 1997, 111 Stat. 2141.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (f)(3), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

**§ 1148. Authority to postpone certain deadlines by reason of Presidentially declared disaster or terroristic or military actions**

In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in section 1033(h)(3) of title 26) or a terroristic or military action (as defined in section 692(c)(2) of such title), the Secretary may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to 1 year which may be dis-

regarded in determining the date by which any action is required or permitted to be completed under this chapter. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.

(Pub. L. 93-406, title I, §518, as added Pub. L. 107-134, title I, §112(c)(1), Jan. 23, 2002, 115 Stat. 2434.)

REFERENCES IN TEXT

This chapter, referred to in text, 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.

EFFECTIVE DATE

Section applicable to disasters and terroristic or military actions occurring on or after Sept. 11, 2001, with respect to any action of the Secretary of the Treasury, the Secretary of Labor, or the Pension Benefit Guaranty Corporation occurring on or after Jan. 23, 2002, see section 112(f) of Pub. L. 107-134, set out as an Effective Date of 2002 Amendment note under section 6081 of Title 26, Internal Revenue Code.

**§ 1149. Prohibition on false statements and representations**

No person, in connection with a plan or other arrangement that is<sup>1</sup> multiple employer welfare arrangement described in section 1002(40) of this title, shall make a false statement or false representation of fact, knowing it to be false, in connection with the marketing or sale of such plan or arrangement, to any employee, any member of an employee organization, any beneficiary, any employer, any employee organization, the Secretary, or any State, or the representative or agent of any such person, State, or the Secretary, concerning—

- (1) the financial condition or solvency of such plan or arrangement;
- (2) the benefits provided by such plan or arrangement;
- (3) the regulatory status of such plan or other arrangement under any Federal or State law governing collective bargaining, labor management relations, or intern union affairs; or
- (4) the regulatory status of such plan or other arrangement regarding exemption from state<sup>2</sup> regulatory authority under this chapter.

This section shall not apply to any plan or arrangement that does not fall within the meaning of the term "multiple employer welfare arrangement" under section 1002(40)(A) of this title.

(Pub. L. 93-406, title I, §519, as added Pub. L. 111-148, title VI, §6601(a), Mar. 23, 2010, 124 Stat. 779.)

REFERENCES IN TEXT

This chapter, referred to in par. (4), was in the original "this Act", meaning Pub. L. 93-406, known as the

<sup>1</sup> So in original. Probably should be followed by "a".

<sup>2</sup> So in original. Probably should be capitalized.

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.

**§ 1150. Applicability of State law to combat fraud and abuse**

The Secretary may, for the purpose of identifying, preventing, or prosecuting fraud and abuse, adopt regulatory standards establishing, or issue an order relating to a specific person establishing, that a person engaged in the business of providing insurance through a multiple employer welfare arrangement described in section 1002(40) of this title is subject to the laws of the States in which such person operates which regulate insurance in such State, notwithstanding section 1144(b)(6) of this title or the Liability Risk Retention Act of 1986 [15 U.S.C. 3901 et seq.], and regardless of whether the law of the State is otherwise preempted under any of such provisions. This section shall not apply to any plan or arrangement that does not fall within the meaning of the term “multiple employer welfare arrangement” under section 1002(40)(A) of this title.

(Pub. L. 93-406, title I, §520, as added Pub. L. 111-148, title VI, §6604(a), Mar. 23, 2010, 124 Stat. 780.)

REFERENCES IN TEXT

The Liability Risk Retention Act of 1986, referred to in text, is Pub. L. 97-45, Sept. 25, 1981, 95 Stat. 949, which is classified generally to chapter 65 (§3901 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 15 and Tables.

**§ 1151. Administrative summary cease and desist orders and summary seizure orders against multiple employer welfare arrangements in financially hazardous condition**

**(a) In general**

The Secretary may issue a cease and desist (ex parte) order under this subchapter if it appears to the Secretary that the alleged conduct of a multiple employer welfare arrangement described in section 1002(40) of this title, other than a plan or arrangement described in subsection (g), is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.

**(b) Hearing**

A person that is adversely affected by the issuance of a cease and desist order under subsection (a) may request a hearing by the Secretary regarding such order. The Secretary may require that a proceeding under this section, including all related information and evidence, be conducted in a confidential manner.

**(c) Burden of proof**

The burden of proof in any hearing conducted under subsection (b) shall be on the party requesting the hearing to show cause why the cease and desist order should be set aside.

**(d) Determination**

Based upon the evidence presented at a hearing under subsection (b), the cease and desist

order involved may be affirmed, modified, or set aside by the Secretary in whole or in part.

**(e) Seizure**

The Secretary may issue a summary seizure order under this subchapter if it appears that a multiple employer welfare arrangement is in a financially hazardous condition.

**(f) Regulations**

The Secretary may promulgate such regulations or other guidance as may be necessary or appropriate to carry out this section.

**(g) Exception**

This section shall not apply to any plan or arrangement that does not fall within the meaning of the term “multiple employer welfare arrangement” under section 1002(40)(A) of this title.

(Pub. L. 93-406, title I, §521, as added Pub. L. 111-148, title VI, §6605(a), Mar. 23, 2010, 124 Stat. 780.)

PART 6—CONTINUATION COVERAGE AND ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

**§ 1161. Plans must provide continuation coverage to certain individuals**

**(a) In general**

The plan sponsor of each group health plan shall provide, in accordance with this part, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

**(b) Exception for certain plans**

Subsection (a) shall not apply to any group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year.

(Pub. L. 93-406, title I, §601, as added Pub. L. 99-272, title X, §10002(a), Apr. 7, 1986, 100 Stat. 227; amended Pub. L. 101-239, title VII, §§7862(c)(1)(B), 7891(a)(1), Dec. 19, 1989, 103 Stat. 2432, 2445.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101-239 struck out at end “Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 of title 26 (relating to employers under common control) shall apply for purposes of this subsection.”

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.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7862(c)(1)(B) of Pub. L. 101-239 applicable to years beginning after Dec. 31, 1986, see section 7862(c)(1)(C) of Pub. L. 101-239, set out as a note under section 106 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.

EFFECTIVE DATE

Pub. L. 99-272, title X, §10002(d), Apr. 7, 1986, 100 Stat. 231, provided that: