(c) Policy

It is hereby declared to be the policy of this Act—

(1) to foster and facilitate interstate commerce,

(2) to alleviate certain problems which tend to discourage the maintenance and growth of multiemployer pension plans,

(3) to provide reasonable protection for the interests of participants and beneficiaries of financially distressed multiemployer pension plans, and

(4) to provide a financially self-sufficient program for the guarantee of employee benefits under multiemployer plans.

(Pub. L. 96–364, § 3, Sept. 26, 1980, 94 Stat. 1209.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 96–364, Sept. 26, 1980, 94 Stat. 1208, known as the Multiemployer Pension Plan Amendments Act of 1980. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 1001 of this title and Tables.

CODIFICATION

Section was enacted as part of the Multiemployer Pension Plan Amendments Act of 1980, and not as part of the Employee Retirement Income Security Act of 1974 which comprises this chapter.

EFFECTIVE DATE

Section effective Sept. 26, 1980, see section 1461(e)(1) of this title.

STUDY AND REPORT RESPECTING COLLECTIVE BARGAINING FOR CONTRIBUTIONS TO, AND BENEFITS FROM, MULTIEMPLOYER PLANS

Section 412(b) of Pub. L. 96–364 directed Secretary of Labor to study feasibility of requiring collective bargaining on both issues of contributions to, and benefits from, multiemployer plans, and submit a report on the study to Congress within 3 years of Sept. 26, 1980.

§ 1001b. Findings and declaration of policy

(a) Findings

The Congress finds that—

(1) single-employer defined benefit pension plans have a substantial impact on interstate commerce and are affected with a national interest;

(2) the continued well-being and retirement income security of millions of workers, retirees, and their dependents are directly affected by such plans;

(3) the existence of a sound termination insurance system is fundamental to the retirement income security of participants and beneficiaries of such plans; and

(4) the current termination insurance system in some instances encourages employers to terminate pension plans, evade their obligations to pay benefits, and shift unfunded pension liabilities onto the termination insurance system and the other premium-payers.

(b) Additional findings

The Congress further finds that modification of the current termination insurance system and an increase in the insurance premium for single-employer defined benefit pension plans—

(1) is desirable to increase the likelihood that full benefits will be paid to participants and beneficiaries of such plans;

(2) is desirable to provide for the transfer of liabilities to the termination insurance system only in cases of severe hardship;

(3) is necessary to maintain the premium costs of such system at a reasonable level; and

(4) is necessary to finance properly current funding deficiencies and future obligations of the single-employer pension plan termination insurance system.

(c) Declaration of policy

It is hereby declared to be the policy of this title—

(1) to foster and facilitate interstate commerce;

(2) to encourage the maintenance and growth of single-employer defined benefit pension plans;

(3) to increase the likelihood that participants and beneficiaries under single-employer defined benefit pension plans will receive their full benefits;

(4) to provide for the transfer of unfunded pension liabilities onto the single-employer pension plan termination insurance system only in cases of severe hardship;

(5) to maintain the premium costs of such system at a reasonable level; and

(6) to assure the prudent financing of current funding deficiencies and future obligations of the single-employer pension plan termination insurance system by increasing termination insurance premiums.

(Pub. L. 99–272, title XI, § 11002, Apr. 7, 1986, 100 Stat. 237.)

REFERENCES IN TEXT

This title, referred to in subsec. (c), is title XI of Pub. L. 99–272, Apr. 7, 1986, 100 Stat. 237, known as the Single-Employer Pension Plan Amendments Act of 1986. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1001 of this title and Tables.

CODIFICATION

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

EFFECTIVE DATE

Section effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as an Effective Date of 1986 Amendment note under section 1341 of this title.

§ 1002. Definitions

For purposes of this subchapter:

(1) The terms ''employee welfare benefit plan'' and ''welfare plan'' mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) 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, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

(2)(A) Except as provided in subparagraph (B), the terms ''employee pension benefit plan'' and ''pension plan'' mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(i) provides retirement income to employees, or

(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan. A distribution from a plan, fund, or program shall not be treated as made in a form other than retirement income or as a distribution prior to termination of covered employment solely because such distribution is made to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

(B) The Secretary may by regulation prescribe rules consistent with the standards and purposes of this chapter providing one or more exempt categories under which—

(i) severance pay arrangements, and

(ii) supplemental retirement income payments, under which the pension benefits of retirees or their beneficiaries are supplemented to take into account some portion or all of the increases in the cost of living (as determined by the Secretary of Labor) since retirement,

shall, for purposes of this subchapter, be treated as welfare plans rather than pension plans. In the case of any arrangement or payment a principal effect of which is the evasion of the standards or purposes of this chapter applicable to pension plans, such arrangement or payment shall be treated as a pension plan. An applicable voluntary early retirement incentive plan (as defined in section 457(e)(11)(D)(ii) of title 26) making payments or supplements described in section 457(e)(11)(D)(i) of title 26, and an applicable employment retention plan (as defined in section 457(f)(4)(C) of title 26) making payments of benefits described in section 457(f)(4)(A) of title 26, shall, for purposes of this subchapter, be treated as a welfare plan (and not a pension plan) with respect to such payments and supplements.

(3) The term ''employee benefit plan'' or ''plan'' means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

(4) The term ''employee organization'' means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

(5) The term ''employer'' means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

(6) The term ''employee'' means any individual employed by an employer.

(7) The term ''participant'' means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

(8) The term ''beneficiary'' means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

(9) The term ''person'' means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

(10) The term ''State'' includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone. The term ''United States'' when used in the geographic sense means the States and the Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).

(11) The term ''commerce'' means trade, traffic, commerce, transportation, or communication between any State and any place outside thereof.

(12) The term ''industry or activity affecting commerce'' means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes any activity or industry ''affecting commerce'' within the meaning of the Labor Management Relations Act, 1947 [29 U.S.C. 141 et seq.], or the Railway Labor Act [45 U.S.C. 151 et seq.].

(13) The term ''Secretary'' means the Secretary of Labor.

(14) The term ''party in interest'' means, as to an employee benefit plan—

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of

shares of all classes of stock of a corporation.[1]

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a relative (as defined in paragraph (15)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E), or (G), or of the employee benefit plan; or

(I) a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of the Treasury, may by regulation prescribe a percentage lower than 50 percent for subparagraph (E) and (G) and lower than 10 percent for subparagraph (H) or (I). The Secretary may prescribe regulations for determining the ownership (direct or indirect) of profits and beneficial interests, and the manner in which indirect stockholdings are taken into account. Any person who is a party in interest with respect to a plan to which a trust described in section 501(c)(22) of title 26 is permitted to make payments under section 1403 of this title shall be treated as a party in interest with respect to such trust.

(15) The term ''relative'' means a spouse, ancestor, lineal descendant, or spouse of a lineal descendant.

(16)(A) The term ''administrator'' means—

(i) the person specifically so designated by the terms of the instrument under which the plan is operated;

(ii) if an administrator is not so designated, the plan sponsor; or

(iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

(B) The term ''plan sponsor'' means (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(17) The term ''separate account'' means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(18) The term ''adequate consideration'' when used in part 4 of subtitle B of this subchapter means (A) in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered under section 78f of title 15, or (ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and (B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary.

(19) The term ''nonforfeitable'' when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan. For purposes of this paragraph, a right to an accrued benefit derived from employer contributions shall not be treated as forfeitable merely because the plan contains a provision described in section 1053(a)(3) of this title.

(20) The term ''security'' has the same meaning as such term has under section 77b(1)[2] of title 15.

(21)(A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 1105(c)(1)(B) of this title.

(B) If any money or other property of an employee benefit plan is invested in securities issued by an investment company registered

[1] So in original. The period probably should be a comma.

[2] See References in Text note below.

under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], such investment shall not by itself cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a fiduciary or a party in interest as those terms are defined in this subchapter, except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter. Nothing contained in this subparagraph shall limit the duties imposed on such investment company, investment adviser, or principal underwriter by any other law.

(22) The term ''normal retirement benefit'' means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to—

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefit under the plan which the Secretary of the Treasury finds to be a benefit described in section 1054(b)(1)(G) of this title.

(23) The term ''accrued benefit'' means—

(A) in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and, except as provided in section 1054(c)(3) of this title, expressed in the form of an annual benefit commencing at normal retirement age, or

(B) in the case of a plan which is an individual account plan, the balance of the individual's account.

The accrued benefit of an employee shall not be less than the amount determined under section 1054(c)(2)(B) of this title with respect to the employee's accumulated contribution.

(24) The term ''normal retirement age'' means the earlier of—

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of—

(i) the time a plan participant attains age 65, or

(ii) the 5th anniversary of the time a plan participant commenced participation in the plan.

(25) The term ''vested liabilities'' means the present value of the immediate or deferred benefits available at normal retirement age for participants and their beneficiaries which are nonforfeitable.

(26) The term ''current value'' means fair market value where available and otherwise the fair value as determined in good faith by a trustee or a named fiduciary (as defined in section 1102(a)(2) of this title) pursuant to the terms of the plan and in accordance with regulations of the Secretary, assuming an orderly liquidation at the time of such determination.

(27) The term ''present value'', with respect to a liability, means the value adjusted to reflect anticipated events. Such adjustments shall conform to such regulations as the Secretary of the Treasury may prescribe.

(28) The term ''normal service cost'' or ''normal cost'' means the annual cost of future pension benefits and administrative expenses assigned, under an actuarial cost method, to years subsequent to a particular valuation date of a pension plan. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(29) The term ''accrued liability'' means the excess of the present value, as of a particular valuation date of a pension plan, of the projected future benefit costs and administrative expenses for all plan participants and beneficiaries over the present value of future contributions for the normal cost of all applicable plan participants and beneficiaries. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(30) The term ''unfunded accrued liability'' means the excess of the accrued liability, under an actuarial cost method which so provides, over the present value of the assets of a pension plan. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(31) The term ''advance funding actuarial cost method'' or ''actuarial cost method'' means a recognized actuarial technique utilized for establishing the amount and incidence of the annual actuarial cost of pension plan benefits and expenses. Acceptable actuarial cost methods shall include the accrued benefit cost method (unit credit method), the entry age normal cost method, the individual level premium cost method, the aggregate cost method, the attained age normal cost method, and the frozen initial liability cost method. The terminal funding cost method and the current funding (pay-as-you-go) cost method are not acceptable actuarial cost methods. The Secretary of the Treasury shall issue regulations to further define acceptable actuarial cost methods.

(32) The term ''governmental plan'' means a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term ''governmental plan'' also includes any plan to which the Railroad Retirement Act of 1935, or 1937 [45 U.S.C. 231 et seq.] applies, and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation under the provisions of the International Organizations Immunities Act [22 U.S.C. 288 et seq.]. The term ''governmental plan'' includes a plan which is established and maintained by an Indian tribal government (as defined in section 7701(a)(40) of title 26), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of title 26), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose

services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function)[3]

(33)(A) The term ''church plan'' means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26.

(B) The term ''church plan'' does not include a plan—

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of title 26), or

(ii) if less than substantially all of the individuals included in the plan are individuals described in subparagraph (A) or in clause (ii) of subparagraph (C) (or their beneficiaries).

(C) For purposes of this paragraph—

(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(ii) The term employee of a church or a convention or association of churches includes—

(I) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of title 26 and which is controlled by or associated with a church or a convention or association of churches; and

(III) an individual described in clause (v).

(iii) A church or a convention or association of churches which is exempt from tax under section 501 of title 26 shall be deemed the employer of any individual included as an employee under clause (ii).

(iv) An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

(v) If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of title 26 and which is controlled by or associated with a church or a convention or association of churches, the church plan shall not fail to meet the requirements of this paragraph merely because the plan—

(I) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan; or

(II) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section 72(m)(7) of title 26) at the time of such separation from service.

(D)(i) If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of title 26 fails to meet one or more of the requirements of this paragraph and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this paragraph for the year in which the correction was made and for all prior years.

(ii) If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this paragraph beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

(iii) For purposes of this subparagraph, the term ''correction period'' means—

(I) the period ending 270 days after the date of mailing by the Secretary of the Treasury of a notice of default with respect to the plan's failure to meet one or more of the requirements of this paragraph; or

(II) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary of the Treasury on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

(III) any additional period which the Secretary of the Treasury determines is reasonable or necessary for the correction of the default,

whichever has the latest ending date.

(34) The term ''individual account plan'' or ''defined contribution plan'' means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(35) The term ''defined benefit plan'' means a pension plan other than an individual account plan; except that a pension plan which is not an

[3] So in original. Probably should be followed by a period.

individual account plan and which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant—

(A) for the purposes of section 1052 of this title, shall be treated as an individual account plan, and

(B) for the purposes of paragraph (23) of this section and section 1054 of this title, shall be treated as an individual account plan to the extent benefits are based upon the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan.

(36) The term ''excess benefit plan'' means a plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of title 26 on plans to which that section applies without regard to whether the plan is funded. To the extent that a separable part of a plan (as determined by the Secretary of Labor) maintained by an employer is maintained for such purpose, that part shall be treated as a separate plan which is an excess benefit plan.

(37)(A) The term ''multiemployer plan'' means a plan—

(i) to which more than one employer is required to contribute,

(ii) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

(iii) which satisfies such other requirements as the Secretary may prescribe by regulation.

(B) For purposes of this paragraph, all trades or businesses (whether or not incorporated) which are under common control within the meaning of section 1301(b)(1) of this title are considered a single employer.

(C) Notwithstanding subparagraph (A), a plan is a multiemployer plan on and after its termination date if the plan was a multiemployer plan under this paragraph for the plan year preceding its termination date.

(D) For purposes of this subchapter, notwithstanding the preceding provisions of this paragraph, for any plan year which began before September 26, 1980, the term ''multiemployer plan'' means a plan described in this paragraph (37) as in effect immediately before such date.

(E) Within one year after September 26, 1980, a multiemployer plan may irrevocably elect, pursuant to procedures established by the corporation and subject to the provisions of sections 1453(b) and (c) of this title, that the plan shall not be treated as a multiemployer plan for all purposes under this chapter or the Internal Revenue Code of 1954 if for each of the last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980—

(i) the plan was not a multiemployer plan because the plan was not a plan described in subparagraph (A)(iii) of this paragraph and section 414(f)(1)(C) of title 26 (as such provisions were in effect on the day before September 26, 1980); and

(ii) the plan had been identified as a plan that was not a multiemployer plan in substantially all its filings with the corporation, the Secretary of Labor and the Secretary of the Treasury.

(F)(i) For purposes of this subchapter a qualified football coaches plan—

(I) shall be treated as a multiemployer plan to the extent not inconsistent with the purposes of this subparagraph; and

(II) notwithstanding section 401(k)(4)(B) of title 26, may include a qualified cash and deferred arrangement.

(ii) For purposes of this subparagraph, the term ''qualified football coaches plan'' means any defined contribution plan which is established and maintained by an organization—

(I) which is described in section 501(c) of title 26;

(II) the membership of which consists entirely of individuals who primarily coach football as full-time employees of 4-year colleges or universities described in section 170(b)(1)(A)(ii) of title 26; and

(III) which was in existence on September 18, 1986.

(G)(i) Within 1 year after August 17, 2006—

(I) an election under subparagraph (E) may be revoked, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, if, for each of the 3 plan years prior to August 17, 2006, the plan would have been a multiemployer plan but for the election under subparagraph (E), and

(II) a plan that meets the criteria in clauses (i) and (ii) of subparagraph (A) of this paragraph or that is described in clause (vi) may, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, elect to be a multiemployer plan, if—

(aa) for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan, the plan has met those criteria or is so described,

(bb) substantially all of the plan's employer contributions for each of those plan years were made or required to be made by organizations that were exempt from tax under section 501 of title 26, and

(cc) the plan was established prior to September 2, 1974.

(ii) An election under this paragraph shall be effective for all purposes under this chapter and under title 26, starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under clause (i)(II).

(iii) Once made, an election under this paragraph shall be irrevocable, except that a plan described in subclause (i)(II) shall cease to be a multiemployer plan as of the plan year beginning immediately after the first plan year for which the majority of its employer contributions were made or required to be made by organizations that were not exempt from tax under section 501 of title 26.

(iv) The fact that a plan makes an election under clause (i)(II) does not imply that the plan was not a multiemployer plan prior to the date of the election or would not be a multiemployer plan without regard to the election.

(v)(I) No later than 30 days before an election is made under this paragraph, the plan administrator shall provide notice of the pending election to each plan participant and beneficiary, each labor organization representing such participants or beneficiaries, and each employer that has an obligation to contribute to the plan, describing the principal differences between the guarantee programs under subchapter III and the benefit restrictions under this subchapter for single employer and multiemployer plans, along with such other information as the plan administrator chooses to include.

(II) Within 180 days after August 17, 2006, the Secretary shall prescribe a model notice under this subparagraph.

(III) A plan administrator's failure to provide the notice required under this subparagraph shall be treated for purposes of section 1132(c)(2) of this title as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 1021(b)(4)[4] of this title.

(vi) A plan is described in this clause if it is a plan sponsored by an organization which is described in section 501(c)(5) of title 26 and exempt from tax under section 501(a) of such title and which was established in Chicago, Illinois, on August 12, 1881.

(vii) For purposes of this chapter and title 26, a plan making an election under this subparagraph shall be treated as maintained pursuant to a collective bargaining agreement if a collective bargaining agreement, expressly or otherwise, provides for or permits employer contributions to the plan by one or more employers that are signatory to such agreement, or participation in the plan by one or more employees of an employer that is signatory to such agreement, regardless of whether the plan was created, established, or maintained for such employees by virtue of another document that is not a collective bargaining agreement.

(38) The term ''investment manager'' means any fiduciary (other than a trustee or named fiduciary, as defined in section 1102(a)(2) of this title)—

(A) who has the power to manage, acquire, or dispose of any asset of a plan;

(B) who (i) is registered as an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.]; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act [15 U.S.C. 80b–3a(a)], is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary; (iii) is a bank, as defined in that Act; or (iv) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and

(C) has acknowledged in writing that he is a fiduciary with respect to the plan.

(39) The terms ''plan year'' and ''fiscal year of the plan'' mean, with respect to a plan, the calendar, policy, or fiscal year on which the records of the plan are kept.

(40)(A) The term ''multiple employer welfare arrangement'' means an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained—

(i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements,

(ii) by a rural electric cooperative, or

(iii) by a rural telephone cooperative association.

(B) For purposes of this paragraph—

(i) two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group,

(ii) the term ''control group'' means a group of trades or businesses under common control,

(iii) the determination of whether a trade or business is under ''common control'' with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 1301(b) of this title, except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent,

(iv) the term ''rural electric cooperative'' means—

(I) any organization which is exempt from tax under section 501(a) of title 26 and which is engaged primarily in providing electric service on a mutual or cooperative basis, and

(II) any organization described in paragraph (4) or (6) of section 501(c) of title 26 which is exempt from tax under section 501(a) of title 26 and at least 80 percent of the members of which are organizations described in subclause (I), and

(v) the term ''rural telephone cooperative association'' means an organization described in paragraph (4) or (6) of section 501(c) of title 26 which is exempt from tax under section 501(a) of title 26 and at least 80 percent of the members of which are organizations engaged primarily in providing telephone service to rural areas of the United States on a mutual, cooperative, or other basis.

(41)[5] SINGLE-EMPLOYER PLAN.—The term ''single-employer plan'' means an employee benefit plan other than a multiemployer plan.

[4] So in original. Section 1021(b) of this title does not contain a par. (4).

[5] So in original. Two pars. (41) have been enacted.

(41)[5] The term ''single-employer plan'' means a plan which is not a multiemployer plan.

(42) the term ''plan assets'' means plan assets as defined by such regulations as the Secretary may prescribe, except that under such regulations the assets of any entity shall not be treated as plan assets if, immediately after the most recent acquisition of any equity interest in the entity, less than 25 percent of the total value of each class of equity interest in the entity is held by benefit plan investors. For purposes of determinations pursuant to this paragraph, the value of any equity interest held by a person (other than such a benefit plan investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded for purposes of calculating the 25 percent threshold. An entity shall be considered to hold plan assets only to the extent of the percentage of the equity interest held by benefit plan investors. For purposes of this paragraph, the term ''benefit plan investor'' means an employee benefit plan subject to part 4,[6] any plan to which section 4975 of title 26 applies, and any entity whose underlying assets include plan assets by reason of a plan's investment in such entity.

(Pub. L. 93–406, title I, § 3, Sept. 2, 1974, 88 Stat. 833; Pub. L. 96–364, title III, §§ 302, 305, title IV, §§ 407(a), 409, Sept. 26, 1980, 94 Stat. 1291, 1294, 1303, 1307; Pub. L. 97–473, title III, § 302(a), Jan. 14, 1983, 96 Stat. 2612; Pub. L. 99–272, title XI, § 11016(c)(1), Apr. 7, 1986, 100 Stat. 273; Pub. L. 99–509, title IX, § 9203(b)(1), Oct. 21, 1986, 100 Stat. 1979; Pub. L. 99–514, title XVIII, § 1879(u)(3), Oct. 22, 1986, 100 Stat. 2913; Pub. L. 100–202, § 136(a), Dec. 22, 1987, 101 Stat. 1329–441; Pub. L. 101–239, title VII, §§ 7871(b)(2), 7881(m)(2)(D), 7891(a)(1), 7893(a), 7894(a)(1)(A), (2)(A), (3), (4), Dec. 19, 1989, 103 Stat. 2435, 2444, 2445, 2447, 2448; Pub. L. 101–508, title XII, § 12002(b)(2)(C), Nov. 5, 1990, 104 Stat. 1388–566; Pub. L. 102–89, § 2, Aug. 14, 1991, 105 Stat. 446; Pub. L. 104–290, title III, § 308(b)(1), Oct. 11, 1996, 110 Stat. 3440; Pub. L. 105–72, § 1(a), Nov. 10, 1997, 111 Stat. 1457; Pub. L. 109–280, title VI, § 611(f), title IX, §§ 905(a), 906(a)(2)(A), title XI, §§ 1104(c), 1106(a), Aug. 17, 2006, 120 Stat. 972, 1050, 1051, 1060; Pub. L. 110–28, title VI, § 6611(a)(1), (b)(1), May 25, 2007, 121 Stat. 179, 180.)

REFERENCES IN TEXT

This chapter, referred to in pars. (2)(B) and (37)(E), (G)(ii), (vii), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Outer Continental Shelf Lands Act, referred to in par. (10), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

The Labor Management Relations Act, 1947, referred to in par. (12), is act June 23, 1947, ch. 120, 61 Stat. 136, as amended, which is classified principally to chapter 7 (§ 141 et seq.) of this title. For complete classification of this Act to the Code, see section 141 of this title and Tables.

The Railway Labor Act, referred to in par. (12), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

Section 77b(1) of title 15, referred to in par. (20), was redesignated section 77b(a)(1) of title 15 by Pub. L. 104–290, title I, § 106(a)(1), Oct. 11, 1996, 110 Stat. 3424.

The Investment Company Act of 1940, referred to in par. (21)(B), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

The Railroad Retirement Act of 1935 or 1937, referred to in par. (32), means act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended, known as the Railroad Retirement Act of 1935. The Railroad Retirement Act of 1935 was amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and was known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305 and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

The International Organizations Immunities Act, referred to in par. (32), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§ 288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

Sections 1453(b) and (c) of this title, referred to in par. (37)(E), was in the original ''sections 4403(b) and (c)'', meaning sections 4403(b) and (c) of the Employee Retirement Income Security Act of 1974, which was translated as section 1453(b) and (c) of this title as the probable intent of Congress, in view of the Employee Retirement Income Security Act of 1974 not containing a section 4403 and the subject matter of section 4303 of the Act which is classified to section 1453(b) and (c) of this title.

The Internal Revenue Code of 1954, referred to in par. (37)(E), was redesignated the Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, and is classified to Title 26, Internal Revenue Code.

For the effective date of the Multiemployer Pension Plan Amendments Act of 1980, referred to in par. (37)(E), see section 1461(e) of this title.

The Investment Advisers Act of 1940, referred to in par. (38)(B), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§ 80b–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b–20 of Title 15 and Tables.

AMENDMENTS

2007—Par. (37)(G)(i)(II)(aa). Pub. L. 110–28, § 6611(a)(1)(A), substituted ''for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan,'' for ''for each of the 3 plan years immediately before August 17, 2006,''.

Par. (37)(G)(ii). Pub. L. 110–28, § 6611(a)(1)(B), substituted ''starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under clause (i)(II)'' for ''starting with the first plan year ending after August 17, 2006''.

Par. (37)(G)(vi). Pub. L. 110–28, § 6611(b)(1), substituted ''if it is a plan sponsored by an organization which is

[6] So in original. Probably should be ''part 4 of subtitle B,''.

described in section 501(c)(5) of title 26 and exempt from tax under section 501(a) of such title and which was established in Chicago, Illinois, on August 12, 1881.'' for ''if it is a plan—

''(I) that was established in Chicago, Illinois, on August 12, 1881; and

''(II) sponsored by an organization described in section 501(c)(5) of title 26 and exempt from tax under section 501(a) of title 26.''

Par. (37)(G)(vii). Pub. L. 110–28, § 6611(a)(1)(C), added cl. (vii).

2006—Par. (2)(A). Pub. L. 109–280, § 905(a), inserted at end ''A distribution from a plan, fund, or program shall not be treated as made in a form other than retirement income or as a distribution prior to termination of covered employment solely because such distribution is made to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.''

Par. (2)(B). Pub. L. 109–280, § 1104(c), inserted at end ''An applicable voluntary early retirement incentive plan (as defined in section 457(e)(11)(D)(ii) of title 26) making payments or supplements described in section 457(e)(11)(D)(i) of title 26, and an applicable employment retention plan (as defined in section 457(f)(4)(C) of title 26) making payments of benefits described in section 457(f)(4)(A) of title 26, shall, for purposes of this subchapter, be treated as a welfare plan (and not a pension plan) with respect to such payments and supplements.''

Par. (32). Pub. L. 109–280, § 906(a)(2)(A), inserted at end ''The term 'governmental plan' includes a plan which is established and maintained by an Indian tribal government (as defined in section 7701(a)(40) of title 26), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of title 26), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function)''.

Par. (37)(G). Pub. L. 109–280, § 1106(a), added subpar. (G).

Par. (42). Pub. L. 109–280, § 611(f), added par. (42).

1997—Par. (38)(B). Pub. L. 105–72 added introductory provisions and cls. (i) and (ii), redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively, and struck out former introductory provisions and cl. (i) which read as follows: ''who is (i) registered as an investment adviser under the Investment Advisers Act of 1940 or under the laws of any State;''.

1996—Par. (38)(B). Pub. L. 104–290 temporarily inserted ''or under the laws of any State'' before ''; (ii) is a bank,''. See Effective and Termination Dates of 1996 Amendment note below.

1991—Par. (40)(A)(iii), (B)(v). Pub. L. 102–89 added cl. (iii) at end of subpar. (A) and cl. (v) at end of subpar. (B).

1990—Par. (41). Pub. L. 101–508 added par. (41) which read as follows: ''The term 'single-employer plan' means a plan which is not a multiemployer plan.''

1989—Pars. (14), (33), (36), (40)(B)(iv). 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.

Par. (23). Pub. L. 101–239, § 7881(m)(2)(D), inserted at end ''The accrued benefit of an employee shall not be less than the amount determined under section 1054(c)(2)(B) of this title with respect to the employee's accumulated contribution.''

Par. (24)(B). Pub. L. 101–239, § 7871(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the latest of—

''(i) the time a plan participant attains age 65,

''(ii) in the case of a plan participant who commences participation in the plan within 5 years before attaining normal retirement age under the plan, the 5th anniversary of the time the plan participant commences participation in the plan, or

''(iii) in the case of a plan participant not described in clause (ii), the 10th anniversary of the time the plan participant commences participation in the plan.''

Par. (33)(D)(iii). Pub. L. 101–239, § 7894(a)(1)(A), substituted ''Secretary of the Treasury'' for ''Secretary'' in subcls. (I) to (III).

Par. (37)(B). Pub. L. 101–239, § 7893(a), substituted ''section 1301(b)(1)'' for ''section 1301(c)(1)''.

Par. (37)(F)(i)(II). Pub. L. 101–239, § 7894(a)(2)(A)(i), substituted ''the Internal Revenue Code of 1986'' for ''such Code'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Par. (37)(F)(ii). Pub. L. 101–239, § 7894(a)(2)(A)(ii), (iii), inserted ''of such Code'' after ''section 501(c)'' in subcl. (I) and after ''section 170(b)(1)(A)(ii)'' in subcl. (II), which for purposes of codification was translated as ''of title 26'' thus requiring no change in text.

Par. (39). Pub. L. 101–239, § 7894(a)(3), substituted ''mean, with respect to a plan, the calendar'' for ''mean with respect to a plan, calendar''.

Par. (41). Pub. L. 101–239, § 7894(a)(4), added par. (41).

1987—Par. (37)(F). Pub. L. 100–202 added subpar. (F).

1986—Par. (24)(B). Pub. L. 99–509 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the later of—

''(i) the time a plan participant attains age 65, or

''(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.''

Par. (37)(A). Pub. L. 99–514 repealed the amendment made by Pub. L. 99–272. See note below.

Pub. L. 99–272, which, eff. Jan. 1, 1986, directed the substitution of ''means a pension plan'' for ''means a plan'' was repealed by Pub. L. 99–514, eff. Jan. 1, 1986.

1983—Par. (40). Pub. L. 97–473 added par. (40).

1980—Par. (2). Pub. L. 96–364, § 409, redesignated existing provisions as subpar. (A), inserted exception for subpar. (B), substituted ''(i)'' for ''(A)'' and ''(ii)'' for ''(B)'', and added subpar. (B).

Par. (14). Pub. L. 96–364, § 305, inserted provisions respecting a trust described in section 501(c)(22) of title 26.

Par. (33). Pub. L. 96–364, § 407(a), substituted provisions defining ''church plan'' as a plan established and maintained (to the extent required in cl. (ii) of subpar. (B)) for employees or beneficiaries by a church, etc., exempt from tax under section 501 of title 26, for provisions defining ''church plan'' as a plan established and maintained for employees by a church, etc., exempt from tax under section 501 of title 26, or a plan in existence on Jan. 1, 1974, established and maintained by a church, etc., for employees and employees of agencies of the church, etc.

Par. (37). Pub. L. 96–364, § 302(a), substantially revised definition of term ''multiemployer plan'' by, among other changes, restructuring subpar. (A), resulting in elimination of provisions covering amount of contributions and payment of benefits, and subpar. (B), resulting in elimination of provisions reworking amount of contributions for subsequent plan years, and added subpars. (C) to (E).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–28 effective as if included in section 1106 of the Pension Protection Act of 2006, Pub. L. 109–280, see section 6611(c) of Pub. L. 110–28, set out as a note under section 414 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 611(f) of Pub. L. 109–280 applicable to transactions occurring after Aug. 17, 2006, see section 611(h)(1) of Pub. L. 109–280, set out as a note under section 4975 of Title 26, Internal Revenue Code.

Amendment by section 905(a) of Pub. L. 109–280 applicable to distributions in plan years beginning after Dec. 31, 2006, see section 905(c) of Pub. L. 109–280, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 906(a)(2)(A) of Pub. L. 109–280 applicable to any year beginning on or after Aug. 17, 2006, see section 906(c) of Pub. L. 109–280, set out as a note under section 414 of Title 26, Internal Revenue Code.

Amendment by section 1104(c) of Pub. L. 109–280 effective Aug. 17, 2006, and applicable to plan years ending after such date, see section 1104(d)(1), (3) of Pub. L. 109–280, set out as a note under section 457 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1(c) of Pub. L. 105–72 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 8, 1997, except that the requirement of section 3(38)(B)(ii) of the Employee Retirement Income Security Act of 1974 [section 1002(38)(B)(ii) of this title] (as amended by this Act) for filing with the Secretary of Labor of a copy of a registration form which has been filed with a State before the date of the enactment of this Act [Nov. 10, 1997], or is to be filed with a State during the 1-year period beginning with such date, shall be treated as satisfied upon the filing of such a copy with the Secretary at any time during such 1-year period. This section shall supersede section 308(b) of the National Securities Markets Improvement Act of 1996 [Pub. L. 104–290, amending this section and enacting provisions set out as an Effective and Termination Dates of 1996 Amendment note below] (and the amendment made thereby).''

EFFECTIVE AND TERMINATION DATES OF 1996 AMENDMENT

Amendment by Pub. L. 104–290 effective 270 days after Oct. 11, 1996, see section 308(a) of Pub. L. 104–290, as amended, set out as a note under section 80b–2 of Title 15, Commerce and Trade.

Section 308(b)(2) of Pub. L. 104–290 which provided that the amendment made by paragraph (1), amending this section, ceased to be effective 2 years after Oct. 11, 1996, was superseded by section 1(c) of Pub. L. 105–72, set out as an Effective Date of 1997 Amendment note above.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 3 of Pub. L. 102–89 provided that: ''The amendments made by section 2 [amending this section] shall take effect on the date of the enactment of this Act [Aug. 14, 1991].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to reversions occurring after Sept. 30, 1990, but not applicable to any reversion after Sept. 30, 1990, if (1) in the case of plans subject to subchapter III of this chapter, notice of intent to terminate under such subchapter was provided to participants (or if no participants, to Pension Benefit Guaranty Corporation) before Oct. 1, 1990, (2) in the case of plans subject to subchapter I of this chapter (and not subchapter III), notice of intent to reduce future accruals under section 1054(h) of this title was provided to participants in connection with termination before Oct. 1, 1990, (3) in the case of plans not subject to subchapter I or III of this chapter, a request for a determination letter with respect to termination was filed with Secretary of the Treasury or Secretary's delegate before Oct. 1, 1990, or (4) in the case of plans not subject to subchapter I or III of this chapter and having only one participant, a resolution terminating the plan was adopted by employer before Oct. 1, 1990, see section 12003 of Pub. L. 101–508, set out as a note under section 4980 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7871(b)(2) of Pub. L. 101–239 effective as if included in the amendments made by section 9203 of Pub. L. 99–509, see section 7871(b)(3) of Pub. L. 101–239, set out as a note under section 411 of Title 26, Internal Revenue Code.

Amendment by section 7881(m)(2)(D) 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.

Section 7891(f) of Pub. L. 101–239 provided that: ''Except as otherwise provided in this section, any amendment made by this section [amending this section, sections 1003, 1025, 1051 to 1056, 1060, 1061, 1081 to 1084, 1085a, 1101, 1103, 1107, 1108, 1132, 1134, 1137, 1161, 1166, 1167, 1201 to 1203, 1222, 1301, 1302, 1307, 1309, 1321 to 1322a, 1342 to 1345, 1362, 1368, 1384, 1385, 1390, 1391, 1393, 1403, 1421, 1423, 1425, and 1453 of this title, and section 4980B of Title 26] shall take effect as if included in the provision of the Reform Act [probably means Tax Reform Act of 1986, Pub. L. 99–514] to which such amendment relates.''

Section 7893(h) of Pub. L. 101–239 provided that: ''Any amendment made by this section [amending this section and sections 1322a, 1341, 1342, 1347, 1366, 1367, and 1398 of this title] shall take effect as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986 [Pub. L. 99–272, title XI] to which such amendment relates.''

Section 7894(a)(1)(B) of Pub. L. 101–239 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if included in section 407 of the Multiemployer Pension Plan Amendments Act of 1980 [Pub. L. 96–364].''

Section 7894(a)(2)(B) of Pub. L. 101–239 provided that: ''The amendment made by this paragraph [amending this section] shall take effect as if included in section 136 of Public Law 100–202.''

Section 7894(i) of Pub. L. 101–239 provided that: ''Except as otherwise provided in this section, any amendment made by this section [amending this section and sections 1021, 1024 to 1026, 1028, 1031, 1051 to 1056, 1060, 1061, 1081, 1082, 1084, 1086, 1103, 1107, 1108, 1113, 1114, 1132, 1144, 1321 to 1322a, 1344, 1368, and 1461 of this title] shall take effect 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.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 136(b) of Pub. L. 100–202 provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after the date of the enactment of this joint resolution [Dec. 22, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1879(u)(3) of Pub. L. 99–514 effective as if such provisions were included in the enactment of the Single-Employer Pension Plan Amendments Act of 1986 [Pub. L. 99–272], see section 1879(u)(4)(A) of Pub. L. 99–514, set out as a note under section 1054 of this title.

Amendment by Pub. L. 99–509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only with respect to service performed on or after such date, see section 9204 of Pub. L. 99–509, set out as an Effective and Termination Dates of 1986 Amendments note under section 623 of this title.

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 302(c) of Pub. L. 97–473 provided that: ''The amendments made by this section [amending this section and section 1144 of this title] shall take effect on the date of the enactment of this Act [Jan. 14, 1983].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment of pars. (2), (14), and (37), by Pub. L. 96–364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

Amendment of par. (33) by Pub. L. 96–364 effective Jan. 1, 1974, see section 407(c) of Pub. L. 96–364, set out as a note under section 414 of Title 26, Internal Revenue Code.

REGULATIONS

Secretary of Labor, Secretary of the Treasury, and Equal Employment Opportunity Commission each to issue before Feb. 1, 1988, final regulations to carry out amendments made by Pub. L. 99–509, see section 9204 of Pub. L. 99–509, set out as an Effective and Termination Dates of 1986 Amendment note under section 623 of this title.

AVAILABILITY OF DOCUMENTS VIA FILING DEPOSITORY

Section 1(b) of Pub. L. 105–72 provided that: ''A fiduciary shall be treated as meeting the requirements of section 3(38)(B)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(38)(B)(ii)] (as amended by subsection (a)) relating to provision to the Secretary of Labor of a copy of the form referred to therein, if a copy of such form (or substantially similar information) is available to the Secretary of Labor from a centralized electronic or other record-keeping database.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

For provisions directing that if any amendments made by Pub. L. 99–509 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 9204 of Pub. L. 99–509, set out as an Effective and Termination Dates of 1986 Amendment note under section 623 of this title.

§ 1003. Coverage

(a) In general

Except as provided in subsection (b) or (c) of this section and in sections 1051, 1081, and 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained—

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) Exceptions for certain plans

The provisions of this subchapter shall not apply to any employee benefit plan if—

(1) such plan is a governmental plan (as defined in section 1002(32) of this title);

(2) such plan is a church plan (as defined in section 1002(33) of this title) with respect to which no election has been made under section 410(d) of title 26;

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 1002(36) of this title) and is unfunded.

The provisions of part 7 of subtitle B of this subchapter shall not apply to a health insurance issuer (as defined in section 1191b(b)(2) of this title) solely by reason of health insurance coverage (as defined in section 1191b(b)(1) of this title) provided by such issuer in connection with a group health plan (as defined in section 1191b(a)(1) of this title) if the provisions of this subchapter do not apply to such group health plan.

(c) Voluntary employee contributions to accounts and annuities

If a pension plan allows an employee to elect to make voluntary employee contributions to accounts and annuities as provided in section 408(q) of title 26, such accounts and annuities (and contributions thereto) shall not be treated as part of such plan (or as a separate pension plan) for purposes of any provision of this subchapter other than section 1103(c), 1104, or 1105 of this title (relating to exclusive benefit, and fiduciary and co-fiduciary responsibilities) and part 5 of subtitle B of this subchapter[1] (relating to administration and enforcement). Such provisions shall apply to such accounts and annuities in a manner similar to their application to a simplified employee pension under section 408(k) of title 26.

(Pub. L. 93–406, title I, § 4, Sept. 2, 1974, 88 Stat. 839; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 104–191, title I, § 101(d), Aug. 21, 1996, 110 Stat. 1952; Pub. L. 104–204, title VI, § 603(b)(3)(A), Sept. 26, 1996, 110 Stat. 2938; Pub. L. 107–16, title VI, § 602(b), June 7, 2001, 115 Stat. 96; Pub. L. 107–147, title IV, § 411(i)(2), Mar. 9, 2002, 116 Stat. 47.)

REFERENCES IN TEXT

Part 5 of subtitle B of this subchapter, referred to in subsec. (c), was in the original a reference to ''part 5'' and was translated as meaning part 5 of subtitle B of title I of Pub. L. 93–406, to reflect the probable intent of Congress.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–147 inserted ''and part 5 of subtitle B of this subchapter (relating to administration and enforcement)'' after ''co-fiduciary responsibilities)'' and ''Such provisions shall apply to such accounts and annuities in a manner similar to their application to a simplified employee pension under section 408(k) of title 26.'' at end.

2001—Subsec. (a). Pub. L. 107–16, § 602(b)(2), inserted ''or (c)'' after ''subsection (b)'' in introductory provisions.

Subsec. (c). Pub. L. 107–16, § 602(b)(1), added subsec. (c).

1996—Subsec. (b). Pub. L. 104–204, in concluding provisions, made technical amendment to references in original act which appear in text as references to section 1191b of this title.

Pub. L. 104–191 inserted at end ''The provisions of part 7 of subtitle B of this subchapter shall not apply to a health insurance issuer (as defined in section 1191b(b)(2) of this title) solely by reason of health insurance coverage (as defined in section 1191b(b)(1) of this title) provided by such issuer in connection with a group health plan (as defined in section 1191b(a)(1) of this title) if the provisions of this subchapter do not apply to such group health plan.''

1989—Subsec. (b)(2). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue

[1] See References in Text note below.