

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

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to plan years beginning after Dec. 31, 2002, see section 602(c) of Pub. L. 107-16, set out as a note under section 408 of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1996 AMENDMENTS

Section 603(c) of Pub. L. 104-204 provided that: "The amendments made by this section [enacting section 1185 of this title and amending this section and sections 1021, 1022, 1024, 1132, 1136, 1144, 1181, 1191, and 1191a of this title] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998."

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 an Effective Date note under section 1181 of this title.

#### 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.

### SUBTITLE B—REGULATORY PROVISIONS

#### PART 1—REPORTING AND DISCLOSURE

### § 1021. Duty of disclosure and reporting

#### (a) Summary plan description and information to be furnished to participants and beneficiaries

The administrator of each employee benefit plan shall cause to be furnished in accordance with section 1024(b) of this title to each participant covered under the plan and to each beneficiary who is receiving benefits under the plan—

- (1) a summary plan description described in section 1022(a)(1)<sup>1</sup> of this title; and
- (2) the information described in subsection (f) and sections 1024(b)(3) and 1025(a) and (c) of this title.

#### (b) Reports to be filed with Secretary of Labor

The administrator shall, in accordance with section 1024(a) of this title, file with the Secretary—

- (1) the annual report containing the information required by section 1023 of this title; and
- (2) terminal and supplementary reports as required by subsection (c) of this section.

#### (c) Terminal and supplementary reports

(1) Each administrator of an employee pension benefit plan which is winding up its affairs (without regard to the number of participants

remaining in the plan) shall, in accordance with regulations prescribed by the Secretary, file such terminal reports as the Secretary may consider necessary. A copy of such report shall also be filed with the Pension Benefit Guaranty Corporation.

(2) The Secretary may require terminal reports to be filed with regard to any employee welfare benefit plan which is winding up its affairs in accordance with regulations promulgated by the Secretary.

(3) The Secretary may require that a plan described in paragraph (1) or (2) file a supplementary or terminal report with the annual report in the year such plan is terminated and that a copy of such supplementary or terminal report in the case of a plan described in paragraph (1) be also filed with the Pension Benefit Guaranty Corporation.

#### (d) Notice of failure to meet minimum funding standards

##### (1) In general

If an employer maintaining a plan other than a multiemployer plan fails to make a required installment or other payment required to meet the minimum funding standard under section 1082 of this title to a plan before the 60th day following the due date for such installment or other payment, the employer shall notify each participant and beneficiary (including an alternate payee as defined in section 1056(d)(3)(K) of this title) of such plan of such failure. Such notice shall be made at such time and in such manner as the Secretary may prescribe.

##### (2) Subsection not to apply if waiver pending

This subsection shall not apply to any failure if the employer has filed a waiver request under section 1083 of this title with respect to the plan year to which the required installment relates, except that if the waiver request is denied, notice under paragraph (1) shall be provided within 60 days after the date of such denial.

##### (3) Definitions

For purposes of this subsection, the terms "required installment" and "due date" have the same meanings given such terms by section 1083(j) of this title.

#### (e) Notice of transfer of excess pension assets to health benefits accounts

##### (1) Notice to participants

Not later than 60 days before the date of a qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the administrator of the plan shall notify (in such manner as the Secretary may prescribe) each participant and beneficiary under the plan of such transfer. Such notice shall include information with respect to the amount of excess pension assets, the portion to be transferred, the amount of health benefits liabilities expected to be provided with the assets transferred, and the amount of pension benefits of the participant which will be nonforfeitable immediately after the transfer.

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

**(2) Notice to Secretaries, administrator, and employee organizations**

**(A) In general**

Not later than 60 days before the date of any qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the employer maintaining the plan from which the transfer is made shall provide the Secretary, the Secretary of the Treasury, the administrator, and each employee organization representing participants in the plan a written notice of such transfer. A copy of any such notice shall be available for inspection in the principal office of the administrator.

**(B) Information relating to transfer**

Such notice shall identify the plan from which the transfer is made, the amount of the transfer, a detailed accounting of assets projected to be held by the plan immediately before and immediately after the transfer, and the current liabilities under the plan at the time of the transfer.

**(C) Authority for additional reporting requirements**

The Secretary may prescribe such additional reporting requirements as may be necessary to carry out the purposes of this section.

**(3) Definitions**

For purposes of paragraph (1), any term used in such paragraph which is also used in section 420 of title 26 (as in effect on August 17, 2006) shall have the same meaning as when used in such section.

**(f) Defined benefit plan funding notices**

**(1) In general**

The administrator of a defined benefit plan to which subchapter III applies shall for each plan year provide a plan funding notice to the Pension Benefit Guaranty Corporation, to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, and, in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan.

**(2) Information contained in notices**

**(A) Identifying information**

Each notice required under paragraph (1) shall contain identifying information, including the name of the plan, the address and phone number of the plan administrator and the plan's principal administrative officer, each plan sponsor's employer identification number, and the plan number of the plan.

**(B) Specific information**

A plan funding notice under paragraph (1) shall include—

(i)(I) in the case of a single-employer plan, a statement as to whether the plan's funding target attainment percentage (as defined in section 1083(d)(2) of this title) for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages), or

(II) in the case of a multiemployer plan, a statement as to whether the plan's funded percentage (as defined in section 1085(i) of this title) for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages),

(ii)(I) in the case of a single-employer plan, a statement of—

(aa) the total assets (separately stating the prefunding balance and the funding standard carryover balance) and liabilities of the plan, determined in the same manner as under section 1083 of this title, for the plan year for which the latest annual report filed under section 1024(a) of this title was filed and for the 2 preceding plan years, as reported in the annual report for each such plan year, and

(bb) the value of the plan's assets and liabilities for the plan year to which the notice relates as of the last day of the plan year to which the notice relates determined using the asset valuation under subclause (II) of section 1306(a)(3)(E)(iii) of this title and the interest rate under section 1306(a)(3)(E)(iv) of this title, and

(II) in the case of a multiemployer plan, a statement of the value of the plan's assets and liabilities for the plan year to which the notice relates as the last day of such plan year and the preceding 2 plan years,

(iii) a statement of the number of participants who are—

(I) retired or separated from service and are receiving benefits,

(II) retired or separated participants entitled to future benefits, and

(III) active participants under the plan,

(iv) a statement setting forth the funding policy of the plan and the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the plan year to which the notice relates,

(v) in the case of a multiemployer plan, whether the plan was in critical or endangered status under section 1085 of this title for such plan year and, if so—

(I) a statement describing how a person may obtain a copy of the plan's funding improvement or rehabilitation plan, as appropriate, adopted under section 1085 of this title and the actuarial and financial data that demonstrate any action taken by the plan toward fiscal improvement, and

(II) a summary of any funding improvement plan, rehabilitation plan, or modification thereof adopted under section 1085 of this title during the plan year to which the notice relates,

(vi) in the case of any plan amendment, scheduled benefit increase or reduction, or other known event taking effect in the current plan year and having a material effect on plan liabilities or assets for the

year (as defined in regulations by the Secretary), an explanation of the amendment, schedule increase or reduction, or event, and a projection to the end of such plan year of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities,

(vii)(I) in the case of a single-employer plan, a summary of the rules governing termination of single-employer plans under subtitle C of subchapter III, or

(II) in the case of a multiemployer plan, a summary of the rules governing reorganization or insolvency, including the limitations on benefit payments,

(viii) a general description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation, along with an explanation of the limitations on the guarantee and the circumstances under which such limitations apply,

(ix) a statement that a person may obtain a copy of the annual report of the plan filed under section 1024(a) of this title upon request, through the Internet website of the Department of Labor, or through an Intranet website maintained by the applicable plan sponsor (or plan administrator on behalf of the plan sponsor), and

(x) if applicable, a statement that each contributing sponsor, and each member of the contributing sponsor's controlled group, of the single-employer plan was required to provide the information under section 1310 of this title for the plan year to which the notice relates.

**(C) Other information**

Each notice under paragraph (1) shall include—

(i) in the case of a multiemployer plan, a statement that the plan administrator shall provide, upon written request, to any labor organization representing plan participants and beneficiaries and any employer that has an obligation to contribute to the plan, a copy of the annual report filed with the Secretary under section 1024(a) of this title, and

(ii) any additional information which the plan administrator elects to include to the extent not inconsistent with regulations prescribed by the Secretary.

**(3) Time for providing notice**

**(A) In general**

Any notice under paragraph (1) shall be provided not later than 120 days after the end of the plan year to which the notice relates.

**(B) Exception for small plans**

In the case of a small plan (as such term is used under section 1083(g)(2)(B) of this title) any notice under paragraph (1) shall be provided upon filing of the annual report under section 1024(a) of this title.

**(4) Form and manner**

Any notice under paragraph (1)—

(A) shall be provided in a form and manner prescribed in regulations of the Secretary,

(B) shall be written in a manner so as to be understood by the average plan participant, and

(C) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

**(g) Reporting by certain arrangements**

The Secretary may, by regulation, require multiple employer welfare arrangements providing benefits consisting of medical care (within the meaning of section 1191b(a)(2) of this title) which are not group health plans to report, not more frequently than annually, in such form and such manner as the Secretary may require for the purpose of determining the extent to which the requirements of part 7 are being carried out in connection with such benefits.

**(h) Simple retirement accounts**

**(1) No employer reports**

Except as provided in this subsection, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under section 408(p) of title 26.

**(2) Summary description**

The trustee of any simple retirement account established pursuant to a qualified salary reduction arrangement under section 408(p) of title 26 shall provide to the employer maintaining the arrangement each year a description containing the following information:

(A) The name and address of the employer and the trustee.

(B) The requirements for eligibility for participation.

(C) The benefits provided with respect to the arrangement.

(D) The time and method of making elections with respect to the arrangement.

(E) The procedures for, and effects of, withdrawals (including rollovers) from the arrangement.

**(3) Employee notification**

The employer shall notify each employee immediately before the period for which an election described in section 408(p)(5)(C) of title 26 may be made of the employee's opportunity to make such election. Such notice shall include a copy of the description described in paragraph (2).

**(i) Notice of blackout periods to participant or beneficiary under individual account plan**

**(1) Duties of plan administrator**

In advance of the commencement of any blackout period with respect to an individual account plan, the plan administrator shall notify the plan participants and beneficiaries who are affected by such action in accordance with this subsection.

**(2) Notice requirements**

**(A) In general**

The notices described in paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall include—

- (i) the reasons for the blackout period,
- (ii) an identification of the investments and other rights affected,
- (iii) the expected beginning date and length of the blackout period,
- (iv) in the case of investments affected, a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets credited to their accounts during the blackout period, and
- (v) such other matters as the Secretary may require by regulation.

**(B) Notice to participants and beneficiaries**

Except as otherwise provided in this subsection, notices described in paragraph (1) shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies at least 30 days in advance of the blackout period.

**(C) Exception to 30-day notice requirement**

In any case in which—

- (i) a deferral of the blackout period would violate the requirements of subparagraph (A) or (B) of section 1104(a)(1) of this title, and a fiduciary of the plan reasonably so determines in writing, or
- (ii) the inability to provide the 30-day advance notice is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan reasonably so determines in writing,

subparagraph (B) shall not apply, and the notice shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies as soon as reasonably possible under the circumstances unless such a notice in advance of the termination of the blackout period is impracticable.

**(D) Written notice**

The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.

**(E) Notice to issuers of employer securities subject to blackout period**

In the case of any blackout period in connection with an individual account plan, the plan administrator shall provide timely notice of such blackout period to the issuer of any employer securities subject to such blackout period.

**(3) Exception for blackout periods with limited applicability**

In any case in which the blackout period applies only to 1 or more participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be a participant or beneficiary under the plan by reason of such merger, acquisition, divestiture, or transaction, the requirement of

this subsection that the notice be provided to all participants and beneficiaries shall be treated as met if the notice required under paragraph (1) is provided to such participants or beneficiaries to whom the blackout period applies as soon as reasonably practicable.

**(4) Changes in length of blackout period**

If, following the furnishing of the notice pursuant to this subsection, there is a change in the beginning date or length of the blackout period (specified in such notice pursuant to paragraph (2)(A)(iii)), the administrator shall provide affected participants and beneficiaries notice of the change as soon as reasonably practicable. In relation to the extended blackout period, such notice shall meet the requirements of paragraph (2)(D) and shall specify any material change in the matters referred to in clauses (i) through (v) of paragraph (2)(A).

**(5) Regulatory exceptions**

The Secretary may provide by regulation for additional exceptions to the requirements of this subsection which the Secretary determines are in the interests of participants and beneficiaries.

**(6) Guidance and model notices**

The Secretary shall issue guidance and model notices which meet the requirements of this subsection.

**(7) Blackout period**

For purposes of this subsection—

**(A) In general**

The term “blackout period” means, in connection with an individual account plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain distributions from the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any period of more than 3 consecutive business days.

**(B) Exclusions**

The term “blackout period” does not include a suspension, limitation, or restriction—

- (i) which occurs by reason of the application of the securities laws (as defined in section 78c(a)(47) of title 15),
- (ii) which is a change to the plan which provides for a regularly scheduled suspension, limitation, or restriction which is disclosed to participants or beneficiaries through any summary of material modifications, any materials describing specific investment alternatives under the plan, or any changes thereto, or
- (iii) which applies only to 1 or more individuals, each of whom is the participant, an alternate payee (as defined in section 1056(d)(3)(K) of this title), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 1056(d)(3)(B)(i) of this title).

**(8) Individual account plan****(A) In general**

For purposes of this subsection, the term “individual account plan” shall have the meaning provided such term in section 1002(34) of this title, except that such term shall not include a one-participant retirement plan.

**(B) One-participant retirement plan**

For purposes of subparagraph (A), the term “one-participant retirement plan” means a retirement plan that—

(i) on the first day of the plan year—

(I) covered only one individual (or the individual and the individual’s spouse) and the individual (or the individual and the individual’s spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or

(II) covered only one or more partners (or partners and their spouses) in the plan sponsor, and

(ii) does not cover a business that leases employees.

**(j) Notice of funding-based limitation on certain forms of distribution**

The plan administrator of a single-employer plan shall provide a written notice to plan participants and beneficiaries within 30 days—

(1) after the plan has become subject to a restriction described in paragraph (1) or (3) of section 1056(g) of this title,<sup>2</sup>

(2) in the case of a plan to which section 1056(g)(4) of this title applies, after the valuation date for the plan year described in section 1056(g)(4)(B) of this title for which the plan’s adjusted funding target attainment percentage for the plan year is less than 60 percent (or, if earlier, the date such percentage is deemed to be less than 60 percent under section 1056(g)(7) of this title), and

(3) at such other time as may be determined by the Secretary of the Treasury.

The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.

**(k) Multiemployer plan information made available on request****(1) In general**

Each administrator of a multiemployer plan shall, upon written request, furnish to any plan participant or beneficiary, employee representative, or any employer that has an obligation to contribute to the plan—

(A) a copy of any periodic actuarial report (including any sensitivity testing) received by the plan for any plan year which has been in the plan’s possession for at least 30 days,

(B) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary which has been in the plan’s possession for at least 30 days, and

(C) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 1084 of this title or section 431(d) of title 26 and the determination of such Secretary pursuant to such application.

**(2) Compliance**

Information required to be provided under paragraph (1)—

(A) shall be provided to the requesting participant, beneficiary, or employer within 30 days after the request in a form and manner prescribed in regulations of the Secretary,

(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the information is required to be provided, and

(C) shall not—

(i) include any individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer, or

(ii) reveal any proprietary information regarding the plan, any contributing employer, or entity providing services to the plan.

**(3) Limitations**

In no case shall a participant, beneficiary, or employer be entitled under this subsection to receive more than one copy of any report or application described in paragraph (1) during any one 12-month period. The administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

**(l) Notice of potential withdrawal liability****(1) In general**

The plan sponsor or administrator of a multiemployer plan shall, upon written request, furnish to any employer who has an obligation to contribute to the plan a notice of—

(A) the estimated amount which would be the amount of such employer’s withdrawal liability under part 1 of subtitle E of subchapter III if such employer withdrew on the last day of the plan year preceding the date of the request, and

(B) an explanation of how such estimated liability amount was determined, including the actuarial assumptions and methods used to determine the value of the plan liabilities and assets, the data regarding employer contributions, unfunded vested benefits, annual changes in the plan’s unfunded vested benefits, and the application of any relevant limitations on the estimated withdrawal liability.

For purposes of subparagraph (B), the term “employer contribution” means, in connection with a participant, a contribution made by an employer as an employer of such participant.

**(2) Compliance**

Any notice required to be provided under paragraph (1)—

<sup>2</sup>So in original. The closing parenthesis probably should not appear.

(A) shall be provided in a form and manner prescribed in regulations of the Secretary to the requesting employer within—

- (i) 180 days after the request, or
- (ii) subject to regulations of the Secretary, such longer time as may be necessary in the case of a plan that determines withdrawal liability based on any method described under paragraph (4) or (5) of section 1391(c) of this title; and

(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to employers to whom the information is required to be provided.

### (3) Limitations

In no case shall an employer be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

### (m) Notice of right to divest

Not later than 30 days before the first date on which an applicable individual of an applicable individual account plan is eligible to exercise the right under section 1054(j) of this title to direct the proceeds from the divestment of employer securities with respect to any type of contribution, the administrator shall provide to such individual a notice—

- (1) setting forth such right under such section, and
- (2) describing the importance of diversifying the investment of retirement account assets.

The notice required by this subsection shall be written in a manner calculated to be understood by the average plan participant and may be delivered in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to the recipient.

### (n) Cross reference

**For regulations relating to coordination of reports to the Secretaries of Labor and the Treasury, see section 1204 of this title.**

(Pub. L. 93-406, title I, § 101, Sept. 2, 1974, 88 Stat. 840; Pub. L. 100-203, title IX, § 9304(d), Dec. 22, 1987, 101 Stat. 1330-348; Pub. L. 101-239, title VII, §§ 7881(b)(5)(A), 7894(b)(2), Dec. 19, 1989, 103 Stat. 2438, 2448; Pub. L. 101-508, title XII, § 12012(d)(1), Nov. 5, 1990, 104 Stat. 1388-572; Pub. L. 103-66, title IV, § 4301(b)(1), Aug. 10, 1993, 107 Stat. 375; Pub. L. 103-465, title VII, § 731(c)(4)(A), Dec. 8, 1994, 108 Stat. 5004; Pub. L. 104-188, title I, § 1421(d)(1), Aug. 20, 1996, 110 Stat. 1799; Pub. L. 104-191, title I, § 101(e)(1), Aug. 21, 1996, 110 Stat. 1952; Pub. L. 104-204, title VI, § 603(b)(3)(B), Sept. 26, 1996, 110 Stat. 2938; Pub. L. 105-34, title XV, § 1503(a), Aug. 5, 1997, 111 Stat. 1061; Pub. L. 105-200, title IV, § 401(h)(1)(A), July 16, 1998, 112 Stat. 668; Pub. L. 106-170, title V, § 535(a)(2)(A), Dec. 17, 1999, 113 Stat. 1934; Pub. L. 107-204, title III, § 306(b)(1), July 30, 2002, 116 Stat. 780; Pub. L.

108-218, title I, § 103(a), title II, § 204(b)(1), Apr. 10, 2004, 118 Stat. 602, 609; Pub. L. 108-357, title VII, § 709(a)(1), Oct. 22, 2004, 118 Stat. 1551; Pub. L. 109-280, title I, §§ 103(b)(1), 107(a)(1), (11), title V, §§ 501(a), 502(a)(1), (b)(1), 503(c)(2), 507(a), 509(a), Aug. 17, 2006, 120 Stat. 815, 818, 819, 936, 939, 940, 944, 948, 952.)

### REFERENCES IN TEXT

Section 1022(a)(1) of this title, referred to in subsec. (a)(1), was redesignated section 1022(a) of this title by Pub. L. 105-34, title XV, § 1503(b)(1)(B), Aug. 5, 1997, 111 Stat. 1061.

### AMENDMENTS

2006—Subsec. (a)(2). Pub. L. 109-280, § 503(c)(2), inserted “subsection (f) and” after “described in”.

Subsec. (d)(3). Pub. L. 109-280, § 107(a)(1), substituted “1083(j)” for “1082(e)”.

Subsec. (e)(3). Pub. L. 109-280, § 107(a)(11), substituted “August 17, 2006” for “October 22, 2004”.

Subsec. (f). Pub. L. 109-280, § 501(a), amended heading and text of subsec. (f) generally, substituting provisions relating to defined benefit plan funding notices for provisions relating to multiemployer defined benefit plan funding notices.

Subsec. (i)(8)(B). Pub. L. 109-280, § 509(a), added cl. (i), redesignated cl. (v) as (ii), and struck out former cls. (i) to (iv) which read as follows:

“(i) on the first day of the plan year—

“(I) covered only the employer (and the employer’s spouse) and the employer owned the entire business (whether or not incorporated), or

“(II) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation (as defined in section 1361(a) of title 26)),

“(ii) meets the minimum coverage requirements of section 410(b) of title 26 (as in effect on July 30, 2002) without being combined with any other plan of the business that covers the employees of the business,

“(iii) does not provide benefits to anyone except the employer (and the employer’s spouse) or the partners (and their spouses),

“(iv) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and”.

Subsec. (j). Pub. L. 109-280, § 103(b)(1)(B), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 109-280, § 502(a)(1)(B), added subsec. (k). Former subsec. (k) redesignated (l).

Pub. L. 109-280, § 103(b)(1)(A), redesignated subsec. (j) as (k).

Subsec. (l). Pub. L. 109-280, § 502(b)(1)(B), added subsec. (l). Former subsec. (l) redesignated (m).

Pub. L. 109-280, § 502(a)(1)(A), redesignated subsec. (k) as (l).

Subsec. (m). Pub. L. 109-280, § 507(a), added subsec. (m). Former subsec. (m) redesignated (n).

Pub. L. 109-280, § 502(b)(1)(A), redesignated subsec. (l) as (m).

Subsec. (n). Pub. L. 109-280, § 507(a), redesignated subsec. (m) as (n).

2004—Subsec. (e)(3). Pub. L. 108-357 substituted “October 22, 2004” for “April 10, 2004”.

Pub. L. 108-218, § 204(b)(1), substituted “April 10, 2004” for “December 17, 1999”.

Subsec. (f). Pub. L. 108-218, § 103(a), added subsec. (f). 2002—Subsecs. (h) to (j). Pub. L. 107-204 added subsec. (i) and redesignated subsec. (h) relating to cross reference as (j).

1999—Subsec. (e)(3). Pub. L. 106-170 substituted “December 17, 1999” for “January 1, 1995”.

1998—Subsec. (f). Pub. L. 105-200 struck out subsec. (f) relating to information necessary to comply with Medicare and Medicaid Coverage Data Bank requirements.

1997—Subsec. (b). Pub. L. 105-34 redesignated pars. (4) and (5) as (1) and (2), respectively, and struck out former pars. (1) to (3), which read as follows:

“(1) the summary plan description described in section 1022(a)(1) of this title;

“(2) a plan description containing the matter required in section 1022(b) of this title;

“(3) modifications and changes referred to in section 1022(a)(2) of this title;”.

1996—Subsec. (g). 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(e)(1)(B), added subsec. (g). Former subsec. (g) redesignated (h).

Pub. L. 104-188 added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 104-191, §101(e)(1)(A), redesignated subsec. (g), relating to simple retirement accounts, as (h).

Pub. L. 104-188, §1421(d)(1), redesignated subsec. (g), relating to cross references, as (h).

1994—Subsec. (e)(3). Pub. L. 103-465 substituted “1995” for “1991”.

1993—Subsecs. (f), (g). Pub. L. 103-66 added subsec. (f) and redesignated former subsec. (f) as (g).

1990—Subsecs. (e), (f). Pub. L. 101-508 added subsec. (e) and redesignated former subsec. (e) as (f).

1989—Subsec. (a)(2). Pub. L. 101-239, §7894(b)(2), substituted “sections” for “section”.

Subsec. (d)(1). Pub. L. 101-239, §7881(b)(5)(A), substituted “an employer maintaining a plan” for “an employer of a plan”.

1987—Subsecs. (d), (e). Pub. L. 100-203 added subsec. (d) and redesignated former subsec. (d) as (e).

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title I, §103(c), Aug. 17, 2006, 120 Stat. 816, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1056 and 1132 of this title] shall apply to plan years beginning after December 31, 2007.

“(2) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before January 1, 2008, the amendments made by this section shall not apply to plan years beginning before the earlier of—

“(A) the later of—

“(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Aug. 17, 2006]), or

“(ii) the first day of the first plan year to which the amendments made by this subsection [probably should be “section”] would (but for this subparagraph) apply, or

“(B) January 1, 2010.

For purposes of subparagraph (A)(i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.”

Pub. L. 109-280, title I, §107(e), Aug. 17, 2006, 120 Stat. 820, provided that: “The amendments made by this section [amending this section, sections 1023, 1053, 1054, 1056, 1103, 1108, 1301, 1303, 1310, 1362, 1371, and 1423 of this title, and Reorganization Plan No. 4 of 1978, set out as a note under section 1001 of this title and in the Appendix to Title 5, Government Organization and Employees, and repealing section 1057 of this title] shall apply to plan years beginning after 2007.”

Pub. L. 109-280, title V, §501(d), Aug. 17, 2006, 120 Stat. 939, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and repealing section 1311 of this title] shall apply to plan years beginning after December 31, 2007, except that the amendment made by subsection (b) [repealing section 1311 of this title] shall apply to plan years beginning after December 31, 2006.

“(2) TRANSITION RULE.—Any requirement under section 101(f) of the Employee Retirement Income Secu-

rity Act of 1974 [29 U.S.C. 1021(f)] (as amended by this section) to report the funding target attainment percentage or funded percentage of a plan with respect to any plan year beginning before January 1, 2008, shall be treated as met if the plan reports—

“(A) in the case of a plan year beginning in 2006, the funded current liability percentage (as defined in section 302(d)(8) of such Act [29 U.S.C. 1082(d)(8)]) of the plan for such plan year, and

“(B) in the case of a plan year beginning in 2007, the funding target attainment percentage or funded percentage as determined using such methods of estimation as the Secretary of the Treasury may provide.”

Amendment by section 502(a)(1), (b)(1) 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.

Pub. L. 109-280, title V, §503(f), Aug. 17, 2006, 120 Stat. 945, provided that: “The amendments made by this section [amending this section and sections 1023 and 1024 of this title] shall apply to plan years beginning after December 31, 2007.”

Pub. L. 109-280, title V, §507(d), Aug. 17, 2006, 120 Stat. 949, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 1132 of this title] shall apply to plan years beginning after December 31, 2006.

“(2) TRANSITION RULE.—If notice under section 101(m) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1021(m)] (as added by this section) would otherwise be required to be provided before the 90th day after the date of the enactment of this Act [Aug. 17, 2006], such notice shall not be required to be provided until such 90th day.”

Pub. L. 109-280, title V, §509(b), Aug. 17, 2006, 120 Stat. 952, provided that: “The amendments made by this subsection [probably means this section, amending this section] shall take effect as if included in the provisions of section 306 of Public Law 107-204 (116 Stat. 745 et seq.).”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-218, title I, §103(d), Apr. 10, 2004, 118 Stat. 604, provided that: “The amendments made by this section [amending this section and section 1132 of this title] shall apply to plan years beginning after December 31, 2004.”

#### 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 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to qualified transfers occurring after Dec. 17, 1999, see section 535(c)(1) of Pub. L. 106-170, set out as a note under section 420 of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-200, title IV, §401(h)(1)(B), July 16, 1998, 112 Stat. 668, provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Act entitled ‘An Act to repeal the Medicare and Medicaid Coverage Data Bank’, approved October 2, 1996 (Public Law 104-226; 110 Stat. 3033).”

#### 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 of 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 an Effective Date note under section 1181 of this title.

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104-188, set out as a note under section 72 of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Section 4301(d) of Pub. L. 103-66 provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting section 1169 of this title and amending this section and sections 1132 and 1144 of this title] shall take effect on the date of the enactment of this Act [Aug. 10, 1993].

“(2) PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994.—Any amendment to a plan required to be made by an amendment made by this section shall not be required to be made before the first plan year beginning on or after January 1, 1994, if—

“(A) during the period after the date before the date of the enactment of this Act and before such first plan year, the plan is operated in accordance with the requirements of the amendments made by this section, and

“(B) such plan amendment applies retroactively to the period after the date before the date of the enactment of this Act and before such first plan year.

A plan shall not be treated as failing to be operated in accordance with the provisions of the plan merely because it operates in accordance with this paragraph.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Section 12012(e) of Pub. L. 101-508 provided that: “The amendments made by this section [amending this section and sections 1082, 1103, 1108, and 1132 of this title] shall apply to qualified transfers under section 420 of the Internal Revenue Code of 1986 [26 U.S.C. 420] made after the date of the enactment of this Act [Nov. 5, 1990].”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(b)(5)(A) 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 7894(b)(2) 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

Section 9304(d) of Pub. L. 100-203, as amended by Pub. L. 101-239, title VII, § 7881(b)(5)(C), Dec. 19, 1989, 103 Stat. 2438, provided that the amendment made by that section is effective with respect to plan years beginning after Dec. 31, 1987.

#### REGULATIONS

Pub. L. 109-280, title V, § 502(a)(3), Aug. 17, 2006, 120 Stat. 940, provided that: “The Secretary shall prescribe regulations under section 101(k)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1021(k)(2)] (as added by paragraph (1)) not later than 1 year after the date of the enactment of this Act [Aug. 17, 2006].”

Pub. L. 108-218, title I, § 103(c), Apr. 10, 2004, 118 Stat. 604, provided that: “The Secretary of Labor shall, not later than 1 year after the date of the enactment of this Act [Apr. 10, 2004], issue regulations (including a model notice) necessary to implement the amendments made by this section [amending this section and section 1132 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 (§§ 101-107) 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.

#### MODEL NOTICES AND FORMS

Pub. L. 109-280, title V, § 501(c), Aug. 17, 2006, 120 Stat. 939, provided that: “Not later than 1 year after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of Labor shall publish a model version of the notice required by section 101(f) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1021(f)]. The Secretary of Labor may promulgate any interim final rules as the Secretary determines appropriate to carry out the provisions of this subsection.”

Pub. L. 109-280, title V, § 503(e), Aug. 17, 2006, 120 Stat. 945, provided that: “Not later than 1 year after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of Labor shall publish a model form for providing the statements, schedules, and other material required to be provided under section 101(f) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1021(f)], as amended by this section. The Secretary of Labor may promulgate any interim final rules as the Secretary determines appropriate to carry out the provisions of this subsection.”

Pub. L. 109-280, title V, § 507(c), Aug. 17, 2006, 120 Stat. 949, provided that: “The Secretary of the Treasury shall, within 180 days after the date of the enactment of this subsection [Aug. 17, 2006], prescribe a model notice for purposes of satisfying the requirements of the amendments made by this section [amending this section and section 1132 of this title].”

#### 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, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of Title 26, Internal Revenue Code.

### § 1022. Summary plan description

(a) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 1024(b) of this title. The summary plan description shall include the information described in subsection (b) of this section, shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 1024(b)(1) of this title.

(b) The summary plan description shall contain the following information: The name and type of administration of the plan; in the case of a group health plan (as defined in section 1191b(a)(1) of this title), whether a health insurance issuer (as defined in section 1191b(b)(2) of this title) is responsible for the financing or administration (including payment of claims) of the plan and (if so) the name and address of such issuer; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names, titles, and addresses of any trustee or trustees (if they are persons different from the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan including the office at the Department of Labor through which participants and beneficiaries may seek assistance or information regarding their rights under this chapter and the Health Insurance Portability and Accountability Act of 1996 with respect to health benefits that are offered through a group health plan (as defined in section 1191b(a)(1) of this title) and the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 1133 of this title).

(Pub. L. 93-406, title I, § 102, Sept. 2, 1974, 88 Stat. 841; Pub. L. 104-191, title I, § 101(c)(2), Aug. 21, 1996, 110 Stat. 1951; Pub. L. 104-204, title VI, § 603(b)(3)(C), Sept. 26, 1996, 110 Stat. 2938; Pub. L. 105-34, title XV, § 1503(b), Aug. 5, 1997, 111 Stat. 1061.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (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.

The Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (b), is Pub. L. 104-191, Aug. 21, 1996, 110 Stat. 1936. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 201 of Title 42, The Public Health and Welfare, and Tables.

#### AMENDMENTS

1997—Pub. L. 105-34, § 1503(b)(2)(B), substituted "Summary plan description" for "Plan description and summary plan description" in section catchline.

Subsec. (a). Pub. L. 105-34, § 1503(b)(1), struck out "(1)" after subsec. designation and struck out par. (2) which read as follows: "A plan description (containing the information required by subsection (b) of this section) of any employee benefit plan shall be prepared on forms prescribed by the Secretary, and shall be filed

with the Secretary as required by section 1024(a)(1) of this title. Any material modification in the terms of the plan and any change in the information described in subsection (b) of this section shall be filed in accordance with section 1024(a)(1)(D) of this title."

Subsec. (b). Pub. L. 105-34, § 1503(b)(2)(A), substituted "The summary plan description shall contain" for "The plan description and summary plan description shall contain".

1996—Subsec. (b). Pub. L. 104-204 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 "in the case of a group health plan (as defined in section 1191b(a)(1) of this title), whether a health insurance issuer (as defined in section 1191b(b)(2) of this title) is responsible for the financing or administration (including payment of claims) of the plan and (if so) the name and address of such issuer;" after "type of administration of the plan;" and "including the office at the Department of Labor through which participants and beneficiaries may seek assistance or information regarding their rights under this chapter and the Health Insurance Portability and Accountability Act of 1996 with respect to health benefits that are offered through a group health plan (as defined in section 1191b(a)(1) of this title)" after "presenting claims for benefits under the plan".

#### 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 an Effective Date 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.

### § 1023. Annual reports

#### (a) Publication and filing

(1)(A) An annual report shall be published with respect to every employee benefit plan to which this part applies. Such report shall be filed with the Secretary in accordance with section 1024(a) of this title, and shall be made available and furnished to participants in accordance with section 1024(b) of this title.

(B) The annual report shall include the information described in subsections (b) and (c) and where applicable subsections (d), (e), and (f) and shall also include—

- (i) a financial statement and opinion, as required by paragraph (3) of this subsection, and
- (ii) an actuarial statement and opinion, as required by paragraph (4) of this subsection.

(2) If some or all of the information necessary to enable the administrator to comply with the requirements of this subchapter is maintained by—

(A) an insurance carrier or other organization which provides some or all of the benefits under the plan, or holds assets of the plan in a separate account,

(B) a bank or similar institution which holds some or all of the assets of the plan in a common or collective trust or a separate trust, or custodial account, or

(C) a plan sponsor as defined in section 1002(16)(B) of this title,

such carrier, organization, bank, institution, or plan sponsor shall transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year (or such other date as may be prescribed under regulations of the Secretary).

(3)(A) Except as provided in subparagraph (C), the administrator of an employee benefit plan shall engage, on behalf of all plan participants, an independent qualified public accountant, who shall conduct such an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual reports by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant. The independent qualified public accountant shall also offer his opinion as to whether the separate schedules specified in subsection (b)(3) of this section and the summary material required under section 1024(b)(3) of this title present fairly, and in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountant shall be made a part of the annual report. In a case where a plan is not required to file an annual report, the requirements of this paragraph shall not apply. In a case where by reason of section 1024(a)(2) of this title a plan is required only to file a simplified annual report, the Secretary may waive the requirements of this paragraph.

(B) In offering his opinion under this section the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary, if he so states his reliance.

(C) The opinion required by subparagraph (A) need not be expressed as to any statements required by subsection (b)(3)(G) of this section prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

(D) For purposes of this subchapter, the term “qualified public accountant” means—

(i) a person who is a certified public accountant, certified by a regulatory authority of a State;

(ii) a person who is a licensed public accountant licensed by a regulatory authority of a State; or

(iii) a person certified by the Secretary as a qualified public accountant in accordance with regulations published by him for a person who practices in States where there is no certification or licensing procedure for accountants.

(4)(A) The administrator of an employee pension benefit plan subject to the reporting requirement of subsection (d) of this section shall engage, on behalf of all plan participants, an enrolled actuary who shall be responsible for the preparation of the materials comprising the actuarial statement required under subsection (d) of this section. In a case where a plan is not required to file an annual report, the requirement of this paragraph shall not apply, and, in a case where by reason of section 1024(a)(2) of this title, a plan is required only to file a simplified report, the Secretary may waive the requirement of this paragraph.

(B) The enrolled actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under subsection (d) of this section—

(i) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

(ii) represent his best estimate of anticipated experience under the plan.

The opinion by the enrolled actuary shall be made with respect to, and shall be made a part of, each annual report.

(C) For purposes of this subchapter, the term “enrolled actuary” means an actuary enrolled under subtitle C of subchapter II of this chapter.

(D) In making a certification under this section the enrolled actuary may rely on the correctness of any accounting matter under subsection (b) of this section to which any qualified public accountant has expressed an opinion, if he so states his reliance.

**(b) Financial statement**

An annual report under this section shall include a financial statement containing the following information:

(1) With respect to an employee welfare benefit plan: a statement of assets and liabilities; a statement of changes in fund balance; and a statement of changes in financial position. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of the plan.

(2) With respect to an employee pension benefit plan: a statement of assets and liabilities, and a statement of changes in net assets available for plan benefits which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such

changes on benefits; the funding policy (including policy with respect to prior service cost), and any changes in such policies during the year; a description of any significant changes in plan benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of such pension plan.

(3) With respect to all employee benefit plans, the statement required under paragraph (1) or (2) shall have attached the following information in separate schedules:

(A) a statement of the assets and liabilities of the plan aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year of the plan;

(B) a statement of receipts and disbursements during the preceding twelve-month period aggregated by general sources and applications;

(C) a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower, or lessor, or similar party to the transaction (including a notation as to whether such party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value;

(D) a schedule of each transaction involving a person known to be party in interest, the identity of such party in interest and his relationship or that of any other party in interest to the plan, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expense incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction;

(E) a schedule of all loans or fixed income obligations which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule (including a notation as to whether parties involved are known to be parties in interest): the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof;

(F) a list of all leases which were in default or were classified during the year as uncollectable; and the following information with respect to each lease on such schedule (including a notation as to whether parties involved are

known to be parties in interest): the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(G) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by a bank as trustee, the report shall include the most recent annual statement of assets and liabilities of such common or collective trust, and in the case of a separate account or a separate trust, such other information as is required by the administrator in order to comply with this subsection; and

(H) a schedule of each reportable transaction, the name of each party to the transaction (except that, in the case of an acquisition or sale of a security on the market, the report need not identify the person from whom the security was acquired or to whom it was sold) and a description of each asset to which the transaction applies; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction. For purposes of the preceding sentence, the term "reportable transaction" means a transaction to which the plan is a party if such transaction is—

(i) a transaction involving an amount in excess of 3 percent of the current value of the assets of the plan;

(ii) any transaction (other than a transaction respecting a security) which is part of a series of transactions with or in conjunction with a person in a plan year, if the aggregate amount of such transactions exceeds 3 percent of the current value of the assets of the plan;

(iii) a transaction which is part of a series of transactions respecting one or more securities of the same issuer, if the aggregate amount of such transactions in the plan year exceeds 3 percent of the current value of the assets of the plan; or

(iv) a transaction with or in conjunction with a person respecting a security, if any other transaction with or in conjunction with such person in the plan year respecting a security is required to be reported by reason of clause (i).

(4) The Secretary may, by regulation, relieve any plan from filing a copy of a statement of assets and liabilities (or other information) described in paragraph (3)(G) if such statement and other information is filed with the Secretary by the bank or insurance carrier which maintains the common or collective trust or separate account.

**(c) Information to be furnished by administrator**

The administrator shall furnish as a part of a report under this section the following information:

(1) The number of employees covered by the plan.

(2) The name and address of each fiduciary.

(3) Except in the case of a person whose compensation is minimal (determined under regulations of the Secretary) and who performs solely ministerial duties (determined under such regulations), the name of each person (including but not limited to, any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment manager, or custodian who rendered services to the plan or who had transactions with the plan) who received directly or indirectly compensation from the plan during the preceding year for services rendered to the plan or its participants, the amount of such compensation, the nature of his services to the plan or its participants, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest.

(4) An explanation of the reason for any change in appointment of trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager, or custodian.

(5) Such financial and actuarial information including but not limited to the material described in subsections (b) and (d) of this section as the Secretary may find necessary or appropriate.

**(d) Actuarial statement**

With respect to an employee pension benefit plan (other than (A) a profit sharing, savings, or other plan, which is an individual account plan, (B) a plan described in section 1081(b) of this title, or (C) a plan described both in section 1321(b) of this title and in paragraph (1), (2), (3), (4), (5), (6), or (7) of section 1081(a) of this title) an annual report under this section for a plan year shall include a complete actuarial statement applicable to the plan year which shall include the following:

(1) The date of the plan year, and the date of the actuarial valuation applicable to the plan year for which the report is filed.

(2) The date and amount of the contribution (or contributions) received by the plan for the plan year for which the report is filed and contributions for prior plan years not previously reported.

(3) The following information applicable to the plan year for which the report is filed: the normal costs, the accrued liabilities, an identification of benefits not included in the calculation; a statement of the other facts and actuarial assumptions and methods used to de-

termine costs, and a justification for any change in actuarial assumptions or cost methods; and the minimum contribution required under section 1082 of this title.

(4) The number of participants and beneficiaries, both retired and nonretired, covered by the plan.

(5) The current value of the assets accumulated in the plan, and the present value of the assets of the plan used by the actuary in any computation of the amount of contributions to the plan required under section 1082 of this title and a statement explaining the basis of such valuation of present value of assets.

(6) Information required in regulations of the Pension Benefit Guaranty Corporation with respect to:

(A) the current value of the assets of the plan,

(B) the present value of all nonforfeitable benefits for participants and beneficiaries receiving payments under the plan,

(C) the present value of all nonforfeitable benefits for all other participants and beneficiaries,

(D) the present value of all accrued benefits which are not nonforfeitable (including a separate accounting of such benefits which are benefit commitments, as defined in section 1301(a)(16) of this title), and

(E) the actuarial assumptions and techniques used in determining the values described in subparagraphs (A) through (D).

(7) A certification of the contribution necessary to reduce the accumulated funding deficiency to zero.

(8) A statement by the enrolled actuary—

(A) that to the best of his knowledge the report is complete and accurate, and

(B) the applicable requirements of sections 1083(h) and 1084(c)(3) of this title (relating to reasonable actuarial assumptions and methods) have been complied with.

(9) A copy of the opinion required by subsection (a)(4) of this section.

(10) A statement by the actuary which discloses—

(A) any event which the actuary has not taken into account, and

(B) any trend which, for purposes of the actuarial assumptions used, was not assumed to continue in the future,

but only if, to the best of the actuary's knowledge, such event or trend may require a material increase in plan costs or required contribution rates.

(11) If the current value of the assets of the plan is less than 70 percent of—

(A) in the case of a single-employer plan, the funding target (as defined in section 1083(d)(1) of this title) of the plan, or

(B) in the case of a multiemployer plan, the current liability (as defined in section 1084(c)(6)(D) of this title) under the plan,

the percentage which such value is of the amount described in subparagraph (A) or (B).

(12) A statement explaining the actuarial assumptions and methods used in projecting future retirements and forms of benefit distributions under the plan.

(13) Such other information regarding the plan as the Secretary may by regulation require.

(14) Such other information as may be necessary to fully and fairly disclose the actuarial position of the plan.

Such actuary shall make an actuarial valuation of the plan for every third plan year, unless he determines that a more frequent valuation is necessary to support his opinion under subsection (a)(4) of this section.

**(e) Statement from insurance company, insurance service, or other similar organizations which sell or guarantee plan benefits**

If some or all of the benefits under the plan are purchased from and guaranteed by an insurance company, insurance service, or other similar organization, a report under this section shall include a statement from such insurance company, service, or other similar organization covering the plan year and enumerating—

(1) the premium rate or subscription charge and the total premium or subscription charges paid to each such carrier, insurance service, or other similar organization and the approximate number of persons covered by each class of such benefits; and

(2) the total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service, or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs paid by such company, service, or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose. If any such company, service, or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the company, service, or other organization and (B) if such company, service, or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

**(f) Additional information with respect to defined benefit plans**

**(1) Liabilities under 2 or more plans**

**(A) In general**

In any case in which any liabilities to participants or their beneficiaries under a defined benefit plan as of the end of a plan year consist (in whole or in part) of liabilities to such participants and beneficiaries under 2 or more pension plans as of immediately before such plan year, an annual report under this section for such plan year shall include the funded percentage of each

of such 2 or more pension plans as of the last day of such plan year and the funded percentage of the plan with respect to which the annual report is filed as of the last day of such plan year.

**(B) Funded percentage**

For purposes of this paragraph, the term “funded percentage”—

(i) in the case of a single-employer plan, means the funding target attainment percentage, as defined in section 1083(d)(2) of this title, and

(ii) in the case of a multiemployer plan, has the meaning given such term in section 1085(i)(2) of this title.

**(2) Additional information for multiemployer plans**

With respect to any defined benefit plan which is a multiemployer plan, an annual report under this section for a plan year shall include, in addition to the information required under paragraph (1), the following, as of the end of the plan year to which the report relates:

(A) The number of employers obligated to contribute to the plan.

(B) A list of the employers that contributed more than 5 percent of the total contributions to the plan during such plan year.

(C) The number of participants under the plan on whose behalf no contributions were made by an employer as an employer of the participant for such plan year and for each of the 2 preceding plan years.

(D) The ratios of—

(i) the number of participants under the plan on whose behalf no employer had an obligation to make an employer contribution during the plan year, to

(ii) the number of participants under the plan on whose behalf no employer had an obligation to make an employer contribution during each of the 2 preceding plan years.

(E) Whether the plan received an amortization extension under section 1084(d) of this title or section 431(d) of title 26 for such plan year and, if so, the amount of the difference between the minimum required contribution for the year and the minimum required contribution which would have been required without regard to the extension, and the period of such extension.

(F) Whether the plan used the shortfall funding method (as such term is used in section 1085 of this title) for such plan year and, if so, the amount of the difference between the minimum required contribution for the year and the minimum required contribution which would have been required without regard to the use of such method, and the period of use of such method.

(G) Whether the plan was in critical or endangered status under section 1085 of this title for such plan year, and if so, a summary of any funding improvement or rehabilitation plan (or modification thereto) adopted during the plan year, and the funded percentage of the plan.

(H) The number of employers that withdrew from the plan during the preceding plan year and the aggregate amount of withdrawal liability assessed, or estimated to be assessed, against such withdrawn employers.

(I) In the case of a multiemployer plan that has merged with another plan or to which assets and liabilities have been transferred, the actuarial valuation of the assets and liabilities of each affected plan during the year preceding the effective date of the merger or transfer, based upon the most recent data available as of the day before the first day of the plan year, or other valuation method performed under standards and procedures as the Secretary may prescribe by regulation.

(Pub. L. 93-406, title I, § 103, Sept. 2, 1974, 88 Stat. 841; Pub. L. 96-364, title III, § 307, Sept. 26, 1980, 94 Stat. 1295; Pub. L. 99-272, title XI, § 11016(b)(1), Apr. 7, 1986, 100 Stat. 272; Pub. L. 100-203, title IX, § 9342(a)(1), Dec. 22, 1987, 101 Stat. 1330-371; Pub. L. 101-239, title VII, § 7881(j)(1), Dec. 19, 1989, 103 Stat. 2442; Pub. L. 109-280, title I, § 107(a)(2), (3), title V, § 503(a)(1), (b), Aug. 17, 2006, 120 Stat. 818, 942, 943.)

#### AMENDMENTS

2006—Subsec. (a)(1)(B). Pub. L. 109-280, § 503(a)(1)(A), substituted “subsections (d), (e), and (f)” for “subsections (d) and (e)” in introductory provisions.

Subsec. (d)(8)(B). Pub. L. 109-280, § 107(a)(2), substituted “the applicable requirements of sections 1083(h) and 1084(c)(3)” for “the requirements of section 1082(c)(3)”.

Subsec. (d)(11). Pub. L. 109-280, § 107(a)(3), added par. (1) and struck out former par. (1) which read as follows: “If the current value of the assets of the plan is less than 70 percent of the current liability under the plan (within the meaning of section 1082(d)(7) of this title), the percentage which such value is of such liability..”

Subsec. (d)(12) to (14). Pub. L. 109-280, § 503(b), added par. (12) and redesignated former pars. (12) and (13) as (13) and (14), respectively.

Subsec. (f). Pub. L. 109-280, § 503(a)(1)(B), added subsec. (f).

1989—Subsec. (d)(11). Pub. L. 101-239 substituted “70 percent” for “60 percent” and “the percentage which such value is of such liability.” for “such percentage”.

1987—Subsec. (d)(11) to (13). Pub. L. 100-203 added par. (1) and redesignated former pars. (11) and (12) as (12) and (13), respectively.

1986—Subsec. (d)(6). Pub. L. 99-272 amended par. (6) generally. Prior to amendment, par. (6) read as follows: “The present value of all of the plan’s liabilities for nonforfeitable pension benefits allocated by the termination priority categories as set forth in section 1344 of this title, and the actuarial assumptions used in these computations. The Secretary shall establish regulations defining (for purposes of this section) ‘termination priority categories’ and acceptable methods, including approximate methods, for allocating the plan’s liabilities to such termination priority categories.”

1980—Subsec. (d)(10) to (12). Pub. L. 96-364 added par. (10) and redesignated former pars. (10) and (11) as (11) and (12), respectively.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 107(a)(2), (3) of Pub. L. 109-280 applicable to plan years beginning after 2007, see section 107(e) of Pub. L. 109-280, set out as a note under section 1021 of this title.

Amendment by section 503(a)(1), (b) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2007, see section 503(f) of Pub. L. 109-280, set out as a note under section 1021 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable with respect to reports required to be filed after Dec. 31, 1987, see section 9342(d)(1) of Pub. L. 100-203, set out as a note under section 1132 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

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

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

#### 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.

#### 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 (§§ 101-107) 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.

#### GUIDANCE BY SECRETARY OF LABOR

Pub. L. 109-280, title V, § 503(a)(2), Aug. 17, 2006, 120 Stat. 943, provided that: “Not later than 1 year after the date of enactment of this Act [Aug. 17, 2006], the Secretary of Labor shall publish guidance to assist multiemployer defined benefit plans to—

“(A) identify and enumerate plan participants for whom there is no employer with an obligation to make an employer contribution under the plan; and

“(B) report such information under section 103(f)(2)(D) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1023(f)(2)(D)] (as added by this section).”

#### TRANSITION RULES

Section 11016(b)(3) of Pub. L. 99-272 provided that: “Any regulations, modifications, or waivers which have been issued by the Secretary of Labor with respect to section 103(d)(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1023(d)(6)] (as in effect immediately before the date of the enactment of this Act [Apr. 7, 1986]) shall remain in full force and effect until modified by any regulations with respect to such section 103(d)(6) prescribed by the Pension Benefit Guaranty Corporation.”

#### CONSOLIDATION OF ACTUARIAL REPORTS

Secretary of the Treasury and Secretary of Labor to take such steps as may be necessary to assure coordination to the maximum extent feasible between the actuarial reports required by subsec. (d) of this section and section 6059 of Title 26, Internal Revenue Code, see section 1033(c) of Pub. L. 93-406, set out as a note under section 6059 of Title 26.

**§ 1024. Filing with Secretary and furnishing information to participants and certain employers**

**(a) Filing of annual report with Secretary**

(1) The administrator of any employee benefit plan subject to this part shall file with the Secretary the annual report for a plan year within 210 days after the close of such year (or within such time as may be required by regulations promulgated by the Secretary in order to reduce duplicative filing). The Secretary shall make copies of such annual reports available for inspection in the public document room of the Department of Labor.

(2)(A) With respect to annual reports required to be filed with the Secretary under this part, he may by regulation prescribe simplified annual reports for any pension plan which covers less than 100 participants.

(B) Nothing contained in this paragraph shall preclude the Secretary from requiring any information or data from any such plan to which this part applies where he finds such data or information is necessary to carry out the purposes of this subchapter nor shall the Secretary be precluded from revoking provisions for simplified reports for any such plan if he finds it necessary to do so in order to carry out the objectives of this subchapter.

(3) The Secretary may by regulation exempt any welfare benefit plan from all or part of the reporting and disclosure requirements of this subchapter, or may provide for simplified reporting and disclosure if he finds that such requirements are inappropriate as applied to welfare benefit plans.

(4) The Secretary may reject any filing under this section—

(A) if he determines that such filing is incomplete for purposes of this part; or

(B) if he determines that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to section 1023(a)(3)(A) or section 1023(a)(4)(B) of this title.

(5) If the Secretary rejects a filing of a report under paragraph (4) and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the Secretary makes his determination under paragraph (4) to reject the filing, and if the Secretary deems it in the best interest of the participants, he may take any one or more of the following actions—

(A) retain an independent qualified public accountant (as defined in section 1023(a)(3)(D) of this title) on behalf of the participants to perform an audit,

(B) retain an enrolled actuary (as defined in section 1023(a)(4)(C) of this title) on behalf of the plan participants, to prepare an actuarial statement,

(C) bring a civil action for such legal or equitable relief as may be appropriate to enforce the provisions of this part, or

(D) take any other action authorized by this subchapter.

The administrator shall permit such accountant or actuary to inspect whatever books and records of the plan are necessary for such audit.

The plan shall be liable to the Secretary for the expenses for such audit or report, and the Secretary may bring an action against the plan in any court of competent jurisdiction to recover such expenses.

(6) The administrator of any employee benefit plan subject to this part shall furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to, the latest summary plan description (including any summaries of plan changes not contained in the summary plan description), and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.

**(b) Publication of summary plan description and annual report to participants and beneficiaries of plan**

Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, a copy of the summary plan description, and all modifications and changes referred to in section 1022(a) of this title—

(A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or

(B) if later, within 120 days after the plan becomes subject to this part.

The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, every fifth year after the plan becomes subject to this part an updated summary plan description described in section 1022 of this title which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period this sentence shall not apply. Notwithstanding the foregoing, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, the summary plan description described in section 1022 of this title every tenth year after the plan becomes subject to this part. If there is a modification or change described in section 1022(a) of this title (other than a material reduction in covered services or benefits provided in the case of a group health plan (as defined in section 1191b(a)(1) of this title)), a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan. If there is a modification or change described in section 1022(a) of this title that is a material reduction in covered services or benefits provided under a group health plan (as defined in section 1191b(a)(1) of this title), a summary description of such modification or change shall be furnished to participants and beneficiaries not later than 60 days after the date of the adoption of the modification or change. In the alternative, the plan sponsors may provide such description at regular intervals of not more than 90 days. The Secretary shall issue regulations within 180 days after Au-

gust 21, 1996, providing alternative mechanisms to delivery by mail through which group health plans (as so defined) may notify participants and beneficiaries of material reductions in covered services or benefits.

(2) The administrator shall make copies of the latest updated summary plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Secretary may prescribe by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrator (other than an administrator of a defined benefit plan to which the requirements of section 1023(f) of this title applies)<sup>1</sup> shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 1023(b)(3) of this title and such other material (including the percentage determined under section 1023(d)(11) of this title) as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary,<sup>2</sup> plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(5) Identification and basic plan information and actuarial information included in the annual report for any plan year shall be filed with the Secretary in an electronic format which accommodates display on the Internet, in accordance with regulations which shall be prescribed by the Secretary. The Secretary shall provide for display of such information included in the annual report, within 90 days after the date of the filing of the annual report, on an Internet website maintained by the Secretary and other appropriate media. Such information shall also be displayed on any Intranet website maintained by the plan sponsor (or by the plan administrator on behalf of the plan sponsor) for the purpose of communicating with employees and not the public, in accordance with regulations which shall be prescribed by the Secretary.

#### (c) Statement of rights

The Secretary may by regulation require that the administrator of any employee benefit plan furnish to each participant and to each beneficiary receiving benefits under the plan a statement of the rights of participants and beneficiaries under this subchapter.

#### (d) Furnishing summary plan information to employers and employee representatives of multiemployer plans

##### (1) In general

With respect to a multiemployer plan subject to this section, within 30 days after the due date under subsection (a)(1) for the filing of the annual report for the fiscal year of the plan, the administrators shall furnish to each employee organization and to each employer with an obligation to contribute to the plan a report that contains—

(A) a description of the contribution schedules and benefit formulas under the plan, and any modification to such schedules and formulas, during such plan year;

(B) the number of employers obligated to contribute to the plan;

(C) a list of the employers that contributed more than 5 percent of the total contributions to the plan during such plan year;

(D) the number of participants under the plan on whose behalf no contributions were made by an employer as an employer of the participant for such plan year and for each of the 2 preceding plan years;

(E) whether the plan was in critical or endangered status under section 1085 of this title for such plan year and, if so, include—

(i) a list of the actions taken by the plan to improve its funding status; and

(ii) a statement describing how a person may obtain a copy of the plan's improvement or rehabilitation plan, as applicable, adopted under section 1085 of this title and the actuarial and financial data that demonstrate any action taken by the plan toward fiscal improvement;

(F) the number of employers that withdrew from the plan during the preceding plan year and the aggregate amount of withdrawal liability assessed, or estimated to be assessed, against such withdrawn employers, as reported on the annual report for the plan year to which the report under this subsection relates;

(G) in the case of a multiemployer plan that has merged with another plan or to which assets and liabilities have been transferred, the actuarial valuation of the assets and liabilities of each affected plan during the year preceding the effective date of the merger or transfer, based upon the most recent data available as of the day before the first day of the plan year, or other valuation method performed under standards and procedures as the Secretary may prescribe by regulation;

(H) a description as to whether the plan—

(i) sought or received an amortization extension under section 1084(d) of this title or section 431(d) of title 26 for such plan year; or

(ii) used the shortfall funding method (as such term is used in section 1085 of this title) for such plan year; and

(I) notification of the right under this section of the recipient to a copy of the annual report filed with the Secretary under sub-

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

<sup>2</sup> So in original. Comma probably should not appear.

section (a), summary plan description, summary of any material modification of the plan, upon written request, but that—

(i) in no case shall a recipient be entitled to receive more than one copy of any such document described during any one 12-month period; and

(ii) the administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to this subparagraph.

**(2) Effect of subsection**

Nothing in this subsection waives any other provision under this subchapter requiring plan administrators to provide, upon request, information to employers that have an obligation to contribute under the plan.

**(e) Cross references**

**For regulations respecting coordination of reports to the Secretaries of Labor and the Treasury, see section 1204 of this title.**

(Pub. L. 93-406, title I, §104, Sept. 2, 1974, 88 Stat. 847; Pub. L. 99-272, title XI, §1101(b)(2), Apr. 7, 1986, 100 Stat. 273; Pub. L. 100-203, title IX, §9342(a)(2), Dec. 22, 1987, 101 Stat. 1330-371; Pub. L. 101-239, title VII, §7894(b)(3), (4), Dec. 19, 1989, 103 Stat. 2448; Pub. L. 104-191, title I, §101(c)(1), Aug. 21, 1996, 110 Stat. 1951; Pub. L. 104-204, title VI, §603(b)(3)(D), Sept. 26, 1996, 110 Stat. 2938; Pub. L. 105-34, title XV, §1503(c)(1), (2)(A), (d)(1)-(3), Aug. 5, 1997, 111 Stat. 1062; Pub. L. 109-280, title V, §§503(c)(1), (d), 504(a), Aug. 17, 2006, 120 Stat. 943-945.)

AMENDMENTS

2006—Pub. L. 109-280, §503(d)(1), substituted “participants and certain employers” for “participants” in section catchline.

Subsec. (b)(3). Pub. L. 109-280, §503(c)(1), which directed amendment of par. (3) by inserting “(other than an administrator of a defined benefit plan to which the requirements of section 1023(f) of this title applies)” after “the administrators”, was executed by making the insertion after “the administrator”, to reflect the probable intent of Congress.

Subsec. (b)(5). Pub. L. 109-280, §504(a), added par. (5).  
Subsecs. (d), (e). Pub. L. 109-280, §503(d)(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).

1997—Subsec. (a)(1). Pub. L. 105-34, §1503(c)(1), amended par. (1) generally, substituting present provisions for provisions requiring filing of annual report, plan description, summary plan description, as well as modifications and changes in plan descriptions.

Subsec. (a)(6). Pub. L. 105-34, §1503(c)(2)(A), added par. (6).

Subsec. (b)(1). Pub. L. 105-34, §1503(d)(1), substituted “section 1022(a) of this title” for “section 1022(a)(1) of this title” wherever appearing.

Subsec. (b)(2). Pub. L. 105-34, §1503(d)(2), substituted “the latest updated summary plan description and” for “the plan description and”.

Subsec. (b)(4). Pub. L. 105-34, §1503(d)(3), struck out “plan description” before “, plan description, and the latest annual report”.

1996—Subsec. (b)(1). Pub. L. 104-204 made technical amendment to references in original act which appear in text as references to section 1191b of this title.

Pub. L. 104-191, in closing provisions, substituted “1022(a)(1) of this title (other than a material reduction in covered services or benefits provided in the case of a group health plan (as defined in section 1191b(a)(1) of this title),” for “1022(a)(1) of this title,” and inserted at end “If there is a modification or change described in section 1022(a)(1) of this title that is a material re-

duction in covered services or benefits provided under a group health plan (as defined in section 1191b(a)(1) of this title), a summary description of such modification or change shall be furnished to participants and beneficiaries not later than 60 days after the date of the adoption of the modification or change. In the alternative, the plan sponsors may provide such description at regular intervals of not more than 90 days. The Secretary shall issue regulations within 180 days after August 21, 1996, providing alternative mechanisms to delivery by mail through which group health plans (as so defined) may notify participants and beneficiaries of material reductions in covered services or benefits.”

1989—Subsec. (a)(5)(B). Pub. L. 101-239, §7894(b)(3), substituted a comma for period at end.

Subsec. (b)(1). Pub. L. 101-239, §7894(b)(4), struck out comma after “summary”.

1987—Subsec. (b)(3). Pub. L. 100-203 inserted “(including the percentage determined under section 1023(d)(11) of this title)” after “material”.

1986—Subsec. (a)(2)(A). Pub. L. 99-272 struck out provision permitting the Secretary to waive or modify the requirements of section 1023(d)(6) of this title if he found that the interests of the plan participants were not harmed and the expense of compliance was not justified by the needs of the participants, the Pension Benefit Guaranty Corporation, and the Department of Labor for some portion or all of the information otherwise required under section 1023(d)(6) of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 503(c)(1), (d) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2007, see section 503(f) of Pub. L. 109-280, set out as a note under section 1021 of this title.

Pub. L. 109-280, title V, §504(b), Aug. 17, 2006, 120 Stat. 945, provided that: “The amendment made by this section [amending this section] shall apply to plan years beginning after December 31, 2007.”

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 an Effective Date note under section 1181 of this title.

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.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable with respect to reports required to be filed after Dec. 31, 1987, see section 9342(d)(1) of Pub. L. 100-203, set out as a note under section 1132 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

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

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.

**§ 1025. Reporting of participant's benefit rights****(a) Requirements to provide pension benefit statements****(1) Requirements****(A) Individual account plan**

The administrator of an individual account plan (other than a one-participant retirement plan described in section 1021(i)(8)(B) of this title) shall furnish a pension benefit statement—

(i) at least once each calendar quarter to a participant or beneficiary who has the right to direct the investment of assets in his or her account under the plan,

(ii) at least once each calendar year to a participant or beneficiary who has his or her own account under the plan but does not have the right to direct the investment of assets in that account, and

(iii) upon written request to a plan beneficiary not described in clause (i) or (ii).

**(B) Defined benefit plan**

The administrator of a defined benefit plan (other than a one-participant retirement plan described in section 1021(i)(8)(B) of this title) shall furnish a pension benefit statement—

(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit and who is employed by the employer maintaining the plan at the time the statement is to be furnished, and

(ii) to a participant or beneficiary of the plan upon written request.

Information furnished under clause (i) to a participant may be based on reasonable estimates determined under regulations prescribed by the Secretary, in consultation with the Pension Benefit Guaranty Corporation.

**(2) Statements****(A) In general**

A pension benefit statement under paragraph (1)—

(i) shall indicate, on the basis of the latest available information—

(I) the total benefits accrued, and

(II) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

(ii) shall include an explanation of any permitted disparity under section 401(l) of title 26 or any floor-offset arrangement that may be applied in determining any accrued benefits described in clause (i),

(iii) shall be written in a manner calculated to be understood by the average plan participant, and

(iv) may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant or beneficiary.

**(B) Additional information**

In the case of an individual account plan, any pension benefit statement under clause (i) or (ii) of paragraph (1)(A) shall include—

(i) the value of each investment to which assets in the individual account have been allocated, determined as of the most recent valuation date under the plan, including the value of any assets held in the form of employer securities, without regard to whether such securities were contributed by the plan sponsor or acquired at the direction of the plan or of the participant or beneficiary, and

(ii) in the case of a pension benefit statement under paragraph (1)(A)(i)—

(I) an explanation of any limitations or restrictions on any right of the participant or beneficiary under the plan to direct an investment,

(II) an explanation, written in a manner calculated to be understood by the average plan participant, of the importance, for the long-term retirement security of participants and beneficiaries, of a well-balanced and diversified investment portfolio, including a statement of the risk that holding more than 20 percent of a portfolio in the security of one entity (such as employer securities) may not be adequately diversified, and

(III) a notice directing the participant or beneficiary to the Internet website of the Department of Labor for sources of information on individual investing and diversification.

**(C) Alternative notice**

The requirements of subparagraph (A)(i)(II) are met if, at least annually and in accordance with requirements of the Secretary, the plan—

(i) updates the information described in such paragraph which is provided in the pension benefit statement, or

(ii) provides in a separate statement such information as is necessary to enable a participant or beneficiary to determine their nonforfeitable vested benefits.

**(3) Defined benefit plans****(A) Alternative notice**

In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if at least once each year the administrator provides to the participant notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant.

**(B) Years in which no benefits accrue**

The Secretary may provide that years in which no employee or former employee benefits (within the meaning of section 410(b) of title 26) under the plan need not be taken into account in determining the 3-year period under paragraph (1)(B)(i).

**(b) Limitation on number of statements**

In no case shall a participant or beneficiary of a plan be entitled to more than 1 statement described in subparagraph (A)(iii) or (B)(ii) of sub-

section (a)(1), whichever is applicable, in any 12-month period.

**(c) Individual statement furnished by administrator to participants setting forth information in administrator's Internal Revenue registration statement and notification of forfeitable benefits**

Each administrator required to register under section 6057 of title 26 shall, before the expiration of the time prescribed for such registration, furnish to each participant described in subsection (a)(2)(C) of such section, an individual statement setting forth the information with respect to such participant required to be contained in the registration statement required by section 6057(a)(2) of title 26. Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.

(Pub. L. 93-406, title I, § 105, Sept. 2, 1974, 88 Stat. 849; Pub. L. 98-397, title I, § 106, Aug. 23, 1984, 98 Stat. 1436; Pub. L. 101-239, title VII, §§ 7891(a)(1), 7894(b)(5), Dec. 19, 1989, 103 Stat. 2445, 2448; Pub. L. 109-280, title V, § 508(a)(1)-(2)(B), Aug. 17, 2006, 120 Stat. 949, 951.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-280, § 508(a)(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information—

"(1) the total benefits accrued, and

"(2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable."

Subsec. (b). Pub. L. 109-280, § 508(a)(2)(B), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) of this section during any one 12-month period."

Subsec. (d). Pub. L. 109-280, § 508(a)(2)(A), struck out heading and text of subsec. (d). Text read as follows: "Subsection (a) of this section shall apply to a plan to which more than one unaffiliated employer is required to contribute only to the extent provided in regulations prescribed by the Secretary in coordination with the Secretary of the Treasury."

1989—Subsec. (b). Pub. L. 101-239, § 7894(b)(5), substituted "12-month" for "12 month".

Subsec. (c). 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.

1984—Subsec. (c). Pub. L. 98-397 inserted at end "Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date."

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title V, § 508(c), Aug. 17, 2006, 120 Stat. 952, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 1132 of this title] shall apply to plan years beginning after December 31, 2006.

"(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employ-

ers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for 'December 31, 2006' the earlier of—

"(A) the later of—

"(i) December 31, 2007, or

"(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

"(B) December 31, 2008."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7891(a)(1) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7891(f) of Pub. L. 101-239, set out as a note under section 1002 of this title.

Amendment by section 7894(b)(5) 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 1984 AMENDMENT

Amendment by Pub. L. 98-397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of this title.

REGULATIONS

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

MODEL STATEMENTS

Pub. L. 109-280, title V, § 508(b), Aug. 17, 2006, 120 Stat. 951, provided that:

"(1) IN GENERAL.—The Secretary of Labor shall, within 1 year after the date of the enactment of this section [Aug. 17, 2006], develop 1 or more model benefit statements that are written in a manner calculated to be understood by the average plan participant and that may be used by plan administrators in complying with the requirements of section 105 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1025].

"(2) INTERIM FINAL RULES.—The Secretary of Labor may promulgate any interim final rules as the Secretary determines appropriate to carry out the provisions of this subsection."

**§ 1026. Reports made public information**

(a) Except as provided in subsection (b) of this section, the contents of the annual reports, statements, and other documents filed with the Secretary pursuant to this part shall be public information and the Secretary shall make any such information and data available for inspection in the public document room of the Department of Labor. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) Information described in sections 1025(a) and 1025(c) of this title with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] may be disclosed under such Act.

(Pub. L. 93-406, title I, § 106, Sept. 2, 1974, 88 Stat. 850; Pub. L. 101-239, title VII, § 7894(b)(6), Dec. 19,

1989, 103 Stat. 2448; Pub. L. 105-34, title XV, § 1503(d)(4), Aug. 5, 1997, 111 Stat. 1062.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security 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.

#### AMENDMENTS

1997—Subsec. (a). Pub. L. 105-34 struck out “descriptions,” before “annual reports.”

1989—Subsec. (b). Pub. L. 101-239 substituted “sections” for “section”.

#### 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.

### § 1027. Retention of records

Every person subject to a requirement to file any report or to certify any information therefor under this subchapter or who would be subject to such a requirement but for an exemption or simplified reporting requirement under section 1024(a)(2) or (3) of this title shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based on the information which they contain, or six years after the date on which such documents would have been filed but for an exemption or simplified reporting requirement under section 1024(a)(2) or (3) of this title.

(Pub. L. 93-406, title I, § 107, Sept. 2, 1974, 88 Stat. 850; Pub. L. 105-34, title XV, § 1503(d)(5), Aug. 5, 1997, 111 Stat. 1062.)

#### AMENDMENTS

1997—Pub. L. 105-34 struck out “description or” after “requirement to file any”.

### § 1028. Reliance on administrative interpretations

In any criminal proceeding under section 1131 of this title, based on any act or omission in alleged violation of this part or section 1112 of this title, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with this part or section 1112 of this title, if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any regulation or written ruling of the Secretary, or (2) publish and file any information required by any provision of this part if he pleads and proves that he published and filed such information in good faith, and in conform-

ity with any regulation or written ruling of the Secretary issued under this part regarding the filing of such reports. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the annual reports and other reports required by this subchapter, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this part.

(Pub. L. 93-406, title I, § 108, Sept. 2, 1974, 88 Stat. 850; Pub. L. 101-239, title VII, § 7894(b)(7), Dec. 19, 1989, 103 Stat. 2448; Pub. L. 105-34, title XV, § 1503(d)(6), Aug. 5, 1997, 111 Stat. 1062.)

#### AMENDMENTS

1997—Pub. L. 105-34, which directed the amendment of cl. (2)(B) by substituting “annual reports” for “plan descriptions, annual reports,” was executed by making the substitution for “plan description, annual reports,” to reflect the probable intent of Congress.

1989—Pub. L. 101-239 substituted “act or omission” for “act of omission” before “complained of”.

#### 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.

#### 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.

### § 1029. Forms

#### (a) Information required on forms

Except as provided in subsection (b) of this section, the Secretary may require that any information required under this subchapter to be submitted to him, including but not limited to the information required to be filed by the administrator pursuant to section 1023(b)(3) and (c) of this title, must be submitted on such forms as he may prescribe.

#### (b) Information not required on forms

The financial statement and opinion required to be prepared by an independent qualified public accountant pursuant to section 1023(a)(3)(A) of this title, the actuarial statement required to be prepared by an enrolled actuary pursuant to section 1023(a)(4)(A) of this title and the summary plan description required by section 1022(a) of this title shall not be required to be submitted on forms.

#### (c) Format and content of summary plan description, annual report, etc., required to be furnished to plan participants and beneficiaries

The Secretary may prescribe the format and content of the summary plan description, the summary of the annual report described in section 1024(b)(3) of this title and any other report, statements or documents (other than the bargaining agreement, trust agreement, contract,

or other instrument under which the plan is established or operated), which are required to be furnished or made available to plan participants and beneficiaries receiving benefits under the plan.

(Pub. L. 93-406, title I, § 109, Sept. 2, 1974, 88 Stat. 850.)

#### 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.

#### § 1030. Alternative methods of compliance

(a) The Secretary on his own motion or after having received the petition of an administrator may prescribe an alternative method for satisfying any requirement of this part with respect to any pension plan, or class of pension plans, subject to such requirement if he determines—

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

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

(A) increase the costs to the plan, or

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

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

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

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

#### REGULATIONS

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

#### § 1031. Repeal and effective date

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

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

(B)(i) Section 1027 of such title 18 is amended by striking out “Welfare and Pension Plans Dis-

closure Act” and inserting in lieu thereof “title I of the Employee Retirement Income Security Act of 1974”, and by striking out “Act” each place it appears and inserting in lieu thereof “title”.

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

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

(C) Section 1954 of such title 18 is amended by striking out “any plan subject to the provisions of the Welfare and Pension Plans Disclosure Act as amended” and inserting in lieu thereof “any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974”; and by striking out “sections 3(3) and 5(b)(1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended” and inserting in lieu thereof “sections 3(4) and (3)(16)<sup>1</sup> of the Employee Retirement Income Security Act of 1974”.

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

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

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

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

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

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

#### REFERENCES IN TEXT

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

Title I of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(A) to (C), means

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

title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(B)(ii), (iii), (D), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, as amended. Titles I, III, and IV of such act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

#### AMENDMENTS

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

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if originally included in the 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 2—PARTICIPATION AND VESTING

### § 1051. Coverage

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

- (1) an employee welfare benefit plan;
- (2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;
- (3)(A) a plan established and maintained by a society, order, or association described in section 501(c)(3) or (9) of title 26, if no part of the contributions to or under such plan are made by employers of participants in such plan, or
- (B) a trust described in section 501(c)(18) of title 26;
- (4) a plan which is established and maintained by a labor organization described in section 501(c)(5) of title 26 and which does not at any time after September 2, 1974, provide for employer contributions;
- (5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of title 26;
- (6) an individual retirement account or annuity described in section 408 of title 26, or a retirement bond described in section 409 of title 26 (as effective for obligations issued before January 1, 1984);
- (7) an excess benefit plan; or
- (8) any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this chapter.

(Pub. L. 93-406, title I, § 201, Sept. 2, 1974, 88 Stat. 852; Pub. L. 96-364, title IV, § 411(a), Sept. 26, 1980, 94 Stat. 1308; Pub. L. 101-239, title VII,

§§ 7891(a)(1), 7894(c)(1)(A), (11)(A), Dec. 19, 1989, 103 Stat. 2445, 2448, 2449.)

#### REFERENCES IN TEXT

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

This chapter, referred to in par. (8), was in the original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

#### AMENDMENTS

1989—Pars. (3)(A), (4), (5). Pub. L. 101-239, § 7891(a)(1), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

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

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

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

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

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

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

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7891(a)(1) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7891(f) of Pub. L. 101-239, set out as a note under section 1002 of this title.

Section 7894(c)(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 411 of the Multiemployer Pension Plan Amendments Act of 1980 [Pub. L. 96-364]."

Section 7894(c)(11)(B) of Pub. L. 101-239 provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if originally included in section 491(b) of Public Law 98-369."

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

### § 1052. Minimum participation standards

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

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

(B)(i) In the case of any plan which provides that after not more than 2 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (ii)