

(Pub. L. 93-406, title IV, § 4008, Sept. 2, 1974, 88 Stat. 1014; Pub. L. 109-280, title IV, § 412, Aug. 17, 2006, 120 Stat. 936.)

AMENDMENTS

2006—Pub. L. 109-280 designated existing provisions as subsec. (a) and added subsec. (b).

§ 1309. Portability assistance

The corporation shall provide advice and assistance to individuals with respect to evaluating the economic desirability of establishing individual retirement accounts or other forms of individual retirement savings for which a deduction is allowable under section 219 of title 26 and with respect to evaluating the desirability, in particular cases, of transferring amounts representing an employee's interest in a qualified plan to such an account upon the employee's separation from service with an employer.

(Pub. L. 93-406, title IV, § 4009, Sept. 2, 1974, 88 Stat. 1014; Pub. L. 101-239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Pub. L. 101-239 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

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

§ 1310. Authority to require certain information

(a) Information required

Each person described in subsection (b) of this section shall provide the corporation annually, on or before a date specified by the corporation in regulations, with—

- (1) such records, documents, or other information that the corporation specifies in regulations as necessary to determine the liabilities and assets of plans covered by this subchapter; and
- (2) copies of such person's audited (or, if unavailable, unaudited) financial statements, and such other financial information as the corporation may prescribe in regulations.

(b) Persons required to provide information

The persons covered by subsection (a) of this section are each contributing sponsor, and each member of a contributing sponsor's controlled group, of a single-employer plan covered by this subchapter, if—

- (1) the funding target attainment percentage (as defined in subsection (d)) at the end of the preceding plan year of a plan maintained by the contributing sponsor or any member of its controlled group is less than 80 percent;
- (2) the conditions for imposition of a lien described in section 1083(k)(1)(A) and (B) of this title or section 430(k)(1)(A) and (B) of title 26 have been met with respect to any plan maintained by the contributing sponsor or any member of its controlled group; or
- (3) minimum funding waivers in excess of \$1,000,000 have been granted with respect to

any plan maintained by the contributing sponsor or any member of its controlled group, and any portion thereof is still outstanding.

(c) Information exempt from disclosure requirements

Any information or documentary material submitted to the corporation pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

(d) Additional information required

(1) In general

The information submitted to the corporation under subsection (a) shall include—

- (A) the amount of benefit liabilities under the plan determined using the assumptions used by the corporation in determining liabilities;
- (B) the funding target of the plan determined as if the plan has been in at-risk status for at least 5 plan years; and
- (C) the funding target attainment percentage of the plan.

(2) Definitions

For purposes of this subsection:

(A) Funding target

The term “funding target” has the meaning provided under section 1083(d)(1) of this title.

(B) Funding target attainment percentage

The term “funding target attainment percentage” has the meaning provided under section 1082(d)(2) of this title.

(C) At-risk status

The term “at-risk status” has the meaning provided in section 1083(i)(4) of this title.

(e) Notice to Congress

The corporation shall, on an annual basis, submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate and the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives, a summary report in the aggregate of the information submitted to the corporation under this section.

(Pub. L. 93-406, title IV, § 4010, as added Pub. L. 103-465, title VII, § 772(a), Dec. 8, 1994, 108 Stat. 5044; amended Pub. L. 109-280, title I, § 107(b)(3), title V, § 505(a), (b), Aug. 17, 2006, 120 Stat. 819, 946.)

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109-280, § 505(a), added par. (1) and struck out former par. (1) which read as follows: “the aggregate unfunded vested benefits at the end of the preceding plan year (as determined under section 1306(a)(3)(E)(iii) of this title) of plans maintained by the contributing sponsor and the members of its controlled group exceed \$50,000,000 (disregarding plans with no unfunded vested benefits);”.

Subsec. (b)(2). Pub. L. 109-280, §107(b)(3), substituted “1083(k)(1)(A) and (B)” for “1082(f)(1)(A) and (B)” and “430(k)(1)(A) and (B)” for “412(n)(1)(A) and (B)”.

Subsecs. (d), (e). Pub. L. 109-280, §505(b), added subsecs. (d) and (e).

CHANGE OF NAME

Committee on Education and the Workforce of House of Representatives changed to Committee on Education and Labor of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 107(b)(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.

Pub. L. 109-280, title V, §505(c), Aug. 17, 2006, 120 Stat. 946, provided that: “The amendments made by this section [amending this section] shall apply with respect to years beginning after 2007.”

EFFECTIVE DATE

Section 772(c) of Pub. L. 103-465 provided that: “The amendments made by this section [enacting this section] shall be effective on the date of enactment of this Act [Dec. 8, 1994].”

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.

§ 1311. Repealed. Pub. L. 109-280, title V, § 501(b)(1), Aug. 17, 2006, 120 Stat. 939

Section, Pub. L. 93-406, title IV, §4011, as added Pub. L. 103-465, title VII, §775(a), Dec. 8, 1994, 108 Stat. 5046, related to notice to participants of plan’s funding status and limitations on corporation’s guaranty.

EFFECTIVE DATE OF REPEAL

Repeal applicable to plan years beginning after Dec. 31, 2006, see section 501(d)(1) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 1021 of this title.

SUBTITLE B—COVERAGE

§ 1321. Coverage

(a) Plans covered

Except as provided in subsection (b) of this section, this subchapter applies to any plan (including a successor plan) which, for a plan year—

(1) is an employee pension benefit plan (as defined in paragraph (2) of section 1002 of this title) established or maintained—

(A) by an employer engaged in commerce or in any industry or activity affecting commerce, or

(B) by any employee organization, or organization representing employees, engaged in commerce or in any industry or activity affecting commerce, or

(C) by both,

which has, in practice, met the requirements of part I of subchapter D of chapter 1 of title 26 (as in effect for the preceding 5 plan years of the plan) applicable to the plans described

in paragraph (2) for the preceding 5 plan years; or

(2) is, or has been determined by the Secretary of the Treasury to be, a plan described in section 401(a) of title 26, or which meets, or has been determined by the Secretary of the Treasury to meet, the requirements of section 404(a)(2) of title 26.

For purposes of this subchapter, a successor plan is considered to be a continuation of a predecessor plan. For this purpose, unless otherwise specifically indicated in this subchapter, a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided.

(b) Plans not covered

This section does not apply to any plan—

(1) which is an individual account plan, as defined in paragraph (34) of section 1002 of this title,¹

(2) established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or to which the Railroad Retirement Act of 1935 or 1937 [45 U.S.C. 231 et seq.] applies and which is financed by contributions required under that Act, or which is described in the last sentence of section 1002(32) of this title²

(3) which is a church plan as defined in section 414(e) of title 26, unless that plan has made an election under section 410(d) of title 26, and has notified the corporation in accordance with procedures prescribed by the corporation, that it wishes to have the provisions of this part apply to it,¹

(4)(A) established and maintained by a society, order, or association described in section 501(c)(8) or (9) of title 26, if no part of the contributions to or under the plan is made by employers of participants in the plan, or

(B) of which a trust described in section 501(c)(18) of title 26 is a part;

(5) which has not at any time after September 2, 1974, provided for employer contributions;

(6) which is unfunded and which is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(7) which is established and maintained outside of the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens;

(8) which is maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of title 26 on plans to which that section applies, without regard to whether the plan is funded, and, to the extent that a separable part of a plan (as determined by the corporation) maintained by an employer is main-

¹ So in original. The comma probably should be a semicolon.

² So in original. A semicolon probably should appear.