this title, and paragraphs (1) and (2) of subsection (g) of such section, shall apply with respect to grants made available under this section, other than subsection (c) of this section. The requirements of section 776 of this title shall apply with respect to grants made available under this section.

(Pub. L. 93–112, title VIII, § 803, as added Pub. L. 102–569, title VIII, § 801(a), Oct. 29, 1992, 106 Stat. 4478.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 771a, 797 of this title.

CHAPTER 17—COMPREHENSIVE EMPLOYMENT AND TRAINING PROGRAMS

CODIFICATION

The Comprehensive Employment and Training Act of 1973, Pub. L. 93–203, Dec. 28, 1973, 87 Stat. 839, as amended by Pub. L. 93–567, Dec. 31, 1974, 88 Stat. 1845; Pub. L. 94–444, Oct. 1, 1976, 90 Stat. 1476; Pub. L. 94–482, Oct. 12, 1976, 90 Stat. 2081; Pub. L. 95–40, June 3, 1977, 91 Stat. 203; Pub. L. 95–44, June 15, 1977, 91 Stat. 220; Pub. L. 95–93, Aug. 5, 1977, 91 Stat. 627, comprised this chapter prior to its complete revision by Pub. L. 95–524, Oct. 27, 1978, 92 Stat. 1909. The Act, Pub. L. 93–203, as amended generally by Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1909, was known as the Comprehensive Employment and Training Act, and was set out as having been added by Pub. L. 95–524 without reference to the intervening amendments in view of the extensive revision of the Act's provisions by Pub. L. 95–524.

§§ 801, 802. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 801, Pub. L. 93–203, § 2, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1912, set out the Congressional statement of purpose in enacting this chapter.

A prior section 801, Pub. L. 93–203, § 2, Dec. 28, 1973, 87 Stat. 839, provided for a Congressional statement of purpose for this chapter, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 802, Pub. L. 93–203, § 3, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1912, provided definitions for this chapter.

A prior section 802, Pub. L. 93–203, § 4, Dec. 28, 1973, 87 Stat. 839; Pub. L. 95–44, § 2(a), June 15, 1977, 91 Stat. 220; Pub. L. 95–93, title III, § 302, Aug. 5, 1977, 91 Stat. 650, authorized appropriations for this chapter, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 3 of Pub. L. 93–203, Dec. 28, 1973, 87 Stat. 839, provided for transitional provisions and was set out as a note under section 801 of this title, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 981 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 803, Pub. L. 95–93, title III, § 305, Aug. 5, 1977, 91 Stat. 651, providing for increased participation of veterans in public service employment programs and job training opportunities, was omitted because it was limited to fiscal years 1977 and 1978.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

SUBCHAPTER I—ADMINISTRATIVE PROVISIONS

PART A—ORGANIZATIONAL PROVISIONS

§§ 811 to 822. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 811, Pub. L. 93–203, title I, § 101, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1917, related to prime sponsors under this chapter.

A prior section 811, Pub. L. 93–203, title I, § 101, Dec. 28, 1973, 87 Stat. 840, provided description of a program to provide comprehensive manpower services, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 812 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 812, Pub. L. 93–203, title I, § 102, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1918, related to authority of the Secretary to provide services.

A prior section 812, Pub. L. 93–203, title I, § 102, Dec. 28, 1973, 87 Stat. 841, related to prime sponsors, prior to the general revision of Pub. L. 93–203, by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 820 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 813, Pub. L. 93–203, title I, § 103, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1918, related to submission and contents of a comprehensive employment and training plan.

A prior section 813, Pub. L. 93–203, title I, § 103, Dec. 28, 1973, 87 Stat. 842, provided for allocation of funds with respect to comprehensive manpower services program, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 815 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 814, Pub. L. 93–203, title I, § 104, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1922, related to review of comprehensive employment and training plans.

A prior section 814, Pub. L. 93–203, title I, § 104, Dec. 28, 1978, 87 Stat. 843, related to establishment of prime sponsor's planning councils, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 818 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 815, Pub. L. 93–203, title I, § 105, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1925, related to Governor's coordination and special services plan.

A prior section 815, Pub. L. 93–203, title I, § 105, Dec. 28, 1973, 87 Stat. 843; Pub. L. 94–444, § 12(b)(1), Oct. 1, 1976, 90 Stat. 1483, related to conditions for receipt of financial assistance, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 816 of this title prior to the general revision of Pub. L. 93–203, by Pub. L. 95–524.

Section 816, Pub. L. 93–203, title I, § 106, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1926, related to complaints and sanctions against prime sponsors under this chapter.

A prior section 816, Pub. L. 93–203, title I, § 106, Dec. 28, 1973, 87 Stat. 845; Pub. L. 94–444, § 12(b)(2), Oct. 1, 1976, 90 Stat. 1483, provided for special provisions relating to State prime sponsors, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 818 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 817, Pub. L. 93–203, title I, § 107, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1929, related to judicial review under this chapter.

A prior section 817, Pub. L. 93–203, title I, § 107, Dec. 28, 1973, 87 Stat. 846; Pub. L. 94–482, title II, § 203(a), Oct. 12, 1976, 90 Stat. 2213; Pub. L. 95–40, § 1(28)(A), June 3, 1977, 91 Stat. 207, related to establishment of a State Manpower Services Council, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 819 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 818, Pub. L. 93–203, title I, § 108, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1929, authorized the Secretary to reallocate funds under this chapter.

A prior section 818, Pub. L. 93–203, title I, § 108, Dec. 28, 1973, 87 Stat. 847; Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845, provided for review of comprehensive manpower plans, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 813 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 819, Pub. L. 93–203, title I, § 109, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1930, related to prime sponsor's planning councils.

A prior section 819, Pub. L. 93–203, title I, § 109, Dec. 28, 1973, 87 Stat. 848, provided for judicial review with respect to comprehensive manpower plans, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 814 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 820, Pub. L. 93–203, title I, § 110, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1930, related to State employment and training councils.

A prior section 820, Pub. L. 93–203, title I, Dec. 28, 1973, 87 Stat. 848, related to authority of the Secretary to provide services, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 817 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 821, Pub. L. 93–203, title I, § 111, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1932, related to consultation by the Secretary with various Federal and State agencies regarding education and health and welfare services and supporting programs.

A prior section 821, Pub. L. 93–203, title I, § 111, Dec. 28, 1973, 87 Stat. 849, provided for allowances for individuals receiving training or education with respect to comprehensive manpower services, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 875 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 822, Pub. L. 93–203, title I, § 112, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1932; amended Pub. L. 96–583, § 1, Dec. 23, 1980, 94 Stat. 3375; Pub. L. 97–14, § 2, June 16, 1981, 95 Stat. 98; Pub. L. 97–35, title VII, § 701(a), Aug. 13, 1981, 95 Stat. 519, provided authorization of appropriations for carrying out this chapter.

A prior section 822, Pub. L. 93–203, title I, § 112, Dec. 28, 1973, 87 Stat. 850, provided for supplemental vocational education assistance, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 802 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

PART B—GENERAL PROVISIONS

§§ 823 to 829. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 823, Pub. L. 93–203, title I, § 121, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1934, related to conditions applicable to all programs under this chapter.

Provisions similar to those comprising this section were contained in former section 983 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 824, Pub. L. 93–203, title I, § 122, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1938, and amended Pub. L. 96–583, § 3(a), Dec. 23, 1980, 94 Stat. 3376, related to special conditions applicable to public service employment.

Provisions similar to those comprising this section were contained in former section 848 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 825, Pub. L. 93–203, title I, § 123, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1941, set out various administrative provisions applicable to this chapter.

Provisions similar to those comprising this section were contained in former sections 813 and 984 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 826, Pub. L. 93–203, title I, § 124, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1943, related to wages and allowances applicable to all activities financed under this chapter.

Provisions similar to those comprising this section were contained in former section 821 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 827, Pub. L. 93–203, title I, § 125, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1944, related to labor standards for all laborers and mechanics employed on works that are federally assisted under this chapter.

Provisions similar to those comprising this section were contained in former section 986 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 828, Pub. L. 93–203, title I, § 126, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1944, related to various powers of the Secretary under this chapter.

Provisions similar to those comprising this section were contained in former section 982 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 829, Pub. L. 93–203, title I, § 127, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1945; amended Pub. L. 96–88, title V, § 508(h)(2), Oct. 17, 1979, 93 Stat. 693, related to various reports to be made by Federal agencies regarding programs, activities, etc., under this chapter.

Provisions similar to those comprising this section were contained in former sections 849 and 985 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

§ 829a. Repealed. Pub. L. 97–300, title I, § 184(a)(2), Oct. 13, 1982, 96 Stat. 1358

Section, Pub. L. 95–524, § 5(b), Oct. 27, 1978, 92 Stat. 2019, related to development of methods to ascertain energy development and conservation employment impact data, and the presentation of best available data to the Secretary of Energy, Secretary of Housing and Urban Development, Director of the Office of Management and Budget, and committees of Congress.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of this section is effective Oct. 13, 1982.

§§ 830 to 837. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 830, Pub. L. 93–203, title I, § 128, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1947, authorized the Secretary to accept and utilize services and property in the furtherance of the purposes of this chapter.

Provisions similar to those comprising this section were contained in former section 987 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 831, Pub. L. 93–203, title I, § 129, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1947, provided the Secretary with additional authorization to utilize various services and facilities of Federal, State, and local agencies and public and private organizations in the performance of functions under this chapter.

Provisions similar to those comprising this section were contained in former section 988 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 832, Pub. L. 93–203, title I, § 130, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1948, related to interstate agreements to facilitate compliance with the provisions of this chapter.

Provisions similar to those comprising this section were contained in former section 989 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 833, Pub. L. 93–203, title I, § 131, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1948, prohibited financial assistance for programs under this chapter involving political activities.

Provisions similar to those comprising this section were contained in former section 990 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 834, Pub. L. 93–203, title I, § 132, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1948, related to prohibition of, and sanctions against, discrimination under this chapter.

Provisions similar to those comprising this section were contained in former section 991 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 835, Pub. L. 93–203, title I, § 133, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1949, related to records, audits, and investigations of recipients of funds under this chapter.

Provisions similar to those comprising this section were contained in former section 992 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 836, Pub. L. 93–203, title I, § 134, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1949, related to bonding of those who handle funds or other financial assistance received under this chapter.

Section 837, Pub. L. 93–203, title I, § 135, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1950, related to establishment of an Office of Management Assistance, the assignment of accountants, management specialists, and other professionals to such office, and reimbursement for services of such office.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

SUBCHAPTER II—COMPREHENSIVE EMPLOYMENT AND TRAINING SERVICES

PART A—FINANCIAL ASSISTANCE PROVISIONS

§§ 841 to 845. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 841, Pub. L. 93–203, title II, § 201, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1950, set out the Congressional statement of purpose in enacting provisions relating to comprehensive employment and training services.

A prior section 841, Pub. L. 93–203, title II, § 201, Dec. 28, 1973, 87 Stat. 850; Pub. L. 93–567, title I, § 106(a), Dec. 31, 1974, 88 Stat. 1849, provided for a Congressional statement of purpose with respect to a public service employment program, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 811 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 842, Pub. L. 93–203, title II, § 202, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1950; amended Pub. L. 96–583, § 3(b), Dec. 23, 1980, 94 Stat. 3376; Pub. L. 97–35, title VII, § 701(b), (c), Aug. 13, 1981, 95 Stat. 520, related to allocation of funds for comprehensive employment and training services.

A prior section 842, Pub. L. 93–203, title II, § 202, Dec. 28, 1973, 87 Stat. 850; Pub. L. 93–567, title I, § 106(b), Dec. 31, 1974, 88 Stat. 1849, Pub. L. 94–444, § 14(a), Oct 1, 1976, 90 Stat. 1487, related to an allocation of funds with regard to the public service employment programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 813 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 843, Pub. L. 93–203, title II, § 203, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1953, related to conditions for the receipt of financial assistance for comprehensive employment and training services.

A prior section 843, Pub. L. 93–203, title II, § 203, Dec. 28, 1973, 87 Stat. 850; Pub. L. 94–444, § 3(a)(1), Oct. 1, 1976, 90 Stat. 1476, related to availability of financial assistance, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 815 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 844, Pub. L. 93–203, title II, § 204, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1953, related to supplemental vocational education assistance.

A prior section 844, Pub. L. 93–203, title II, § 204, Dec. 28, 1973, 87 Stat. 850; Pub. L. 93–567, title I, § 106 (c), (d), Dec. 31, 1974, 88 Stat. 1849, related to eligible applicants, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 822 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 845, Pub. L. 93–203, title II, § 205, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1954, related to participant assessment in comprehensive employment and training services programs.

A prior section 845, Pub. L. 93–203, title II, § 205, Dec. 28, 1973, 87 Stat. 851; Pub. L. 93–567, title I, § 106 (e), (f), Dec. 31, 1974, 88 Stat. 1849; Pub. L. 94–444, § 7, Oct. 1, 1976, 90 Stat. 1482; Pub. L. 95–93, title III, § 306(a), Aug. 5, 1977, 91 Stat. 651, related to applications for financial assistance, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

PART B—SERVICES FOR THE ECONOMICALLY DISADVANTAGED

§§ 846 to 851. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 846, Pub. L. 93–203, title II, § 211, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1954, described types of comprehensive employment and training services programs.

A prior section 846, Pub. L. 93–203, title II, § 206, Dec. 28, 1973, 87 Stat. 854, related to approval of applications

for financial assistance, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 211 of Pub. L. 93–203, title II, Dec. 28, 1973, 87 Stat. 857; Pub. L. 93–567, title I, § 103, Dec. 31, 1974, 88 Stat. 1847, related to a determination of areas of substantial unemployment which was formerly classified to section 851 of this title, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 811 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 847, Pub. L. 93–203, title II, § 212, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1955, related to limitations on use of funds under comprehensive employment and training services programs.

A prior section 847, Pub. L. 93–203, title II, § 207, Dec. 28, 1973, 87 Stat. 854, related to special responsibilities of Secretary, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 848, Pub. L. 93–203, title II, § 213, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1955, related to eligibility for participation in a program for services for economically disadvantaged.

A prior section 848, Pub. L. 93–203, title II, § 208, Dec. 28, 1973, 87 Stat. 855, related to special conditions for providing financial assistance for public service employment programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 849, Pub. L. 93–203, title II, § 214, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1955, provided for services for youth.

A prior section 849, Pub. L. 93–203, title II, § 209, Dec. 28, 1973, 87 Stat. 856; Pub. L. 93–567, title I, § 105, Dec. 31, 1974, 88 Stat. 1848, provided for a special report to Congress with respect to activities concerning public service employment program, prior to the general revision of this Pub. L. 93–203 by Pub. L. 95–524.

Section 850, Pub. L. 93–203, title II, § 215, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1956, related to services for older workers.

A prior section 850, Pub. L. 93–203, title II, § 210, Dec. 28, 1973, 87 Stat. 857; Pub. L. 93–567, title I, § 106(g), Dec. 31, 1974, 88 Stat. 1849, related to utilization of funds for public service employment programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 851, Pub. L. 93–203, title II, § 216, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1956, related to services for public assistance recipients.

A prior section 851, Pub. L. 93–203, title II, § 211, Dec. 28, 1973, 87 Stat. 857; Pub. L. 93–567, title I, § 103, Dec. 31, 1974, 88 Stat. 1847, related to determinations by Secretary of areas of substantial unemployment, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

PART C—UPGRADING AND RETRAINING

§ 852. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section, Pub. L. 93–203, title II, § 221, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1956, related to occupational upgrading and retraining programs.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of this section is effective Oct. 13, 1982.

PART D—TRANSITIONAL EMPLOYMENT OPPORTUNITIES FOR THE ECONOMICALLY DISADVANTAGED

§§ 853 to 859. Repealed, Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 853, Pub. L. 93–203, title II, § 231, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1957, set out the Congressional statement of purpose for transitional employment opportunities for the economically disadvantaged.

Section 854, Pub. L. 93–203, title II, § 232, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1958, related to financial assistance to prime sponsors for transitional public service employment for economically disadvantaged persons who are unemployed.

Section 855, Pub. L. 93–203, title II, § 233, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1958; amended Pub. L. 96–583, § 3(b), Dec. 23, 1980, 94 Stat. 3376, related to allocation of funds for carrying out of transitional employment opportunities for the economically disadvantaged.

Section 856, Pub. L. 93–203, title II, § 234, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1959, related to expenditure of funds by prime sponsors for purposes of transitional employment opportunities for economically disadvantaged.

Section 857, Pub. L. 93–203, title II, § 235, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1959, related to applicability of section 966 of this title to transitional employment opportunities for economically disadvantaged.

Section 858, Pub. L. 93–203, title II, § 236, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1959, related to eligibility for transitional employment opportunities for economically disadvantaged.

Section 859, Pub. L. 93–203, title II, § 237, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1960, related to payment of wages to economically disadvantaged individuals employed in transitional public service employment.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

SUBCHAPTER III—SPECIAL FEDERAL RESPONSIBILITIES

PART A—SPECIAL NATIONAL PROGRAMS AND ACTIVITIES

§§ 871 to 878. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 871, Pub. L. 93–203, title III, § 301, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1960, related to special programs and activities.

A prior section 871, Pub. L. 93–203, title III, § 301, Dec. 28, 1973, 87 Stat. 857, provided for additional manpower services, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 872, Pub. L. 93–203, title III, § 302, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1962, related to Native American employment and training programs.

A prior section 872, Pub. L. 93–203, title III, § 302, Dec. 28, 1973, 87 Stat. 858; Pub. L. 95–93, title III, § 303(a)–(d), Aug. 5, 1977, 91 Stat. 650, related to Native American employment and training programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 873, Pub. L. 93–203, title III, § 303, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1964; amended Pub. L. 96–88, title V, § 508(h)(3), Oct. 17, 1979, 93 Stat. 693, related to migrant and seasonal farmworker employment and training programs.

A prior section 873, Pub. L. 93–203, title III, § 303, Dec. 28, 1973, 87 Stat. 859, related to migrant and seasonal farmworker manpower programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 874, Pub. L. 93–203, title III, § 304, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1965, related to job search and relocation assistance.

A prior section 874, Pub. L. 93–203, title III, § 304, Dec. 28, 1973, 87 Stat. 859, provided for youth programs and other special programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 875, Pub. L. 93–203, title III, § 305, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1965; amended

Pub. L. 96–583, § 3(d), Dec. 23, 1980, 94 Stat. 3376, related to veterans information and outreach.

A prior section 875, Pub. L. 93–203, title III, § 306, Dec. 28, 1973, 87 Stat. 860, related to a consultation with Secretary of Health, Education, and Welfare, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 803 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 876, Pub. L. 93–203, title III, § 306, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1965, related to programs for the handicapped.

A prior section 306 of Pub. L. 93–203, title III, Dec. 28, 1973, 87 Stat. 860, related to a consultation with Secretary of Health, Education, and Welfare, was classified to former section 875 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 877, Pub. L. 93–203, title III, § 307, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1966, related to partnership programs between prime sponsors and employment security agencies.

Section 878, Pub. L. 93–203, title III, § 308, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1966, related to projects for middle-aged and older workers.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

PART B—RESEARCH, TRAINING, AND EVALUATION

§§ 879 to 886. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 879, Pub. L. 93–203, title III, § 311, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1968; amended Pub. L. 96–88, title V, § 508(h)(4), Oct. 17, 1979, 93 Stat. 693; Pub. L. 96–583, § 3(c), Dec. 23, 1980, 94 Stat. 3376, related to establishment of various employment and training research programs.

A prior section 311 of Pub. L. 93–203, title III, Dec. 28, 1973, 87 Stat. 860; Pub. L. 94–444, § 10, Oct. 1, 1976, 90 Stat. 1483, which related to establishment of a comprehensive program of manpower research, was classified to former section 881 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 880, Pub. L. 93–203, title III, § 312, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1970, provided for a labor market information and job bank program.

A prior section 312 of Pub. L. 93–203, title III, Dec. 28, 1973, 87 Stat. 861, which related to development of a system of labor market information and establishment of a job bank program, was classified to former section 882 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 881, Pub. L. 93–203, title III, § 313, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1971, related to evaluation of all programs and activities under this chapter.

A prior section 881, Pub. L. 93–203, title III, § 311, Dec. 28, 1973, 87 Stat. 860; Pub. L. 94–444, § 10, Oct. 1, 1976, 90 Stat. 1483, related to establishment of a comprehensive program of manpower research, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 313 of Pub. L. 93–203, title III, Dec. 28, 1973, 87 Stat. 862, which related to an evaluation of the programs and activities conducted under this chapter, was classified to section 883 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 882, Pub. L. 93–203, title III, § 314, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1972; amended Pub. L. 96–88, title V, § 508(h)(5), Oct. 17, 1979, 93 Stat. 693, provided for training and technical assistance with respect to programs under this chapter.

A prior section 882, Pub. L. 93–203, title III, § 312, Dec. 28, 1973, 87 Stat. 861, related to development of a system of labor market information and establishment of a job bank program, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 314 of Pub. L. 93–203, title III, Dec. 28, 1973, 87 Stat. 863, which related to a continuous study with respect to the removal of artificial barriers to employment and advancement, was classified to former section 884 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 885 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 883, Pub. L. 93–203, title III, § 315, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1972, related to National Occupational Information Coordinating Committee.

A prior section 883, Pub. L. 93–203, title III, § 313, Dec. 28, 1973, 87 Stat. 862, related to evaluation of programs and activities conducted under this chapter, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 315 of Pub. L. 93–203, title III, Dec. 28, 1973, 87 Stat. 863, which related to training and technical assistance, was classified to former section 885 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 884, Pub. L. 93–203, title III, § 316, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1973, related to evaluation of a prime sponsor's employment and training services program and to the awarding of incentive grants to such sponsors.

A prior section 884, Pub. L. 93–203, title III, § 314, Dec. 28, 1973, 87 Stat. 863, related to a continuous study with respect to the removal of artificial barriers to employment and advancement, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 885, Pub. L. 93–203, title III, § 317, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1973, related to voucher demonstration projects.

A prior section 885, Pub. L. 93–203, title III, § 315, Dec. 28, 1973, 87 Stat. 863, related to training and technical assistance, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 886, Pub. L. 93–203, title III, § 318, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1974, related to employment and training activities to stimulate local private economic development.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

SUBCHAPTER IV—YOUTH PROGRAMS

§§ 891 to 892a. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 891, Pub. L. 93–203, title IV, § 401, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1974, set out Congressional declaration of purpose for youth employment and training programs.

A prior section 891, Pub. L. 93–203, title III, § 321, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 632, provided for a Congressional declaration of purpose with respect to youth employment, training and demonstration programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 401 of Pub. L. 93–203, title IV, Dec. 28, 1973, 87 Stat. 863, which provided for a congressional statement of purpose with respect to the Job Corps program, was classified to former section 911 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 874 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 892, Pub. L. 93–203, title IV, § 402, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1974, provided definitions of ''eligible youth'' under various youth programs.

A prior section 892, Pub. L. 93–203, title III, § 325, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat.

632, related to authorization of youth incentive entitlement pilot projects, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 402 of Pub. L. 93–203, title IV, Dec. 28, 1973, 87 Stat. 864, related to establishment of a Job Corps and was classified to former section 912 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 892a, Pub. L. 93–203, title IV, § 403, as added Pub. L. 97–35, title VII, § 701(e)(1), Aug. 13, 1981, 95 Stat. 520, related to transferability of funds for youth programs.

A prior section 892a, Pub. L. 93–203, title III, § 326, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 633, related to guarantees of employment opportunities, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Sections 892b to 892d of this title were eliminated in the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 892b, Pub. L. 93–203, title III, § 327, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 633, related to selection of prime sponsors.

Section 892c, Pub. L. 93–203, title III, § 328, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 635, related to special provisions for development of a participants role as a member of the community and for restrictions on use of funds.

Section 892d, Pub. L. 93–203, title III, § 329, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 635, related to reports to Congress.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

PART A—YOUTH EMPLOYMENT DEMONSTRATION PROGRAMS

§ 893. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 893, Pub. L. 93–203, title IV, § 411, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1974, set out Congressional statement of purpose for youth employment demonstration programs.

A prior section 893, Pub. L. 93–203, title III, § 331, added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 636, provided for a Congressional declaration of purpose with respect to a program of community conservation and improvement projects, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 411 of Pub. L. 93–203, title IV, Dec. 28, 1973, 87 Stat. 868, which related to activities designed to establish a mutually beneficial relationship between Job Corps centers and nearby communities, was classified to former section 921 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 891 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Sections 893a to 893g of this title were eliminated in the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 893a, Pub. L. 93–203, title III, § 332, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 636, defined terms used in provisions covering youth community conservation and improvement projects.

Section 893b, Pub. L. 93–203, title III, § 333, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 636, related to allocation of funds with respect to youth community conservation and improvement projects.

Section 893c, Pub. L. 93–203, title III, § 334, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 637, authorized Secretary to enter into agreements with eligible applicants to pay the costs of community conservation and improvement youth employment projects.

Section 893d, Pub. L. 93–203, title III, § 335, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 637, related to applications for community conservation and improvement youth employment projects.

Section 893e, Pub. L. 93–203, title III, § 336, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 637, related to submittal of proposed agreements to Secretary.

Section 893f, Pub. L. 93–203, title III, § 337, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 638, related to authority of Secretary to approve or deny project applications.

Section 893g, Pub. L. 93–203, title III, § 338, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 639, related to a work limitation with respect to eligible youths involved in community conservation and improvement projects.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of this section is effective Oct. 13, 1982.

SUBPART 1—YOUTH INCENTIVE ENTITLEMENT PILOT PROJECTS

§§ 894 to 898. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 894, Pub. L. 93–203, title IV, § 416, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1975, authorized youth incentive entitlement pilot projects.

A prior section 894, Pub. L. 93–203, title III, § 341, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 639, provided for a Congressional declaration of purpose with respect to youth employment and training programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 416 of Pub. L. 93–203, title IV, Dec. 28, 1973, 87 Stat. 872, which related to the Federal status of enrollees in the Job Corps, was classified to former section 926 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 892 of this title prior to the general revision of Pub. L. 93–203, by Pub. L. 95–524.

Sections 894a to 894g of this title were eliminated in the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 894a, Pub. L. 93–203, title III, § 342, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 639, related to programs authorized for youth employment and training.

Section 894b, Pub. L. 93–203, title III, § 343, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 640, related to allocation of funds with respect to youth employment and training programs.

Section 894c, Pub. L. 93–203, title III, § 344, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 642, related to eligible applicants for purposes of the youth employment and training programs.

Section 894d, Pub. L. 93–203, title III, § 345, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 642, related to eligible participants for programs for employment and training of youth.

Section 894e, Pub. L. 93–203, title III, § 346, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 642, related to conditions for receipt of financial assistance for programs authorized under former section 894a of this title.

Section 894f, Pub. L. 93–203, title III, § 347, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 645, related to a review of plans by the Secretary.

Section 894g, Pub. L. 93–203, title III, § 348, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 645, related to discretionary projects of Secretary dealing with unemployment problems of youth.

Section 895, Pub. L. 93–203, title IV, § 417, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1975, related to employment guarantees under youth incentive entitlement pilot projects.

A prior section 895, Pub. L. 93–203, title III, § 351, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 646, provided for authorization of appropriations and distribution of funds with respect to youth employment

demonstration programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 417 of Pub. L. 93–203, title IV, Dec. 28, 1973, 87 Stat. 873, which related to special limitations with respect to the Job Corps, was classified to former section 927 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 892a of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Sections 895a to 895f of this title were eliminated in the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 895a, Pub. L. 93–203, title III, § 352, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 646, related to rates of pay.

Section 895b, Pub. L. 93–203, title III, § 353, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 647, related to special conditions with respect to financial assistance to youth employment, training, and demonstration programs.

Section 895c, Pub. L. 93–203, title III, § 354, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 648, related to special provisions for youth community conservation and improvement projects and for youth employment and training programs.

Section 895d, Pub. L. 93–203, title III, § 355, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 649, related to grant or award of academic credit and counseling and placement services.

Section 895e, Pub. L. 93–203, title III, § 356, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 649, related to affect of earnings received under the youth employment, training, and demonstration programs in determination of need under other programs.

Section 895f, Pub. L. 93–203, title III, § 357, as added Pub. L. 95–93, title II, § 201, Aug. 5, 1977, 91 Stat. 649, related to general provisions.

Section 896, Pub. L. 93–203, title IV, § 418, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1976, related to selection of prime sponsors to operate youth incentive entitlement projects.

A prior section 418 of Pub. L. 93–203, title IV, Dec. 28, 1973, 87 Stat. 873, related to prohibitions respecting political discrimination and political activity, was classified to former section 928 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 892b of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 897, Pub. L. 93–203, title IV, § 419, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1978, related to special provisions for development of participant's role as a member of the community and for restrictions on use of funds for youth incentive entitlement projects.

A prior section 419 of Pub. L. 93–203, title IV, Dec. 28, 1973, 87 Stat. 873; Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845, which provided for administrative provisions, was classified to former section 929 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 892c of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 898, Pub. L. 93–203, title IV, § 420, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1978, related to reports by the Secretary to Congress regarding youth incentive entitlement projects.

Provisions similar to those comprising this section were contained in former section 892d of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

SUBPART 2—YOUTH COMMUNITY CONSERVATION AND IMPROVEMENT PROJECTS

§§ 899 to 906. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 899, Pub. L. 93–203, title IV, § 421, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1979, set out Congressional statement of purpose for youth community conservation and improvement projects.

Provisions similar to those comprising this section were contained in former section 893 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 900, Pub. L. 93–203, title IV, § 422, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1979, provided definitions applicable to youth community conservation and improvement projects.

Provisions similar to those comprising this section were contained in former section 893a of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 901, Pub. L. 93–203, title IV, § 423, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1979, related to allocation of funds regarding youth community conservation projects.

Provisions similar to those comprising this section were contained in former section 893b of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 902, Pub. L. 93–203, title IV, § 424, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1980, authorized Secretary to enter into agreements with eligible applicants to pay the costs of community conversation and improvement youth employment projects.

Provisions similar to those comprising this section were contained in former section 893c of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 903, Pub. L. 93–203, title IV, § 425, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1980, related to applications for youth community conservation and improvement projects.

Provisions similar to those comprising this section were contained in former section 893d of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 904, Pub. L. 93–203, title IV, § 426, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1980, related to proposed agreements for funding submitted to Secretary by eligible applicants.

Provisions similar to those comprising this section were contained in former section 893e of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 905, Pub. L. 93–203, title IV, § 427, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1981, related to approval or denial of youth community conservation and improvement project applications submitted with an opposed agreement.

Provisions similar to those comprising this section were contained in former section 893f of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 906, Pub. L. 93–203, title IV, § 428, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1981, set out work limitations under youth community conservation and improvement projects.

Provisions similar to those comprising this section were contained in former section 893g of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

SUBPART 3—YOUTH EMPLOYMENT AND TRAINING PROGRAMS

§§ 907 to 915. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 907, Pub. L. 93–203, title IV, § 431, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1982, set out Congressional statement of purpose for youth employment and training programs.

Provisions similar to those comprising this section were contained in former section 894 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 908, Pub. L. 93–203, title IV, § 432, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1982, related to youth employment and training programs eligible to receive financial assistance.

Provisions similar to those comprising this section were contained in former section 894a of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 909, Pub. L. 93–203, title IV, § 433, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1983; amended Pub. L. 97–35, title VII, § 701(d)(1), Aug. 13, 1981, 95 Stat. 520, related to allocation of funds for youth employment and training programs.

Provisions similar to those comprising this section were contained in former section 894b of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 910, Pub. L. 93–203, title IV, § 434, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1985, related to eligible applicants for youth employment and training programs.

Provisions similar to those comprising this section were contained in former section 894c of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 911, Pub. L. 93–203, title IV, § 435, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1985, related to eligible participants for youth employment and training programs.

A prior section 911, Pub. L. 93–203, title IV, § 401, Dec. 28, 1973, 87 Stat. 863, provided for a congressional statement of purpose with regard to the Job Corps, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 894d of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 912, Pub. L. 93–203, title IV, § 436, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1985; amended Pub. L. 97–35, title VII, § 701(d)(2), Aug. 13, 1981, 95 Stat. 520, related to conditions for receipt of financial assistance for youth employment and training programs.

A prior section 912, Pub. L. 93–203, title IV, § 402, Dec. 28, 1973, 87 Stat. 864, related to establishment of the Job Corps, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 894e of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 913, Pub. L. 93–203, title IV, § 437, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1987, related to review of youth employment and training plans by Secretary.

A prior section 913, Pub. L. 93–203, title IV, § 403, Dec. 28, 1973, 87 Stat. 864, related to eligibility for enrollment in the Job Corps, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 894f of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 914, Pub. L. 93–203, title IV, § 438, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1987; amended Pub. L. 96–88, title V, § 508(h)(6), Oct. 17, 1979, 93 Stat. 693, related to Secretary's discretionary youth employment and training projects.

A prior section 914, Pub. L. 93–203, title IV, § 404, Dec. 28, 1973, 87 Stat. 864, related to screening and selection of applicants, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 894g of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 915, Pub. L. 93–203, title IV, § 439, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1988, related to youth employment incentive and social bonus program.

A prior section 915, Pub. L. 93–203, title IV, § 405, Dec. 28, 1973, 87 Stat. 865, related to special limitations on screening and selection of applicants, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

SUBPART 4—GENERAL PROVISIONS

§ 916. Repealed. Pub. L. 97–14, § 3, June 16, 1981, 95 Stat. 98

Section, Pub. L. 93–203, title IV, § 441, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1989, provided that, of the sums available for carrying out the provisions of this part, 15 percent would be available for subpart 1, 15 percent would be available for subpart 2, and 70 percent would be available for subpart 3.

A prior section 916, Pub. L. 93–203, title IV, § 406, Dec. 28, 1973, 87 Stat. 865, related to enrollment and assignment in the Job Corps, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 895 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

§§ 917 to 922. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 917, Pub. L. 93–203, title IV, § 442, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1989, related to rates of pay under youth employment demonstration programs.

A prior section 917, Pub. L. 93–203, title IV, § 407, Dec. 28, 1973, 87 Stat. 866, related to establishment and operation of Job Corps centers, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 895a of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 918, Pub. L. 93–203, title IV, § 443, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1990, related to special conditions for financial assistance for youth employment demonstration programs.

A prior section 918, Pub. L. 93–203, title IV, § 408, Dec. 28, 1973, 87 Stat. 866, related to activities of the program, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 895b of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 919, Pub. L. 93–203, title IV, § 444, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1991, related to special provisions for youth community conservation and improvement projects and youth employment and training programs.

A prior section 919, Pub. L. 93–203, title IV, § 409, Dec. 28, 1973, 87 Stat. 867, provided for allowances and support for the enrollees, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 895c of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 920, Pub. L. 93–203, title IV, § 445, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1992, related to academic credit and counseling and placement services.

A prior section 920, Pub. L. 93–203, title IV, § 410, Dec. 28, 1973, 87 Stat. 868, related to Job Corps centers standards of conduct and deportment, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 895d of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 921, Pub. L. 93–203, title IV, § 446, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1992, provided that the earnings and allowances received by any youth under a youth employment demonstration program would be disregarded in determining the eligibility of the youth's family for, and the amount of, any benefits based on need under any Federal or federally assisted program.

A prior section 921, Pub. L. 93–203, title IV, § 411, Dec. 28, 1973, 87 Stat. 868, related to activities designed to establish a mutually beneficial relationship between Job Corps centers and nearby communities, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 895e of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 922, Pub. L. 93–203, title IV, § 447, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1992, related to applicability of subchapter I of this chapter to youth employment demonstration programs.

A prior section 922, Pub. L. 93–203, title IV, § 412, Dec. 28, 1973, 87 Stat. 869, related to counseling and job placement, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 895f of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

PART B—JOB CORPS

§§ 923 to 941a. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 923, Pub. L. 93–203, title IV, § 450, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1992, set out Congressional statement of purpose for establishment of the Job Corps.

A prior section 923, Pub. L. 93–203, title IV, § 413, Dec. 28, 1973, 87 Stat. 870, related to an evaluation of experimental and developmental projects, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 911 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 924, Pub. L. 93–203, title IV, § 451, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1993, related to establishment of a Job Corps.

A prior section 924, Pub. L. 93–203, title IV, § 414, Dec. 28, 1973, 87 Stat. 871, related to use of advisory boards and committees by Secretary, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 912 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 925, Pub. L. 93–203, title IV, § 452, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1993, related to individuals eligible to enroll in Job Corps.

A prior section 925, Pub. L. 93–203, title IV, § 415, Dec. 28, 1973, 87 Stat. 871, related to action by Secretary to facilitate participation by the States in the Job Corps program, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 913 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 926, Pub. L. 93–203, title IV, § 453, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1993, related to screening and selection of applicants for Job Corps.

A prior section 926, Pub. L. 93–203, title IV, § 416, Dec. 28, 1973, 87 Stat. 872, related to applicability of certain Federal laws to the Job Corps program, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 914 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 927, Pub. L. 93–203, title IV, § 454, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1994, related to special limitations on selection of enrollees in Job Corps.

A prior section 927, Pub. L. 93–203, title IV, § 417, Dec. 28, 1973, 87 Stat. 873, related to special limitations with regard to the Job Corps program, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 915 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 928, Pub. L. 93–203, title IV, § 455, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1994, related to enrollment and assignment of enrollees in Job Corps.

A prior section 928, Pub. L. 93–203, title IV, § 418, Dec. 28, 1973, 87 Stat. 873, related to prohibitions concerning political discrimination and political activity, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 916 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 929, Pub. L. 93–203, title IV, § 456, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1994, related to establishment of Job Corps centers.

A prior section 929, Pub. L. 93–203, title IV, § 419, Dec. 28, 1973, 87 Stat. 873; Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845, related to administrative provisions with regard to the Job Corps program, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 917 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 930, Pub. L. 93–203, title IV, § 457, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1995; amended Pub. L. 96–583, § 3(c), Dec. 23, 1980, 94 Stat. 3376, related to various Job Corps activities.

Provisions similar to those comprising this section were contained in former section 918 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 931, Pub. L. 93–203, title IV, § 458, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1995, related to allowances and support for enrollees of the Job Corps.

Provisions similar to those comprising this section were contained in former section 919 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 932, Pub. L. 93–203, title IV, § 459, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1996, related to standards of conduct in Job Corps.

Provisions similar to those comprising this section were contained in former section 920 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 933, Pub. L. 93–203, title IV, § 460, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1997, related to community participation, including community advisory councils, with regard to Job Corps.

Provisions similar to those comprising this section were contained in former section 921 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 934, Pub. L. 93–203, title IV, § 461, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1997, related to counseling and job placement for enrollees of Job Corps.

Provisions similar to those comprising this section were contained in former section 922 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 935, Pub. L. 93–203, title IV, § 462, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1998; amended Pub. L. 96–583, § 3(c), Dec. 23, 1980, 94 Stat. 3376, related to experimental and developmental projects in furtherance of Job Corps program.

Provisions similar to those comprising this section were contained in former section 923 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524

Section 936, Pub. L. 93–203, title IV, § 463, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1998, related to advisory boards and committees in connection with the operation of Job Corps.

Provisions similar to those comprising this section were contained in former section 924 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 937, Pub. L. 93–203, title IV, § 464, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1999, related to participation of States in Job Corps program.

Provisions similar to those comprising this section were contained in former section 925 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 938, Pub. L. 93–203, title IV, § 465, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 1999, related to application of provisions of Federal law to enrollees in Job Corps.

Provisions similar to those comprising this section were contained in former section 926 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 939, Pub. L. 93–203, title IV, § 466, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2000, related to ratio of women enrollees in Job Corps, acquisition as property of United States of all studies, evaluations, and proposals produced with Federal funds in course of Job Corps program, and transactions conducted by private for-profit contractors for Job Corps centers.

Provisions similar to those comprising this section were contained in former section 927 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 940, Pub. L. 93–203, title IV, § 467, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2000, set out administrative provisions in connection with Job Corps program.

Provisions similar to those comprising this section were contained in former section 929 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 941, Pub. L. 93–203, title IV, § 468, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2001, related to utilization of funds for Job Corps program.

Section 941a, Pub. L. 93–203, title IV, § 469, as added Pub. L. 96–341, § 1, Sept. 8, 1980, 94 Stat. 1076, related to Earle C. Clements Job Corps Center.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

PART C—SUMMER YOUTH PROGRAM

§§ 942 to 945. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 942, Pub. L. 93–203, title IV, § 481, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2001, related to establishment of summer youth programs.

Section 943, Pub. L. 93–203, title IV, § 482, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2001, related to prime sponsors eligible for assistance under summer youth programs.

Section 944, Pub. L. 93–203, title IV, § 483, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2001, related to financial assistance under summer youth programs.

Section 945, Pub. L. 93–203, title IV, § 484, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2002, related to Secretarial authority over summer youth programs.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

SUBCHAPTER V—NATIONAL COMMISSION FOR EMPLOYMENT POLICY

§§ 951 to 955. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 951, Pub. L. 93–203, title V, § 501, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2002, set out Congressional statement of purpose for establishment of a National Commission for Employment Policy.

A prior section 951, Pub. L. 93–203, title V, § 501, Dec. 28, 1973, 87 Stat. 874, provided for Congressional findings and declaration of purpose with regard to National Commission for Manpower Policy, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 952, Pub. L. 93–203, title V, § 502, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2002; amended Pub. L. 96–88, title V, § 508(h)(7), Oct. 17, 1979, 93 Stat. 693, related to establishment of National Commission for Employment Policy.

A prior section 952, Pub. L. 93–203, title V, § 502, Dec. 28, 1973, 87 Stat. 874; Pub. L. 94–482, title II, § 203(b)(1), Oct. 12, 1976, 90 Stat. 2214, related to establishment of National Commission for Manpower Policy, prior to the general revision of Pub. L. 95–203 by Pub. L. 95–524.

Section 953, Pub. L. 93–203, title V, § 503, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2003, related to functions of National Commission for Employment Policy.

A prior section 953, Pub. L. 93–203, title V, § 503, Dec. 28, 1973, 87 Stat. 875; Pub. L. 94–482, title II, § 203(b)(2), Oct. 12, 1976, 90 Stat. 2214; Pub. L. 95–40, § 1(28)(B), June 3, 1977, 91 Stat. 207, related to functions of National Commission for Manpower Policy, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 954, Pub. L. 93–203, title V, § 504, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2004, set out administrative provisions relating to powers of Chairman of the National Commission for Employment Policy.

A prior section 954, Pub. L. 93–203, title V, § 504, Dec. 28, 1973, 87 Stat. 875, related to a study of utilization and interrelation of programs of manpower training with closely associated programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 955, Pub. L. 93–203, title V, § 505, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2005, related to reports made by Commission to President, Congress, and Federal departments and agencies.

A prior section 955, Pub. L. 93–203, title V, § 505, Dec. 28, 1973, 87 Stat. 875, related to reports to President and Congress, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 956, Pub. L. 93–203, title V, § 506, Dec. 28, 1973, 87 Stat. 876, related to a study by Secretary concerning the impact of energy shortages upon manpower needs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

COMMISSION AUTHORIZED UNTIL SEPTEMBER 30, 1983

For provisions that the Commission established by former sections 951 to 955 of this title continues to be authorized until Sept. 30, 1983, and that on that date the personnel, property, and records of that Commis-

sion shall be transferred to the Commission established by section 1771 et seq. of this title, see section 1591(b) of this title.

SUBCHAPTER VI — COUNTERCYCLICAL PUBLIC SERVICE EMPLOYMENT PROGRAM

§§ 961 to 970. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 961, Pub. L. 93–203, title VI, § 601, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2005, set out Congressional statement of purpose for a countercyclical public service employment program.

A prior section 961, Pub. L. 93–203, title VI, 601, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845; amended Pub. L. 94–444, § 2, Oct. 1, 1976, 90 Stat. 1476; Pub. L. 95–44, § 2(b), June 15, 1977, 91 Stat. 220, authorized appropriations for emergency job programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 962, Pub. L. 93–203, title VI, § 602, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2006, related to reports on appropriations submitted by President to Congress.

A prior section 962, Pub. L. 93–203, title VI, § 602, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845; amended Pub. L. 94–444, §§ 3(a)(2), 8(a), Oct. 1, 1976, 90 Stat. 1476, 1482; Pub. L. 95–93, title III, § 306(b), Aug. 5, 1977, 91 Stat. 651, related to availability of financial assistance for emergency job programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 963, Pub. L. 93–203, title VI, § 603, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2006, related to financial assistance for public service employment programs.

A prior section 963, Pub. L. 93–203, title VI, § 603, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1846; amended Pub. L. 94–444, §§ 4(b), 8(b), (c), 14(b), Oct. 1, 1976, 90 Stat. 1477, 1482, 1487, related to allotment of funds with regard to emergency job programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 962 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 964, Pub. L. 93–203, title VI, § 604, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2007; amended Pub. L. 96–583, § 3(b), Dec. 23, 1980, 94 Stat. 3376, related to allocation of funds with regard to public service employment programs.

A prior section 964, Pub. L. 93–203, title VI, § 604, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1846, related to special provision for areas of excessively high unemployment and for expansion of job opportunities, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 963 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 965, Pub. L. 93–203, title VI, § 605, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2008, related to expenditure of funds with regard to a public service employment program.

A prior section 965, Pub. L. 93–203, title VI, § 605, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1847; amended Pub. L. 94–444, § 5(b)(3), (d), Oct. 1, 1976, 90 Stat. 1480, related to expenditure of funds with regard to emergency job programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 966, Pub. L. 93–203, title VI, § 606, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2008, related to prime sponsors and Native American entities qualified to receive financial assistance and program agents.

A prior section 966, Pub. L. 93–203, title VI, § 606, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1847; amended Pub. L. 94–444, § 5(b)(2), Oct. 1, 1976, 90 Stat. 1479, provided for reallocation of funds by Secretary, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 967, Pub. L. 93–203, title VI, § 607, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2009, related to eligibility for employment under a public service employment program.

A prior section 967, Pub. L. 93–203, title VI, § 607, as added Pub. L. 94–444, § 5(a), Oct. 1, 1976, 90 Stat. 1477; amended Pub. L. 95–44, § 2(c), June 15, 1977, 91 Stat. 220, related to reservation of funds for certain public service jobholders, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Provisions similar to those comprising this section were contained in former section 968 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 968, Pub. L. 93–203, title VI, § 608, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2009, related to payment of wages to those employed under a public service employment program.

A prior section 968, Pub. L. 93–203, title VI, § 608, as added Pub. L. 94–444, § 5(a), Oct. 1, 1976, 90 Stat. 1478; amended Pub. L. 95–93, title III, § 307, Aug. 5, 1977, 91 Stat. 652, related to eligibility of long-term unemployed low-income persons, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 969, Pub. L. 93–203, title VI, § 609, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2009, related to wage supplementation for public service employees receiving financial assistance under public service employment programs.

A prior section 969, Pub. L. 93–203, title VI, § 609, as added Pub. L. 94–444, § 5(a), Oct. 1, 1976, 90 Stat. 1479, related to approval of project applications, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 970, Pub. L. 93–203, title VI, § 610, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2009, related to utilization of funds available under public service employment programs.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

SUBCHAPTER VII—PRIVATE SECTOR OPPORTUNITIES FOR THE ECONOMICALLY DISADVANTAGED

§§ 981 to 986. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 981, Pub. L. 93–203, title VII, § 701, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2010; amended Pub. L. 96–583, § 2(1), Dec. 23, 1980, 94 Stat. 3375, set out Congressional statement of purpose for increase of private sector opportunities for the economically disadvantaged.

A prior section 981, Pub. L. 93–203, title VII, § 701, formerly title VI, § 601, Dec. 28, 1973, 87 Stat. 876; renumbered title VII, § 701, and amended Pub. L. 93–567, title I, §§ 101, 107(a)–(c), Dec. 31, 1974, 88 Stat. 1845, 1849; Pub. L. 94–444, § 5(b)(1), Oct. 1, 1976, 90 Stat. 1479; Pub. L. 95–93, title III, § 303(e), Aug. 5, 1977, 91 Stat. 650, defined terms for use in this chapter, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 982, Pub. L. 93–203, title VII, § 702, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2010; amended Pub. L. 96–583, § 2(2), Dec. 23, 1980, 94 Stat. 3375; Pub. L. 97–35, title VII, § 701(f), Aug. 13, 1981, 95 Stat. 521, related to financial assistance to prime sponsors for increase of private sector opportunities for economically disadvantaged.

A prior section 982, Pub. L. 93–203, title VII, § 702, formerly title VI, § 602, Dec. 28, 1973, 87 Stat. 877; renumbered title VII, § 702, Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845; amended Pub. L. 94–444, § 5(c), Oct. 1, 1976, 90 Stat. 1480, related to legal authority of Secretary under this chapter, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 983, Pub. L. 93–203, title VII, § 703, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2010; amended

Pub. L. 96–583, §2(3), Dec. 23, 1980, 94 Stat. 3375, related to conditions for receipt of financial assistance for increase of private sector opportunities for economically disadvantaged.

A prior section 983, Pub. L. 93–203, title VII, §703, formerly title VI, §603, Dec. 28, 1973, 87 Stat. 878; renumbered title VII, §703, and amended Pub. L. 93–567, title I, §§101, 107(d), Dec. 31, 1974, 88 Stat. 1845, 1849, related to conditions applicable to all programs, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 984, Pub. L. 93–203, title VII, §704, as added Pub. L. 95–524, §2, Oct. 27, 1978, 92 Stat. 2011; amended Pub. L. 96–583, §2(4), (5), Dec. 23, 1980, 94 Stat. 3375, related to private industry councils.

A prior section 984, Pub. L. 93–203, title VII, §704, formerly title VI, §604, Dec. 28, 1973, 87 Stat. 879; renumbered title VII, §704, Pub. L. 93–567, title I, §101, Dec. 31, 1974, 88 Stat. 1845, and amended Pub. L. 94–444, §§3(b), 9, 11, Oct. 1, 1976, 90 Stat. 1476, 1482, 1483, related to special provisions applicable to this chapter, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 985, Pub. L. 93–203, title VII, §705, as added Pub. L. 95–524, §2, Oct. 27, 1978, 92 Stat. 2012; amended Pub. L. 96–583, §2(6)–(9), Dec. 23, 1980, 94 Stat. 3375, 3376, related to private sector initiatives by prime sponsors.

A prior section 985, Pub. L. 93–203, title VII, §705, formerly title VI, §605, Dec. 28, 1973, 87 Stat. 879; renumbered title VII, §705, Pub. L. 93–567, title I, §101, Dec. 31, 1974, 88 Stat. 1845, provided for reports to President and Congress, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 986, Pub. L. 93–203, title VII, §706, as added Pub. L. 95–524, §2, Oct. 27, 1978, 92 Stat. 2013, related to a report to Congress and dissemination of information to prime sponsors.

A prior section 986, Pub. L. 93–203, title VII, §706, formerly title VI, §606, Dec. 28, 1973, 87 Stat. 880; renumbered title VII, §706, Pub. L. 93–567, title I, §101, Dec. 31, 1974, 88 Stat. 1845, related to labor standards, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Sections 987 to 990 of this title were eliminated in the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 987, Pub. L. 93–203, title VII, §707, formerly title VI, §607, Dec. 28, 1973, 87 Stat. 880; renumbered title VII, §707, Pub. L. 93–567, title I, §101, Dec. 31, 1974, 88 Stat. 1845, related to authority of Secretary to accept gifts in name of Department.

Section 988, Pub. L. 93–203, title VII, §708, formerly title VI, §608, Dec. 28, 1973, 87 Stat. 881; renumbered title VII, §708, Pub. L. 93–567, title I, §101, Dec. 31, 1974, 88 Stat. 1845, related to use of the services and facilities of departments, agencies, and establishments of the United States by Secretary.

Section 989, Pub. L. 93–203, title VII, §709, formerly title VI, §609, Dec. 28, 1973, 87 Stat. 881; renumbered title VII, §709, Pub. L. 93–567, title I, §101, Dec. 31, 1974, 88 Stat. 1845, related to interstate agreements.

Section 990, Pub. L. 93–203, title VII, §710, formerly title VI, §610, Dec. 28, 1973, 87 Stat. 881; renumbered title VII, §710, Pub. L. 93–567, title I, §101, Dec. 31, 1974, 88 Stat. 1845, related to prohibition concerning political activities.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

SUBCHAPTER VIII—YOUNG ADULT CONSERVATION CORPS

§§ 991 to 999. Repealed. Pub. L. 97–300, title I, § 184(a)(1), Oct. 13, 1982, 96 Stat. 1357

Section 991, Pub. L. 93–203, title VIII, §801, as added Pub. L. 95–524, §2, Oct. 27, 1978, 92 Stat. 2013, set out Congressional statement of purpose for Young Adult Conservation Corps.

A prior section 991, Pub. L. 93–203, title VII, §712, formerly title VI, §612, Dec. 28, 1973, 87 Stat. 882; renumbered title VII, §712, Pub. L. 93–567, title I, §101, Dec. 31, 1974, 88 Stat. 1845, related to prohibition concerning discrimination, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 801 of Pub. L. 93–203, title VIII, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 627, which provided for Congressional declaration of purpose with regard to Young Adult Conservation Corps, was formerly classified to section 993 of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 992, Pub. L. 93–203, title VIII, §802, as added Pub. L. 95–524, §2, Oct. 27, 1978, 92 Stat. 2013, related to establishment of Young Adult Conservation Corps.

A prior section 992, Pub. L. 93–203, title VII, §713, formerly title VI, §613, Dec. 28, 1973, 87 Stat. 882; renumbered title VII, §713, Pub. L. 93–567, title I, §101, Dec. 31, 1974, 88 Stat. 1845, related to records, audits, and reports, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 802 of Pub. L. 93–203, title VIII, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 627, which provided for establishment of Young Adult Conservation Corps, was formerly classified to section 993a of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 993, Pub. L. 93–203, title VIII, §803, as added Pub. L. 95–524, §2, Oct. 27, 1978, 92 Stat. 2013, related to enrollees of Young Adult Conservation Corps.

A prior section 993, Pub. L. 93–203, title VIII, §801, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 627, provided for a Congressional declaration of purpose with regard to Young Adult Conservation Corps, prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

A prior section 803 of Pub. L. 93–203, title VIII, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 627, which related to selection of enrollees, was formerly classified to section 993b of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Sections 993a to 993i of this title were eliminated in the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 993a, Pub. L. 93–203, title VIII, §802, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 627, related to establishment of Young Adult Conservation Corps.

Section 993b, Pub. L. 93–203, title VIII, §803, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 627, related to selection of enrollees of Young Adult Conservation Corps.

Section 993c, Pub. L. 93–203, title VIII, §804, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 628, related to activities of Young Adult Conservation Corps.

Section 993d, Pub. L. 93–203, title VIII, §805, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 629, related to conditions applicable to Young Adult Conservation Corps enrollees.

Section 993e, Pub. L. 93–203, title VIII, §806, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 630, related to State and local programs.

Section 993f, Pub. L. 93–203, title VIII, §807, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 631, related to an annual report to President and Congress.

Section 993g, Pub. L. 93–203, title VIII, §808, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 631, related to prohibition concerning discrimination.

Section 993h, Pub. L. 93–203, title VIII, §809, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 631, related to transfer of funds pursuant to an interagency agreement.

Section 993i, Pub. L. 93–203, title VIII, §810, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 631, related to authorization of appropriations for Young Adult Conservation Corps program.

Section 994, Pub. L. 93–203, title VIII, §804, as added Pub. L. 95–524, §2, Oct. 27, 1978, 92 Stat. 2014, related to activities of Young Adult Conservation Corps.

A prior section 804 of Pub. L. 93–203, title VIII, as added Pub. L. 95–93, title I, §101, Aug. 5, 1977, 91 Stat. 628, which related to activities of Young Adult Conservation Corps, was formerly classified to section 993c

of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 995, Pub. L. 93–203, title VIII, § 805, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2015, related to conditions applicable to enrollees of Young Adult Conservation Corps.

A prior section 805 of Pub. L. 93–203, title VIII, as added Pub. L. 95–93, title I, § 101, Aug. 5, 1977, 91 Stat. 629, which related to conditions applicable to Young Adult Conservation Corps enrollees, was formerly classified to section 993d of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 996, Pub. L. 93–203, title VIII, § 806, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2016, related to State and local programs in connection with Young Adult Conservation Corps.

A prior section 806 of Pub. L. 93–203, title VIII, as added Pub. L. 95–93, title I, § 101, Aug. 5, 1977, 91 Stat. 630, which related to State and local programs, was formerly classified to section 993e of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 997, Pub. L. 93–203, title VIII, § 807, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2017, related to an annual report to President and Congress.

A prior section 807 of Pub. L. 93–203, title VIII, as added Pub. L. 95–93, title I, § 101, Aug. 5, 1977, 91 Stat. 631, which related to an annual report to the President and the Congress, was formerly classified to section 993f of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 998, Pub. L. 93–203, title VIII, § 808, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2017, related to prohibition of discrimination.

A prior section 808 of Pub. L. 93–203, title VIII, as added Pub. L. 95–93, title I, § 101, Aug. 5, 1977, 91 Stat. 631, which related to a prohibition concerning discrimination, was formerly classified to section 993g of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

Section 999, Pub. L. 93–203, title VIII, § 809, as added Pub. L. 95–524, § 2, Oct. 27, 1978, 92 Stat. 2017, related to transfer of funds pursuant to interagency agreement.

A prior section 809 of Pub. L. 93–203, title VIII, as added Pub. L. 95–93, title I, § 101, Aug. 5, 1977, 91 Stat. 631, which related to a transfer of funds pursuant to an interagency agreement, was formerly classified to section 993h of this title prior to the general revision of Pub. L. 93–203 by Pub. L. 95–524.

EFFECTIVE DATE OF REPEAL

Section 184(a) of Pub. L. 97–300 provided that the repeal of these sections is effective Oct. 13, 1982.

CHAPTER 18—EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SUBTITLE A—GENERAL PROVISIONS

Sec.
1001. Congressional findings and declaration of policy.
(a) Benefit plans as affecting interstate commerce and the Federal taxing power.
(b) Protection of interstate commerce and beneficiaries by requiring disclosure and reporting, setting standards of conduct, etc., for fiduciaries.
(c) Protection of interstate commerce, the Federal taxing power, and beneficiaries by vesting of accrued benefits, setting minimum standards of funding, requiring termination insurance.
1001a. Additional Congressional findings and declaration of policy.
(a) Effects of multiemployer pension plans.
(b) Modification of multiemployer plan termination insurance provisions and replacement of program.
(c) Policy.
1001b. Findings and declaration of policy.
(a) Findings.
(b) Additional findings.
(c) Declaration of policy.
1002. Definitions.
1003. Coverage.

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.
(b) Plan description, modifications and changes, and reports to be filed with Secretary of Labor.
(c) Terminal and supplementary reports.
(d) Notice of failure to meet minimum funding standards.
(e) Notice of transfer of excess pension assets to health benefits accounts.
(f) Information necessary to comply with Medicare and Medicaid Coverage Data Bank requirements.
(g) Cross reference.
1022. Plan description and summary plan description.
1023. Annual reports.
(a) Publication and filing.
(b) Financial statement.
(c) Information to be furnished by administrator.
(d) Actuarial statement.
(e) Statement from insurance company, insurance service, or other similar organizations which sell or guarantee plan benefits.
1024. Filing and furnishing of information.
(a) Filing of annual report, plan description, summary plan description, and modifications and changes with Secretary.
(b) Publication of summary plan description and annual report to participants and beneficiaries of plan.
(c) Statement of rights.
(d) Cross references.
1025. Reporting of participant's benefit rights.
(a) Statement furnished by administrator to participants and beneficiaries.
(b) One-per-year limit on reports.
(c) Individual statement furnished by administrator to participants setting forth information in administrator's Internal Revenue registration statement and notification of forfeitable benefits.
(d) Plans to which more than one unaffiliated employer is required to contribute; regulations.
1026. Reports made public information.
1027. Retention of records.
1028. Reliance on administrative interpretations.
1029. Forms.
(a) Information required on forms.
(b) Information not required on forms.
(c) Format and content of summary plan description, annual report, etc., required to be furnished to plan participants and beneficiaries.

Sec.
1030. Alternative methods of compliance.
1031. Repeal and effective date.

PART 2—PARTICIPATION AND VESTING

1051. Coverage.
1052. Minimum participation standards.
1053. Minimum vesting standards.
(a) Nonforfeitability requirements.
(b) Computation of period of service.
(c) Plan amendments altering vesting schedule.
(d) Nonforfeitable benefits after lesser period and in greater amounts than required.
(e) Consent for distribution; present value; covered distributions.
1054. Benefit accrual requirements.
(a) Satisfaction of requirements by pension plans.
(b) Enumeration of plan requirements.
(c) Employee's accrued benefits derived from employer and employee contributions.
(d) Employee service which may be disregarded in determining employee's accrued benefits under plan.
(e) Opportunity to repay full amount of distributions which have been reduced through disregarded employee service.
(f) Employer treated as maintaining a plan.
(g) Decrease of accrued benefits through amendment of plan.
(h) Notice of significant reduction in benefit accruals.
(i) Prohibition on benefit increases where plan sponsor is in bankruptcy.
(j) Cross reference.
1055. Requirement of joint and survivor annuity and preretirement survivor annuity.
(a) Required contents for applicable plans.
(b) Applicable plans.
(c) Plans meeting requirements of section.
(d) ''Qualified joint and survivor annuity'' defined.
(e) ''Qualified preretirement survivor annuity'' defined.
(f) Marriage requirements for plan.
(g) Distribution of present value of annuity; written consent; determination of present value.
(h) Definitions.
(i) Increased costs from providing annuity.
(j) Use of participant's accrued benefit as security for loan as not preventing distribution.
(k) Spousal consent.
(*l*) Regulations; consultation of Secretary of the Treasury with Secretary of Labor.
1056. Form and payment of benefits.
(a) Commencement date for payment of benefits.
(b) Decrease in plan benefits by reason of increases in benefit levels under Social Security Act or Railroad Retirement Act of 1937.
(c) Forfeiture of accrued benefits derived from employer contributions.
(d) Assignment or alienation of plan benefits.
(e) Limitation on distributions other than life annuities paid by plan.
(f) Missing participants in terminated plans.

Sec.
1057. Temporary variances from certain vesting requirements.
1058. Mergers and consolidations of plans or transfers of plan assets.
1059. Recordkeeping and reporting requirements.
1060. Multiple employer plans.
(a) Plan maintained by more than one employer.
(b) Maintenance of plan of predecessor employer.
(c) Plan maintained by controlled group of corporations.
(d) Plan of trades or businesses under common control.
1061. Effective dates.

PART 3—FUNDING

1081. Coverage.
(a) Plans excepted from applicability of this part.
(b) ''Insurance contract plan'' defined.
(c) Applicability of this part to terminated multiemployer plans.
(d) Financial assistance from Pension Benefit Guaranty Corporation.
1082. Minimum funding standards.
(a) Avoidance of accumulated funding deficiency.
(b) Funding standard account.
(c) Methods.
(d) Additional funding requirements for plans which are not multiemployer plans.
(e) Quarterly contributions required.
(f) Imposition of lien where failure to make required contributions.
(g) Qualified transfers to health benefit accounts.
(h) Cross reference.
1083. Variance from minimum funding standard.
(a) Waiver of requirements in event of business hardship.
(b) Matters considered in determining business hardship.
(c) ''Waived funding deficiency'' defined.
(d) Special rules.
(e) Notice of filing of application for waiver.
(f) Cross reference.
1084. Extension of amortization periods.
(a) Determinations by Secretary in granting extension.
(b) Amendment of plan.
(c) Notice of filing of application for extension.
1085. Alternative minimum funding standard.
(a) Maintenance of account.
(b) Operation of account.
(c) Interest.
1085a. Security for waivers of minimum funding standard and extensions of amortization period.
(a) Security may be required.
(b) Consultation with the Pension Benefit Guaranty Corporation.
(c) Exception for certain waivers and extensions.
1085b. Security required upon adoption of plan amendment resulting in significant underfunding.
(a) In general.
(b) Form of security.
(c) Amount of security.
(d) Release of security.
(e) Notice.
(f) Definitions.
1086. Effective dates.

PART 4—FIDUCIARY RESPONSIBILITY

1101. Coverage.

Sec.
1102. Establishment of plan.
(a) Named fiduciaries.
(b) Requisite features of plan.
(c) Optional features of plan.
1103. Establishment of trust.
(a) Benefit plan assets to be held in trust; authority of trustees.
(b) Exceptions.
(c) Assets of plan not to inure to benefit of employer; allowable purposes of holding plan assets.
(d) Termination of plan.
1104. Fiduciary duties.
(a) Prudent man standard of care.
(b) Indicia of ownership of assets outside jurisdiction of district courts.
(c) Control over assets by participant or beneficiary.
(d) Plan terminations.
1105. Liability for breach of co-fiduciary.
(a) Circumstances giving rise to liability.
(b) Assets held by two or more trustees.
(c) Allocation of fiduciary responsibility; designated persons to carry out fiduciary responsibilities.
(d) Investment managers.
1106. Prohibited transactions.
(a) Transactions between plan and party in interest.
(b) Transactions between plan and fiduciary.
(c) Transfer of real or personal property to plan by party in interest.
1107. Limitation with respect to acquisition and holding of employer securities and employer real property by certain plans.
(a) Percentage limitation.
(b) Exception.
(c) Election.
(d) Definitions.
(e) Marketable obligations.
(f) Maximum percentage of stock held by plan; time of holding or acquisition; necessity of legally binding contract.
1108. Exemptions from prohibited transactions.
(a) Grant of exemptions.
(b) Enumeration of transactions exempted from section 1106 prohibitions.
(c) Fiduciary benefits and compensation not prohibited by section 1106.
(d) Owner-employees; family members; shareholder employees.
(e) Acquisition or sale by plan of qualifying employer securities; acquisition, sale, or lease by plan of qualifying employer real property.
(f) Applicability of statutory prohibitions to mergers or transfers.
1109. Liability for breach of fiduciary duty.
1110. Exculpatory provisions; insurance.
1111. Persons prohibited from holding certain positions.
(a) Conviction or imprisonment.
(b) Penalty.
(c) Definitions.
(d) Salary of person barred from employee benefit plan office during appeal of conviction.
1112. Bonding.
(a) Requisite bonding of plan officials.
(b) Unlawful acts.
(c) Conflict of interest prohibited in procuring bonds.
(d) Exclusiveness of statutory basis for bonding requirement for persons handling funds or other property of employee benefit plans.
(e) Regulations.
Sec.
1113. Limitation of actions.
1114. Effective date.

PART 5—ADMINISTRATION AND ENFORCEMENT

1131. Criminal penalties.
1132. Civil enforcement.
(a) Persons empowered to bring a civil action.
(b) Plans qualified under Internal Revenue Code; maintenance of actions involving delinquent contributions.
(c) Administrator's refusal to supply requested information; penalty for failure to provide annual report in complete form.
(d) Status of employee benefit plan as entity.
(e) Jurisdiction.
(f) Amount in controversy; citizenship of parties.
(g) Attorney's fees and costs; awards in actions involving delinquent contributions.
(h) Service upon Secretary of Labor and Secretary of the Treasury.
(i) Administrative assessment of civil penalty.
(j) Direction and control of litigation by Attorney General.
(k) Jurisdiction of actions against the Secretary of Labor.
(*l*) Civil penalties on violations by fiduciaries.
(m) Penalty for improper distribution.
1133. Claims procedure.
1134. Investigative authority.
(a) Investigation and submission of reports, books, etc.
(b) Frequency of submission of books and records.
(c) Other provisions applicable relating to attendance of witnesses and production of books, records, etc.
1135. Regulations.
1136. Coordination and responsibility of agencies enforcing this subchapter and related Federal laws.
(a) Coordination with other agencies and departments.
(b) Responsibility for detecting and investigating civil and criminal violations of this subchapter and related Federal laws.
1137. Administration.
1138. Appropriations.
1139. Separability.
1140. Interference with protected rights.
1141. Coercive interference.
1142. Advisory Council on Employee Welfare and Pension Benefit Plans.
(a) Establishment; membership; terms; appointment and reappointment; vacancies; quorum.
(b) Duties and functions.
(c) Executive secretary; secretarial and clerical services.
(d) Compensation.
(e) Termination.
1143. Research, studies, and reports.
(a) Authorization to undertake research and surveys.
(b) Submission of annual report to Congress; contents.
(c) Cooperation with Congress.
1143a. Studies by Comptroller General.
(1) In general.
(2) Access to books, documents, etc.
(3) Definitions.
(4) Effective date.

Sec.
1144. Other laws.
(a) Supersedure; effective date.
(b) Construction and application.
(c) Definitions.
(d) Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of the United States prohibited.
1145. Delinquent contributions.

PART 6—GROUP HEALTH PLANS

1161. Plans must provide continuation coverage to certain individuals.
(a) In general.
(b) Exception for certain plans.
1162. Continuation coverage.
1163. Qualifying event.
1164. Applicable premium.
1165. Election
1166. Notice requirements.
(a) In general.
(b) Alternative means of compliance with requirements for notification of multiemployer plans by employers.
(c) Rules relating to notification of qualified beneficiaries by plan administrator.
1167. Definitions and special rules.
1168. Regulations.
1169. Additional standards for group health plans.
(a) Group health plan coverage pursuant to medical child support orders.
(b) Rights of States with respect to group health plans where participants or beneficiaries thereunder are eligible for medicaid benefits.
(c) Group health plan coverage of dependent children in cases of adoption.
(d) Continued coverage of costs of a pediatric vaccine under group health plans.
(e) Regulations.

SUBCHAPTER II—JURISDICTION, ADMINISTRATION, ENFORCEMENT; JOINT PENSION TASK FORCE, ETC.

SUBTITLE A—JURISDICTION, ADMINISTRATION, AND ENFORCEMENT

1201. Procedures in connection with the issuance of certain determination letters by the Secretary of the Treasury covering qualifications under Internal Revenue Code.
(a) Additional material required of applicants.
(b) Opportunity to comment on application.
(c) Intervention by Pension Benefit Guaranty Corporation or Secretary of Labor into declaratory judgment action under section 7476 of title 26, action by Corporation authorized.
(d) Notification and information by Secretary of the Treasury to Secretary of Labor upon issuance by Secretary of the Treasury of a determination letter to applicant.
(e) Effective date.
1202. Procedures with respect to continued compliance with Internal Revenue requirements relating to participation, vesting, and funding standards.
(a) Notification by Secretary of the Treasury to Secretary of Labor of issuance of a preliminary notice of intent to disqualify or of commencement of proceedings to determine satisfaction of requirements.
(b) Notification to Secretary of Labor before Secretary of the Treasury sends notice of deficiency under section 4971 of title 26; waiver of imposition of tax; requests for investigation; consultation.
(c) Extended application of regulations prescribed by Secretary of the Treasury relating to minimum participation standards, minimum vesting standards, and minimum funding standards.
(d) Opportunity afforded Secretary of the Treasury to intervene in cases involving construction or application of minimum standards; review of briefs filed by Pension Benefit Guaranty Corporation or Secretary of Labor.
(e) Consultative requirements respecting promulgation of proposed or final regulations.
1203. Procedures in connection with prohibited transactions.
(a) Notification to Secretary of Labor; opportunity to comment on imposition of tax under section 4975 of title 26; waiver; requests for investigations.
(b) Consultation.
(c) Transmission of information to Secretary of the Treasury.
1204. Coordination between the Department of the Treasury and the Department of Labor.

SUBTITLE B—JOINT PENSION, PROFIT-SHARING, AND EMPLOYEE STOCK OWNERSHIP PLAN TASK FORCE; STUDIES

PART 1—JOINT PENSION, PROFIT-SHARING, AND EMPLOYEE STOCK OWNERSHIP PLAN TASK FORCE

1221. Establishment.
1222. Duties.

PART 2—OTHER STUDIES

1231. Congressional study.
1232. Protection for employees under Federal procurement, construction, and research contracts and grants.
(a) Study and investigation by Secretary of Labor.
(b) Consultation.
(c) Regulations.
(d) Congressional review of regulations; resolution of disapproval.

SUBTITLE C—ENROLLMENT OF ACTUARIES

1241. Joint Board for the Enrollment of Actuaries.
1242. Enrollment by Board; standards and qualifications; suspension or termination of enrollment.

SUBCHAPTER III—PLAN TERMINATION INSURANCE

SUBTITLE A—PENSION BENEFIT GUARANTY CORPORATION

1301. Definitions.
1302. Pension Benefit Guaranty Corporation.
(a) Establishment within Department of Labor.
(b) Powers of corporation.
(c) Omitted.
(d) Board of directors; compensation; reimbursement for expenses.
(e) Meetings.
(f) Adoption of bylaws; amendment, alteration; publication in the Federal Register.

Sec.
(g) Exemption from taxation.
(h) Advisory committee to corporation.
1303. Operation of corporation.
(a) Investigatory authority; audit of statistically significant number of terminating plans.
(b) Discovery powers vested in board members or officers designated by the chairman.
(c) Contempt.
(d) Cooperation with other governmental agencies.
(e) Civil actions by corporation; jurisdiction; process; expeditious handling of case; costs; limitation on actions.
(f) Civil actions against corporation; appropriate court; award of costs and expenses; limitation on actions; jurisdiction; removal of actions.
1304. Repealed.
1305. Pension benefit guaranty funds.
(a) Establishment of four revolving funds on books of Treasury of the United States.
(b) Credits to funds; availability of funds; investment of moneys in excess of current needs.
(c) Authority to issue notes or other obligations; purchase by Secretary of the Treasury as public debt transaction.
(d) Establishment of fifth fund; purpose, availability, etc.
(e) Establishment of sixth fund; purpose, availability, etc.
(f) Deposit of premiums into separate revolving fund.
(g) Other use of funds; deposits of repayments.
(h) Voting by corporation of stock paid as liability.
1306. Premium rates.
(a) Schedules for premium rates and bases for application; establishment, coverage, etc.
(b) Revised schedule; Congressional procedures applicable.
(c) Rates for plans for basic benefits.
1307. Payment of premiums.
(a) Premiums payable when due; accrual; waiver or reduction.
(b) Late payment charge; waiver.
(c) Civil action to recover premium penalty and interest.
(d) Basic benefits guarantee not stopped by designated payor's failure to pay premiums when due.
(e) Designated payor.
1308. Annual report by the corporation.
1309. Portability assistance.
1310. Authority to require certain information.
(a) Information required.
(b) Persons required to provide information.
(c) Information exempt from disclosure requirements.
1311. Notice to participants.
(a) In general.
(b) Exception.

SUBTITLE B—COVERAGE

1321. Coverage.
(a) Plans covered.
(b) Plans not covered.
(c) Definitions.
1322. Single-employer plan benefits guaranteed.
(a) Nonforfeitable benefits.
(b) Exceptions.
(c) Payment by corporation to participants and beneficiaries of recovery percentage of outstanding amount of benefit liabilities.
(d) Authorization to guarantee other classes of benefits.
(e) Nonforfeitability of preretirement survivor annuity.
(f) Effective date of plan amendments.
1322a. Multiemployer plan benefits guaranteed.
(a) Benefits of covered plans subject to guarantee.
(b) Benefits or benefit increases not eligible for guarantee.
(c) Determinations respecting amount of guarantee.
(d) Amount of guarantee of reduced benefit.
(e) Ineligibility of benefits for guarantee.
(f) Study, report, etc., respecting premium increase in existing basic-benefit guarantee levels; Congressional procedures applicable for revision of schedules.
(g) Guarantee of payment of other classes of benefits and establishment of terms and conditions of guarantee; promulgation of regulations for establishment of supplemental program to guarantee benefits otherwise ineligible; status of benefits; applicability of revised schedule of premiums.
(h) Applicability to nonforfeitable benefits accrued as of July 30, 1980; manner and extent of guarantee.
1322b. Aggregate limit on benefits guaranteed; criteria applicable.
1323. Plan fiduciaries.

SUBTITLE C—TERMINATIONS

1341. Termination of single-employer plans.
(a) General rules governing single-employer plan terminations.
(b) Standard termination of single-employer plans.
(c) Distress termination of single-employer plans.
(d) Sufficiency.
(e) Limitation on the conversion of a defined benefit plan to a defined contribution plan.
1341a. Termination of multiemployer plans.
(a) Determinative factors.
(b) Date of termination.
(c) Duties of plan sponsor of amended plan.
(d) Duties of plan sponsor of nonoperative plan.
(e) Amount of contribution of employer under amended plan for each plan year subsequent to plan termination date.
(f) Payment of benefits; reporting requirements for terminated plans and rules and standards for administration of such plans.
1342. Institution of termination proceedings by the corporation.
(a) Authority to institute proceedings to terminate a plan.
(b) Appointment of trustee.
(c) Adjudication that plan must be terminated.
(d) Powers of trustee.
(e) Filing of application notwithstanding pendency of other proceedings.
(f) Exclusive jurisdiction; stay of other proceedings.
(g) Venue.
(h) Compensation of trustee and professional service personnel appointed or retained by trustee.

Sec.
1343. Reportable events.
(a) Notification that event has occurred.
(b) Notification that event is about to occur.
(c) Enumeration of reportable events.
(d) Notification to corporation by Secretary of the Treasury.
(e) Notification to corporation by Secretary of Labor.
(f) Disclosure exemption.
1344. Allocation of assets.
(a) Order of priority of participants and beneficiaries.
(b) Adjustment of allocations; reallocations; mandatory contributions; establishment of subclasses and categories.
(c) Increase or decrease in value of assets.
(d) Distribution of residual assets; restrictions on reversions pursuant to recently amended plans; assets attributable to employee contributions; calculation of remaining assets.
1345. Recapture of payments.
(a) Authorization to recover benefits.
(b) Recoverable amount.
(c) Payments made on or after death or disability of participant; waiver of recovery in case of hardship.
1346. Reports to trustee.
1347. Restoration of plans.
1348. Termination date.
1349. Repealed.
1350. Missing participants.
(a) General rule.
(b) Definitions.
(c) Regulatory authority.

SUBTITLE D—LIABILITY

1361. Amounts payable by corporation.
1362. Liability for termination of single-employer plans under a distress termination or a termination by corporation.
(a) In general.
(b) Liability to corporation.
(c) Liability to section 1342 trustee.
(d) Definitions.
(e) Treatment of substantial cessation of operations.
1363. Liability of substantial employer for withdrawal from single-employer plans under multiple controlled groups.
(a) Single-employer plans with two or more contributing sponsors.
(b) Computation of liability.
(c) Bond in lieu of payment of liability; 5-year termination period.
(d) Alternate appropriate procedure.
(e) Indemnity agreement.
1364. Liability on termination of single-employer plans under multiple controlled groups.
1365. Annual report of plan administrator.
1366. Annual notification to substantial employers.
1367. Recovery of liability for plan termination.
1368. Lien for liability.
(a) Creation of lien.
(b) Term of lien.
(c) Priority.
(d) Civil action; limitation period.
(e) Release or subordination.
(f) Definitions.
1369. Treatment of transactions to evade liability; effect of corporate reorganization.
(a) Treatment of transactions to evade liability.
(b) Effect of corporate reorganization.
1370. Enforcement authority relating to terminations of single-employer plans.
(a) In general.
(b) Status of plan as party to action and with respect to legal process.
(c) Jurisdiction and venue.
(d) Right of corporation to intervene.
(e) Awards of costs and expenses.
(f) Limitation on actions.
1371. Penalty for failure to timely provide required information.

SUBTITLE E—SPECIAL PROVISIONS FOR MULTIEMPLOYER PLANS

PART 1—EMPLOYER WITHDRAWALS

1381. Withdrawal liability established; criteria and definitions.
1382. Determination and collection of liability; notification of employer.
1383. Complete withdrawal.
(a) Determinative factors.
(b) Building and construction industry.
(c) Entertainment industry.
(d) Other determinative factors.
(e) Date of complete withdrawal.
(f) Special liability withdrawal rules for industries other than construction and entertainment industries; procedures applicable to amend plans.
1384. Sale of assets.
(a) Complete or partial withdrawal not occurring as a result of sale and subsequent cessation of covered operations or cessation of obligation to contribute to covered operations; continuation of liability of seller.
(b) Liability of purchaser.
(c) Variances or exemptions from continuation of liability of seller; procedures applicable.
(d) ''Unrelated party'' defined.
1385. Partial withdrawals.
(a) Determinative factors.
(b) Criteria applicable.
(c) Retail food industry.
(d) Continuation of liability of employer for partial withdrawal under amended plan.
1386. Adjustment for partial withdrawal; determination of amount; reduction for partial withdrawal liability; procedures applicable.
1387. Reduction or waiver of complete withdrawal liability; procedures and standards applicable.
1388. Reduction of partial withdrawal liability.
(a) Obligation of employer for payments for partial withdrawal for plan years beginning after the second consecutive plan year following the partial withdrawal year; criteria applicable; furnishing of bond in lieu of payment of partial withdrawal liability.
(b) Obligation of employer for payments for partial withdrawal for plan years beginning after the second consecutive plan year; other criteria applicable.
(c) Pro rata reduction of amount of partial withdrawal liability payment of employer for plan year following partial withdrawal year.
(d) Building and construction industry; entertainment industry.
(e) Reduction or elimination of partial withdrawal liability under any conditions; criteria; procedures applicable.
1389. De minimis rule.
(a) Reduction of unfunded vested benefits allocable to employer withdrawn from plan.

Sec.
(b) Amendment of plan for reduction of amount of unfunded vested benefits allocable to employer withdrawn from plan.
(c) Nonapplicability.
(d) Presumption of employer withdrawal from plan pursuant to agreement or arrangement applicable in action or proceeding to determine or collect withdrawal liability.
1390. Nonapplicability of withdrawal liability for certain temporary contribution obligation periods; exception.
1391. Methods for computing withdrawal liability.
(a) Determination of amount of unfunded vested benefits allocable to employer withdrawn from plan.
(b) Factors determining computation of amount of unfunded vested benefits allocable to employer withdrawn from plan.
(c) Amendment of multiemployer plan for determination respecting amount of unfunded vested benefits allocable to employer withdrawn from plan; factors determining computation of amount.
(d) Method of calculating allocable share of employer of unfunded vested benefits set forth in subsection (c)(3) of this section; applicability of certain statutory provisions.
(e) Reduction of liability of withdrawn employer in case of transfer of liabilities to another plan incident to withdrawal or partial withdrawal of employer.
(f) Computations applicable in case of withdrawal following merger of multiemployer plans.
1392. Obligation to contribute.
(a) ''Obligation to contribute'' defined.
(b) Payments of withdrawal liability not considered contributions.
(c) Transactions to evade or avoid liability.
1393. Actuarial assumptions.
(a) Use by plan actuary in determining unfunded vested benefits of a plan for computing withdrawal liability of employer.
(b) Factors determinative of unfunded vested benefits of plan for computing withdrawal liability of employer.
(c) Determination of amount of unfunded vested benefits.
1394. Application of plan amendments; exception.
1395. Plan notification to corporation of potentially significant withdrawals.
1396. Special rules for plans under section 404(c) of title 26.
(a) Amount of withdrawal liability; determinative factors.
(b) Covered plans.
(c) Amount of liability of employer; ''a year of signatory service'' defined.
1397. Application of part in case of certain pre-1980 withdrawals; adjustment of covered plan.
1398. Withdrawal not to occur because of change in business form or suspension of contributions during labor dispute.
1399. Notice, collection, etc., of withdrawal liability.
(a) Furnishing of information by employer to plan sponsor.
(b) Notification, demand for payment, and review upon complete or partial withdrawal by employer.
(c) Payment requirements; amount, etc.
(d) Applicability of statutory prohibitions.
1400. Approval of amendments.
(a) Amendment of covered multiemployer plan; procedures applicable.
(b) Amendment respecting methods for computing withdrawal liability.
(c) Criteria for disapproval by corporation.
1401. Resolution of disputes.
(a) Arbitration proceedings; matters subject to arbitration, procedures applicable, etc.
(b) Alternative collection proceedings; civil action subsequent to arbitration award; conduct of arbitration proceedings.
(c) Presumption respecting finding of fact by arbitrator.
(d) Payments by employer prior and subsequent to determination by arbitrator; adjustments; failure of employer to make payments.
(e) Furnishing of information by plan sponsor to employer respecting computation of withdrawal liability of employer; fees.
1402. Reimbursements for uncollectible withdrawal liability.
(a) Required supplemental program to reimburse for payments due from employers uncollectible as a result of employer involvement in bankruptcy case or proceedings; program participation, premiums, etc.
(b) Discretionary supplemental program to reimburse for payments due from employers uncollectible for other appropriate reasons.
(c) Payment of cost of program.
(d) Terms and conditions, limitations, etc., of supplemental program.
(e) Arrangements by corporation with private insurers for implementation of program; election of coverage by participating plans with private insurers.
1403. Withdrawal liability payment fund.
(a) Establishment of or participation in fund by plan sponsors.
(b) Definitions.
(c) Payments to plan; amount, criteria, etc.
(d) Application of payments by plan.
(e) Subrogation of fund to rights of plan.
(f) Discharge of rights of fiduciary of fund; standards applicable, etc.
(g) Prohibition on payments from fund to plan where certain labor negotiations involve employer withdrawn or partially withdrawn from plan and continuity of labor organization representing employees continues.
(h) Purchase of insurance by employer.
(i) Promulgation of regulations for establishment and maintenance of fund.
1404. Alternative method of withdrawal liability payments.
1405. Limitation on withdrawal liability.
(a) Unfunded vested benefits allocable to employer in bona fide sale of assets of employer in arms-length transaction to unrelated party; maximum amount; determinative factors.

Sec.
(b) Unfunded vested benefits allocable to insolvent employer undergoing liquidation or dissolution; maximum amount; determinative factors.
(c) Property not subject to enforcement of liability; precondition.
(d) Insolvency of employer; liquidation or dissolution value of employer.
(e) One or more withdrawals of employer attributable to same sale, liquidation, or dissolution.

PART 2—MERGER OR TRANSFER OF PLAN ASSETS OR LIABILITIES

1411. Mergers and transfers between multiemployer plans.
(a) Authority of plan sponsor.
(b) Criteria.
(c) Actions not deemed violation of section 1106(a) or (b)(2) of this title.
(d) Nature of plan to which liabilities are transferred.
1412. Transfers between a multiemployer plan and a single-employer plan.
(a) General authority.
(b) Accrued benefit of participant or beneficiary not lower immediately after effective date of transfer or merger.
(c) Liability of multiemployer plan to corporation where single-employer plan terminates within 60 months after effective date of transfer; amount of liability, exemption, etc.
(d) Guarantee of benefits under single-employer plan.
(e) Transfer of liabilities by multiemployer plan to single-employer plan.
(f) Additional requirements by corporation for protection of interests of plan participants, beneficiaries and corporation; approval by corporation of transfer of assets or liabilities to single-employer plan from plan in reorganization; covered transfers in connection with termination.
1413. Partition.
(a) Authority of corporation.
(b) Authority of plan sponsor upon application to corporation for partition order; procedures applicable to corporation.
(c) Authority of corporation notwithstanding pendency of partition proceeding.
(d) Scope of partition order.
(e) Nature of plan created by partition.
(f) Authority of corporation to obtain decree partitioning plan and appointing trustee for terminated portion of partitioned plan.
1414. Asset transfer rules.
(a) Applicability and scope.
(b) Exemption of de minimis transfers.
(c) Written reciprocity agreements.
1415. Transfers pursuant to change in bargaining representative.
(a) Authority to transfer from old plan to new plan pursuant to employee participation in another multiemployer plan after certified change of representative.
(b) Notification by employer of plan sponsor of old plan; notification by plan sponsor of old plan of employer and plan sponsor of new plan; appeal by new plan to prevent transfer; further proceedings.

Sec.
(c) Reduction of amount of withdrawal liability of employer upon transfer of appropriate amount of assets and liabilities by plan sponsor of old plan to new plan.
(d) Escrow payments by employer upon complete or partial withdrawal and prior to transfer.
(e) Prohibition on transfer of assets to new plan by plan sponsor of old plan; exemptions.
(f) Agreement between plan sponsors of old plan and new plan to transfer in compliance with other statutory provisions; reduction of withdrawal liability of employer from old plan; amount of withdrawal liability of employer to new plan.
(g) Definitions.

PART 3—REORGANIZATION; MINIMUM CONTRIBUTION REQUIREMENT FOR MULTIEMPLOYER PLANS

1421. Reorganization status.
(a) Reorganization index of plan for plan year greater than zero.
(b) Determination of reorganization index of plan for plan year; applicable factors, definitions, etc.
(c) Payment of benefits to participants.
(d) Terminated multiemployer plans.
1422. Notice of reorganization and funding requirements.
1423. Minimum contribution requirement.
(a) Maintenance of funding standard account; amount of accumulated funding deficiency.
(b) Determination of amount; applicable factors.
(c) Current contribution base; valuation contribution base.
(d) Maximum amount; amount of funding standard requirement; applicability to plan amendments increasing benefits.
(e) Adjustment of vested benefits charge.
(f) Waiver of accumulated funding deficiency.
(g) Statutory methods applicable for determinations.
1424. Overburden credit against minimum contribution requirement.
(a) Applicability of overburden credit to determinations.
(b) Determination of overburden status of plan.
(c) Amount of overburden credit.
(d) Amount of overburden factor.
(e) Definitions; determinative factors.
(f) Eligibility of plan for overburden credit for plan year.
(g) Overburden credit where 2 or more multiemployer plans merge.
1425. Adjustments in accrued benefits.
(a) Amendment of multiemployer plan in reorganization to reduce or eliminate accrued benefits attributable to employer contributions ineligible for guarantee of corporation; adjustment of vested benefits charge to reflect plan amendment.
(b) Reduction of accrued benefits; notice by plan sponsors to plan participants and beneficiaries.
(c) Recoupment by plan of excess benefit payment.
(d) Amendment of plan to increase or restore accrued benefits previously reduced or rate of future benefit accruals; conditions, applicable factors, etc.

Sec.
(e) ''Inactive participant'' defined.
(f) Promulgation of rules; contents, etc.
1426. Insolvent plans.
(a) Suspension of payments of benefits; conditions, amount, etc.
(b) Determination of insolvency status for plan year; definitions.
(c) Determination by plan sponsor of plan in reorganization of resource benefit level of plan for each insolvency year; uniform application of suspension of benefits; adjustments of benefit payments.
(d) Applicability and determinations respecting plan assets; time for determinations of resource benefit level and level of basic benefits.
(e) Notice, etc., requirements of plan sponsor of plan in reorganization regarding insolvency and resource benefit levels.
(f) Financial assistance from corporation; conditions and criteria applicable.

PART 4—FINANCIAL ASSISTANCE

1431. Assistance by corporation.
(a) Authority; procedure applicable; amount.
(b) Conditions; repayment terms.
(c) Assistance pending final determination of application.

PART 5—BENEFITS AFTER TERMINATION

1441. Benefits under certain terminated plans.
(a) Amendment of plan by plan sponsor to reduce benefits, and suspension of benefit payments.
(b) Determinations respecting value of nonforfeitable benefits under terminated plan and value of assets of plan.
(c) Amendment of plan by plan sponsor to reduce benefits for conservation of assets; factors applicable.
(d) Suspension of benefit payments; determinative factors; powers and duties of plan sponsor; retroactive benefit payments.

PART 6—ENFORCEMENT

1451. Civil actions.
(a) Persons entitled to maintain actions.
(b) Failure of employer to make withdrawal liability payment within prescribed time.
(c) Jurisdiction of Federal and State courts.
(d) Venue and service of process.
(e) Costs and expenses.
(f) Time limitations.
(g) Service of complaint on corporation; intervention by corporation.
1452. Penalty for failure to provide notice.
1453. Election of plan status.
(a) Authority, time, and criteria.
(b) Requirements.
(c) Effective date.

SUBTITLE F—TRANSITION RULES AND EFFECTIVE DATES

1461. Effective date; special rules.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 441 of this title; title 7 section 1a; title 15 sections 77b, 631b; title 18 section 1027; title 20 section 1085; title 26 sections 412, 414; title 26 section 404; title 31 section 9502; title 42 sections 1396s, 3035r; title 45 section 743.

SUBCHAPTER I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1201, 1202, 1203, 1343 of this title; title 18 sections 664, 1027, 1954; title 19 sections 2345, 2373; title 26 section 6103.

SUBTITLE A—GENERAL PROVISIONS

§ 1001. Congressional findings and declaration of policy

(a) Benefit plans as affecting interstate commerce and the Federal taxing power

The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans are carried on by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) Protection of interstate commerce and beneficiaries by requiring disclosure and reporting, setting standards of conduct, etc., for fiduciaries

It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit

plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) Protection of interstate commerce, the Federal taxing power, and beneficiaries by vesting of accrued benefits, setting minimum standards of funding, requiring termination insurance

It is hereby further declared to be the policy of this chapter to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

(Pub. L. 93–406, title I, § 2, Sept. 2, 1974, 88 Stat. 832.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), 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 below and Tables.

EFFECTIVE DATE OF 1984 AMENDMENTS; TRANSITIONAL RULES

Pub. L. 98–397, title III, §§ 302, 303, Aug. 23, 1984, 98 Stat. 1451, 1452, as amended by Pub. L. 99–514, § 2, title XI, § 1145(c), title XVIII, § 1898(g), (h)(1)(A), (2), (3), Oct. 22, 1986, 100 Stat. 2095, 2491, 2956, 2957; Pub. L. 101–239, title VII, § 7861(d)(1), Dec. 19, 1989, 103 Stat. 2431, provided that:

''SEC. 302. GENERAL EFFECTIVE DATES.

''(a) IN GENERAL.—Except as otherwise provided in this section or section 303, the amendments made by this Act [see Short Title of 1984 Amendments note below] shall apply to plan years beginning after December 31, 1984.

''(b) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—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 the date of the enactment of this Act [Aug. 23, 1984], except as provided in subsection (d) or section 303, the amendments made by this Act shall not apply to plan years beginning before the earlier of—

''(1) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Aug. 23, 1984]), or

''(2) July 1, 1988.

For purposes of paragraph (1), 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 title I or II [of Pub. L. 98–397] shall not be treated as a termination of such collective bargaining agreement.

''(c) NOTICE REQUIREMENT.—The amendments made by section 207 [amending sections 402 and 6652 of Title 26, Internal Revenue Code] shall apply to distributions after December 31, 1984.

''(d) SPECIAL RULES FOR TREATMENT OF PLAN AMENDMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by section 301 [amending section 1054 of this title and sections 401 and 411 of Title 26] shall apply to plan amendments made after July 30, 1984.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements entered into before January 1, 1985, which are—

''(A) between employee representatives and 1 or more employers, and

''(B) successor agreements to 1 or more collective bargaining agreements which terminate after July 30, 1984, and before January 1, 1985,

the amendments made by section 301 shall not apply to plan amendments adopted before April 1, 1985, pursuant to such successor agreements (without regard to any modification or reopening after December 31, 1984).

''SEC. 303. TRANSITIONAL RULES.

''(a) AMENDMENTS RELATING TO VESTING RULES; BREAKS IN SERVICE; MATERNITY OR PATERNITY LEAVE.—

''(1) MINIMUM AGE FOR VESTING.—The amendments made by sections 102(b) and 202(b) [amending section 1053 of this title and section 411 of Title 26, Internal Revenue Code] shall apply in the case of participants who have at least 1 hour of service under the plan on or after the first day of the first plan year to which the amendments made by this Act [see Short Title of 1984 Amendments note below] apply.

''(2) BREAK IN SERVICE RULES.—If, as of the day before the first day of the first plan year to which the amendments made by this Act apply, section 202(a) or (b) or 203(b) of the Employee Retirement Income Security Act of 1974 [section 1052(a) or (b) or section 1053(b) of this title] or section 410(a) or 411(a) of the Internal Revenue Code of 1986 [section 410(a) or section 411(a) of Title 26] (as in effect on the day before the date of the enactment of this Act [Aug. 23, 1984]) would not require any service to be taken into account, nothing in the amendments made by subsections (c) and (d) of section 102 of this Act [amending sections 1052 and 1053 of this title] and subsections (c) and (d) of section 202 of this Act [amending sections 410 and 411 of Title 26] shall be construed as requiring such service to be taken into account under such section 202(a) or (b), 203(b), 410(a), or 411(a); as the case may be.

''(3) MATERNITY OR PATERNITY LEAVE.—The amendments made by sections 102(e) and 202(e) [amending sections 1052 to 1054 of this title and sections 410 and 411 of Title 26] shall apply in the case of absences from work which begin on or after the first day of the first plan year to which the amendments made by this Act apply.

''(b) SPECIAL RULE FOR AMENDMENTS RELATING TO MATERNITY OR PATERNITY ABSENCES.—If a plan is administered in a manner which would meet the amendments made by sections 102(e) and 202(e) [amending sections 1052 to 1054 of this title and sections 410 and 411 of Title 26] (relating to certain maternity or paternity absences not treated as breaks in service), such plan need not be amended to meet such requirements until the earlier of—

''(1) the date on which such plan is first otherwise amended after the date of the enactment of this Act [Aug. 23, 1984], or

''(2) the beginning of the first plan year beginning after December 31, 1986.

''(c) REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY.—

''(1) REQUIREMENT THAT PARTICIPANT HAVE AT LEAST 1 HOUR OF SERVICE OR PAID LEAVE ON OR AFTER DATE OF ENACTMENT.—The amendments made by sections 103 and 203 [amending section 1055 of this title and section 401 of Title 26 and enacting section 417 of Title 26] shall apply only in the case of participants who have at least 1 hour of service under the plan on or after the date of the enactment of this Act [Aug. 23,

1984] or have at least 1 hour of paid leave on or after such date of enactment.

''(2) REQUIREMENT THAT PRERETIREMENT SURVIVOR ANNUITY BE PROVIDED IN CASE OF CERTAIN PARTICIPANTS DYING ON OR AFTER DATE OF ENACTMENT.—In the case of any participant—

''(A) who has at least 1 hour of service under the plan on or after the date of the enactment of this Act [Aug. 23, 1984] or has at least 1 hour of paid leave on or after such date of enactment,

''(B) who dies before the annuity starting date, and

''(C) who dies on or after the date of the enactment of this Act [Aug. 23, 1984] and before the first day of the first plan year to which the amendments made by this Act apply,

the amendments made by sections 103 and 203 shall be treated as in effect as of the time of such participant's death. In the case of a profit-sharing or stock bonus plan to which this paragraph applies, the plan shall be treated as meeting the requirements of the amendments made by sections 103 and 203 with respect to any participant if the plan made a distribution in a form other than a life annuity to the surviving spouse of the participant of such participant's nonforfeitable benefit.

''(3) SPOUSAL CONSENT REQUIRED FOR CERTAIN ELECTIONS AFTER DECEMBER 31, 1984.—Any election after December 31, 1984, and before the first day of the first plan year to which the amendments made by this Act apply not to take a joint and survivor annuity shall not be effective unless the requirements of section 205(c)(2) of the Employee Retirement Income Security Act of 1974 [section 1055(c)(2) of this title] (as amended by section 103 of this Act) and section 417(a)(2) of the Internal Revenue Code of 1986 [section 417(a)(2) of Title 26] (as added by section 203 of this Act) are met with respect to such election.

''(4) ELIMINATION OF DOUBLE DEATH BENEFITS.—

''(A) IN GENERAL.—In the case of a participant described in paragraph (2), death benefits (other than a qualified joint and survivor annuity or a qualified preretirement survivor annuity) payable to any beneficiary shall be reduced by the amount payable to the surviving spouse of such participant by reason of paragraph (2). The reduction under the preceding sentence shall be made on the basis of the respective present values (as of the date of the participant's death) of such death benefits and the amount so payable to the surviving spouse.

''(B) SPOUSE MAY WAIVE PROVISIONS OF PARAGRAPH (2).—In the case of any participant described in paragraph (2), the surviving spouse of such participant may waive the provisions of paragraph (2). Such waiver shall be made on or before the close of the second plan year to which the amendments made by section 103 of this Act [amending section 1055 of this title] apply. Such a waiver shall not be treated as a transfer of property for purposes of chapter 12 of the Internal Revenue Code of 1986 and shall not be treated as an assignment or alienation for purposes of section 401(a)(13) of the Internal Revenue Code of 1986 [section 401(a)(13) of Title 26] or section 206(d) of the Employee Retirement Income Security Act of 1974 [section 1056 of this title].

''(d) AMENDMENTS RELATING TO ASSIGNMENTS IN DIVORCE, ETC., PROCEEDINGS.—The amendments made by sections 104 and 204 [amending sections 1056 and 1144 of this title and sections 72, 401, 402 and 414 of Title 26] shall take effect on January 1, 1985, except that in the case of a domestic relations order entered before such date, the plan administrator—

''(1) shall treat such order as a qualified domestic relations order if such administrator is paying benefits pursuant to such order on such date, and

''(2) may treat any other such order entered before such date as a qualified domestic relations order even if such order does not meet the requirements of such amendments.

''(e) TREATMENT OF CERTAIN PARTICIPANTS WHO SEPARATE FROM SERVICE BEFORE DATE OF ENACTMENT.—

''(1) JOINT AND SURVIVOR ANNUITY PROVISIONS OF EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 APPLY TO CERTAIN PARTICIPANTS.—If—

''(A) a participant had at least 1 hour of service under the plan on or after September 2, 1974,

''(B) section 205 of the Employee Retirement Income Security Act of 1974 [section 1055 of this title] and section 401(a)(11) of the Internal Revenue Code of 1986 [section 401(a)(11) of Title 26] (as in effect on the day before the date of the enactment of this Act [Aug. 23, 1984]) would not (but for this paragraph) apply to such participant,

''(C) the amendments made by sections 103 and 203 [amending section 1055 of this title and section 401 of Title 26 and enacting section 417 of Title 26] of this Act do not apply to such participant, and

''(D) as of the date of the enactment of this Act [Aug. 23, 1984], the participant's annuity starting date has not occurred and the participant is alive,

then such participant may elect to have section 205 of the Employee Retirement Income Security Act of 1974 [section 1055 of this title] and section 401(a)(11) of the Internal Revenue Code of 1986 [section 401(a)(11) of Title 26] (as in effect on the day before the date of the enactment of this Act) apply.

''(2) TREATMENT OF CERTAIN PARTICIPANTS WHO PERFORM SERVICE ON OR AFTER JANUARY 1, 1976.—If—

''(A) a participant had at least 1 hour of service in any plan year beginning on or after January 1, 1976,

''(B) the amendments made by sections 103 and 203 [amending section 1055 of this title and section 401 of Title 26 and enacting section 417 of Title 26] would not (but for this paragraph) apply to such participant,

''(C) when such participant separated from service, such participant had at least 10 years of service under the plan and had a nonforfeitable right to all (or any portion) of such participant's accrued benefit derived from employer contributions, and

''(D) as of the date of the enactment of this Act [Aug. 23, 1984], such participant's annuity starting date has not occurred and such participant is alive,

then such participant may elect to have the qualified preretirement survivor annuity requirements of the amendments made by sections 103 and 203 apply.

''(3) PERIOD DURING WHICH ELECTION MAY BE MADE.—An election under paragraph (1) or (2) may be made by any participant during the period—

''(A) beginning on the date of the enactment of this Act [Aug. 23, 1984], and

''(B) ending on the earlier of the participant's annuity starting date or the date of the participant's death.

''(4) REQUIREMENT OF NOTICE.—

''(A) IN GENERAL.—

''(i) TIME AND MANNER.—Every plan shall give notice of the provisions of this subsection at such time or times and in such manner or manners as the Secretary of the Treasury may prescribe.

''(ii) PENALTY.—If any plan fails to meet the requirements of clause (i), such plan shall pay a civil penalty to the Secretary of the Treasury equal to $1 per participant for each day during the period beginning with the first day on which such failure occurs and ending on the day before notice is given by the plan; except that the amount of such penalty imposed on any plan shall not exceed $2,500.

''(B) RESPONSIBILITIES OF SECRETARY OF LABOR.—The Secretary of Labor shall take such steps (by public announcements and otherwise) as may be necessary or appropriate to bring to public attention the provisions of this subsection.

''(f) The amendments made by section 301 of this Act [amending section 1054 of this title and sections 401 and 411 of Title 26] shall not apply to the termination of a defined benefit plan if such termination—

''(1) is pursuant to a resolution directing the termination of such plan which was adopted by the Board of Directors of a corporation on July 17, 1984, and

''(2) occurred on November 30, 1984.''

[Amendment by section 1145(c) of Pub. L. 99–514 applicable as if included in the amendments made by the Retirement Equity Act of 1984, Pub. L. 98–397, see section 1145(d) of Pub. L. 99–514, set out as a note under section 401 of Title 26.]

[Amendment by section 1898(g), (h)(1)(A), (2), (3) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of Title 26.]

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–401, § 1, Oct. 22, 1994, 108 Stat. 4172, provided that: ''This Act [amending section 1132 of this title and enacting provisions set out as notes under section 1132 of this title] may be cited as the 'Pension Annuitants Protection Act of 1994'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–89, § 1, Aug. 14, 1991, 105 Stat. 446, provided that: ''This Act [amending section 1002 of this title and enacting provisions set out as a note under section 1002 of this title] may be cited as the 'Rural Telephone Cooperative Associations ERISA Amendments Act of 1991'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–272, title XI, § 11001, Apr. 7, 1986, 100 Stat. 237, provided that: ''This title [enacting sections 1001b, 1085a, 1143a, 1349, 1369, and 1370 of this title, amending sections 1002, 1023, 1024, 1054, 1061, 1083, 1084, 1086, 1301, 1303, 1305, 1306, 1322, 1322a, 1341, 1342, 1344, 1347, 1348, 1362 to 1364, and 1366 to 1368 of this title, and sections 402, 404, 412, and 501 of Title 26, Internal Revenue Code, repealing section 1304 of this title, and enacting provisions set out as notes under sections 1023, 1054, 1085a, 1135, 1143a, 1303, 1306, 1341, 1362, and 1369 of this title and section 404 of Title 26] may be cited as 'Single-Employer Pension Plan Amendments Act of 1986'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–397, § 1, Aug. 23, 1984, 98 Stat. 1426, provided that: ''This Act [enacting section 417 of Title 26, Internal Revenue Code, amending sections 1025, 1052 to 1056, and 1144 of this title and sections 72, 401, 402, 410, 411, 414, 6057, and 6652 of Title 26, and enacting provisions set out as notes under this section] may be cited as the 'Retirement Equity Act of 1984'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–364, § 1, Sept. 26, 1980, 94 Stat. 1208, provided that: ''This Act [enacting sections 1001a, 1145, 1322a, 1322b, 1323, 1341a, 1381 to 1405, 1411 to 1415, 1421 to 1426, 1431, 1441, and 1451 to 1453 of this title and sections 418 to 418E of Title 26, Internal Revenue Code, amending sections 1002, 1023, 1051, 1053, 1058, 1081, 1082, 1103, 1104, 1108, 1132, 1202, 1301 to 1303, 1305 to 1307, 1321, 1322, 1341, 1342, 1344, 1346, 1348, 1361 to 1366, and 1461 of this title, section 8521 of Title 5, Government Organization and Employees, and sections 194, 401, 404, 411 to 414, 501, 3304, 4971 and 4975 of Title 26, repealing former section 1323 of this title, and enacting provisions set out as notes under this section, sections 1001a, 1302, 1306, 1381, 1385, 1426 and 1461 of this title, section 8521 of Title 5, and sections 401, 404, 414, 418, and 3304 of Title 26] may be cited as the 'Multiemployer Pension Plan Amendments Act of 1980'.''

SHORT TITLE

Section 1 of Pub. L. 93–406 provided that: ''This Act [enacting this chapter, sections 408 to 415, 4971 to 4975, 6057 to 6059, 6692, and 6693 of Title 26, Internal Revenue Code, section 1037 of former Title 31, Money and Finance, and section 1320b–1 of Title 42, The Public Health and Welfare, amending section 441 of this title, sections 5108 and 5109 of Title 5, Government Organization and Employees, sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, sections 37, 46, 56, 62, 72, 101, 122, 219, 220, 275, 401, 402, 403, 404, 405, 406, 407, 503, 801, 805, 871, 901, 1304, 1348, 1379, 2039, 3401, 6033, 6047, 6051, 6103, 6104, 6161, 6201, 6204, 6211, 6212, 6213, 6214, 6344, 6501, 6503, 6511, 6512, 6601, 6652, 6653, 6659, 6676, 6677, 6679, 6682, 6688, 6690, 6861, 6862, 7422, 7451, 7459, 7482, 7701, and 7802, of Title 26, and section 846 of former Title 31, repealing sections 301 to 309 of this title, and enacting provisions set out as notes under sections 72, 122, 219, 401, 402, 403, 404, 410, 411, 412, 415, 501, 4973, 4975, 6057, 6059, 6103, 6104, 7476, and 7802 of Title 26] may be cited as the 'Employee Retirement Income Security Act of 1974'.''

COORDINATION OF INTERNAL REVENUE CODE OF 1986 WITH EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

This subchapter and subchapter III of this chapter not applicable in interpreting Internal Revenue Code of 1986, except to the extent specifically provided in such Code, or as determined by the Secretary of the Treasury, see section 9343(a) of Pub. L. 100–203, set out as a note under section 401 of Title 26, Internal Revenue Code.

STUDY BY COMPTROLLER GENERAL OF THE UNITED STATES OF EFFECT OF PENSION RULES ON WOMEN

Pub. L. 98–397, title III, § 304, Aug. 23, 1984, 98 Stat. 1454, directed Comptroller General to conduct detailed study of effect on women of participation, vesting, funding, integration, survivorship features, and other relevant plan and Federal pension rules and, not later than Jan. 1, 1990, submit a report on the study to Congress.

STUDY BY GENERAL ACCOUNTING OFFICE REGARDING RESULTS OF MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980; PROCEDURES APPLICABLE

Pub. L. 96–364, title IV, § 413, Sept. 26, 1980, 94 Stat. 1309, directed Comptroller General to conduct a study of effects of amendments made by Pub. L. 99–364 on: participants, beneficiaries, employers, employee organizations, and other parties, and the self-sufficiency of the fund established under section 1305 of this title with respect to benefits guaranteed under section 1322a of this title, taking into account financial conditions of multiemployer plans and employers and to report to Congress no later than June 30, 1985, results of study including his recommendations with respect thereto.

PRESIDENT'S COMMISSION ON PENSION POLICY; EXTENSION OF TERM; CONTINUATION OF EFFORT

Pub. L. 96–14, May 24, 1979, 93 Stat. 29, known as the Pension Policy Commission Act, authorized the President's Commission on Pension Policy established by Ex. Ord. No. 12071 to continue in operation for two years following May 24, 1979, and set forth membership, compensation, implementation, and reporting requirements, with the Commission to cease to exist ninety days after submission of the final report.

REORGANIZATION PLAN NO. 4 OF 1978

43 F.R. 47713, 92 Stat. 3790

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, August 10, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.[1]

EMPLOYEE RETIREMENT INCOME SECURITY ACT TRANSFERS

SECTION 101. TRANSFER TO THE SECRETARY OF THE TREASURY

Except as otherwise provided in Sections 104 and 106 of this Plan, all authority of the Secretary of Labor to

[1] As amended September 20, 1978.

issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of the Treasury:

(a) regulations, rulings, opinions, variances and waivers under Parts 2 [29 U.S.C. 1051 et seq.] and 3 [29 U.S.C. 1081 et seq.] of Subtitle B of Title I and subsection 1012(c) [set out as a note under 26 U.S.C. 411] of Title II of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 note) (hereinafter referred to as ''ERISA'').

EXCEPT for sections and subsections 201, 203(a)(3)(B), 209, and 301(a) of ERISA; [29 U.S.C. 1051, 1053(a)(3)(B), 1059, and 1081(a)];

(b) such regulations, rulings, and opinions which are granted to the Secretary of Labor under Sections 404, 410, 411, 412, and 413 of the Internal Revenue Code of 1954, as amended [26 U.S.C. 404, 410, 411, 412, and 413], (hereinafter referred to as the ''Code'').

EXCEPT for subsection 411(a)(3)(B) of the Code [26 U.S.C. 411(a)(3)(B)] and the definitions of ''collectively bargained plan'' and ''collective bargaining agreement'' contained in subsections 404 (a)(1)(B) and (a)(1)(C), 410 (b)(2)(A) and (b)(2)(B), and 413(a)(1) of the Code [26 U.S.C. 404(a)(1)(B) and (a)(1)(C), 410 (b)(2)(A) and (b)(2)(B), and 413(a)(1)]; and

(c) regulations, rulings, and opinions under subsections 3(19), 3(22), 3(23), 3(24), 3(25), 3(27), 3(28), 3(29), 3(30), and 3(31) of Subtitle A of Title I of ERISA [29 U.S.C. 1002(19), (22), (23), (24), (25), (27), (28), (29), (30), and (31)].

SEC. 102. TRANSFER TO THE SECRETARY OF LABOR

Except as otherwise provided in Section 105 of this Plan, all authority of the Secretary of the Treasury to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of Labor;

(a) regulations, rulings, opinions, and exemptions under section 4975 of the Code [26 U.S.C. 4975],

EXCEPT for (i) subsections 4975(a), (b), (c)(3), (d)(3), (c)(1), and (e)(7) of the Code [26 U.S.C. 4975(a), (b), (c)(3), (d)(3), (e)(1), and (e)(7)]; (ii) to the extent necessary for the continued enforcement of subsections 4975(a) and (b) [26 U.S.C. 4975(a) and (b)] by the Secretary of the Treasury, subsections 4975(f)(1), (f)(2), (f)(4), (f)(5) and (f)(6) of the Code [26 U.S.C. 4975(f)(1), (f)(2), (f)(4), (f)(5) and (f)(6)]; and (iii) exemptions with respect to transactions that are exempted by subsection 404(c) of ERISA [29 U.S.C. 1104(c)] from the provisions of Part 4 of Subtitle B of Title I of ERISA [29 U.S.C. 1101 et seq.]; and

(b) regulations, rulings, and opinions under subsection 2003(c) of ERISA [set out as a note under 29 U.S.C. 4975].

EXCEPT for subsection 2003(c)(1)(B) [set out in the note under 26 U.S.C. 4975].

SEC. 103. COORDINATION CONCERNING CERTAIN FIDUCIARY ACTIONS

In the case of fiduciary actions which are subject to Part 4 of Subtitle B of Title I of ERISA [29 U.S.C. 1101 et seq.], the Secretary of the Treasury shall notify the Secretary of Labor prior to the time of commencing any proceeding to determine whether the action violates the exclusive benefit rule of subsection 401(a) of the Code [26 U.S.C. 401(a)], but not later than prior to issuing a preliminary notice of intent to disqualify under that rule, and the Secretary of the Treasury shall not issue a determination that a plan or trust does not satisfy the requirements of subsection 401(a) by reason of the exclusive benefit rule of subsection 401(a), unless within 90 days after the date on which the Secretary of the Treasury notifies the Secretary of Labor of pending action, the Secretary of Labor certifies that he has no objection to the disqualification or the Secretary of Labor fails to respond to the Secretary of the Treasury. The requirements of this paragraph do not apply in the case of any termination or jeopardy assessment under sections 6851 or 6861 of the Code [26 U.S.C. 6851 or 6861] that has been approved in advance by the Commissioner of Internal Revenue, or, as delegated, the Assistant Commissioner for Employee Plans and Exempt Organizations.

SEC. 104. ENFORCEMENT BY THE SECRETARY OF LABOR

The transfers provided for in Section 101 of this Plan shall not affect the ability of the Secretary of Labor, subject to the provisions of Title III of ERISA [29 U.S.C. 1201 et seq.] relating to jurisdiction, administration, and enforcement, to engage in enforcement under Section 502 of ERISA [29 U.S.C. 1132] or to exercise the authority set forth under Title III of ERISA, including the ability to make interpretations necessary to engage in such enforcement or to exercise such authority. However, in bringing such actions and in exercising such authority with respect to Parts 2 [29 U.S.C. 1051 et seq.] and 3 [29 U.S.C. 1081 et seq.] of Subtitle B of Title I of ERISA and any definitions for which the authority of the Secretary of Labor is transferred to the Secretary of the Treasury as provided in Section 101 of this Plan, the Secretary of Labor shall be bound by the regulations, rulings, opinions, variances, and waivers issued by the Secretary of the Treasury.

SEC. 105. ENFORCEMENT BY THE SECRETARY OF THE TREASURY

The transfers provided for in Section 102 of this Plan shall not affect the ability of the Secretary of the Treasury, subject to the provisions of Title III of ERISA [29 U.S.C. 1201 et seq.] relating to jurisdiction, administration, and enforcement, (a) to audit plans and employers and to enforce the excise tax provisions of subsections 4975(a) and 4975(b) of the Code [26 U.S.C. 4975(a) and (b)], to exercise the authority set forth in subsections 502(b)(1) and 502(h) of ERISA [29 U.S.C. 1132(b)(1) and (h)], or to exercise the authority set forth in Title III of ERISA, including the ability to make interpretations necessary to audit, to enforce such taxes, and to exercise such authority; and (b) consistent with the coordination requirements under Section 103 of this Plan, to disqualify, under section 401 of the Code [26 U.S.C. 401], a plan subject to Part 4 of Subtitle B of Title I of ERISA [29 U.S.C. 1101 et seq.], including the ability to make the interpretations necessary to make such disqualification. However, in enforcing such excise taxes and, to the extent applicable, in disqualifying such plans the Secretary of the Treasury shall be bound by the regulations, rulings, opinions, and exemptions issued by the Secretary of Labor pursuant to the authority transferred to the Secretary of Labor as provided in Section 102 of this Plan.

SEC. 106. COORDINATION FOR SECTION 101 TRANSFER

(a) The Secretary of the Treasury shall not exercise the functions transferred pursuant to Section 101 of this Plan to issue in proposed or final form any of the documents described in subsection (b) of this Section in any case in which such documents would significantly impact on or substantially affect collectively bargained plans unless, within 100 calendar days after the Secretary of the Treasury notifies the Secretary of Labor of such proposed action, the Secretary of Labor certifies that he has no objection or he fails to respond to the Secretary of the Treasury. The fact of such a notification, except for such notification for documents described in subsection (b)(iv) of this Section, from the Secretary of the Treasury to the Secretary of Labor shall be announced by the Secretary of Labor to the public within ten days following the date of receipt of the notification by the Secretary of Labor.

(b) The documents to which this Section applies are:

(i) amendments to regulations issued pursuant to subsections 202(a)(3), 203(b)(2) and (3)(A), 204(b)(3)(A), (C), and (E), and 210(a)(2) of ERISA [29 U.S.C. 1052(a)(3), 1053(b)(2) and (3)(A), 1054(b)(3)(A), (C), and (E), and 1060(a)(2)], and subsections 410(a)(3) and 411(a)(5), (6)(A), and (b)(3)(A), (C), and (E), 413(b)(4) and (c)(3) and 414(f) of the Code [26 U.S.C. 410(a)(3) and 411(a)(5), (6)(A), and (b)(3)(A), (C), and (E), 413 (b)(4) and (c)(3) and 414(f)];

(ii) regulations issued pursuant to subsections 204(b)(3)(D), 302(c)(8), and 304(a) and (b)(2)(A) of ERISA [29 U.S.C. 1054(b)(3)(D), 1082(c)(8), and 1084(a) and (b)(2)(A)], and subsections 411(b)(3)(D), 412(c)(8), (e), and (f)(2)(A) of the Code [26 U.S.C. 411(b)(3)(D), 412(c)(8), (e), and (f)(2)(A)]; and

(iii) revenue rulings (within the meaning of 26 CFR Section 601.201(a)(6)), revenue procedures, and similar publications, if the rulings, procedures and publications are issued under one of the statutory provisions listed in (i) and (ii) of this subsection; and

(iv) rulings (within the meaning of 26 CFR Section 601.201(a)(2)) issued prior to the issuance of a published regulation under one of the statutory provisions listed in (i) and (ii) of this subsection and not issued under a published Revenue Ruling.

(c) For those documents described in subsections (b)(i), (b)(ii) and (b)(iii) of this Section, the Secretary of Labor may request the Secretary of the Treasury to initiate the actions described in this Section 106 of this Plan.

SEC. 107. EVALUATION

On or before January 31, 1980, the President will submit to both Houses of the Congress an evaluation of the extent to which this Reorganization Plan has alleviated the problems associated with the present administrative structure under ERISA, accompanied by specific legislative recommendations for a long-term administrative structure under ERISA.

SEC. 108. INCIDENTAL TRANSFERS

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SEC. 109. EFFECTIVE DATE

The provisions of this Reorganization Plan shall become effective at such time or times, on or before April 30, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

Today I am submitting to the Congress my fourth Reorganization Plan for 1978. This proposal is designed to simplify and improve the unnecessarily complex administrative requirements of the Employee Retirement Income Security Act of 1974 (ERISA) [see Short Title note set out under this section]. The new plan will eliminate overlap and duplication in the administration of ERISA and help us achieve our goal of well regulated private pension plans.

ERISA was an essential step in the protection of worker pension rights. Its administrative provisions, however, have resulted in bureaucratic confusion and have been justifiably criticized by employers and unions alike. The biggest problem has been overlapping jurisdictional authority. Under current ERISA provisions, the Departments of Treasury and Labor both have authority to issue regulations and decisions.

This dual jurisdiction has delayed a good many important rulings and, more importantly, produced bureaucratic runarounds and burdensome reporting requirements.

The new plan will significantly reduce these problems. In addition, both Departments are trying to cut red tape and paperwork, to eliminate unnecessary reporting requirements, and to streamline forms wherever possible.

Both Departments have already made considerable progress, and both will continue the effort to simplify their rules and their forms.

The Reorganization Plan is the most significant result of their joint effort to modify and simplify ERISA. It will eliminate most of the jurisdictional overlap between Treasury and Labor by making the following changes:

1) Treasury will have statutory authority for minimum standards. The new plan puts all responsibility for funding, participation, and vesting of benefit rights in the Department of Treasury. These standards are necessary to ensure that employee benefit plans are adequately funded and that all beneficiary rights are protected. Treasury is the most appropriate Department to administer these provisions; however, Labor will continue to have veto power over Treasury decisions that significantly affect collectively bargained plans.

2) Labor will have statutory authority for fiduciary obligations. ERISA prohibits transactions in which self-interest or conflict of interest could occur, but allows certain exemptions from these prohibitions. Labor will be responsible for overseeing fiduciary conduct under these provisions.

3) Both Departments will retain enforcement powers. The Reorganization Plan will continue Treasury's authority to audit plans and levy tax penalties for any deviation from standards. The plan will also continue Labor's authority to bring civil action against plans and fiduciaries. These provisions are retained in order to keep the special expertise of each Department available. New coordination between the Departments will eliminate duplicative investigations of alleged violations.

This reorganization will make an immediate improvement in ERISA's administration. It will eliminate almost all of the dual and overlapping authority in the two departments and dramatically cut the time required to process applications for exemptions from prohibited transactions.

This plan is an interim arrangement. After the Departments have had a chance to administer ERISA under this new plan, the Office of Management and Budget and the Departments will jointly evaluate that experience. Based on that evaluation, early in 1980, the Administration will make appropriate legislative proposals to establish a long-term administrative structure for ERISA.

Each provision in this reorganization will accomplish one or more of the purposes in Title 5 of U.S.C. 901(a). There will be no change in expenditure or personnel levels, although a small number of people will be transferred from the Department of Treasury to the Department of Labor.

We all recognize that the administration of ERISA has been unduly burdensome. I am confident that this reorganization will significantly relieve much of that burden.

This plan is the culmination of our effort to streamline ERISA. It provides an administrative arrangement that will work.

ERISA has been a symbol of unnecessarily complex government regulation. I hope this new step will become equally symbolic of my Administration's commitment to making government more effective and less intrusive in the lives of our people.

JIMMY CARTER.

THE WHITE HOUSE, August 10, 1978.

EXECUTIVE ORDER NO. 12071

Ex. Ord. No. 12071, July 12, 1978, 43 F.R. 30259, which established the President's Commission on Pension Policy and provided for its membership, functions, etc.,

was revoked by Ex. Ord. No. 12379, §1, Aug. 17, 1982, 47 F.R. 36099, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 12108. EFFECTIVE DATE OF ERISA TRANSFERS

Ex. Ord. No. 12108, Dec. 28, 1978, 44 F.R. 1065, provided: By the authority vested in me as President of the United States of America by Section 109 of Reorganization Plan No. 4 of 1978 (43 F.R. 47713) [set out above], it is hereby ordered that the provisions of Reorganization Plan No. 4 of 1978 shall be effective on Sunday, December 31, 1978.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12262

Ex. Ord. No. 12262, Jan. 7, 1981, 46 F.R. 2313, which established the Interagency Employee Benefit Council and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, §9, Aug. 17, 1982, 47 F.R. 36099, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 1001a. Additional Congressional findings and declaration of policy

(a) Effects of multiemployer pension plans

The Congress finds that—

(1) multiemployer pension plans have a substantial impact on interstate commerce and are affected with a national public interest;

(2) multiemployer pension plans have accounted for a substantial portion of the increase in private pension plan coverage over the past three decades;

(3) the continued well-being and security of millions of employees, retirees, and their dependents are directly affected by multiemployer pension plans; and

(4)(A) withdrawals of contributing employers from a multiemployer pension plan frequently result in substantially increased funding obligations for employers who continue to contribute to the plan, adversely affecting the plan, its participants and beneficiaries, and labor-management relations, and

(B) in a declining industry, the incidence of employer withdrawals is higher and the adverse effects described in subparagraph (A) are exacerbated.

(b) Modification of multiemployer plan termination insurance provisions and replacement of program

The Congress further finds that—

(1) it is desirable to modify the current multiemployer plan termination insurance provisions in order to increase the likelihood of protecting plan participants against benefit losses; and

(2) it is desirable to replace the termination insurance program for multiemployer pension plans with an insolvency-based benefit protection program that will enhance the financial soundness of such plans, place primary emphasis on plan continuation, and contain program costs within reasonable limits.

(c) Policy

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

(1) to foster and facilitate interstate commerce,

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

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

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

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

REFERENCES IN TEXT

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

CODIFICATION

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

EFFECTIVE DATE

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

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

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

§ 1001b. Findings and declaration of policy

(a) Findings

The Congress finds that—

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

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

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

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

(b) Additional findings

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

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

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

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

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

(c) Declaration of policy

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

(1) to foster and facilitate interstate commerce;

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

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

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

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

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

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

REFERENCES IN TEXT

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

CODIFICATION

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

EFFECTIVE DATE

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

§ 1002. Definitions

For purposes of this subchapter:

(1) The terms ''employee welfare benefit plan'' and ''welfare plan'' mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

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

(i) provides retirement income to employees, or

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

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

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

(i) severance pay arrangements, and

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

shall, for purposes of this subchapter, be treated as welfare plans rather than pension plans. In the case of any arrangement or payment a principal effect of which is the evasion of the standards or purposes of this chapter applicable to pension plans, such arrangement or payment shall be treated as a pension plan.

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

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

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

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

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

(8) The term ''beneficiary'' means a person designated by a participant, or by the terms of

an employee benefit plan, who is or may become entitled to a benefit thereunder.

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

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

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

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

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

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

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

(B) a person providing services to such plan;

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

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

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

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation.[1]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) The term ''adequate consideration'' when used in part 4 of subtitle B of this subchapter means (A) in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered under section 78f of title 15, or (ii) if the security is not traded on such a national securities exchange, a

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

price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and (B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary.

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

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

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

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

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

(A) medical benefits, and

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

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

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

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

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

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

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

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

(B) the later of—

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

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

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

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

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

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

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

(30) The term ''unfunded accrued liability'' means the excess of the accrued liability, under

an actuarial cost method which so provides, over the present value of the assets of a pension plan. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

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

(32) The term ''governmental plan'' means a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term ''governmental plan'' also includes any plan to which the Railroad Retirement Act of 1935, or 1937 [45 U.S.C. 231 et seq.] applies, and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation under the provisions of the International Organizations Immunities Act [22 U.S.C. 288 et seq.].

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

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

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

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

(C) For purposes of this paragraph—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

whichever has the latest ending date.

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

(35) The term ''defined benefit plan'' means a pension plan other than an individual account plan; except that a pension plan which is not an individual account plan and which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) who is (i) registered as an investment adviser under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.]; (ii) is a bank, as defined in that Act; or (iii) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and

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

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

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

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

(ii) by a rural electric cooperative, or

(iii) by a rural telephone cooperative association.

(B) For purposes of this paragraph—

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

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

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

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

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

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

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

(41)[2] SINGLE-EMPLOYER PLAN.—The term ''single-employer plan'' means an employee benefit plan other than a multiemployer plan.

(41)[2] The term ''single-employer plan'' means a plan which is not a multiemployer plan.

(Pub. L. 93–406, title I, § 3, Sept. 2, 1974, 88 Stat. 833; Pub. L. 96–364, title III, §§ 302, 305, title IV, §§ 407(a), 409, Sept. 26, 1980, 94 Stat. 1291, 1294, 1303, 1307; Pub. L. 97–473, title III, § 302(a), Jan. 14, 1983, 96 Stat. 2612; Pub. L. 99–272, title XI, § 11016(c)(1), Apr. 7, 1986, 100 Stat. 273; Pub. L. 99–509, title IX, § 9203(b)(1), Oct. 21, 1986, 100 Stat. 1979; Pub. L. 99–514, title XVIII, § 1879(u)(3), Oct. 22, 1986, 100 Stat. 2913; Pub. L. 100–202, § 136(a), Dec. 22, 1987, 101 Stat. 1329–441; Pub. L. 101–239, title VII, §§ 7871(b)(2), 7881(m)(2)(D), 7891(a)(1), 7893(a), 7894(a)(1)(A), (2)(A), (3), (4), Dec. 19, 1989, 103 Stat. 2435, 2444, 2445, 2447, 2448; Pub. L. 101–508, title XII, § 12002(b)(2)(C), Nov. 5, 1990, 104 Stat. 1388–566; Pub. L. 102–89, § 2, Aug. 14, 1991, 105 Stat. 446.)

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

REFERENCES IN TEXT

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

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

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

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

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

The Railroad Retirement Act of 1935 or 1937, referred to in par. (32), means act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended, known as the Railroad Retirement Act of 1935. The Railroad Retirement Act of 1935 was amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and was known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305 and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

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

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

The Internal Revenue Code of 1954, referred to in par. (37)(E), was redesignated the Internal Revenue Code of

1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, and is classified to Title 26, Internal Revenue Code.

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

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

AMENDMENTS

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

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

1989—Pars. (14), (33), (36), (40)(B)(iv). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1991 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

Amendment by section 7881(m)(2)(D) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26.

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

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

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

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

Section 7894(i) of Pub. L. 101–239 provided that: ''Except as otherwise provided in this section, any amendment made by this section [amending this section and sections 1021, 1024 to 1026, 1028, 1031, 1051 to 1056, 1060, 1061, 1081, 1082, 1084, 1086, 1103, 1107, 1108, 1113, 1114, 1132, 1144, 1321 to 1322a, 1344, 1368, and 1461 of this title] shall take effect as if originally included in the provision of the Employee Retirement Income Security Act of 1974 [Pub. L. 93–406] to which such amendment relates.''

EFFECTIVE DATE OF 1987 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENTS

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

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

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

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

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

REGULATIONS

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 623, 1003, 1023, 1053, 1055, 1081, 1082, 1143a, 1144, 1301, 1321, 1342, 1453, 2104, 2611 of this title; title 5 sections 8438, 8477; title 12 section 1821; title 15 section 77b; title 18 section 1954; title 26 sections 412, 414, 3121, 3306, 4980B, 9702, 9712; title 38 sections 4303, 4317, 4318; title 42 sections 300bb–8, 409, 1306, 3058k.

§ 1003. Coverage

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

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

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

(3) by both.

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

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

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

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

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

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

(Pub. L. 93–406, title I, § 4, Sept. 2, 1974, 88 Stat. 839; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (b)(2). 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1051, 1081, 1101, 1144 of this title.

SUBTITLE B—REGULATORY PROVISIONS

PART 1—REPORTING AND DISCLOSURE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1131, 1169 of this title.

§ 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) of this title; and

(2) the information described in sections 1024(b)(3) and 1025(a) and (c) of this title.

(b) Plan description, modifications and changes, and 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 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;

(4) the annual report containing the information required by section 1023 of this title; and

(5) 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 1082(e) 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.

(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 January 1, 1995) shall have the same meaning as when used in such section.

(f) Information necessary to comply with Medicare and Medicaid Coverage Data Bank requirements

(1) Provision of information by group health plan upon request of employer

(A) In general

An employer shall comply with the applicable requirements of section 1320b–14 of title 42. Upon the request of an employer maintaining a group health plan, any plan sponsor, plan administrator, insurer, third-party administrator, or other person who maintains under the plan the information necessary to enable the employer to comply with the applicable requirements of section 1320b–14 of title 42 shall, in such form and manner as may be prescribed in regulations of the Secretary (in consultation with the Secretary of Health and Human Services), provide such information (not inconsistent with paragraph (2))—

(i) in the case of a request by an employer described in subparagraph (B) and a plan that is not a multiemployer plan or a component of an arrangement described in subparagraph (C), to the Medicare and Medicaid Coverage Data Bank;

(ii) in the case of a plan that is a multiemployer plan or is a component of an arrangement described in subparagraph (C), to the employer or to such Data Bank, at the option of the plan; and

(iii) in any other case, to the employer or to such Data Bank, at the option of the employer.

(B) Employer described

An employer is described in this subparagraph for any calendar year if such employer normally employed fewer than 50 employees on a typical business day during such calendar year.

(C) Arrangement described

An arrangement described in this subparagraph is any arrangement in which two or more employers contribute for the purpose of providing group health plan coverage for employees.

(2) Information not required to be provided

Any plan sponsor, plan administrator, insurer, third-party administrator, or other person described in paragraph (1)(A) (other than the employer) that maintains the information under the plan shall not provide to an employer in order to satisfy the requirements of section 1320b–14 of title 42, and shall not provide to the Data Bank under such section, information that pertains in any way to—

(A) the health status of a participant, or of the participant's spouse, dependent child, or other beneficiary,

(B) the cost of coverage provided to any participant or beneficiary, or

(C) any limitations on such coverage specific to any participant or beneficiary.

(3) Regulations

The Secretary may, in consultation with the Secretary of Health and Human Services, prescribe such regulations as are necessary to carry out this subsection.

(g) 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.)

AMENDMENTS

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 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

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1132 of this title; title 42 section 1320b–14.

§ 1022. Plan description and summary plan description

(a)(1) 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.

(2) 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.

(b) The plan description and summary plan description shall contain the following information: The name and type of administration of the plan; 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 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.)

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1024, 1029 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) of this section and where applicable subsections (d) and (e) of this section 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 issue, 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 determine 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 requirements of section 1082(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 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..[1]

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

(13) 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

[1] So in original.

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.

(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.)

AMENDMENTS

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. (11) 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 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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1024, 1029 of this title; title 5 section 8439; title 31 section 9503.

§ 1024. Filing and furnishing of information

(a) Filing of annual report, plan description, summary plan description, and modifications and changes with Secretary

(1) The administrator of any employee benefit plan subject to this part shall file with the Secretary—

(A) 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);

(B) the plan description within 120 days after such plan becomes subject to this part and an updated plan description, no more frequently than once every 5 years, as the Secretary may require;

(C) a copy of the summary plan description at the time such summary plan description is required to be furnished to participants and beneficiaries pursuant to subsection (b)(1)(B) of this section; and

(D) modifications and changes referred to in section 1022(a)(2) of this title within 60 days after such modification or change is adopted or occurs, as the case may be.

The Secretary shall make copies of such plan descriptions, summary plan descriptions, and annual reports available for inspection in the pub-

lic document room of the Department of Labor. The administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.

(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.

(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 summary plan description, and all modifications and changes referred to in section 1022(a)(1) 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)(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.

(2) The administrator shall make copies of the 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 prescribed by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrators 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 plan description, 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.

(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) 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, § 11016(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.)

AMENDMENTS

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 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1022, 1023, 1027, 1029, 1132 of this title; title 26 section 6058; title 31 section 9503.

§ 1025. Reporting of participant's benefit rights

(a) Statement furnished by administrator to participants and beneficiaries

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.

(b) One-per-year limit on reports

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.

(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.

(d) Plans to which more than one unaffiliated employer is required to contribute; regulations

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.

(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.)

AMENDMENTS

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 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 pro-

vided, 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1026, 1132 of this title.

§ 1026. Reports made public information

(a) Except as provided in subsection (b) of this section, the contents of the descriptions, 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.)

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

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 description or 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.)

§ 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 conformity 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 plan description, 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.)

AMENDMENTS

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 ad-

ministrator 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1135 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1143, 1343 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 Disclosure 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 provisions 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)[1] 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.

[1] So in original. Probably should be ''3(16)''.

(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)(1), (2), (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 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1144 of this title.

PART 2—PARTICIPATION AND VESTING

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1103, 1132, 1201, 1202 of this title; title 26 section 6057.

§ 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)(8) 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1003 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) of subparagraph (A) shall be applied by substituting ''2 years of service'' for ''1 year of service''.

(ii) In the case of any plan maintained exclusively for employees of an educational organization (as defined in section 170(b)(1)(A)(ii) of title 26) by an employer which is exempt from tax under section 501(a) of title 26, which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting ''26'' for ''21''. This clause shall not apply to any plan to which clause (i) applies.

(2) No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age.

(3)(A) For purposes of this section, the term ''year of service'' means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, in accordance with regulations prescribed by the Secretary, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

(B) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term ''year of service'' shall be such period as may be determined under regulations prescribed by the Secretary.

(C) For purposes of this section, the term ''hour of service'' means a time of service determined under regulations prescribed by the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(4) A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(b)(1) Except as otherwise provided in paragraphs (2), (3), and (4), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of subsection (a)(1) of this section.

(2) In the case of any employee who has any 1-year break in service (as defined in section 1053(b)(3)(A) of this title) under a plan to which the service requirements of clause (i) of subsection (a)(1)(B) of this section apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(3) In computing an employee's period of service for purposes of subsection (a)(1) of this section in the case of any participant who has any 1-year break in service (as defined in section 1053(b)(3)(A) of this title), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in subsection (a)(3) of this section) after his return.

(4)(A) For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account in computing the period of service if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(i) 5, or

(ii) the aggregate number of years of service before such period.

(B) If any years of service are not required to be taken into account by reason of a period of breaks in service to which subparagraph (A) applies, such years of service shall not be taken into account in applying subparagraph (A) to a subsequent period of breaks in service.

(C) For purposes of subparagraph (A), the term ''nonvested participant'' means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(5)(A) In the case of each individual who is absent from work for any period—

(i) by reason of the pregnancy of the individual,

(ii) by reason of the birth of a child of the individual,

(iii) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(iv) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this subsection whether a 1-year break in service (as defined in section 1053(b)(3)(A) of this title) has occurred, the hours described in subparagraph (B).

(B) The hours described in this subparagraph are—

(i) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(ii) in any case in which the plan is unable to determine the hours described in clause (i), 8 hours of service per day of such absence,

except that the total number of hours treated as hours of service under this subparagraph by reason of any such pregnancy or placement shall not exceed 501 hours.

(C) The hours described in subparagraph (B) shall be treated as hours of service as provided in this paragraph—

(i) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in subparagraph (A); or

(ii) in any other case, in the immediately following year.

(D) For purposes of this paragraph, the term ''year'' means the period used in computations pursuant to subsection (a)(3)(A) of this section.

(E) A plan may provide that no credit will be given pursuant to this paragraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(i) that the absence from work is for reasons referred to in subparagraph (A), and

(ii) the number of days for which there was such an absence.

(Pub. L. 93–406, title I, § 202, Sept. 2, 1974, 88 Stat. 853; Pub. L. 98–397, title I, § 102(a), (d)(1), (e)(1), Aug. 23, 1984, 98 Stat. 1426, 1427; Pub. L. 99–509, title IX, § 9203(a)(1), Oct. 21, 1986, 100 Stat. 1979; Pub. L. 99–514, title XI, § 1113(e)(3), Oct. 22, 1986, 100 Stat. 2448; Pub. L. 101–239, title VII, §§ 7861(a)(2), 7891(a)(1), 7892(a), 7894(c)(2), Dec. 19, 1989, 103 Stat. 2430, 2445, 2447, 2449.)

AMENDMENTS

1989—Subsec. (a)(1)(B)(i). Pub. L. 101–239, § 7861(a)(2), made technical correction to directory language of Pub. L. 99–514. See 1986 Amendment note below.

Subsec. (a)(1)(B)(ii). Pub. L. 101–239, § 7894(c)(2)(A), substituted ''educational organization'' for ''educational institution''.

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

Subsec. (a)(2). Pub. L. 101–239, § 7892(a), struck out comma after ''specified age''.

Subsec. (b)(2). Pub. L. 101–239, § 7894(c)(2)(B), substituted ''a plan'' for ''the plan''.

1986—Subsec. (a)(1)(B)(i). Pub. L. 99–514, as amended by Pub. L. 101–239, § 7861(a)(2), substituted ''2 years of service'' for ''3 years of service'' in two places.

Subsec. (a)(2). Pub. L. 99–509 substituted a period for ''unless—

''(A) the plan is a—

''(i) defined benefit plan, or

''(ii) target benefit plan (as defined under regulations prescribed by the Secretary of the Treasury), and

''(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.''

1984—Subsec. (a)(1). Pub. L. 98–397, § 102(a), substituted ''21'' for ''25'' in subpar. (A)(i) and '' '26' for '21' '' for '' '30' for '25' '' in subpar. (B)(ii).

Subsec. (b)(4). Pub. L. 98–397, § 102(d)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''In the case of an employee who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of subsection (a)(1) of this section if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service before such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this paragraph by reason of any prior break in service.''

Subsec. (b)(5). Pub. L. 98–397, § 102(e)(1), added par. (5).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7861(a)(2) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 of Title 26, Internal Revenue Code.

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

Section 7892(c) of Pub. L. 101–239 provided that: ''Any amendment made by this section [amending this section and section 1082 of this title] shall take effect as if included in the provision of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203, probably should refer to Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509] or Pension Protection Act [Pub. L. 100–203, §§ 9302–9346, probably should refer to Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203] to which such amendment relates.''

Amendment by section 7894(c)(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 1986 AMENDMENTS

Amendment by section 1113(e)(3) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with

special rule for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and not applicable to employees who do not have 1 hour of service in any plan year to which the amendment applies, see section 1113(f) of Pub. L. 99–514, as amended, set out as a note under section 411 of Title 26, Internal Revenue Code.

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

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

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1053, 1054, 1060, 1061 of this title.

§ 1053. Minimum vesting standards

(a) Nonforfeitability requirements

Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

(A) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(B) A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

(C) A plan satisfies the requirements of this subparagraph if—

(i) the plan is a multiemployer plan (within the meaning of section 1002(37)), and

(ii) under the plan—

(I) an employee who is covered pursuant to a collective bargaining agreement described in section 1002(37)(A)(ii) of this title and who has completed at least 10 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions, and

(II) the requirements of subparagraph (A) or (B) are met with respect to employees not described in subclause (I).

(3)(A) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 1055 of this title).

(B) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multiemployer plan, by an employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term ''employed''.

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 1082(c)(8) of this title.

(D)(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least

50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in the last sentence of section 1054(c)(2)(C) of this title) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of section 1054(c)(2)(C) of this title (if such subsection applies) on the date of such repayment (computed annually from the date of such withdrawal). The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before September 2, 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions, made by such participant before September 2, 1974, if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after September 2, 1974. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) Cross reference.—

For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 1056(c) of this title.

(E)(i) A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because the plan provides that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contribute under the plan may not be payable if the employer ceases contributions to the multiemployer plan.

(ii) A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because—

(I) the plan is amended to reduce benefits under section 1425 or 1441 of this title, or

(II) benefit payments under the plan may be suspended under section 1426 or 1441 of this title.

(F) A matching contribution (within the meaning of section 401(m) of title 26) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B) of title 26, an excess deferral under section 402(g)(2)(A) of title 26, or an excess aggregate contribution under section 401(m)(6)(B) of title 26.

(b) Computation of period of service

(1) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2) of this section, all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 18,[1]

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions,[1]

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan, defined by the Secretary of the Treasury;

(D) service not required to be taken into account under paragraph (3);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

(F) years of service before this part first applies to the plan if such service would have been disregarded under the rules of the plan with regard to breaks in service, as in effect on the applicable date; and

(G) in the case of a multiemployer plan, years of service—

(i) with an employer after—

(I) a complete withdrawal of such employer from the plan (within the meaning of section 1383 of this title), or

(II) to the extent permitted by regulations prescribed by the Secretary of the Treasury, a partial withdrawal described in section 1385(b)(2)(A)(i) of this title in connection with the decertification of the collective bargaining representative; and

(ii) with any employer under the plan after the termination date of the plan under section 1348 of this title.

(2)(A) For purposes of this section, except as provided in subparagraph (C), the term ''year of service'' means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has completed 1,000 hours of service.

(B) For purposes of this section, the term ''hour of service'' has the meaning provided by section 1052(a)(3)(C) of this title.

(C) In the case of any seasonal industry where the customary period of employment is less

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

than 1,000 hours during a calendar year, the term ''year of service'' shall be such period as determined under regulations of the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(3)(A) For purposes of this paragraph, the term ''1-year break in service'' means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has not completed more than 500 hours of service.

(B) For purposes of paragraph (1), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) For purposes of paragraph (1), in the case of any participant in an individual account plan or an insured defined benefit plan which satisfies the requirements of subsection 1054(b)(1)(F) of this title who has 5 consecutive 1-year breaks in service, years of service after such 5-year period shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such 5-year period.

(D)(i) For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) For purposes of clause (i), the term ''nonvested participant'' means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E)(i) In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service has occurred, the hours described in clause (ii).

(ii) The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of absence,

except that the total number of hours treated as hours of service under this clause by reason of such pregnancy or placement shall not exceed 501 hours.

(iii) The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) For purposes of this subparagraph, the term ''year'' means the period used in computations pursuant to paragraph (2).

(v) A plan may provide that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

(4) Cross references.—

(A) For definitions of "accrued benefit" and "normal retirement age", see sections 1002(23) and (24) of this title;

(B) For effect of certain cash out distributions, see section 1054(d)(1) of this title.

(c) Plan amendments altering vesting schedule

(1)(A) A plan amendment changing any vesting schedule under this plan shall be treated as not satisfying the requirements of subsection (a)(2) of this section if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) of this section unless each participant having not less than 3 years of service is permitted to elect, within a reasonable period after adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(2) Subsection (a) of this section shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary of the Treasury to preclude the discrimination prohibited by section 401(a)(4) of title 26.

(d) Nonforfeitable benefits after lesser period and in greater amounts than required

A pension plan may allow for nonforfeitable benefits after a lesser period and in greater amounts than are required by this part.

(e) Consent for distribution; present value; covered distributions

(1) If the present value of any nonforfeitable benefit with respect to a participant in a plan exceeds $3,500, the plan shall provide that such benefit may not be immediately distributed without the consent of the participant.

(2) For purposes of paragraph (1), the present value shall be calculated in accordance with section 1055(g)(3) of this title.

(3) This subsection shall not apply to any distribution of dividends to which section 404(k) of title 26 applies.

(Pub. L. 93–406, title I, § 203, Sept. 2, 1974, 88 Stat. 854; Pub. L. 96–364, title III, § 303, Sept. 26, 1980, 94 Stat. 1292; Pub. L. 98–397, title I, §§ 102(b), (c), (d)(2), (e)(2), 105(a), Aug. 23, 1984, 98 Stat. 1426–1428, 1436; Pub. L. 99–514, title XI, §§ 1113(e)(1), (2), (4)(A), 1139(c)(1), title XVIII, § 1898(a)(1)(B), (4)(B)(i), (d)(1)(B), (2)(B), Oct. 22, 1986, 100 Stat. 2447, 2448, 2487, 2942, 2944, 2955; Pub. L. 101–239, title VII, §§ 7861(a)(1), (5)(B), (6)(B), 7862(d)(4), (5), (10), 7891(a)(1), (b)(1), (2), 7894(c)(3), Dec. 19, 1989, 103 Stat. 2430, 2434, 2445, 2449; Pub. L. 103–465, title VII, § 767(c)(1), Dec. 8, 1994, 108 Stat. 5039.)

AMENDMENTS

1994—Subsec. (e)(2). Pub. L. 103–465 amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2)(A) For purposes of paragraph (1), the present value shall be calculated—

''(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

''(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) be less than $25,000.

''(B) For purposes of subparagraph (A), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.''

1989—Subsec. (a)(2). Pub. L. 101–239, § 7861(a)(1)(A), substituted ''satisfies the requirements'' for ''satisfies the following requirements'' in introductory provisions.

Subsec. (a)(2)(C)(ii)(I). Pub. L. 101–239, § 7861(a)(1)(B), substituted ''section 1002(37)(A)(ii) of this title'' for ''section 414(f)(1)(B)''.

Subsec. (a)(3)(D)(v). Pub. L. 101–239, § 7894(c)(3), substituted ''nonforfeitability'' for ''nonforfeitably''.

Subsec. (a)(3)(F). Pub. L. 101–239, § 7861(a)(5)(B), added subpar. (F).

Subsec. (b)(1)(A). Pub. L. 101–239, § 7861(a)(6)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''years of service before age 18, except that in case of a plan which does not satisfy subparagraph (A) or (B) of subsection (a)(2) of this section, the plan may not disregard any such year of service during which the employee was a participant;''.

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

Subsec. (e)(1). Pub. L. 101–239, § 7862(d)(10), which directed amendment of par. (1) by substituting ''nonforfeitable benefit'' for ''vested accrued benefit'', could not be executed because the language ''vested accrued benefit'' did not appear after the amendment by Pub. L. 101–239, § 7862(d)(5), see below.

Pub. L. 101–239, § 7862(d)(5), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''If the present value of any vested accrued benefit exceeds $3,500, a pension plan shall provide that such benefit may not be immediately distributed without the consent of the participant.''

Pub. L. 101–239, § 7862(d)(4), made technical correction to Pub. L. 99–514, § 1898(d)(1)(B), see 1986 Amendment note below.

Subsec. (e)(2). Pub. L. 101–239, § 7891(b)(1), (2), realigned margins of subpars. (A) and (B) and struck out subpar. (B) heading ''Applicable interest rate''.

Subsec. (e)(3). 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.

1986—Subsec. (a)(2). Pub. L. 99–514, § 1113(e)(1), amended par. (2) generally, substituting provisions covering 5-year vesting, 3- to 7-year vesting, and multiemployer plans, for former provisions which covered 10-year vesting, 5- to 15-year vesting, and the ''rule of 45'' under which a plan satisfied the requirements of this paragraph if an employee who had completed at least 5 years of service and with respect to whom the sum of his age and years of service equalled or exceeded 45 had a right to a percentage of his accrued benefits derived from employer contributions.

Subsec. (a)(3)(D)(ii). Pub. L. 99–514, § 1898(a)(4)(B)(i), inserted last sentence and struck out former last sentence which read as follows: ''In the case of a defined contribution plan the plan provision required under this clause may provide that such repayment must be made before the participant has any 1-year break in service commencing after the withdrawal.''

Subsec. (c)(1)(B). Pub. L. 99–514, § 1113(e)(4)(A), substituted ''3 years'' for ''5 years''.

Subsec. (c)(3). Pub. L. 99–514, § 1113(e)(2), struck out par. (3) which provided for class year vesting.

Pub. L. 99–514, § 1898(a)(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The requirements of subsection (a)(2) of this section shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th year following the plan year for which such contributions were made. For purposes of this part, the term 'class year plan' means a profit sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.''

Subsec. (e)(1). Pub. L. 99–514, § 1898(d)(1)(B), as amended by Pub. L. 101–239, § 7862(d)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''If the present value of any accrued benefit exceeds $3,500, such benefit shall not be treated as nonforfeitable if the plan provides that the present value of such benefit could be immediately distributed without the consent of the participant.''

Subsec. (e)(2). Pub. L. 99–514, § 1139(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of paragraph (1), the present value shall be calculated by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.''

Pub. L. 99–514, § 1898(d)(2)(B), added par. (3).

1984—Subsec. (b)(1)(A). Pub. L. 98–397, § 102(b), substituted ''18'' for ''22''.

Subsec. (b)(3)(C). Pub. L. 98–397, § 102(c), substituted ''5 consecutive 1-year breaks in service'' for ''any 1-year

break in service'' and substituted ''such 5-year period'' for ''such break'' in two places.

Subsec. (b)(3)(D). Pub. L. 98–397, § 102(d)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''For purposes of paragraph (1), in the case of a participant who, under the plan, does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.''

Subsec. (b)(3)(E). Pub. L. 98–397, § 102(e)(2), added subpar. (E).

Subsec. (e). Pub. L. 98–397, § 105(a), added subsec. (e).

1980—Subsec. (a)(3)(E). Pub. L. 96–364, § 303(1), added subpar. (E).

Subsec. (b)(1)(G). Pub. L. 96–364, § 303(2)–(4), added subpar. (G).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to plan years and limitation years beginning after Dec. 31, 1994, except that employer may elect to treat such amendment as effective on or after Dec. 8, 1994, with provisions relating to reduction of accrued benefits and timing of plan amendment, see section 767(d) of Pub. L. 103–465, set out as a note under section 411 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by sections 7861(a)(1), (5)(B), (6)(B) and 7862(d)(4), (5), (10) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 of Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1), (b)(1), (2) 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(c)(3) 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 1986 AMENDMENT

Amendment by section 1113(e)(1), (2), (4)(A) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and not applicable to employees who do not have 1 hour of service in any plan year to which the amendment applies, see section 1113(f) of Pub. L. 99–514, as amended, set out as a note under section 411 of Title 26, Internal Revenue Code.

Amendment by section 1139(c)(1) of Pub. L. 99–514 applicable to distributions in plan years beginning after Dec. 31, 1984, except that such amendments shall not apply to any distributions in plan years beginning after Dec. 31, 1984, and before Jan. 1, 1987, if such distributions were made in accordance with the requirements of the regulations issued under the Retirement Equity Act of 1984, Pub. L. 98–397, with additional provisions relating to reductions in accrued benefits, see section 1139(d) of Pub. L. 99–514, set out as a note under section 411 of Title 26.

Amendment by section 1898(a)(1)(B) of Pub. L. 99–514 applicable to contributions made for plan years beginning after Oct. 22, 1986, except that in the case of a plan described in section 302(b) of Pub. L. 98–397, set out as a note under section 1001 of this title, such amendments shall not apply to any plan year to which amendments made by Pub. L. 98–397 do not apply by reason of such section 302(b), see section 1898(a)(1)(C) of Pub. L. 99–514, set out as a note under section 411 of Title 26.

Amendment by section 1898(a)(4)(B)(i), (d)(1)(B), (2)(B), of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of Title 26.

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.

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 of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1113 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of Title 26, Internal Revenue Code.

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 623, 1002, 1052, 1054, 1055, 1056, 1057, 1059, 1060, 1061, 1222, 1344, 1425, 1426, 1441 of this title; title 26 section 6057.

§ 1054. Benefit accrual requirements

(a) Satisfaction of requirements by pension plans

Each pension plan shall satisfy the requirements of subsection (b)(3) of this section, and—

(1) in the case of a defined benefit plan, shall satisfy the requirements of subsection (b)(1) of this section; and

(2) in the case of a defined contribution plan, shall satisfy the requirements of subsection (b)(2) of this section.

(b) Enumeration of plan requirements

(1)(A) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 3 percent of the normal retirement benefit to which he would be entitled at the normal retirement age if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) A defined benefit plan satisfies the requirements of this paragraph of a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to September 2, 1974, or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term ''year of service'' has the meaning provided by section 1052(a)(3)(A) of this title.

(F) Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of paragraphs (2) and (3) of section 1081(b) of this title (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 1081(b) of this title were satisfied.

(G) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before benefits payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] which benefits under the plan—

(i) do not exceed social security benefits, and

(ii) terminate when such social security benefits commence.

(H)(i) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age.

(ii) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(iii) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

(I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 1056(a)(3) of this title, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 1053(a)(3)(B) of this title, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The preceding provisions of this clause shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee, with respect to any period of time within a plan year.

(iv) Clause (i) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26.

(v) A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(vi) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of title 26 shall apply with respect to the requirements of this subparagraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(1)(H).

(2)(A) A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

(B) A plan shall not be treated as failing to meet the requirements of subparagraph (A) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(C) Any regulations prescribed by the Secretary of the Treasury pursuant to subparagraphs (B) and (C) of section 411(b)(2) of title 26 shall apply with respect to the requirements of this paragraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(2).

(3) A plan satisfies the requirements of this paragraph if—

(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

(4)(A) For purposes of determining an employee's accrued benefit, the term ''year of participation'' means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 1052(b) of this title, determined without regard to section 1052(b)(5) of this title) as determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

(B) For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis merely because such service is not taken into account.

(D) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term ''year of participation'' shall be such period as determined under regulations prescribed by the Secretary.

(E) For purposes of this subsection in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(c) Employee's accrued benefits derived from employer and employee contributions

(1) For purposes of this section and section 1053 of this title an employee's accrued benefit derived from employer contributions as of any applicable date is the excess (if any) of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2)(A) In the case of a plan other than a defined benefit plan, the accrued benefit derived

from contributions made by an employee as of any applicable date is—

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B) DEFINED BENEFIT PLANS.—In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 1055(g)(3) of this title (as of the determination date).

(C) For purposes of this subsection, the term ''accumulated contributions'' means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which section 1053(a)(2) of this title does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually—

(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of a plan year for the period beginning with the 1st plan year to which subsection (a)(2) of this section applies by reason of the applicable effective date) and ending with the date on which the determination is being made, and

(II) at the interest rate which would be used under the plan under section 1055(g)(3) of this title (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age.

For purposes of this subparagraph, the term ''mandatory contributions'' means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plans, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) The Secretary of the Treasury is authorized to adjust by regulation the conversion factor described in subparagraph (B) from time to time as he may deem necessary. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(3) For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(4) In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

(d) Employee service which may be disregarded in determining employee's accrued benefits under plan

Notwithstanding section 1053(b)(1) of this title, for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(1) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $3,500) permitted under regulations prescribed by the Secretary of the Treasury, or

(2) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Paragraph (1) shall apply only if such distribution was made on termination of the employee's participation in the plan. Paragraph (2) shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary of the Treasury.

(e) Opportunity to repay full amount of distributions which have been reduced through disregarded employee service

For purposes of determining the employee's accrued benefit, the plan shall not disregard service as provided in subsection (d) of this section unless the plan provides an opportunity for the participant to repay the full amount of a distribution described in subsection (d) of this section with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) of this section and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subsection shall apply only in the case of a participant who—

(1) received such a distribution in any plan year to which this section applies which distribution was less than the present value of his accrued benefit,

(2) resumes employment covered under the plan, and

(3) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) of this section.

The plan provision required under this subsection may provide that such repayment must

be made (A) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (B) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(f) Employer treated as maintaining a plan

For the purposes of this part, an employer shall be treated as maintaining a plan if any employee of such employer accrues benefits under such plan by reason of service with such employer.

(g) Decrease of accrued benefits through amendment of plan

(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 1082(c)(8) or 1441 of this title.

(2) For purposes of paragraph (1), a plan amendment which has the effect of—

(A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(B) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

(3) For purposes of this subsection, any—

(A) tax credit employee stock ownership plan (as defined in section 409(a) of title 26, or

(B) employee stock ownership plan (as defined in section 4975(e)(7) of title 26),

shall not be treated as failing to meet the requirements of this subsection merely because it modifies distribution options in a nondiscriminatory manner.

(h) Notice of significant reduction in benefit accruals

(1) A plan described in paragraph (2) may not be amended so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effective date, to—

(A) each participant in the plan,

(B) each beneficiary who is an alternate payee (within the meaning of section 1056(d)(3)(K) of this title) under an applicable qualified domestic relations order (within the meaning of section 1056(d)(3)(B)(i) of this title), and

(C) each employee organization representing participants in the plan,

except that such notice shall instead be provided to a person designated, in writing, to receive such notice on behalf of any person referred to in subparagraph (A), (B), or (C).

(2) A plan is described in this paragraph if such plan is—

(A) a defined benefit plan, or

(B) an individual account plan which is subject to the funding standards of section 1082 of this title.

(i) Prohibition on benefit increases where plan sponsor is in bankruptcy

(1) In the case of a plan described in paragraph (3) which is maintained by an employer that is a debtor in a case under title 11 or similar Federal or State law, no amendment of the plan which increases the liabilities of the plan by reason of—

(A) any increase in benefits,

(B) any change in the accrual of benefits, or

(C) any change in the rate at which benefits become nonforfeitable under the plan,

with respect to employees of the debtor, shall be effective prior to the effective date of such employer's plan of reorganization.

(2) Paragraph (1) shall not apply to any plan amendment that—

(A) the Secretary of the Treasury determines to be reasonable and that provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(B) only repeals an amendment described in section 1082(c)(8) of this title,

(C) is required as a condition of qualification under part I of subchapter D of chapter 1 of title 26, or

(D) was adopted prior to, or pursuant to a collective bargaining agreement entered into prior to, the date on which the employer became a debtor in a case under title 11 or similar Federal or State law.

(3) This subsection shall apply only to plans (other than multiemployer plans) covered under section 1321 of this title for which the funded current liability percentage (within the meaning of section 1082(d)(8) of this title) is less than 100 percent after taking into account the effect of the amendment.

(4) For purposes of this subsection, the term ''employer'' has the meaning set forth in section 1082(c)(11)(A) of this title, without regard to section 1082(c)(11)(B) of this title.

(j) Cross reference

For special rules relating to plan provisions adopted to preclude discrimination, see section 1053(c)(2) of this title.

(Pub. L. 93–406, title I, § 204, Sept. 2, 1974, 88 Stat. 858; Pub. L. 98–397, title I, §§ 102(e)(3), (f), 105(b), title III, § 301(a)(2), Aug. 23, 1984, 98 Stat. 1429, 1436, 1451; Pub. L. 99–272, title XI, § 11006(a), Apr. 7, 1986, 100 Stat. 243; Pub. L. 99–509, title IX, § 9202(a), Oct. 21, 1986, 100 Stat. 1975; Pub. L. 99–514, title XI, § 1113(e)(4)(B), title XVIII, §§ 1879(u)(1), 1898(a)(4)(B)(ii), (f)(1)(B), (2), Oct. 22, 1986, 100 Stat. 2448, 2913, 2944, 2956; Pub. L. 100–203, title IX, § 9346(a), Dec. 22, 1987, 101 Stat. 1330–374; Pub. L. 101–239, title VII, §§ 7862(b)(1)(A), (2), 7871(a)(1), (3), 7881(m)(2)(A)–(C), 7891(a)(1), 7894(c)(4)–(6), Dec. 19, 1989, 103 Stat. 2432, 2434, 2435, 2444, 2445, 2449; Pub. L. 103–465, title VII, § 766(a), Dec. 8, 1994, 108 Stat. 5036.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1)(G), 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

1994—Subsecs. (i), (j). Pub. L. 103–465 added subsec. (i) and redesignated former subsec. (i) as (j).

1989—Subsec. (b)(1)(A). Pub. L. 101–239, §7894(c)(4), substituted ''subparagraph'' for ''suparagraph'' in last sentence.

Subsec. (b)(1)(E). Pub. L. 101–239, §7894(c)(5), substituted ''term 'year of service' '' for ''term 'years of service' ''.

Subsec. (b)(2)(B). Pub. L. 101–239, §7871(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''Subparagraph (A) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26.''

Subsec. (b)(2)(C). Pub. L. 101–239, §7871(a)(3), substituted ''subparagraphs (B) and (C)'' for ''subparagraphs (C) and (D)''.

Pub. L. 101–239, §7871(a)(1), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (b)(2)(D). Pub. L. 101–239, §7871(a)(1), redesignated subpar. (D) as (C).

Subsec. (c)(2)(B). Pub. L. 101–239, §7881(m)(2)(B), inserted heading and amended text generally. Prior to amendment, text read as follows:

''(i) In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

''(ii) For purposes of clause (i), the term 'appropriate conversion factor' means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary of the Treasury or his delegate.''

Subsec. (c)(2)(C)(iii). Pub. L. 101–239, §7881(m)(2)(A), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of a plan year) from the beginning of the first plan year to which section 1053(a)(2) of this title applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.''

Subsec. (c)(2)(E). Pub. L. 101–239, §7881(m)(2)(C), struck out subpar. (E) which read as follows: ''The accrued benefit derived from employee contributions shall not exceed the greater of—

''(i) the employee's accrued benefit under the plan, or

''(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.''

Subsec. (d). Pub. L. 101–239, §7894(c)(6), removed the indentation of the term ''Paragraph'' where first appearing in concluding provisions.

Subsec. (g)(3)(A). Pub. L. 101–239, §7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (h). Pub. L. 101–239, §7862(b)(1)(A), made technical correction to directory language of Pub. L. 99–514, §1879(u)(1), see 1986 Amendment note below.

Subsec. (h)(2). Pub. L. 101–239, §7862(b)(2), adjusted left-hand margin of introductory provisions to full measure.

1987—Subsec. (c)(2)(C)(iii). Pub. L. 100–203, §9346(a)(1), substituted ''120 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of a plan year)'' for ''5 percent per annum''.

Subsec. (c)(2)(D). Pub. L. 100–203, §9346(a)(2), struck out '', the rate of interest described in clause (iii) of subparagraph (C), or both,'' before ''from time to time'' in first sentence and struck out second sentence which read as follows: ''The rate of interest shall bear the relationship to 5 percent which the Secretary of the Treasury determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973.''

1986—Subsec. (a). Pub. L. 99–509, §9202(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Each pension plan shall satisfy the requirements of subsection (b)(2) of this section, and in the case of a defined benefit plan shall also satisfy the requirements of subsection (b)(1) of this section.''

Subsec. (b)(1)(H). Pub. L. 99–509, §9202(a)(2), added subpar. (H).

Subsec. (b)(2) to (4). Pub. L. 99–509, §9202(a)(3), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (e). Pub. L. 99–514, §1898(a)(4)(B)(ii), inserted last sentence and struck out former last sentence which read as follows: ''In the case of a defined contribution plan, the plan provision required under this subsection may provide that such repayment must be made before the participant has 5 consecutive 1-year breaks in service commencing after such withdrawal''.

Subsec. (g)(1). Pub. L. 99–514, §1898(f)(2), inserted reference to section 1441.

Subsec. (g)(3). Pub. L. 99–514, §1898(f)(1)(B), added par. (3).

Subsec. (h). Pub. L. 99–514, §1879(u)(1), as amended by Pub. L. 101–239, §7862(b)(1)(A), designated existing provisions as par. (1), substituted ''plan described in paragraph (2)'' for ''single-employer plan'', redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, substituted ''subparagraph (A), (B), or (C)'' for ''paragraph (1), (2), or (3)'' in concluding provisions, and added par. (2).

Pub. L. 99–272 added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 99–514, §1113(e)(4)(B), amended subsec. (i) generally, striking out reference to class year plans under section 1053(c)(3) of this title.

Pub. L. 99–272 redesignated former subsec. (h) as (i).

1984—Subsec. (b)(3)(A). Pub. L. 98–397, §102(e)(3), inserted '', determined without regard to section 1052(b)(5) of this title'' after ''section 1052(b) of this title''.

Subsec. (d)(1). Pub. L. 98–397, §105(b), substituted ''$3,500'' for ''$1,750''.

Subsec. (e). Pub. L. 98–397, §102(f), substituted ''5 consecutive 1-year breaks in service'' for ''any 1-year break in service''.

Subsec. (g). Pub. L. 98–397, §301(a)(2), designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to plan amendments adopted on or after Dec. 8, 1994, see section 766(d) of Pub. L. 103–465, set out as a note under section 401 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7862(b)(1)(A), (2) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 of Title 26, Internal Revenue Code.

Amendment by section 7871(a)(1), (3) of Pub. L. 101–239 effective as if included in the amendments made by section 9202 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, see section 7871(a)(4) of Pub. L. 101–239, set out as a note under section 411 of Title 26.

Amendment by section 7881(m)(2)(A)–(C) 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.

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(c)(4)–(6) 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 9346(c) of Pub. L. 100–203 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 411 of Title 26, Internal Revenue Code] shall apply to plan years beginning after December 31, 1987.

''(2) PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989.—If any amendment made by this section 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 January 1, 1989, if—

''(A) during the period after such amendments made by this section take effect and before such first plan year, the plan is operated in accordance with the requirements of such amendments or in accordance with an amendment prescribed by the Secretary of the Treasury and adopted by the plan, and

''(B) such plan amendment applies retroactively to the period after such amendments take effect and such first plan year.

A plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this subsection.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1113(e)(4)(B) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and not applicable to employees who do not have 1 hour of service in any plan year to which the amendment applies, see section 1113(f) of Pub. L. 99–514, as amended, set out as a note under section 411 of Title 26, Internal Revenue Code.

Section 1879(u)(5), formerly section 1879(u)(4), of Pub. L. 99–514, as redesignated and amended by Pub. L. 101–239, title VII, §7862(b)(1)(A), (B), Dec. 19, 1989, 103 Stat. 2432, provided that:

''(A) GENERAL RULE.—Except as provided in subparagraph (B), the preceding provisions of this subsection [amending this section and sections 1002 and 1349 of this title] shall be effective as if such provisions were included in the enactment of the Single-Employer Pension Plan Amendments Act of 1986 [Pub. L. 99–272, title XI].

''(B) SPECIAL RULE.—Subparagraph (B) of section 204(h)(2) of the Employee Retirement Income Security Act of 1974 (as amended by paragraph (1)) [29 U.S.C. 1054(h)(2)(B)] shall apply only with respect to plan amendments adopted on or after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by section 1898(a)(4)(B)(ii), (f)(1)(B), (2) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by Pub. L. 99–509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only to employees who have 1 hour of service in any plan year to which amendment applies, with special rule for collectively bargained plans, see section 9204 of Pub. L. 99–509, set out as an Effective and Termination Dates of 1986 Amendments note under section 623 of this title.

Section 11006(b) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to plan amendments adopted on or after January 1, 1986, except that, in the case of plan amendments adopted on or after January 1, 1986, and on or before the date of the enactment of this Act [Apr. 7, 1986], the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974 [subsec. (h) of this section] (as added by this section) shall be treated as met if the written notice required under such section 204(h) is provided before 60 days after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by sections 102(e)(3), (f), and 105(b) of 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.

Amendment by section 301(a)(2) of Pub. L. 98–397 not applicable to the termination of a certain defined benefit plan, see section 303(f) of Pub. L. 98–397.

REGULATIONS

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

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

PLAN AMENDMENTS REFLECTING AMENDMENTS BY SECTION 7881(m) OF PUB. L. 101–239 NOT TREATED AS REDUCING ACCRUED BENEFIT

Section 7881(m)(3) of Pub. L. 101–239 provided that:''If—

''(A) during the period beginning December 22, 1987, and ending June 21, 1988, a plan was amended to reflect the amendments made by section 9346 of the Pension Protection Act [Pub. L. 100–203, amending this section and section 411 of Title 26, Internal Revenue Code], and

''(B) such plan is amended to reflect the amendments made by this subsection [amending this section, section 1002 of this title, and section 411 of Title 26],

any plan amendment described in subparagraph (B) shall not be treated as reducing accrued benefits for purposes of section 411(d)(6) of the Internal Revenue Code of 1986 [section 411(d)(6) of Title 26] or section 204(g) of ERISA [subsec. (g) of this section].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1053, 1056, 1057, 1060, 1061, 1322, 1425, 1426, 1441 of this title.

§ 1055. Requirement of joint and survivor annuity and preretirement survivor annuity

(a) Required contents for applicable plans

Each pension plan to which this section applies shall provide that—

(1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

(b) Applicable plans

(1) This section shall apply to—

(A) any defined benefit plan,

(B) any individual account plan which is subject to the funding standards of section 1082 of this title, and

(C) any participant under any other individual account plan unless—

(i) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under subsection (c)(2) of this section, to a designated beneficiary),

(ii) such participant does not elect the payment of benefits in the form of a life annuity, and

(iii) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in subparagraph (A) or (B) or to which this clause applied with respect to the participant.

Clause (iii) of subparagraph (C) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(2)(A) In the case of—

(i) a tax credit employee stock ownership plan (as defined in section 409(a) of title 26), or

(ii) an employee stock ownership plan (as defined in section 4975(e)(7) of title 26),

subsection (a) of this section shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) of title 26 apply.

(B) Subparagraph (A) shall not apply with respect to any participant unless the requirements of clause[1] (i), (ii), and (iii) of paragraph (1)(C) are met with respect to such participant.

(4)[2] This section shall not apply to a plan which the Secretary of the Treasury or his delegate has determined is a plan described in section 404(c) of title 26 (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(4)[2] A plan shall not be treated as failing to meet the requirements of paragraph (1)(C) or (2) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(c) Plans meeting requirements of section

(1) A plan meets the requirements of this section only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both), and

(ii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4).

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3)(A) Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary of the Treasury may prescribe) a written explanation of—

[1] So in original. Probably should be "clauses".

[2] So in original. There are two pars. designated (4) and no par. (3).

(i) the terms and conditions of the qualified joint and survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2), and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B)(i) Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(ii) For purposes of clause (i), the term ''applicable period'' means, with respect to a participant, whichever of the following periods ends last:

(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

(II) A reasonable period after the individual becomes a participant.

(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

(IV) A reasonable period ending after this section applies to the participant.

In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.

(4) Each plan shall provide that, if this section applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

(5)(A) The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if such benefit may not be waived (or another beneficiary selected) and if the plan fully subsidizes the costs of such benefit.

(B) For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(6) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(A) relying on a consent or revocation referred to in paragraph (1)(A), or

(B) making a determination under paragraph (2),

then such consent, revocation, or determination shall be treated as valid for purposes of discharging the plan from liability to the extent of payments made pursuant to such Act.

(7) For purposes of this subsection, the term ''applicable election period'' means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 90-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(d) "Qualified joint and survivor annuity" defined

For purposes of this section, the term ''qualified joint and survivor annuity'' means an annuity—

(1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(e) "Qualified preretirement survivor annuity" defined

For purposes of this section—

(1) Except as provided in paragraph (2), the term ''qualified preretirement survivor annuity'' means a survivor annuity for the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.

(2) In the case of any individual account plan or participant described in subparagraph (B) or (C) of subsection (b)(1) of this section, the term ''qualified preretirement survivor annuity'' means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 1053 of this title).

(3) For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

(f) Marriage requirements for plan

(1) Except as provided in paragraph (2), a plan may provide that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

(A) the participant's annuity starting date, or

(B) the date of the participant's death.

(2) For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(g) Distribution of present value of annuity; written consent; determination of present value

(1) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed $3,500. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

(2) If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $3,500, and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3) DETERMINATION OF PRESENT VALUE.—

(A) IN GENERAL.—

(i) PRESENT VALUE.—Except as provided in subparagraph (B), for purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(ii) DEFINITIONS.—For purposes of clause (i)—

(I) APPLICABLE MORTALITY TABLE.—The term ''applicable mortality table'' means the table prescribed by the Secretary of the Treasury. Such table shall be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of title 26) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5) of such title).

(II) APPLICABLE INTEREST RATE.—The term ''applicable interest rate'' means the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

(B) EXCEPTION.—In the case of a distribution from a plan that was adopted and in effect prior to December 8, 1994, the present value of any distribution made before the earlier of—

(i) the later of when a plan amendment applying subparagraph (A) is adopted or made effective, or

(ii) the first day of the first plan year beginning after December 31, 1999,

shall be calculated, for purposes of paragraphs (1) and (2), using the interest rate determined under the regulations of the Pension Benefit Guaranty Corporation for determining the present value of a lump sum distribution on plan termination that were in effect on September 1, 1993, and using the provisions of the plan as in effect on the day before December 8, 1994; but only if such provisions of the plan met the requirements of this paragraph as in effect on the day before December 8, 1994.

(h) Definitions

For purposes of this section—

(1) The term ''vested participant'' means any participant who has a nonforfeitable right (within the meaning of section 1002(19) of this title) to any portion of such participant's accrued benefit.

(2)(A) The term ''annuity starting date'' means—

(i) the first day of the first period for which an amount is payable as an annuity, or

(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

(B) For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall

be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

(3) The term ''earliest retirement age'' means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(i) Increased costs from providing annuity

A plan may take into account in any equitable manner (as determined by the Secretary of the Treasury) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(j) Use of participant's accrued benefit as security for loan as not preventing distribution

If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (c)(4) of this section, nothing in this section shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(k) Spousal consent

No consent of a spouse shall be effective for purposes of subsection (g)(1) or (g)(2) of this section (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (c)(1)(A) of this section are met.

(*l*) Regulations; consultation of Secretary of the Treasury with Secretary of Labor

In prescribing regulations under this section, the Secretary of the Treasury shall consult with the Secretary of Labor.

(Pub. L. 93–406, title I, § 205, Sept. 2, 1974, 88 Stat. 862; Pub. L. 98–397, title I, § 103(a), Aug. 23, 1984, 98 Stat. 1429; Pub. L. 99–514, title XI, §§ 1139(c)(2), 1145(b), title XVIII, § 1898(b)(1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), (7)(B), (8)(B), (9)(B), (10)(B), (11)(B), (12)(B), (13)(B), (14)(B), Oct. 22, 1986, 100 Stat. 2488, 2491, 2945–2951; Pub. L. 101–239, title VII, §§ 7861(d)(2), 7862(d)(1)(B), (3), (6)–(9), 7891(a)(1), (b)(3), (c), (e), 7894(c)(7)(A), Dec. 19, 1989, 103 Stat. 2431, 2434, 2445, 2447, 2449; Pub. L. 103–465, title VII, § 767(c)(2), Dec. 8, 1994, 108 Stat. 5039.)

AMENDMENTS

1994—Subsec. (g)(3). Pub. L. 103–465 amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(3)(A) For purposes of paragraphs (1) and (2), the present value shall be calculated—

''(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

''(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) be less than $25,000.

''(B) For purposes of subparagraph (A), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.''

1989—Subsec. (b)(1)(C)(i). Pub. L. 101–239, § 7862(d)(7), made technical correction to directory language of Pub. L. 99–514, § 1898(b)(7)(B), see 1986 Amendment note below.

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

Subsec. (b)(3), (4). Pub. L. 101–239, § 7862(d)(9), amended directory language of Pub. L. 99–514, § 1898(b)(14)(B), see 1986 Amendment note below, and redesignated par. (3), as added by Pub. L. 99–514, § 1898(b)(14)(B), as par. (4).

Pub. L. 101–239, §§ 7861(d)(2), 7891(c), realigned margins of par. (3), as added by Pub. L. 99–514, § 1145(b), and redesignated such par. (3) as (4).

Subsec. (c)(3)(B)(ii). Pub. L. 101–239, § 7862(d)(1)(B), inserted at end ''In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.''

Subsec. (c)(3)(B)(ii)(IV). Pub. L. 101–239, § 7862(d)(6), substituted ''after this section'' for ''after section 1101(a)(11) of this title''.

Subsec. (c)(3)(B)(ii)(V). Pub. L. 101–239, § 7862(d)(1)(B), struck out subcl. (V) which read as follows: ''A reasonable period after separation from service in case of a participant who separates before attaining age 35.''

Subsec. (c)(6). Pub. L. 101–239, § 7894(c)(7)(A), substituted ''such Act'' for ''such act''.

Subsec. (e)(2). Pub. L. 101–239, § 7862(d)(8), substituted ''nonforfeitable right (within the meaning of section 1053 of this title)'' for ''nonforfeitable accrued benefit''.

Subsec. (g)(3)(A). Pub. L. 101–239, § 7891(b)(3), realigned margins of subpar. (A).

Subsec. (h)(1). Pub. L. 101–239, §§ 7862(d)(3)(A), 7891(e)(1), amended par. (1) identically, substituting ''The term'' for ''the term'' and ''benefit.'' for ''benefit,''.

Subsec. (h)(3). Pub. L. 101–239, §§ 7862(d)(3)B), 7891(e)(2), amended par. (3) identically, substituting ''The term'' for ''the term''.

1986—Subsec. (a)(1). Pub. L. 99–514, § 1898(b)(3)(B), substituted ''who does not die before the annuity starting date'' for ''who retires under the plan''.

Subsec. (b)(1). Pub. L. 99–514, § 1898(b)(2)(B)(ii), inserted at end ''Clause (iii) of subparagraph (C) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.''

Subsec. (b)(1)(C)(i). Pub. L. 99–514, § 1898(b)(13)(B), substituted ''(c)(2)'' for ''(c)(2)(A)''.

Pub. L. 99–514, § 1898(b)(7)(B), as amended by Pub. L. 101–239, § 7862(d)(7), inserted ''(reduced by any security interest held by the plan by reason of a loan outstanding to such participant)''.

Subsec. (b)(1)(C)(iii). Pub. L. 99–514, § 1898(b)(2)(B)(i), substituted ''a direct or indirect transferee (in a transfer after December 31, 1984)'' for ''a transferee''.

Subsec. (b)(3). Pub. L. 99–514, § 1898(b)(14)(B), as amended by Pub. L. 101–239, § 7862(d)(9)(A), added par. (3) relating to treatment of plan as meeting requirements of par. (1)(C) or (2) of subsec. (b).

Pub. L. 99–514, § 1145(b), added par. (3) relating to applicability of this section to plans described in section 404(c) of title 26.

Subsec. (c)(1)(B). Pub. L. 99–514, § 1898(b)(4)(B)(i), substituted ''paragraphs (2), (3), and (4)'' for ''paragraphs (2) and (3)''.

Subsec. (c)(2)(A). Pub. L. 99–514, § 1898(b)(6)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the spouse of the participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or''.

Subsec. (c)(3)(B). Pub. L. 99–514, § 1898(b)(5)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Each plan shall provide to each participant, within the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35 (and consistent with such regulations as the Secretary of the Treasury may prescribe), a written explanation with respect to the qualified preretirement sur-

vivor annuity comparable to that required under subparagraph (A).''

Subsec. (c)(4). Pub. L. 99–514, §1898(b)(4)(B)(ii), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 99–514, §1898(b)(4)(B)(ii), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(5)(A). Pub. L. 99–514, §1898(b)(11)(B), inserted ''if such benefit may not be waived (or another beneficiary selected) and''.

Subsec. (c)(6), (7). Pub. L. 99–514, §1898(b)(4)(B)(ii), redesignated pars. (5) and (6) as (6) and (7), respectively.

Subsec. (e)(1). Pub. L. 99–514, §1898(b)(1)(B), inserted at end ''In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.''

Subsec. (e)(2). Pub. L. 99–514, §1898(b)(9)(B)(i), substituted ''the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable accrued benefit'' for ''the account balance of the participant as of the date of death''.

Subsec. (e)(3). Pub. L. 99–514, §1898(b)(9)(B)(ii), added par. (3).

Subsec. (g)(3). Pub. L. 99–514, §1139(c)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of paragraphs (1) and (2), the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall be determined as of the date of the distribution and by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.''

Subsec. (h)(1). Pub. L. 99–514, §1898(b)(8)(B), substituted ''such participant's accrued benefit'' for ''the accrued benefit derived from employer contributions''.

Subsec. (h)(2). Pub. L. 99–514, §1898(b)(12)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the term 'annuity starting date' means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability), and''.

Subsec. (j). Pub. L. 99–514, §1898(b)(4)(B)(iii), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 99–514, §1898(b)(10)(B), added subsec. (k). Former subsec. (k) redesignated (*l*).

Pub. L. 99–514, §1898(b)(4)(B)(iii), redesignated subsec. (j) as (k).

Subsec. (*l*). Pub. L. 99–514, §1898(b)(10)(B), redesignated subsec. (k) as (*l*).

1984—Subsec. (a). Pub. L. 98–397 substituted provisions relating to provisions to be included in applicable plans for former provisions relating to form of payment of annuity benefits.

Subsec. (b). Pub. L. 98–397 substituted provisions relating to applicable plans under this section for former provisions relating to plans providing for payment of benefits before normal retirement age.

Subsec. (c). Pub. L. 98–397 substituted provisions relating to conditions under which plans meet the requirements of this section for former provisions relating to election of qualified joint and survivor annuity form.

Subsec. (d). Pub. L. 98–397 substituted provisions defining ''qualified joint and survivor annuity'' for former provisions relating to the participant's spouse not being entitled to receive survivor annuity.

Subsec. (e). Pub. L. 98–397 substituted provisions defining ''qualified preretirement survivor annuity'' for former provisions relating to election to take annuity.

Subsec. (f). Pub. L. 98–397 substituted provisions to the effect that plans may provide that annuities will not be provided unless the participant and spouse had been married for a certain 1-year period, for former provisions relating to plan provisions which render election or revocation ineffective if participant dies within period of up to 2 years following the date of election or revocation.

Subsec. (g). Pub. L. 98–397 substituted provisions relating to plan provisions for immediate distribution of present value if such value does not exceed $3,500 and for written consent from the participant and spouse for former provisions setting forth definitions. See subsec. (h) of this section.

Subsec. (h). Pub. L. 98–397 substituted provisions setting forth definitions for former provisions relating to increased costs resulting from providing joint and survivor annuity benefits. See subsec. (i) of this section.

Subsec. (i). Pub. L. 98–397 substituted provisions relating to increased costs resulting from providing annuities under applicable plans for former provisions setting forth the effective date of this section.

Subsec. (j). Pub. L. 98–397 added subsec. (j).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to plan years and limitation years beginning after Dec. 31, 1994, except that employer may elect to treat such amendment as effective on or after Dec. 8, 1994, with provisions relating to reduction of accrued benefits and timing of plan amendment, see section 767(d) of Pub. L. 103–465, set out as a note under section 411 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by sections 7861(d)(2) and 7862(d)(1)(B), (3), (6)–(9) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 of Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1), (b)(3), (c), (e) 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)(7)(B) of Pub. L. 101–239 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in section 103 of the Retirement Equity Act of 1984 [Pub. L. 98–397] in reference to the new section 205(c)(5) of ERISA [subsec. (c)(5) of this section] as added by such section 3113.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1139(c)(2) of Pub. L. 99–514 applicable to distributions in plan years beginning after Dec. 31, 1984, except that such amendments shall not apply to any distributions in plan years beginning after Dec. 31, 1984, and before Jan. 1, 1987, if such distributions were made in accordance with the requirements of the regulations issued under the Retirement Equity Act of 1984, Pub. L. 98–397, with additional provisions relating to reductions in accrued benefits, see section 1139(d) of Pub. L. 99–514, set out as a note under section 411 of Title 26, Internal Revenue Code.

Amendment by section 1145(b) of Pub. L. 99–514 applicable as if included in the amendments made by the Retirement Equity Act of 1984, Pub. L. 98–397, see section 1145(d) of Pub. L. 99–514, set out as a note under section 401 of Title 26.

Amendment by section 1898(b)(4)(B) of Pub. L. 99–514 applicable with respect to loans made after Aug. 18, 1985, see section 1898(b)(4)(C) of Pub. L. 99–514, set out as a note under section 417 of Title 26.

Amendment by section 1898(b)(6)(B) of Pub. L. 99–514 applicable to plan years beginning after Oct. 22, 1986, see section 1898(b)(6)(C) of Pub. L. 99–514, set out as a note under section 417 of Title 26.

Amendment by section 1898(b)(8)(B) of Pub. L. 99–514 applicable to distributions after Oct. 22, 1986, see section 1898(b)(8)(C) of Pub. L. 99–514, as added, set out as a note under section 417 of Title 26.

Amendment by section 1898(b)(1)(B), (2)(B), (3)(B), (5)(B), (7)(B), (9)(B), (10)(B), (11)(B), (12)(B), (13)(B), (14)(B) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as

otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of Title 26.

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.

Nothing in amendment by Pub. L. 98–397 to prevent any distribution required by reason of failure to comply with terms of loan made on or before Aug. 18, 1985, and secured by portion of participant's accrued benefit, see section 1898(b)(4)(C)(ii) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 417 of Title 26, Internal Revenue Code.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1054, 1056, 1061, 1322, 1350 of this title; title 28 section 3010.

§ 1056. Form and payment of benefits

(a) Commencement date for payment of benefits

Each pension plan shall provide that unless the participant otherwise elects, the payment of benefits under the plan to the participant shall begin not later than the 60th day after the latest of the close of the plan year in which—

(1) occurs the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(3) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, such plan shall provide that a participant who satisfied the service requirements for such early retirement benefit, but separate from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially reduced under regulations prescribed by the Secretary of the Treasury.

(b) Decrease in plan benefits by reason of increases in benefit levels under Social Security Act or Railroad Retirement Act of 1937

If—

(1) a participant or beneficiary is receiving benefits under a pension plan, or

(2) a participant is separated from the service and has non-forfeitable rights to benefits,

a plan may not decrease benefits of such a participant by reason of any increase in the benefit levels payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] or the Railroad Retirement Act of 1937 [45 U.S.C. 231 et seq.] or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation.

(c) Forfeiture of accrued benefits derived from employer contributions

No pension plan may provide that any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable) is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply (1) to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit, or (2) to the extent that an accrued benefit is permitted to be forfeited in accordance with section 1053(a)(3)(D)(iii) of this title.

(d) Assignment or alienation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before September 2, 1974. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued non-forfeitable benefit and is exempt from the tax imposed by section 4975 of title 26 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of title 26.

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term ''qualified domestic relations order'' means a domestic relations order—

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term ''domestic relations order'' means any judgment, decree, or order (including approval of a property settlement agreement) which—

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies—

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order—

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(E)(i) A domestic relations order shall not be treated as failing to meet the requirements of clause (i) of subparagraph (D) solely because such order requires that payment of benefits be made to an alternate payee—

(I) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(II) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(III) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of subclause (II), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(ii) For purposes of this subparagraph, the term ''earliest retirement age'' means the earlier of—

(I) the date on which the participant is entitled to a distribution under the plan, or

(II) the later of the date of the participant attains age 50 or the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(F) To the extent provided in any qualified domestic relations order—

(i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of section 1055 of this title (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(ii) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 1055(f) of this title.

(G)(i) In the case of any domestic relations order received by a plan—

(I) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures—

(I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

(H)(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this subparagraph referred to as the ''segregated amounts'') which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(ii) If within the 18-month period described in clause (v) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(iii) If within the 18-month period described in clause (v)—

(I) it is determined that the order is not a qualified domestic relations order, or

(II) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest there-

on) to the person or persons who would have been entitled to such amounts if there had been no order.

(iv) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in clause (v) shall be applied prospectively only.

(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(I) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(i) treating a domestic relations order as being (or not being) a qualified domestic relations order, or

(ii) taking action under subparagraph (H),

then the plan's obligation to the participant and each alternate payee shall be discharged to the extent of any payment made pursuant to such Act.

(J) A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this chapter a beneficiary under the plan. Nothing in the preceding sentence shall permit a requirement under section 1301 of this title of the payment of more than 1 premium with respect to a participant for any period.

(K) The term ''alternate payee'' means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(L) This paragraph shall not apply to any plan to which paragraph (1) does not apply.

(M) Payment of benefits by a pension plan in accordance with the applicable requirements of a qualified domestic relations order shall not be treated as garnishment for purposes of section 1673(a) of title 15.

(N) In prescribing regulations under this paragraph, the Secretary shall consult with the Secretary of the Treasury.

(e) Limitation on distributions other than life annuities paid by plan

(1) In general

Notwithstanding any other provision of this part, the fiduciary of a pension plan that is subject to the additional funding requirements of section 1082(d) of this title shall not permit a prohibited payment to be made from a plan during a period in which such plan has a liquidity shortfall (as defined in section 1082(e)(5) of this title).

(2) Prohibited payment

For purposes of paragraph (1), the term ''prohibited payment'' means—

(A) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 1054(b)(1)(G) of this title), to a participant or beneficiary whose annuity starting date (as defined in section 1055(h)(2) of this title), that occurs during the period referred to in paragraph (1),

(B) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(C) any other payment specified by the Secretary of the Treasury by regulations.

(3) Period of shortfall

For purposes of this subsection, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under section 1082(e) of this title by reason of paragraph (5)(A) thereof.

(4) Coordination with other provisions

Compliance with this subsection shall not constitute a violation of any other provision of this chapter.

(f) Missing participants in terminated plans

In the case of a plan covered by subchapter III of this chapter, the plan shall provide that, upon termination of the plan, benefits of missing participants shall be treated in accordance with section 1350 of this title.

(Pub. L. 93–406, title I, § 206, Sept. 2, 1974, 88 Stat. 864; Pub. L. 98–397, title I, § 104(a), Aug. 23, 1984, 98 Stat. 1433; Pub. L. 99–514, title XVIII, § 1898(c)(2)(B), (4)(B), (5), (6)(B), (7)(B), Oct. 22, 1986, 100 Stat. 2952–2954; Pub. L. 101–239, title VII, §§ 7891(a)(1), 7894(c)(8), (9)(A), Dec. 19, 1989, 103 Stat. 2445, 2449; Pub. L. 103–465, title VII, §§ 761(a)(9)(B)(i), 776(c)(2), Dec. 8, 1994, 108 Stat. 5033, 5048.)

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.

The Railroad Retirement Act of 1937, referred to in subsec. (b), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and which was classified principally to subchapter III (§ 228a et seq.) of chapter 9 of Title 45, Railroads. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45. For complete classification of these acts to the Code, see Tables.

This chapter, referred to in subsec. (e)(4), 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

1994—Subsec. (e). Pub. L. 103–465, § 761(a)(9)(B)(i), added subsec. (e).

Subsec. (f). Pub. L. 103–465, § 776(c)(2), added subsec. (f).

1989—Subsec. (a)(1). Pub. L. 101–239, § 7894(c)(8), inserted ''occurs'' before ''the date''.

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

Subsec. (d)(3)(I). Pub. L. 101–239, § 7894(c)(9)(A), substituted ''such Act'' for ''such act''.

1986—Subsec. (d)(3)(E)(i). Pub. L. 99–514, § 1898(c)(7)(B)(iii), substituted ''A'' for ''In the case of any payment before a participant has separated from service, a'' in introductory provisions and inserted ''in the case of any payment before a participant has separated from service,'' in subcl. (I).

Subsec. (d)(3)(E)(ii). Pub. L. 99–514, § 1898(c)(7)(B)(iv), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''For purposes of this subparagraph, the term 'earliest retirement age' has the meaning given such term by section 1055(h)(3) of this section, except that in the case of any individual account plan, the earliest retirement age shall be the date which is 10 years before the normal retirement age.''

Subsec. (d)(3)(F)(i). Pub. L. 99–514, § 1898(c)(6)(B), inserted ''(and any spouse of the participant shall not be treated as a spouse of the participant for such purposes)''.

Subsec. (d)(3)(F)(ii). Pub. L. 99–514, § 1898(c)(7)(B)(i), inserted ''surviving'' before ''former spouse''.

Subsec. (d)(3)(G)(i)(I). Pub. L. 99–514, § 1898(c)(7)(B)(ii), substituted ''each'' for ''any other''.

Subsec. (d)(3)(H)(i). Pub. L. 99–514, § 1898(c)(2)(B)(i), substituted ''shall separately account for the amounts (hereinafter in this subparagraph referred to as the 'segregated amounts')'' for ''shall segregate in a separate account in the plan or in an escrow account the amounts''.

Subsec. (d)(3)(H)(ii), (iii). Pub. L. 99–514, § 1898(c)(2)(B)(ii), (iii), substituted ''the 18-month period described in clause (v)'' for ''18 months'' and ''including any interest'' for ''plus any interest''.

Subsec. (d)(3)(H)(iv). Pub. L. 99–514, § 1898(c)(2)(B)(iv), inserted ''described in clause (v)''.

Subsec. (d)(3)(H)(v). Pub. L. 99–514, § 1898(c)(2)(B)(v), added cl. (v).

Subsec. (d)(3)(L). Pub. L. 99–514, § 1898(c)(4)(B), added subpar. (L) and redesignated former subpar. (L) as (N).

Subsec. (d)(3)(M). Pub. L. 99–514, § 1898(c)(5), added subpar. (M).

Subsec. (d)(3)(N). Pub. L. 99–514, § 1898(c)(4)(B), redesignated subpar. (L) as (N).

1984—Subsec. (d)(3). Pub. L. 98–397 added par. (3).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 761(b) of Pub. L. 103–465 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1082, 1132, and 1301 of this title] shall apply to plan years beginning after December 31, 1994.

''(2) CONTRIBUTING SPONSOR.—The amendment made by subsection (a)(11) [amending section 1301 of this title] shall be effective as if included in the Pension Protection Act [Pub. L. 100–203, title IX, subtitle D, part II, §§ 9302–9346].''

Section 776(e) of Pub. L. 103–465 provided that: ''The provisions of this section [enacting section 1350 of this title and amending this section and sections 1303, 1305, and 1341 of this title and section 401 of Title 26, Internal Revenue Code] shall be effective with respect to distributions that occur in plan years commencing after final regulations implementing these provisions are prescribed by the Pension Benefit Guaranty Corporation.''

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(c)(8) 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.

Section 7894(c)(9)(B) of Pub. L. 101–239 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in section 104 of the Retirement Equity Act of 1984 [Pub. L. 98–397].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1984 AMENDMENT

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 623, 1021, 1053, 1054, 1061, 1132, 1144, 1301, 1322, 1344 of this title.

§ 1057. Temporary variances from certain vesting requirements

In the case of any plan maintained on January 1, 1974, if not later than 2 years after September 2, 1974, the administrator petitions the Secretary, the Secretary may prescribe an alternate method which shall be treated as satisfying the requirements of section 1053(a)(2) or 1054(b)(1) (other than subparagraph (D) thereof) of this title or both for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation.

(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

(3) a waiver or extension of time granted under section 1083 or 1084 of this title would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the administrator petitions the Secretary for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.

(Pub. L. 93–406, title I, § 207, Sept. 2, 1974, 88 Stat. 865.)

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1143 of this title.

§ 1058. Mergers and consolidations of plans or transfers of plan assets

A pension plan may not merge or consolidate with, or transfer its assets or liabilities to, any other plan after September 2, 1974, unless each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence shall not apply to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which subchapter III of this chapter applies.

(Pub. L. 93–406, title I, § 208, Sept. 2, 1974, 88 Stat. 865; Pub. L. 96–364, title IV, § 402(b)(1), Sept. 26, 1980, 94 Stat. 1299.)

AMENDMENTS

1980—Pub. L. 96–364 substituted provisions respecting applicability of preceding sentence to transactions under a covered multiemployer plan to which subchapter III applies, for provisions relating to applicability of paragraph to a multiemployer plan only to extent determined by Corporation.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1061, 1343, 1344 of this title.

§ 1059. Recordkeeping and reporting requirements

(a)(1) Except as provided by paragraph (2) every employer shall, in accordance with regulations prescribed by the Secretary, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees. The plan administrator shall make a report, in such manner and at such time as may be provided in regulations prescribed by the Secretary, to each employee who is a participant under the plan and who—

(A) requests such report, in such manner and at such time as may be provided in such regulations,

(B) terminates his service with the employer, or

(C) has a 1-year break in service (as defined in section 1053(b)(3)(A) of this title).

The employer shall furnish to the plan administrator the information necessary for the administrator to make the reports required by the preceding sentence. Not more than one report shall be required under subparagraph (A) in any 12-month period. Not more than one report shall be required under subparagraph (C) with respect to consecutive 1-year breaks in service. The report required under this paragraph shall be sufficient to inform the employee of his accrued benefits under the plan and the percentage of such benefits which are nonforfeitable under the plan.

(2) If more than one employer adopts a plan, each such employer shall, in accordance with regulations prescribed by the Secretary, furnish to the plan administrator the information necessary for the administrator to maintain the records and make the reports required by paragraph (1). Such administrator shall maintain the records and, to the extent provided under regulations prescribed by the Secretary, make the reports, required by paragraph (1).

(b) If any person who is required, under subsection (a) of this section, to furnish information or maintain records for any plan year fails to comply with such requirement, he shall pay to the Secretary a civil penalty of $10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.

(Pub. L. 93–406, title I, § 209, Sept. 2, 1974, 88 Stat. 865.)

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.

§ 1060. Multiple employer plans

(a) Plan maintained by more than one employer

Notwithstanding any other provision of this part or part 3, the following provisions of this subsection shall apply to a plan maintained by more than one employer:

(1) Section 1052 of this title shall be applied as if all employees of each of the employers were employed by a single employer.

(2) Sections 1053 and 1054 of this title shall be applied as if all such employers constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary.

(3) The minimum funding standard provided by section 1082 of this title shall be determined as if all participants in the plan were employed by a single employer.

(b) Maintenance of plan of predecessor employer

For purposes of this part and part 3—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary of the Treasury, be treated as service for the employer.

(c) Plan maintained by controlled group of corporations

For purposes of sections 1052, 1053, and 1054 of this title, all employees of all corporations

which are members of a controlled group of corporations (within the meaning of section 1563(a) of title 26, determined without regard to section 1563(a)(4) and (e)(3)(C) of title 26) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 1082 of this title shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary of the Treasury.

(d) Plan of trades or businesses under common control

For purposes of sections 1052, 1053, and 1054 of this title, under regulations prescribed by the Secretary of the Treasury, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (c) of this section.

(Pub. L. 93–406, title I, § 210, Sept. 2, 1974, 88 Stat. 866; Pub. L. 101–239, title VII, §§ 7891(a)(1), 7894(c)(10), Dec. 19, 1989, 103 Stat. 2445, 2449.)

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–239, § 7894(c)(10), substituted ''and (e)(3)(C) of such Code'' for ''and (e)(3)(C) of such code'', which for purposes of codification was translated as ''and (e)(3)(C) of title 26'' thus requiring no change in text.

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 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(c)(10) 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.

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.

§ 1061. Effective dates

(a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after September 2, 1974.

(b)(1) Except as otherwise provided in subsection (d) of this section, sections 1055, 1056(d) and 1058 of this title shall apply with respect to plan years beginning after December 31, 1975.

(2) Except as otherwise provided in subsections (c) and (d) of this section in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee organizations and one or more employers, no plan shall be treated as not meeting the requirements of sections 1054 and 1055 of this title by reason of a supplementary or special plan provision (within the meaning of paragraph (2)) for any plan year before the year which begins after the earlier of—

(A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after September 2, 1974), or

(B) December 31, 1980.

For purposes of subparagraph (A) and section 1086(c)[1] of this title, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this chapter or the Internal Revenue Code of 1986 shall not be treated as a termination of such collective bargaining agreement. This paragraph shall not apply unless the Secretary determines that the participation and vesting rules in effect on September 2, 1974, are not less favorable to participants, in the aggregate, than the rules provided under sections 1052, 1053, and 1054 of this title.

(2) For purposes of paragraph (1), the term ''supplementary or special plan provision'' means any plan provision which—

(A) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of any annuity for the life of the participant, or

(B) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(3) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b) of this section.

(d) If the administrator of a plan elects under section 1017(d) of this Act to make applicable to a plan year and to all subsequent plan years the provisions of the Internal Revenue Code of 1986 relating to participation, vesting, funding, and form of benefit, this part shall apply to the first plan year to which such election applies and to all subsequent plan years.

(e)(1) No pension plan to which section 1052 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 1052 of this title first becomes effective with respect to such plan) which provides that any employee's participation in the plan would commence to any date later than the later of—

(A) the date on which his participation would commence under the break in service rules of section 1052(b) of this title, or

[1] See References in Text note below.

(B) the date on which his participation would commence under the plan as in effect on January 1, 1974.

(2) No pension plan to which section 1053 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 1053 of this title first becomes effective with respect to such plan) if such amendment provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

(A) the break in service rules of section 1052(b)(3) of this title, or

(B) the plan as in effect on January 1, 1974.

Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

(f) The preceding provisions of this section shall not apply with respect to amendments made to this part in provisions enacted after September 2, 1974.

(Pub. L. 93–406, title I, § 211, Sept. 2, 1974, 88 Stat. 867; Pub. L. 99–272, title XI, § 11015(a)(1)(B), Apr. 7, 1986, 100 Stat. 265; Pub. L. 101–239, title VII, §§ 7891(a)(1), 7894(h)(2), Dec. 19, 1989, 103 Stat. 2445, 2451.)

REFERENCES IN TEXT

Section 1086(c) of this title, referred to in subsec. (c)(1), was in the original ''section 307(c)'', meaning section 307(c) of Pub. L. 93–406, the Employee Retirement Income Security Act of 1974. Section 307(c) was renumbered section 308(c) by Pub. L. 100–203, title IX, § 9341(b)(1), Dec. 22, 1987, 101 Stat. 1330–370.

This chapter, referred to in subsec. (c)(1), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsecs. (c)(1) and (d), is classified generally to Title 26, Internal Revenue Code.

Section 1017(d) of this Act, referred to in subsec. (d), is section 1017 of Pub. L. 93–406, which is set out as an Effective Date; Transitional Rules note under section 410 of Title 26.

AMENDMENTS

1989—Subsecs. (c)(1), (d). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (f). Pub. L. 101–239, § 7894(h)(2), added subsec. (f).

1986—Subsec. (c)(1). Pub. L. 99–272 made a technical amendment to the reference to section 1086(c) of this title to reflect the renumbering of the corresponding section of the original act.

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(h)(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 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable with respect to applications for waivers, extensions, and modifications filed on or after Apr. 7, 1986, see section 11015(a)(3) of Pub. L. 99–272, set out as an Effective Date note under section 1085a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1086 of this title.

PART 3—FUNDING

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1060, 1103, 1132, 1201, 1202 of this title.

§ 1081. Coverage

(a) Plans excepted from applicability of this part

This part shall apply to any employee pension 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) an insurance contract plan described in subsection (b) of this section;

(3) 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;

(4)(A) a plan which is 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 such plan are made by employers of participants in such plan; or

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

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

(6) an agreement providing payments to a retired partner or deceased partner or a deceased partner's successor in interest as described in section 736 of title 26;

(7) an individual retirement account or annuity as described in section 408(a) of title 26, or a retirement bond described in section 409 of title 26 (as effective for obligations issued before January 1, 1984);

(8) an individual account plan (other than a money purchase plan) and a defined benefit plan to the extent it is treated as an individual account plan (other than a money purchase plan) under section 1002(35)(B) of this title;

(9) an excess benefit plan; or

(10) 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.

(b) "Insurance contract plan" defined

For the purposes of paragraph (2) of subsection (a) of this section a plan is an "insurance contract plan" if—

(1) the plan is funded exclusively by the purchase of individual insurance contracts,

(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase became effective),

(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

(4) premiums payable for the plan year, and all prior plan years under such contracts have been paid before lapse or there is reinstatement of the policy,

(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(6) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary of the Treasury to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection.

(c) Applicability of this part to terminated multiemployer plans

This part applies, with respect to a terminated multiemployer plan to which section 1321 of this title applies, until the last day of the plan year in which the plan terminates, within the meaning of section 1341a(a)(2) of this title.

(d) Financial assistance from Pension Benefit Guaranty Corporation

Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section in such manner as determined by the Secretary of the Treasury.

(Pub. L. 93–406, title I, § 301, Sept. 2, 1974, 88 Stat. 868; Pub. L. 96–364, title III, § 304(a), title IV, § 411(b), Sept. 26, 1980, 94 Stat. 1293, 1308; Pub. L. 101–239, title VII, §§ 7891(a)(1), 7894(d)(1)(A), (4)(A), Dec. 19, 1989, 103 Stat. 2445, 2449.)

REFERENCES IN TEXT

Section 409 of title 26, referred to in subsec. (a)(7), 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 subsec. (a)(10), 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—Subsec. (a)(4)(A), (6). Pub. L. 101–239, § 7891(a)(1), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (a)(7). Pub. L. 101–239, § 7894(d)(4)(A), substituted "section 409 of title 26 (as effective for obligations issued before January 1, 1984)" for "section 409 of title 26".

Subsec. (a)(8). Pub. L. 101–239, § 7894(d)(1)(A)(i), struck out "or" after semicolon at end.

Subsec. (a)(9). Pub. L. 101–239, § 7894(d)(1)(A)(ii), substituted "; or" for period at end.

Subsec. (a)(10). Pub. L. 101–239, § 7894(d)(1)(A)(iii), substituted "any" for "Any".

1980—Subsec. (a)(10). Pub. L. 96–364, § 411(b), added par. (10).

Subsecs. (c), (d). Pub. L. 96–364, § 304(a), added subsecs. (c) and (d).

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(d)(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(d)(4)(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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1003, 1023, 1054 of this title.

§ 1082. Minimum funding standards

(a) Avoidance of accumulated funding deficiency

(1) Every employee pension benefit plan subject to this part shall satisfy the minimum funding standard (or the alternative minimum funding standard under section 1085 of this title) for any plan year to which this part applies. A plan to which this part applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year the plan does not have an accumulated funding deficiency.

(2) For the purposes of this part, the term "accumulated funding deficiency" means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this part applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years.

(3) In any plan year in which a multiemployer plan is in reorganization, the accumulated funding deficiency of the plan shall be determined under section 1423 of this title.

(b) Funding standard account

(1) Each plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 40 plan years,

(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 30 plan years,

(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years,

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 5 plan years (15 plan years in the case of a multiemployer plan), and

(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 10 plan years (30 plan years in the case of a multiemployer plan),

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 1083(c) of this title) for each prior plan year in equal annual installments (until fully amortized) over a period of 5 plan years (15 plan years in the case of a multiemployer plan), and

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D).

(3) For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years,

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 5 plan years (15 plan years in the case of a multiemployer plan), and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 10 plan years (30 plan years in the case of a multiemployer plan),

(C) the amount of the waived funding deficiency (within the meaning of section 1083(c) of this title) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be off set against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(5) INTEREST.—

(A) IN GENERAL.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(B) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under subsection (d) of this section for any plan year—

(i) IN GENERAL.—If any rate of interest used under the plan to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

(I) IN GENERAL.—Except as provided in subclause (II), the term ''permissible range'' means a rate of interest which is not more than 10 percent above, and not more than 10 percent below, the the[1] weighted average of the rates of interest on 30-year Treasury securities during the

[1] So in original.

4-year period ending on the last day before the beginning of the plan year.

(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under subclause (I).

(iii) ASSUMPTIONS.—Notwithstanding subsection (c)(3)(A)(i) of this section, the interest rate used under the plan shall be—

(I) determined without taking into account the experience of the plan and reasonable expectations, but

(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

(6) In the case of a plan which, immediately before September 26, 1980, was a multiemployer plan (within the meaning of section 1002(37) of this title as in effect immediately before such date)—

(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose;

(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose;

(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

(D) any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits which—

(i) was adopted before such date, and

(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the increase arises.

(7) For purposes of this part—

(A) Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of subchapter III of this chapter shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

(B) If a plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 418B(a) of title 26 as of the end of the last plan year that the plan was in reorganization.

(C) Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 1402 of this title or to a fund exempt under section 501(c)(22) of title 26 pursuant to section 1403 of this title shall reduce the amount of contributions considered received by the plan for the plan year.

(D) Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of subchapter III of this chapter and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

(E) For purposes of the full funding limitation under subsection (c)(7) of this section, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of title 26).

(c) Methods

(1) For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2)(A) For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

(B) For purposes of this part, the value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary of the Treasury. In the case of a plan other than a

multiemployer plan, this subparagraph shall not apply, but the Secretary of the Treasury may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5) of this section.

(3) For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

(A) in the case of—

(i) a plan other than a multiemployer plan, each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, or

(ii) a multiemployer plan, which, in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) For purposes of this section, if—

(A) a change in benefits under the Social Security Act [42 U.S.C. 301 et seq.] or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term ''wages'' under section 3121 of title 26, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of title 26,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5)(A) IN GENERAL.—If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary of the Treasury. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary of the Treasury.

(B) APPROVAL REQUIRED FOR CERTAIN CHANGES IN ASSUMPTIONS BY CERTAIN SINGLE-EMPLOYER PLANS SUBJECT TO ADDITIONAL FUNDING REQUIREMENT.—

(i) IN GENERAL.—No actuarial assumption (other than the assumptions described in subsection (d)(7)(C) of this section) used to determine the current liability for a plan to which this subparagraph applies may be changed without the approval of the Secretary of the Treasury.

(ii) PLANS TO WHICH SUBPARAGRAPH APPLIES.—This subparagraph shall apply to a plan only if—

(I) the plan is a defined benefit plan (other than a multiemployer plan) to which subchapter III of this chapter applies;

(II) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 1306(a)(3)(E)(iii) of this title) of such plan and all other plans maintained by the contributing sponsors (as defined in section 1301(a)(13) of this title) and members of such sponsors' controlled groups (as defined in section 1301(a)(14) of this title) which are covered by subchapter III of this chapter (disregarding plans with no unfunded vested benefits) exceed $50,000,000; and

(III) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the unfunded current liability of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the current liability of the plan before such change.

(6) If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under section 1085 of this title) in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in paragraphs (2), (B), (C), and (D) and (3)(B) of subsection (b) of this section which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

(7) FULL-FUNDING LIMITATION.—

(A) IN GENERAL.—For purposes of paragraph (6), the term ''full-funding limitation'' means the excess (if any) of—

(i) the lesser of (I) 150 percent of current liability (including the expected increase in current liability due to benefits accruing during the plan year), or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(ii) the lesser of—

(I) the fair market value of the plan's assets, or

(II) the value of such assets determined under paragraph (2).

(B) CURRENT LIABILITY.—For purposes of subparagraph (D) and subclause (I) of subparagraph (A)(i), the term ''current liability'' has the meaning given such term by subsection (d)(7) of this section (without regard to subparagraphs (C) and (D) thereof) and using the rate of interest used under subsection (b)(5)(B) of this section.

(C) SPECIAL RULE FOR PARAGRAPH (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof.

(D) REGULATORY AUTHORITY.—The Secretary of the Treasury may by regulations provide—

(i) for adjustments to the percentage contained in subparagraph (A)(i) to take into account the respective ages or lengths of service of the participants,

(ii) alternative methods based on factors other than current liability for the determination of the amount taken into account under subparagraph (A)(i), and

(iii) for the treatment under this section of contributions which would be required to be

made under the plan but for the provisions of subparagraph (A)(i)(I).

(E) MINIMUM AMOUNT.—

(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

(II) the value of the plan's assets determined under paragraph (2).

(ii) CURRENT LIABILITY; ASSETS.—For purposes of clause (i)—

(I) the term ''current liability'' has the meaning given such term by subsection (d)(7) of this section (without regard to subparagraph (D) thereof), and

(II) assets shall not be reduced by any credit balance in the funding standard account.

(8) For purposes of this part, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment or, within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless he determines that such amendment is necessary because of a substantial business hardship (as determined under section 1083(b) of this title) and that waiver under section 1083(a) of this title is unavailable or inadequate.

(9) For purposes of this part, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

(10) For purposes of this section—

(A) In the case of a defined benefit plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

(i) beginning on the day after the last day of such plan year, and

(ii) ending on the date which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

(B) In the case of a plan not described in subparagraph (A), any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury.

(11) LIABILITY FOR CONTRIBUTIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of any contribution required by this section and any required installments under subsection (e) of this section shall be paid by the employer responsible for contributing to or under the plan the amount described in subsection (b)(3)(A) of this section.

(B) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

(i) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in subparagraph (A) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contribution or required installment.

(ii) CONTROLLED GROUP.—For purposes of clause (i), the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 of title 26.

(12) ANTICIPATION OF BENEFIT INCREASES EFFECTIVE IN THE FUTURE.—In determining projected benefits, the funding method of a collectively bargained plan described in section 413(a) of title 26 (other than a multiemployer plan) shall anticipate benefit increases scheduled to take effect during the term of the collective bargaining agreement applicable to the plan.

(d) Additional funding requirements for plans which are not multiemployer plans

(1) In general

In the case of a defined benefit plan (other than a multiemployer plan) to which this subsection applies under paragraph (9) for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

(A) the excess (if any) of—

(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

(ii) the sum of the charges for such plan year under subsection (b)(2) of this section, reduced by the sum of the credits for such plan year under subparagraph (B) of subsection (b)(3) of this section, plus

(B) the unpredictable contingent event amount (if any) for such plan year.

Such increase shall not exceed the amount which, after taking into account charges

(other than the additional charge under this subsection) and credits under subsection (b) of this section, is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.

(2) Deficit reduction contribution

For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

(A) the unfunded old liability amount,

(B) the unfunded new liability amount,

(C) the expected increase in current liability due to benefits accruing during the plan year, and

(D) the aggregate of the unfunded mortality increase amounts.

(3) Unfunded old liability amount

For purposes of this subsection—

(A) In general

The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 18 plan years (beginning with the 1st plan year beginning after December 31, 1988).

(B) Unfunded old liability

The term ''unfunded old liability'' means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

(C) Special rules for benefit increases under existing collective bargaining agreements

(i) In general

In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 29, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 18 plan years beginning with—

(I) the plan year in which the benefit increase with respect to such liability occurs, or

(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

(ii) Unfunded existing benefit increase liabilities

For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

(I) by taking into account only liabilities attributable to such benefit increase, and

(II) by reducing (but not below zero) the amount determined under paragraph (8)(A)(ii) by the current liability determined without regard to such benefit increase.

(iii) Extensions, modifications, etc. not taken into account

For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 28, 1987, shall not be taken into account.

(D) Special rule for required changes in actuarial assumptions

(i) In general

The unfunded old liability amount with respect to any plan for any plan year shall be increased by the amount necessary to amortize the amount of additional unfunded old liability under the plan in equal annual installments over a period of 12 plan years (beginning with the first plan year beginning after December 31, 1994).

(ii) Additional unfunded old liability

For purposes of clause (i), the term ''additional unfunded old liability'' means the amount (if any) by which—

(I) the current liability of the plan as of the beginning of the first plan year beginning after December 31, 1994, valued using the assumptions required by paragraph (7)(C) as in effect for plan years beginning after December 31, 1994, exceeds

(II) the current liability of the plan as of the beginning of such first plan year, valued using the same assumptions used under subclause (I) (other than the assumptions required by paragraph (7)(C)), using the prior interest rate, and using such mortality assumptions as were used to determine current liability for the first plan year beginning after December 31, 1992.

(iii) Prior interest rate

For purposes of clause (ii), the term ''prior interest rate'' means the rate of interest that is the same percentage of the weighted average under subsection (b)(5)(B)(ii)(I) of this section for the first plan year beginning after December 31, 1994, as the rate of interest used by the plan to determine current liability for the first plan year beginning after December 31, 1992, is of the weighted average under subsection (b)(5)(B)(ii)(I) of this section for such first plan year beginning after December 31, 1992.

(E) Optional rule for additional unfunded old liability

(i) In general

If an employer makes an election under clause (ii), the additional unfunded old liability for purposes of subparagraph (D) shall be the amount (if any) by which—

(I) the unfunded current liability of the plan as of the beginning of the first plan year beginning after December 31, 1994, valued using the assumptions re-

quired by paragraph (7)(C) as in effect for plan years beginning after December 31, 1994, exceeds

(II) the unamortized portion of the unfunded old liability under the plan as of the beginning of the first plan year beginning after December 31, 1994.

(ii) Election

(I) An employer may irrevocably elect to apply the provisions of this subparagraph as of the beginning of the first plan year beginning after December 31, 1994.

(II) If an election is made under this clause, the increase under paragraph (1) for any plan year beginning after December 31, 1994, and before January 1, 2002, to which this subsection applies (without regard to this subclause) shall not be less than the increase that would be required under paragraph (1) if the provisions of this subchapter as in effect for the last plan year beginning before January 1, 1995, had remained in effect.

(4) Unfunded new liability amount

For purposes of this subsection—

(A) In general

The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

(B) Unfunded new liability

The term ''unfunded new liability'' means the unfunded current liability of the plan for the plan year determined without regard to—

(i) the unamortized portion of the unfunded old liability, the unamortized portion of the additional unfunded old liability, the unamortized portion of each unfunded mortality increase, and the unamortized portion of the unfunded existing benefit increase liability, and

(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

(C) Applicable percentage

The term ''applicable percentage'' means, with respect to any plan year, 30 percent, reduced by the product of—

(i) .40 multiplied by

(ii) the number of percentage points (if any) by which the funded current liability percentage exceeds 60 percent.

(5) Unpredictable contingent event amount

(A) In general

The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greatest of—

(i) the applicable percentage of the product of—

(I) 100 percent, reduced (but not below zero) by the funded current liability percentage for the plan year, multiplied by

(II) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits,

(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 plan years (beginning with the plan year in which such event occurs), or

(iii) the additional amount that would be determined under paragraph (4)(A) if the unpredictable contingent event benefit liabilities were included in unfunded new liability notwithstanding paragraph (4)(B)(ii).

(B) Applicable percentage

In the case of plan years beginning in:	The applicable percentage is:
1989 and 1990	5
1991	10
1992	15
1993	20
1994	30
1995	40
1996	50
1997	60
1998	70
1999	80
2000	90
2001 and thereafter	100.

(C) Paragraph not to apply to existing benefits

This paragraph shall not apply to unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before the first plan year beginning after December 31, 1988.

(D) Special rule for first year of amortization

Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary of the Treasury to reflect the application of this subparagraph.

(E) Limitation

The present value of the amounts described in subparagraph (A) with respect to any one event shall not exceed the unpredictable contingent event benefit liabilities attributable to that event.

(6) Special rules for small plans

(A) Plans with 100 or fewer participants

This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

(B) Plans with more than 100 but not more than 150 participants

In the case of a plan to which subparagraph (A) does not apply and which on each

day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

(i) such increase determined without regard to this subparagraph, multiplied by

(ii) 2 percent for the highest number of participants in excess of 100 on any such day.

(C) Aggregation of plans

For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

(7) Current liability

For purposes of this subsection—

(A) In general

The term ''current liability'' means all liabilities to participants and their beneficiaries under the plan.

(B) Treatment of unpredictable contingent event benefits

(i) In general

For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

(ii) Unpredictable contingent event benefit

The term ''unpredictable contingent event benefit'' means any benefit contingent on an event other than—

(I) age, service, compensation, death, or disability, or

(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury).

(C) Interest rate and mortality assumptions used

Effective for plan years beginning after December 31, 1994—

(i) Interest rate

(I) In general

The rate of interest used to determine current liability under this subsection shall be the rate of interest used under subsection (b)(5) of this section, except that the highest rate in the permissible range under subparagraph (B)(ii) thereof shall not exceed the specified percentage under subclause (II) of the weighted average referred to in such subparagraph.

(II) Specified percentage

For purposes of subclause (I), the specified percentage shall be determined as follows:

In the case of plan years beginning in calendar year:	The specified percentage is:
1995	109
1996	108
1997	107
1998	106
1999 and thereafter	105.

(ii) Mortality tables

(I) Commissioners' standard table

In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this subsection shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of title 26) used to determine reserves for group annuity contracts issued on January 1, 1993.

(II) Secretarial authority

The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary of the Treasury shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(III) Periodic review

The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subsection and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(iii) Separate mortality tables for the disabled

Notwithstanding clause (ii)—

(I) In general

In the case of plan years beginning after December 31, 1995, the Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (ii)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(II) Special rule for disabilities occurring after 1994

In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act [42 U.S.C. 401 et seq.] and the regulations thereunder.

(III) Plan years beginning in 1995

In the case of any plan year beginning in 1995, a plan may use its own mortality

assumptions for individuals who are entitled to benefits under the plan on account of disability.

(D) Certain service disregarded

(i) In general

In the case of a participant to whom this subparagraph applies, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

(ii) Applicable percentage

For purposes of this subparagraph, the applicable percentage shall be determined as follows:

If the years of participation are:	The applicable percentage is:
1	20
2	40
3	60
4	80
5 or more	100.

(iii) Participants to whom subparagraph applies

This subparagraph shall apply to any participant who, at the time of becoming a participant—

(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member,

(II) who first becomes a participant under the plan in a plan year beginning after December 31, 1987, and

(III) has years of service greater than the minimum years of service necessary for eligibility to participate in the plan.

(iv) Election

An employer may elect not to have this subparagraph apply. Such an election, once made, may be revoked only with the consent of the Secretary of the Treasury.

(8) Other definitions

For purposes of this subsection—

(A) Unfunded current liability

The term ''unfunded current liability'' means, with respect to any plan year, the excess (if any) of—

(i) the current liability under the plan, over

(ii) value of the plan's assets determined under subsection (c)(2) of this section.

(B) Funded current liability percentage

The term ''funded current liability percentage'' means, with respect to any plan year, the percentage which—

(i) the amount determined under subparagraph (A)(ii), is of

(ii) the current liability under the plan.

(C) Controlled group

The term ''controlled group'' means any group treated as a single employer under subsections (b), (c), (m), and (*o*) of section 414 of title 26.

(D) Adjustments to prevent omissions and duplications

The Secretary of the Treasury shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, the current payment amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits.

(E) Deduction for credit balances

For purposes of this subsection, the amount determined under subparagraph (A)(ii) shall be reduced by any credit balance in the funding standard account. The Secretary of the Treasury may provide for such reduction for purposes of any other provision which references this subsection.

(9) Applicability of subsection

(A) In general

Except as provided in paragraph (6)(A), this subsection shall apply to a plan for any plan year if its funded current liability percentage for such year is less than 90 percent.

(B) Exception for certain plans at least 80 percent funded

Subparagraph (A) shall not apply to a plan for a plan year if—

(i) the funded current liability percentage for the plan year is at least 80 percent, and

(ii) such percentage for each of the 2 immediately preceding plan years (or each of the 2d and 3d immediately preceding plan years) is at least 90 percent.

(C) Funded current liability percentage

For purposes of subparagraphs (A) and (B), the term ''funded current liability percentage'' has the meaning given such term by paragraph (8)(B), except that such percentage shall be determined for any plan year—

(i) without regard to paragraph (8)(E), and

(ii) by using the rate of interest which is the highest rate allowable for the plan year under paragraph (7)(C).

(D) Transition rules

For purposes of this paragraph:

(i) Funded percentage for years before 1995

The funded current liability percentage for any plan year beginning before January 1, 1995, shall be treated as not less than 90 percent only if for such plan year the plan met one of the following requirements (as in effect for such year):

(I) The full-funding limitation under subsection (c)(7) of this section for the plan was zero.

(II) The plan had no additional funding requirement under this subsection (or would have had no such requirement if its funded current liability percentage had been determined under subparagraph (C)).

(III) The plan's additional funding requirement under this subsection did not

exceed the lesser of 0.5 percent of current liability or $5,000,000.

(ii) Special rule for 1995 and 1996

For purposes of determining whether subparagraph (B) applies to any plan year beginning in 1995 or 1996, a plan shall be treated as meeting the requirements of subparagraph (B)(ii) if the plan met the requirements of clause (i) of this subparagraph for any two of the plan years beginning in 1992, 1993, and 1994 (whether or not consecutive).

(10) Unfunded mortality increase amount

(A) In general

The unfunded mortality increase amount with respect to each unfunded mortality increase is the amount necessary to amortize such increase in equal annual installments over a period of 10 plan years (beginning with the first plan year for which a plan uses any new mortality table issued under paragraph (7)(C)(ii)(II) or (III)).

(B) Unfunded mortality increase

For purposes of subparagraph (A), the term ''unfunded mortality increase'' means an amount equal to the excess of—

(i) the current liability of the plan for the first plan year for which a plan uses any new mortality table issued under paragraph (7)(C)(ii)(II) or (III), over

(ii) the current liability of the plan for such plan year which would have been determined if the mortality table in effect for the preceding plan year had been used.

(11) Phase-in of increases in funding required by Retirement Protection Act of 1994

(A) In general

For any applicable plan year, at the election of the employer, the increase under paragraph (1) shall not exceed the greater of—

(i) the increase that would be required under paragraph (1) if the provisions of this subchapter as in effect for plan years beginning before January 1, 1995, had remained in effect, or

(ii) the amount which, after taking into account charges (other than the additional charge under this subsection) and credits under subsection (b) of this section, is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) for the applicable plan year to a percentage equal to the sum of the initial funded current liability percentage of the plan plus the applicable number of percentage points for such applicable plan year.

(B) Applicable number of percentage points

(i) Initial funded current liability percentage of 75 percent or less

Except as provided in clause (ii), for plans with an initial funded current liability percentage of 75 percent or less, the applicable number of percentage points for the applicable plan year is:

In the case of applicable plan years beginning in:	The applicable number of percentage points is:
1995	3
1996	6
1997	9
1998	12
1999	15
2000	19
2001	24.

(ii) Other cases

In the case of a plan to which this clause applies, the applicable number of percentage points for any such applicable plan year is the sum of—

(I) 2 percentage points;

(II) the applicable number of percentage points (if any) under this clause for the preceding applicable plan year;

(III) the product of .10 multiplied by the excess (if any) of (a) 85 percentage points over (b) the sum of the initial funded current liability percentage and the number determined under subclause (II);

(IV) for applicable plan years beginning in 2000, 1 percentage point; and

(V) for applicable plan years beginning in 2001, 2 percentage points.

(iii) Plans to which clause (ii) applies

(I) In general

Clause (ii) shall apply to a plan for an applicable plan year if the initial funded current liability percentage of such plan is more than 75 percent.

(II) Plans initially under clause (i)

In the case of a plan which (but for this subclause) has an initial funded current liability percentage of 75 percent or less, clause (ii) (and not clause (i)) shall apply to such plan with respect to applicable plan years beginning after the first applicable plan year for which the sum of the initial funded current liability percentage and the applicable number of percentage points (determined under clause (i)) exceeds 75 percent. For purposes of applying clause (ii) to such a plan, the initial funded current liability percentage of such plan shall be treated as being the sum referred to in the preceding sentence.

(C) Definitions

For purposes of this paragraph—

(i) The term ''applicable plan year'' means a plan year beginning after December 31, 1994, and before January 1, 2002.

(ii) The term ''initial funded current liability percentage'' means the funded current liability percentage as of the first day of the first plan year beginning after December 31, 1994.

(e) Quarterly contributions required

(1) In general

If a defined benefit plan (other than a multiemployer plan) which has a funded current li-

ability percentage (as defined in subsection (d)(8) of this section) for the preceding plan year of less than 100 percent fails to pay the full amount of a required installment for the plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) of this section with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of such plan year), or

(B) the rate of interest used under the plan in determining costs (including adjustments under subsection (b)(5)(B) of this section).

(2) Amount of underpayment, period of underpayment

For purposes of paragraph (1)—

(A) Amount

The amount of the underpayment shall be the excess of—

(i) the required installment, over

(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

(B) Period of underpayment

The period for which any interest is charged under this subsection with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan (determined without regard to subsection (c)(10) of this section).

(C) Order of crediting contributions

For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(3) Number of required installments; due dates

For purposes of this subsection—

(A) Payable in 4 installments

There shall be 4 required installments for each plan year.

(B) Time for payment of installments

In the case of the following required installments:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year.

(4) Amount of required installment

For purposes of this subsection—

(A) In general

The amount of any required installment shall be the applicable percentage of the required annual payment.

(B) Required annual payment

For purposes of subparagraph (A), the term ''required annual payment'' means the lesser of—

(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year under section 412 of title 26 (without regard to any waiver under subsection (c) thereof), or

(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

(C) Applicable percentage

For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

For plan years beginning in:	The applicable percentage is:
1989	6.25
1990	12.5
1991	18.75
1992 and thereafter	25.

(D) Special rules for unpredictable contingent event benefits

In the case of a plan to which subsection (d) of this section applies for any calendar year and which has any unpredictable contingent event benefit liabilities—

(i) Liabilities not taken into account

Such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B).

(ii) Increase in installments

Each required installment shall be increased by the greatest of—

(I) the unfunded percentage of the amount of benefits described in subsection (d)(5)(A)(i) of this section paid during the 3-month period preceding the month in which the due date for such installment occurs,

(II) 25 percent of the amount determined under subsection (d)(5)(A)(ii) of this section for the plan year, or

(III) 25 percent of the amount determined under subsection (d)(5)(A)(iii) of this section for the plan year.

(iii) Unfunded percentage

For purposes of clause (ii)(I), the term ''unfunded percentage'' means the percentage determined under subsection (d)(5)(A)(i)(I) of this section for the plan year.

(iv) Limitation on increase

In no event shall the increases under clause (ii) exceed the amount necessary to increase the funded current liability percentage (within the meaning of subsection (d)(8)(B) of this section) for the plan year to 100 percent.

(5) Liquidity requirement

(A) In general

A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

(B) Plans to which paragraph applies

This paragraph shall apply to a defined benefit plan (other than a multiemployer plan or a plan described in subsection (d)(6)(A) of this section) which—

(i) is required to pay installments under this subsection for a plan year, and

(ii) has a liquidity shortfall for any quarter during such plan year.

(C) Period of underpayment

For purposes of paragraph (1), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

(D) Limitation on increase

If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.

(E) Definitions

For purposes of this paragraph—

(i) Liquidity shortfall

The term ''liquidity shortfall'' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of the base amount with respect to such quarter over the value (as of such last day) of the plan's liquid assets.

(ii) Base amount

(I) In general

The term ''base amount'' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

(II) Special rule

If the amount determined under clause (i) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary of the Treasury that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) Disbursements from the plan

The term ''disbursements from the plan'' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

(iv) Adjusted disbursements

The term ''adjusted disbursements'' means disbursements from the plan reduced by the product of—

(I) the plan's funded current liability percentage (as defined in subsection (d)(8) of this section) for the plan year, and

(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall provide in regulations.

(v) Liquid assets

The term ''liquid assets'' means cash, marketable securities and such other assets as specified by the Secretary of the Treasury in regulations.

(vi) Quarter

The term ''quarter'' means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

(F) Regulations

The Secretary of the Treasury may prescribe such regulations as are necessary to carry out this paragraph.

(6) Fiscal years and short years

(A) Fiscal years

In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.

(B) Short plan year

This section shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury.

(f) Imposition of lien where failure to make required contributions

(1) In general

In the case of a plan covered under section 1321 of this title, if—

(A) any person fails to make a required installment under subsection (e) of this section or any other payment required under this section before the due date for such installment or other payment, and

(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

(2) Plans to which subsection applies

This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for

any plan year for which the funded current liability percentage (within the meaning of subsection (d)(8)(B) of this section) of such plan is less than 100 percent.

(3) Amount of lien

For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

(A) for plan years beginning after 1987, and

(B) for which payment has not been made before the due date.

(4) Notice of failure; lien

(A) Notice of failure

A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required installment or other payment.

(B) Period of lien

The lien imposed by paragraph (1) shall arise on the due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

(C) Certain rules to apply

Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 1368 of this title shall apply with respect to a lien imposed by subsection (a) of this section and the amount with respect to such lien.

(5) Enforcement

Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

(6) Definitions

For purposes of this subsection—

(A) Due date; required installment

The terms ''due date'' and ''required installment'' have the meanings given such terms by subsection (e) of this section, except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under this section.

(B) Controlled group

The term ''controlled group'' means any group treated as a single employer under subsections (b), (c), (m), and (*o*) of section 414 of title 26.

(g) Qualified transfers to health benefit accounts

For purposes of this section, in the case of a qualified transfer (as defined in section 420 of title 26)—

(1) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of subsection (c)(7) of this section, be treated as assets in the plan as of the valuation date for such year, and

(2) the plan shall be treated as having a net experience loss under subsection (b)(2)(B)(iv) of this section in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the plan under section 420(c)(1)(B) of title 26) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such subsection shall be applied to such amount by substituting ''10 plan years'' for ''5 plan years''.

(h) Cross reference

For alternative amortization method for certain multiemployer plans see section 1013(d) of this Act.

(Pub. L. 93–406, title I, § 302, Sept. 2, 1974, 88 Stat. 869; Pub. L. 96–364, title III, § 304(b), Sept. 26, 1980, 94 Stat. 1293; Pub. L. 100–203, title IX, §§ 9301(b), 9303(b), (d)(2), 9304(a)(2), (b)(2), (e)(2), 9305(b)(2), 9307(a)(2), (b)(2), (e)(2), Dec. 22, 1987, 101 Stat. 1330–332, 1330–337, 1330–342, 1330–344, 1330–346, 1330–349, 1330–352, 1330–356 to 1330–358; Pub. L. 100–647, title II, § 2005(a)(2)(B), (d)(2), Nov. 10, 1988, 102 Stat. 3610, 3612; Pub. L. 101–239, title VII, §§ 7881(a)(1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), (b)(1)(B), (2)(B), (3)(B), (4)(B), (6)(B)(i), (d)(1)(B), (2), (4), 7891(a)(1), 7892(b), 7894(d)(2), (5), Dec. 19, 1989, 103 Stat. 2435–2439, 2445, 2447, 2449, 2450; Pub. L. 101–508, title XII, § 12012(c), Nov. 5, 1990, 104 Stat. 1388–572; Pub. L. 103–465, title VII, §§ 761(a)(1)–(9)(A), (10), 762(a), 763(a), 764(a), 768(b), Dec. 8, 1994, 108 Stat. 5024–5031, 5033–5036, 5041.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c)(4)(A) and (d)(7)(C)(iii)(II), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Retirement Protection Act of 1994, referred to in subsec. (d)(11), is subtitle F (§§ 750–781) of title VII of Pub. L. 103–465, Dec. 8, 1994, 108 Stat. 5012. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 1 of Title 26, Internal Revenue Code, and Tables.

Section 1013(d) of this Act, referred to in subsec. (h), is section 1013(d) of Pub. L. 93–406, which is set out as an Alternative Amortization Method for Certain Multiemployer Plans note under section 412 of Title 26.

CODIFICATION

Section 2005(d)(2) of Pub. L. 100–647, which directed that subsec. (d)(3)(B) of this section be amended by striking out ''October 17, 1987'' in cl. (i) and inserting in lieu thereof ''October 29, 1987'', and by striking out ''October 16, 1987'' in cl. (iii) and inserting in lieu thereof ''October 28, 1987'', could not be executed because it did not contain cls. (i) and (iii).

AMENDMENTS

1994—Subsec. (c)(5). Pub. L. 103–465, § 762(a), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(7)(A)(i). Pub. L. 103–465, § 761(a)(10)(A), inserted ''(including the expected increase in current li-

ability due to benefits accruing during the plan year)'' after ''current liability''.

Subsec. (c)(7)(B). Pub. L. 103–465, § 761(a)(10)(C), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''For purposes of subparagraphs (A) and (D), the term 'current liability' has the meaning given such term by subsection (d)(7) of this section (without regard to subparagraph (D) thereof).''

Subsec. (c)(7)(E). Pub. L. 103–465, § 761(a)(10)(B), added subpar. (E).

Subsec. (c)(12). Pub. L. 103–465, § 763(a), added par. (12).

Subsec. (d)(1). Pub. L. 103–465, § 761(a)(1)(A), (2)(B), substituted ''to which this subsection applies under paragraph (9)'' for ''which has an unfunded current liability'' in introductory provisions and substituted last sentence for one which read ''Such increase shall not exceed the amount necessary to increase the funded current liability percentage to 100 percent.''

Subsec. (d)(1)(A)(ii). Pub. L. 103–465, § 761(a)(2)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v) thereof), (C), and (D) of subsection (b)(2) of this section, reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3) of this section, plus''.

Subsec. (d)(2)(C), (D). Pub. L. 103–465, § 761(a)(3), (7)(B)(i), added subpars. (C) and (D).

Subsec. (d)(3)(D), (E). Pub. L. 103–465, § 761(a)(4)(A), added subpars. (D) and (E).

Subsec. (d)(4)(B)(i). Pub. L. 103–465, § 761(a)(4)(B), (7)(B)(iii), inserted '', the unamortized portion of the additional unfunded old liability, the unamortized portion of each unfunded mortality increase,'' after ''the unfunded old liability''.

Subsec. (d)(4)(C). Pub. L. 103–465, § 761(a)(5), substituted ''.40'' for ''.25'' in cl. (i) and ''60'' for ''35'' in cl. (ii).

Subsec. (d)(5)(A). Pub. L. 103–465, § 761(a)(6)(A)(i), substituted ''greatest of'' for ''greater of'' in introductory provisions.

Subsec. (d)(5)(A)(iii). Pub. L. 103–465, § 761(a)(6)(A)(ii)–(iv), added cl. (iii).

Subsec. (d)(5)(E). Pub. L. 103–465, § 761(a)(6)(B), added subpar. (E).

Subsec. (d)(7)(C). Pub. L. 103–465, § 761(a)(7)(A), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: ''The rate of interest used to determine current liability shall be the rate of interest used under subsection (b)(5) of this section.''

Subsec. (d)(9) to (11). Pub. L. 103–465, § 761(a)(1)(B), (7)(B)(ii), (8), added pars. (9) to (11).

Subsec. (e)(1). Pub. L. 103–465, § 764(a), in introductory provisions, inserted ''which has a funded current liability percentage (as defined in subsection (d)(8) of this section) for the preceding plan year of less than 100 percent'' before ''fails to pay'' and substituted ''the plan year'' for ''any plan year''.

Subsec. (e)(4)(D)(ii). Pub. L. 103–465, § 761(a)(6)(C)(i), substituted ''greatest of'' for ''greater of'' in introductory provisions.

Subsec. (e)(4)(D)(ii)(III). Pub. L. 103–465, § 761(a)(6)(C)(ii)–(iv), added subcl. (III).

Subsec. (e)(5), (6). Pub. L. 103–465, § 761(a)(9)(A), added par. (5) and redesignated former par. (5) as (6).

Subsec. (f)(1). Pub. L. 103–465, § 768(b)(1), substituted ''covered under section 4021 of this title'' for ''to which this section applies'' in introductory provisions.

Subsec. (f)(3). Pub. L. 103–465, § 768(b)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''For purposes of paragraph (1), the amount of the lien shall be equal to the lesser of—

''(A) the amount by which the unpaid balances described in paragraph (1)(B) (including interest) exceed $1,000,000, or

''(B) the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

''(i) for plan years beginning after 1987, and

''(ii) for which payment has not been made before the due date.''

Subsec. (f)(4)(B). Pub. L. 103–465, § 768(b)(3), struck out ''60th day following the'' before ''due date''.

1990—Subsecs. (g), (h). Pub. L. 101–508 added subsec. (g) and redesignated former subsec. (g) as (h).

1989—Subsec. (b)(3)(B)(iii). Pub. L. 101–239, § 7894(d)(2), substituted comma for period at end.

Subsec. (b)(5). Pub. L. 101–239, § 7881(d)(2)(B), struck out introductory provision which read as follows: ''For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under section 412(*l*) of title 26 for any plan year—''.

Subsec. (b)(5)(B). Pub. L. 101–239, § 7881(d)(2)(A), inserted introductory provision ''For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under subsection (d) of this section for any plan year—''.

Subsec. (b)(5)(B)(ii)(I). Pub. L. 101–239, § 7881(d)(2)(C), substituted ''the weighted average of the rates'' for ''average rate''.

Subsec. (b)(5)(B)(iii). Pub. L. 101–239, § 7881(d)(1)(B), struck out ''for purposes of this section and for purposes of determining current liability,'' before ''the interest rate'' in introductory provisions.

Subsec. (b)(7)(B), (E). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (c)(3). Pub. L. 101–239, § 7881(d)(4), realigned margins.

Subsec. (c)(4)(B). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (c)(6). Pub. L. 101–239, § 7894(d)(5), substituted ''section 1085 of this title'' for ''subsection (g) of this section''.

Subsec. (c)(7). Pub. L. 101–239, § 7892(b), realigned margins.

Subsec. (c)(9). Pub. L. 101–239, § 7881(a)(6)(B), substituted ''every year'' for ''every 3 years''.

Subsec. (c)(10)(A). Pub. L. 101–239, § 7881(b)(1)(B), inserted ''defined benefit'' before ''plan other''.

Subsec. (c)(10)(B). Pub. L. 101–239, § 7881(b)(2)(B), substituted ''plan not described in subparagraph (A)'' for ''multiemployer plan''.

Subsec. (d)(3)(C)(ii)(II). Pub. L. 101–239, § 7881(a)(1)(B), inserted ''(but not below zero)'' after ''reducing''.

Subsec. (d)(4)(B)(i). Pub. L. 101–239, § 7881(a)(2)(B), inserted ''and the unamortized portion of the unfunded existing benefit increase liability'' after ''liability''.

Subsec. (d)(5)(C). Pub. L. 101–239, § 7881(a)(3)(B), substituted ''the first plan year beginning after December 31, 1988'' for ''October 17, 1987''.

Subsec. (d)(7)(D)(iii)(III). Pub. L. 101–239, § 7881(a)(4)(B)(i), added subcl. (III).

Subsec. (d)(7)(D)(iv). Pub. L. 101–239, § 7881(a)(4)(B)(ii), added cl. (iv).

Subsec. (d)(8)(A)(ii). Pub. L. 101–239, § 7881(a)(5)(B)(i), struck out ''reduced by any credit balance in the funding standard account'' after ''this section''.

Subsec. (d)(8)(E). Pub. L. 101–239, § 7881(a)(5)(B)(ii), added subpar. (E).

Subsec. (e)(1). Pub. L. 101–239, § 7881(b)(3)(B), inserted ''defined benefit'' before ''plan (other''.

Subsec. (e)(1)(B). Pub. L. 101–239, § 7881(b)(6)(B)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the rate under subsection (b)(5) of this section.''

Subsec. (e)(4)(D). Pub. L. 101–239, § 7881(b)(4)(B), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''In the case of a plan with any unpredictable contingent event benefit liabilities—

''(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

''(ii) each required installment shall be increased by the greater of—

''(I) the amount of benefits described in subsection (d)(5)(A)(i) of this section paid during the 3-month period preceding the month in which the due date for such installment occurs, or

''(II) 25 percent of the amount determined under subsection (d)(5)(A)(ii) of this section for the plan year.''

1988—Subsec. (d)(3)(C). Pub. L. 100–647, § 2005(a)(2)(B), substituted ''October 29'' for ''October 17'' in cl. (i) and ''October 28'' for ''October 16'' in cl. (iii).

1987—Subsec. (b)(2)(B)(iv), (C), (3)(B)(ii). Pub. L. 100–203, § 9307(a)(2)(A), substituted ''5 plan years (15 plan years in the case of a multiemployer plan)'' for ''15 plan years''.

Subsec. (b)(2)(B)(v), (3)(B)(iii). Pub. L. 100–203, § 9307(a)(2)(B), substituted ''10 plan years (30 plan years in the case of a multiemployer plan)'' for ''30 plan years''.

Subsec. (b)(5). Pub. L. 100–203, § 9307(e)(2), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.''

Subsec. (c)(2)(B). Pub. L. 100–203, § 9303(d)(2), inserted at end ''In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary of the Treasury may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5) of this section.''

Subsec. (c)(3). Pub. L. 100–203, § 9307(b)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of this part, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.''

Subsec. (c)(7). Pub. L. 100–203, § 9301(b), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''For purposes of paragraph (6), the term 'full funding limitation' means the excess (if any) of—

''(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).''

Subsec. (c)(10). Pub. L. 100–203, § 9304(a)(2), amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''For purposes of this part, any contributions for a plan year made by an employer after the last day of such plan year, but not later than 2½ months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such 2½ month period may be extended for not more than 6 months under regulations prescribed by the Secretary of the Treasury.''

Subsec. (c)(11). Pub. L. 100–203, § 9305(b)(2), added par. (11).

Subsec. (d). Pub. L. 100–203, § 9303(b)(1), added subsec. (d). Former subsec. (d) ''Cross reference'' redesignated (e).

Subsec. (e). Pub. L. 100–203, § 9304(b)(2), added subsec. (e). Former subsec. (e) ''Cross reference'' redesignated (f).

Pub. L. 100–203, § 9303(b)(1), redesignated former subsec. (d) as (e).

Subsec. (f). Pub. L. 100–203, § 9304(e)(2), added subsec. (f). Former subsec. (f) ''Cross reference'' redesignated (g).

Pub. L. 100–203, § 9304(b)(2), redesignated former subsec. (e) as (f).

Subsec. (g). Pub. L. 100–203, § 9304(e)(2), redesignated former subsec. (f) as (g).

1980—Subsec. (a)(3). Pub. L. 96–364, § 304(b)(3), added par. (3).

Subsec. (b)(2). Pub. L. 96–364, § 304(b)(1), struck out in par. (B)(ii) and (iii) ''(40 plan years in the case of a multiemployer plan)'' after ''30 plan years'' and in par. (B)(iv) ''(20 plan years in the case of a multiemployer plan)'' after ''15 plan years''.

Subsec. (b)(3). Pub. L. 96–364, § 304(b)(1), struck out in par. (B)(i) ''(40 plan years in the case of a multiemployer plan)'' after ''30 plan years'' and in par. (B)(ii) ''(20 plan years in the case of a multiemployer plan)'' after ''15 plan years''.

Subsec. (b)(6), (7). Pub. L. 96–364, § 304(b)(2), added pars. (6) and (7).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 761(a)(1)–(9)(A), (10) of Pub. L. 103–465 applicable to plan years beginning after Dec. 31, 1994, see section 761(b)(1) of Pub. L. 103–465, set out as a note under section 1056 of this title.

Section 762(b) of Pub. L. 103–465 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to changes in assumptions for plan years beginning after October 28, 1993.

''(2) CERTAIN CHANGES CEASE TO BE EFFECTIVE.—In the case of changes in assumptions for plan years beginning after December 31, 1992, and on or before October 28, 1993, such changes shall cease to be effective for plan years beginning after December 31, 1994, if—

''(A) such change would have required the approval of the Secretary of the Treasury had such amendment applied to such change, and

''(B) such change is not so approved.''

Section 763(b) of Pub. L. 103–465 provided that: ''The amendment made by this section [amending this section] shall apply to plan years beginning after December 31, 1994 with respect to collective bargaining agreements in effect on or after January 1, 1995.''

Section 764(b) of Pub. L. 103–465 provided that: ''The amendment made by this section [amending this section] shall apply to plan years beginning after the date of enactment of this Act [Dec. 8, 1994].

Amendment by section 768(b) of Pub. L. 103–465 effective for installments and other payments required under section 412 of Title 26, Internal Revenue Code, or under this part, that become due on or after Dec. 8, 1994, see section 768(c) of Pub. L. 103–465, set out as a note under section 412 of Title 26.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to qualified transfers under section 420 of title 26 made after Nov. 5, 1990, see section 12012(e) of Pub. L. 101–508, set out as a note under section 1021 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(a)(1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), (b)(1)(B), (2)(B), (3)(B), (4)(B), (6)(B)(i), (d)(1)(B), (2), (4) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

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

Amendment by section 7892(b) of Pub. L. 101–239 effective as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7892(c) of Pub. L. 101–239, set out as a note under section 1052 of this title.

Amendment by section 7894(d)(2), (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 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective as if included in the amendments made by the provisions of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, to which it relates, see section 2005(e) of Pub. L. 100–647, set out as a note under section 404 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9301(b) of Pub. L. 100–203 applicable to years beginning after Dec. 31, 1987, see section 9301(c)(1) of Pub. L. 100–203, set out as a note under section 412 of Title 26, Internal Revenue Code.

Amendment by section 9303(b) of Pub. L. 100–203 applicable with respect to plan years beginning after Dec. 31, 1988, see section 9303(e)(1) of Pub. L. 100–203, set out as a note under section 412 of Title 26.

Amendment by section 9303(d)(2) of Pub. L. 100–203 applicable with respect to plan years beginning after Dec. 31, 1987, see section 9303(e)(2) of Pub. L. 100–203, set out as a note under section 412 of Title 26.

Amendment by section 9304(a)(2) of Pub. L. 100–203 applicable to plan years beginning after Dec. 31, 1987, see section 9304(a)(3) of Pub. L. 100–203, set out as a note under section 412 of Title 26.

Amendment by section 9304(b)(2) of Pub. L. 100–203 applicable with respect to plan years beginning after 1988, see section 9304(b)(3) of Pub. L. 100–203, set out as a note under section 412 of Title 26.

Amendment by section 9304(e)(2) of Pub. L. 100–203 applicable to plan years beginning after Dec. 31, 1987, see section 9304(e)(3) of Pub. L. 100–203, set out as a note under section 412 of Title 26.

Amendment by section 9305(b)(2) of Pub. L. 100–203 applicable with respect to plan years beginning after Dec. 31, 1987, see section 9305(d) of Pub. L. 100–203, set out as a note under section 412 of Title 26.

Amendment by section 9307(a)(2), (b)(2), (e)(2) of Pub. L. 100–203 applicable to years beginning after Dec. 31, 1987, except that subsec. (b)(2)(B)(iv), (3)(B)(ii) of this section (as amended by section 9307(a)(2)(A) of Pub. L. 100–203) is applicable to gains and losses established in years beginning after Dec. 31, 1987, see section 9307(f) of Pub. L. 100–203, as amended, set out as a note under section 404 of Title 26.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1023, 1053, 1054, 1055, 1056, 1060, 1083, 1084, 1085, 1085a, 1085b, 1301, 1303, 1306, 1310, 1311, 1342, 1343, 1362, 1371, 1423 of this title; title 26 section 412.

§ 1083. Variance from minimum funding standard

(a) Waiver of requirements in event of business hardship

If an employer, or in the case of a multi-employer plan, 10 percent or more of the number of employers contributing to or under the plan are unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary of the Treasury may waive the requirements of section 1082(a) of this title for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under section 1082(b)(2)(C) of this title. The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years. The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) of this section for any plan year shall be—

(1) in the case of a plan other than a multiemployer plan, the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs (including adjustments under section 1082(b)(5)(B) of this title), and

(2) in the case of a multiemployer plan, the rate determined under section 6621(b) of title 26.

(b) Matters considered in determining business hardship

For purposes of this part, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether—

(1) the employer is operating at an economic loss,

(2) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

(3) the sales and profits of the industry concerned are depressed or declining, and

(4) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(c) "Waived funding deficiency" defined

For purposes of this part, the term ''waived funding deficiency'' means the portion of the minimum funding standard (determined without regard to subsection (b)(3)(C) of section 1082 of this title) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

(d) Special rules

(1) Application must be submitted before date 2½ months after close of year

In the case of a plan other than a multiemployer plan, no waiver may be granted under this section with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year.

(2) Special rule if employer is member of controlled group

(A) In general

In the case of a plan other than a multiemployer plan, if an employer is a member of a

controlled group, the temporary substantial business hardship requirements of subsection (a) of this section shall be treated as met only if such requirements are met—

(i) with respect to such employer, and

(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary of the Treasury determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this subsection.

(B) Controlled group

For purposes of subparagraph (A), the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 of title 26.

(e) Notice of filing of application for waiver

(1) The Secretary of the Treasury shall, before granting a waiver under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each employee organization representing employees covered by the affected plan, and each affected party (as defined in section 1301(a)(21) of this title) other than the Pension Benefit Guaranty Corporation. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under subchapter III of this chapter and for benefit liabilities.

(2) The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

(f) Cross reference

For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1986, see section 412(d) of title 26.

(Pub. L. 93–406, title I, § 303, Sept. 2, 1974, 88 Stat. 872; Pub. L. 99–272, title XI, §§ 11015(b)(1)(A), 11016(c)(2), Apr. 7, 1986, 100 Stat. 267, 273; Pub. L. 100–203, title IX, § 9306(a)(2), (b)(2), (c)(2)(A), (d)(2), Dec. 22, 1987, 101 Stat. 1330–353 to 1330–355; Pub. L. 101–239, title VII, §§ 7881(b)(6)(B)(ii), (7), (8), (c)(2), 7891(a)(1), Dec. 19, 1989, 103 Stat. 2438, 2439, 2445.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (f), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 7881(b)(7), redesignated pars. (A) and (B) as pars. (1) and (2), respectively, realigned margins, redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, of par. (1), and made technical correction to reference to section 6621(b) of title 26 in par. (2) resulting in no change in text.

Subsec. (a)(1)(B). Pub. L. 101–239, § 7881(b)(6)(B)(ii), inserted ''(including adjustments under section 1082(b)(5)(B) of this title)'' after ''costs''.

Subsec. (e)(1). Pub. L. 101–239, § 7881(c)(2), substituted ''for benefit liabilities'' for ''the benefit liabilities'' in last sentence.

Subsec. (f). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Pub. L. 101–239, § 7881(b)(8), transferred subsec. (f) to follow immediately after subsec. (e).

1987—Subsec. (a). Pub. L. 100–203, § 9306(a)(2)(B), substituted ''temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)'' for ''substantial business hardship''.

Pub. L. 100–203, § 9306(b)(2), substituted ''more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)'' for ''more than 5 of any 15''.

Pub. L. 100–203, § 9306(c)(2)(A), substituted ''The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) of this section for any plan year shall be—'' and pars. (A) and (B) for ''The interest rate used for purposes of computing the amortization charge described in section 1082(b)(2)(C) of this title for a variance granted under this subsection shall be the rate determined under section 6621(b) of title 26.''

Subsec. (b). Pub. L. 100–203, § 9306(a)(2)(B), substituted ''temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)'' for ''substantial business hardship''.

Subsec. (d)(1). Pub. L. 100–203, § 9306(a)(2)(A), added subsec. (d)(1). Former subsec. (d) redesignated (f).

Subsec. (d)(2). Pub. L. 100–203, § 9306(a)(2)(C), added par. (2).

Subsec. (e)(1). Pub. L. 100–203, § 9306(d)(2), substituted ''plan, and each affected party (as defined in section 1301(a)(21) of this title) other than the Pension Benefit Guaranty Corporation. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under subchapter III of this chapter and the benefit liabilities.'' for ''plan.''

Subsec. (f). Pub. L. 100–203, § 9306(a)(2)(A), redesignated former subsec. (d) as (f).

1986—Pub. L. 99–272, § 11015(b)(1)(A), inserted provision that the interest rate used for purposes of computing the amortization charge described in section 1082(b)(2)(C) of this title for a variance granted under this subsection be the rate determined under section 6621(b) of title 26.

Subsec. (e). Pub. L. 99–272, § 11016(c)(2), added subsec. (e).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(b)(6)(B)(ii), (7), (8), (c)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

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

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable in the case of any application submitted after Dec. 17, 1987, and any waiver granted pursuant to such an application, except that the amendment by section 9306(a)(2)(A) of Pub. L. 100–203 applicable to plan years beginning after Dec. 31, 1987, amendment by section 9306(b)(2) of Pub. L. 100–203 applicable to waivers for plan years beginning after Dec. 31, 1987, and amendment by section 9306(d)(2) of Pub. L. 100–203 applicable to applications submitted more than 90 days after Dec. 22, 1987, with certain exceptions and transitional rules, see section 9306(f) of Pub. L. 100–203, as amended, set out as a note under section 412 of Title 26, Internal Revenue Code.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1057, 1082, 1084, 1085a, 1143, 1362, 1423 of this title; title 26 section 412.

§ 1084. Extension of amortization periods

(a) Determinations by Secretary in granting extension

The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B) of section 1082 of this title) of any plan may be extended by the Secretary for a period of time (not in excess of 10 years) if he determines that such extension would carry out the purposes of this chapter and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

(1) result in—

(A) a substantial risk to the voluntary continuation of the plan, or

(B) a substantial curtailment of pension benefit levels or employee compensation, and

(2) be adverse to the interests of plan participants in the aggregate.

In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs. In the case of a multiemployer plan, such rate shall be the rate determined under section 6621(b) of title 26.

(b) Amendment of plan

(1) No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under section 1083(a) of this title or an extension of time under subsection (a) of this section is in effect with respect to the plan, or if a plan amendment described in section 1082(c)(8) of this title has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(2) Paragraph (1) shall not apply to any plan amendment which—

(A) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

(B) only repeals an amendment described in section 1082(c)(8) of this title, or

(C) is required as a condition of qualification under part I of subchapter D, of chapter 1, of title 26.

(c) Notice of filing of application for extension

(1) The Secretary of the Treasury shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each employee organization representing employees covered by the affected plan.

(2) The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

(Pub. L. 93–406, title I, § 304, Sept. 2, 1974, 88 Stat. 873; Pub. L. 99–272, title XI, §§ 11015(b)(1)(B), 11016(c)(3), Apr. 7, 1986, 100 Stat. 267, 273; Pub. L. 100–203, title IX, § 9306(c)(2)(B), Dec. 22, 1987, 101 Stat. 1330–355; Pub. L. 101–239, title VII, §§ 7891(a)(1), 7894(d)(3), Dec. 19, 1989, 103 Stat. 2445, 2449.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), 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—Subsec. (b)(2)(A). Pub. L. 101–239, § 7894(d)(3), substituted a comma for period at end.

Subsec. (b)(2)(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.

1987—Subsec. (a). Pub. L. 100–203 amended last sentence generally. Prior to amendment, last sentence read as follows: ''The interest rate applicable under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the rate determined under section 6621(b) of title 26.''

1986—Subsec. (a). Pub. L. 99–272, § 11015(b)(1)(B), inserted provision that the interest rate applicable under any arrangement entered into by the Secretary in connection with an extension granted under this subsection be the rate determined under section 6621(b) of title 26.

Subsec. (c). Pub. L. 99–272, § 11016(c)(3), added subsec. (c).

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(d)(3) 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

Amendment by Pub. L. 100–203 applicable in the case of any application submitted after Dec. 17, 1987, and any waiver granted pursuant to such an application,

see section 9306(f) of Pub. L. 100–203, set out as a note under section 412 of Title 26, Internal Revenue Code.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1057, 1085a, 1143, 1362 of this title; title 26 section 412.

§ 1085. Alternative minimum funding standard

(a) Maintenance of account

A plan which uses a funding method that requires contributions in all years not less than those required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this section.

(b) Operation of account

For a plan year the alternative minimum funding standard accounts shall be—

(1) charged with the sum of—

(A) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,

(B) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

(C) an amount equal to the excess, if any, of credits to the alternative minimum funding standard account for all prior plan years over charges to such account for all such years, and

(2) credited with the amount considered contributed by the employer to or under the plan (within the meaning of section 1082(c)(10) of this title) for the plan year.

(c) Interest

The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under section 1082(b)(5) of this title with respect to the funding standard account.

(Pub. L. 93–406, title I, § 305, Sept. 2, 1974, 88 Stat. 873.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1082 of this title.

§ 1085a. Security for waivers of minimum funding standard and extensions of amortization period

(a) Security may be required

(1) In general

Except as provided in subsection (c) of this section, the Secretary of the Treasury may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 1301(a)(15) of this title) to provide security to such plan as a condition for granting or modifying a waiver under section 1083 of this title or an extension under section 1084 of this title.

(2) Special rules

Any security provided under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation or, at the direction of the Corporation, by a contributing sponsor (within the meaning of section 1301(a)(13) of this title) or a member of such sponsor's controlled group (within the meaning of section 1301(a)(14) of this title).

(b) Consultation with the Pension Benefit Guaranty Corporation

Except as provided in subsection (c) of this section, the Secretary of the Treasury shall, before granting or modifying a waiver under section 1083 of this title or an extension under section 1084 of this title with respect to a plan described in subsection (a)(1) of this section—

(1) provide the Pension Benefit Guaranty Corporation with—

(A) notice of the completed application for any waiver, extension, or modification, and

(B) an opportunity to comment on such application within 30 days after receipt of such notice, and

(2) consider—

(A) any comments of the Corporation under paragraph (1)(B), and

(B) any views of any employee organization representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

Information provided to the corporation under this subsection shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p) of title 26.

(c) Exception for certain waivers and extensions

(1) In general

The preceding provisions of this section shall not apply to any plan with respect to which the sum of—

(A) the outstanding balance of the accumulated funding deficiencies (within the meaning of section 1082(a)(2) of this title and section 412(a) of title 26) of the plan,

(B) the outstanding balance of the amount of waived funding deficiencies of the plan waived under section 1083 of this title or section 412(d) of title 26, and

(C) the outstanding balance of the amount of decreases in the minimum funding standard allowed under section 1084 of this title or section 412(e) of title 26,

is less than $1,000,000.

(2) Accumulated funding deficiencies

For purposes of paragraph (1)(A), accumulated funding deficiencies shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under section 1083 of this title or section 412(d) of title 26 and for extensions of the amortization period under section 1084 of this title or section 412(e) of title 26 which are pending with respect to such plan were denied.

(Pub. L. 93–406, title I, § 306, as added Pub. L. 99–272, title XI, § 11015(a)(1)(A)(ii), Apr. 7, 1986, 100 Stat. 264; amended Pub. L. 100–203, title IX, § 9306(e)(2), Dec. 22, 1987, 101 Stat. 1330–355; Pub.

L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

PRIOR PROVISIONS

A prior section 306 of Pub. L. 93–406 was renumbered section 308 and is classified to section 1086 of this title.

AMENDMENTS

1989—Subsecs. (b), (c). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1987—Subsec. (c)(1). Pub. L. 100–203, § 9306(e)(2), substituted ''$1,000,000'' for ''$2,000,000''.

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.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable in the case of any application submitted after Dec. 17, 1987, and any waiver granted pursuant to such an application, see section 9306(f) of Pub. L. 100–203, set out as a note under section 412 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section 11015(a)(3) of Pub. L. 99–272 provided that: ''The amendments made by this subsection [enacting this section and amending section 1061 of this title and section 412 of Title 26, Internal Revenue Code] shall apply with respect to applications for waivers, extensions, and modifications filed on or after the date of the enactment of this Act [Apr. 7, 1986].''

§ 1085b. Security required upon adoption of plan amendment resulting in significant underfunding

(a) In general

If—

(1) a defined benefit plan (other than a multiemployer plan) to which the requirements of section 1082 of this title apply adopts an amendment an effect of which is to increase current liability under the plan for a plan year, and

(2) the funded current liability percentage of the plan for the plan year in which the amendment takes effect is less than 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment,

the contributing sponsor (or any member of the controlled group of the contributing sponsor) shall provide security to the plan.

(b) Form of security

The security required under subsection (a) of this section shall consist of—

(1) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 1112 of this title,

(2) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

(3) such other form of security as is satisfactory to the Secretary of the Treasury and the parties involved.

(c) Amount of security

The security shall be in an amount equal to the excess of—

(1) the lesser of—

(A) the amount of additional plan assets which would be necessary to increase the funded current liability percentage under the plan to 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, or

(B) the amount of the increase in current liability under the plan attributable to the plan amendment and any other plan amendments adopted after December 22, 1987, and before such plan amendment, over

(2) $10,000,000.

(d) Release of security

The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at the end of the first plan year which ends after the provision of the security and for which the funded current liability percentage under the plan is not less than 60 percent. The Secretary of the Treasury may prescribe regulations for partial releases of the security by reason of increases in the funded current liability percentage.

(e) Notice

A contributing sponsor which is required to provide security under subsection (a) of this section shall notify the Pension Benefit Guaranty Corporation within 30 days after the amendment requiring such security takes effect. Such notice shall contain such information as the Corporation may require.

(f) Definitions

For purposes of this section, the terms ''current liability'', ''funded current liability percentage'', and ''unfunded current liability'' shall have the meanings given such terms by section 1082(d) of this title, except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year.

(Pub. L. 93–406, title I, § 307, as added Pub. L. 100–203, title IX, § 9341(b)(2), Dec. 22, 1987, 101 Stat. 1330–370; amended Pub. L. 101–239, title VII, § 7881(i)(1)(B)–(3)(A), (4)(B), Dec. 19, 1989, 103 Stat. 2442.)

PRIOR PROVISIONS

A prior section 307 of Pub. L. 93–406 was renumbered section 308 and is classified to section 1086 of this title.

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–239, § 7881(i)(4)(B), inserted ''to which the requirements of section 1082 of this title apply'' after ''multiemployer plan)''.

Subsec. (c)(1)(B). Pub. L. 101–239, § 7881(i)(1)(B), which directed amendment of subsec. (c)(1)(B) by inserting ''and any other plan amendments adopted after December 22, 1987, and before such plan amendment'' without specifying where such language was to be inserted, was executed by making the insertion after ''to the plan amendment'', as the probable intent of Congress.

Subsec. (d). Pub. L. 101–239, § 7881(i)(2), inserted ''of the Treasury'' after ''Secretary''.

Subsecs. (e), (f). Pub. L. 101–239, § 7881(i)(3)(A), added subsec. (e) and redesignated former subsec. (e) as (f).

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

This section applicable to plan amendments adopted after Dec. 22, 1987, except that, in the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before Dec. 22, 1987, this section not applicable to plan amendments adopted pursuant to collective bargaining agreements ratified before Dec. 22, 1987, see section 9341(c) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 401 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1371 of this title.

§ 1086. Effective dates

(a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after September 2, 1974.

(b) Except as otherwise provided in subsections (c) and (d) of this section, in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee representatives and one or more employers, this part shall apply only with respect to plan years beginning after the earlier of the date specified in subparagraph (A) or (B) of section 1061(c)(1) of this title.

(2) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b) of this section.

(d) In the case of a plan the administrator of which elects under section 1017(d) of this Act to have the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit to apply to a plan year and to all subsequent plan years, this part shall apply to plan years beginning on the earlier of the first plan year to which such election applies or the first plan year determined under subsections (a), (b), and (c) of this section.

(e) In the case of a plan maintained by a labor organization which is exempt from tax under section 501(c)(5) of title 26 exclusively for the benefit of its employees and their beneficiaries, this part shall be applied by substituting for the term ''December 31, 1975'' in subsection (b) of this section, the earlier of—

(1) the date on which the second convention of such labor organization held after September 2, 1974, ends or

(2) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subsection (c) of this section be substituted.

(f) The preceding provisions of this section shall not apply with respect to amendments made to this part in provisions enacted after September 2, 1974.

(Pub. L. 93–406, title I, §308, formerly §306, Sept. 2, 1974, 88 Stat. 874, renumbered §307, Pub. L. 99–272, title XI, §11015(a)(1)(A)(i), Apr. 7, 1986, 100 Stat. 264; renumbered §308, Pub. L. 100–203, title IX, §9341(b)(1), Dec. 22, 1987, 101 Stat. 1330–370; amended Pub. L. 101–239, title VII, §7894(h)(3), Dec. 19, 1989, 103 Stat. 2451.)

REFERENCES IN TEXT

Section 1017 of this Act, referred to in subsec. (d), is section 1017 of Pub. L. 93–406, which is set out as an Effective Date; Transitional Rules note under section 410 of Title 26, Internal Revenue Code.

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

AMENDMENTS

1989—Subsec. (f). Pub. L. 101–239 added subsec. (f).

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1061 of this title.

PART 4—FIDUCIARY RESPONSIBILITY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1002, 1055, 1056, 1132, 1169, 1201, 1342, 1349 of this title.

§ 1101. Coverage

(a) 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) 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; or

(2) any agreement described in section 736 of title 26, which provides payments to a retired partner or deceased partner or a deceased partner's successor in interest.

(b) For purposes of this part:

(1) In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], the assets of such plan shall be deemed to include such security but shall not, solely by reason of such investment, be deemed to include any assets of such investment company.

(2) In the case of a plan to which a guaranteed benefit policy is issued by an insurer, the assets of such plan shall be deemed to include such policy, but shall not, solely by reason of the issuance of such policy, be deemed to include any assets of such insurer. For purposes of this paragraph:

(A) The term ''insurer'' means an insurance company, insurance service, or insurance organization, qualified to do business in a State.

(B) The term ''guaranteed benefit policy'' means an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. Such term includes any surplus in a separate account, but excludes any other portion of a separate account.

(Pub. L. 93–406, title I, § 401, Sept. 2, 1974, 88 Stat. 874; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

REFERENCES IN TEXT

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

AMENDMENTS

1989—Subsec. (a)(2). 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1003 of this title; title 26 section 4975.

§ 1102. Establishment of plan

(a) Named fiduciaries

(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

(2) For purposes of this subchapter, the term ''named fiduciary'' means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly.

(b) Requisite features of plan

Every employee benefit plan shall—

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this subchapter,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedures described in section 1105(c)(1) of this title),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan.

(c) Optional features of plan

Any employee benefit plan may provide—

(1) that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator);

(2) that a named fiduciary, or a fiduciary designated by a named fiduciary pursuant to a plan procedure described in section 1105(c)(1) of this title, may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the plan; or

(3) that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.

(Pub. L. 93–406, title I, § 402, Sept. 2, 1974, 88 Stat. 875.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1103, 1105, 1114 of this title.

§ 1103. Establishment of trust

(a) Benefit plan assets to be held in trust; authority of trustees

Except as provided in subsection (b) of this section, all assets of an employee benefit plan shall be held in trust by one or more trustees. Such trustee or trustees shall be either named in the trust instrument or in the plan instrument described in section 1102(a) of this title or appointed by a person who is a named fiduciary, and upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that—

(1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to this chapter, or

(2) authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 1102(c)(3) of this title.

(b) Exceptions

The requirements of subsection (a) of this section shall not apply—

(1) to any assets of a plan which consist of insurance contracts or policies issued by an insurance company qualified to do business in a State;

(2) to any assets of such an insurance company or any assets of a plan which are held by such an insurance company;

(3) to a plan—

(A) some or all of the participants of which are employees described in section 401(c)(1) of title 26; or

(B) which consists of one or more individual retirement accounts described in section 408 of title 26;

to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of title 26, whichever is applicable.

(4) to a plan which the Secretary exempts from the requirement of subsection (a) of this section and which is not subject to any of the following provisions of this chapter—

(A) part 2 of this subtitle,

(B) part 3 of this subtitle, or

(C) subchapter III of this chapter; or

(5) to a contract established and maintained under section 403(b) of title 26 to the extent that the assets of the contract are held in one or more custodial accounts pursuant to section 403(b)(7) of title 26.

(6) 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.

(c) Assets of plan not to inure to benefit of employer; allowable purposes of holding plan assets

(1) Except as provided in paragraph (2), (3), or (4) or subsection (d) of this section, or under sections 1342 and 1344 of this title (relating to termination of insured plans), or under section 420 of title 26 (as in effect on January 1, 1995), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

(2)(A) In the case of a contribution, or a payment of withdrawal liability under part 1 of subtitle E of subchapter III of this chapter—

(i) if such contribution or payment is made by an employer to a plan (other than a multiemployer plan) by a mistake of fact, paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the payment of the contribution, and

(ii) if such contribution or payment is made by an employer to a multiemployer plan by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) of title 26 or the trust which is part of such plan is exempt from taxation under section 501(a) of title 26), paragraph (1) shall not prohibit the return of such contribution or payment to the employer within 6 months after the plan administrator determines that the contribution was made by such a mistake.

(B) If a contribution is conditioned on initial qualification of the plan under section 401 or 403(a) of title 26, and if the plan receives an adverse determination with respect to its initial qualification, then paragraph (1) shall not prohibit the return of such contribution to the employer within one year after such determination, but only if the application for the determination is made by the time prescribed by law for filing the employer's return for the taxable year in which such plan was adopted, or such later date as the Secretary of the Treasury may prescribe.

(C) If a contribution is conditioned upon the deductibility of the contribution under section 404 of title 26, then, to the extent the deduction is disallowed, paragraph (1) shall not prohibit the return to the employer of such contribution (to the extent disallowed) within one year after the disallowance of the deduction.

(3) In the case of a withdrawal liability payment which has been determined to be an overpayment, paragraph (1) shall not prohibit the return of such payment to the employer within 6 months after the date of such determination.

(d) Termination of plan

(1) Upon termination of a pension plan to which section 1321 of this title does not apply at the time of termination and to which this part applies (other than a plan to which no employer contributions have been made) the assets of the plan shall be allocated in accordance with the provisions of section 1344 of this title, except as otherwise provided in regulations of the Secretary.

(2) The assets of a welfare plan which terminates shall be distributed in accordance with the terms of the plan, except as otherwise provided in regulations of the Secretary.

(Pub. L. 93–406, title I, § 403, Sept. 2, 1974, 88 Stat. 876; Pub. L. 96–364, title III, § 310, title IV, §§ 402(b)(2), 410(a), 411(c), Sept. 26, 1980, 94 Stat. 1296, 1299, 1308; Pub. L. 100–203, title IX, § 9343(c), Dec. 22, 1987, 101 Stat. 1330–372; Pub. L. 101–239, title VII, §§ 7881(k), 7891(a)(1), 7894(e)(1)(A), (3), Dec. 19, 1989, 103 Stat. 2443, 2445, 2450; Pub. L. 101–508, title XII, § 12012(a), Nov. 5, 1990, 104 Stat. 1388–571; Pub. L. 103–465, title VII, § 731(c)(4)(B), Dec. 8, 1994, 108 Stat. 5004.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (b)(4), (6), 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

1994—Subsec. (c)(1). Pub. L. 103–465 substituted "1995" for "1991".

1990—Subsec. (c)(1). Pub. L. 101–508 inserted ", or under section 420 of title 26 (as in effect on January 1, 1991)" after "insured plans".

1989—Subsecs. (b)(3), (5), (c)(2)(A)(ii), (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.

Subsec. (b)(3). Pub. L. 101–239, § 7894(e)(3), redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, struck out ", to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of title 26, whichever is applicable" before the semicolon in subpar. (B), and inserted concluding provision "to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of title 26, whichever is applicable."

Subsec. (c)(2)(A). Pub. L. 101–239, § 7894(e)(1)(A), in introductory provisions, made technical amendment to reference to part 1 of subtitle E of subchapter III of this chapter to correct reference to corresponding part of original Act, requiring no change in text, and in cls. (i) and (ii), inserted "if such contribution or payment is" before "made by an employer".

Subsec. (c)(3), (4). Pub. L. 101–239, § 7881(k), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''In the case of a contribution which would otherwise be an excess contribution (as defined in section 4979(c) of title 26) paragraph (1) shall not prohibit a correcting distribution with respect to such contribution from the plan to the employer to the extent permitted in such section to avoid payment of an excise tax on excess contributions under such section.''

1987—Subsec. (c)(2)(B). Pub. L. 100–203, § 9343(c)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''If a contribution is conditioned on qualification of the plan under section 401, 403(a), or 405(a) of title 26, and if the plan does not qualify, then paragraph (1) shall not prohibit the return of such contributions to the employer within one year after the date of denial of qualification of the plan.''

Subsec. (c)(3). Pub. L. 100–203, § 9343(c)(2), substituted ''section 4979(c) of title 26'' for ''section 4972(b) of title 26''.

1980—Subsec. (a)(1). Pub. L. 96–364, § 402(b)(2), substituted ''chapter'' for ''subchapter''.

Subsec. (b)(6). Pub. L. 96–364, § 411(c), added par. (6).

Subsec. (c)(1). Pub. L. 96–364, § 310(1), inserted reference to par. (4).

Subsec. (c)(2)(A). Pub. L. 96–364, § 410(a), substituted provisions relating to contributions or payments of withdrawal liability under part 1 of subtitle E of subchapter III of this chapter made by an employer to a plan by a mistake of fact, and by an employer to a multiemployer plan by a mistake of fact or law, for provisions relating to contributions made by an employer by a mistake of fact.

Subsec. (c)(4). Pub. L. 96–364, § 310(2), added par. (4).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to qualified transfers under section 420 of title 26 made after Nov. 5, 1990, see section 12012(e) of Pub. L. 101–508, set out as a note under section 1021 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(k) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

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

Section 7894(e)(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 410 of the Multiemployer Pension Plan Amendments Act of 1980 [Pub. L. 96–364].''

Amendment by section 7894(e)(3) 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 1980 AMENDMENT

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

Amendment by section 410(a) of Pub. L. 96–364 effective Jan. 1, 1975, except with respect to contributions received by a collectively bargained plan maintained by more than one employer before Sept. 26, 1980, see section 410(c) of Pub. L. 96–364, set out as a note under section 401 of Title 26, Internal Revenue Code.

REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031 and 1114 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1104, 1105, 1114, 1403 of this title; title 26 section 409.

§ 1104. Fiduciary duties

(a) Prudent man standard of care

(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter and subchapter III of this chapter.

(2) In the case of an eligible individual account plan (as defined in section 1107(d)(3) of this title), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B) is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in section 1107(d)(4) and (5) of this title).

(b) Indicia of ownership of assets outside jurisdiction of district courts

Except as authorized by the Secretary by regulations, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States.

(c) Control over assets by participant or beneficiary

In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over the assets in his account, if a participant or beneficiary exercises control over the assets in his account (as determined under regulations of the Secretary)—

(1) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and

(2) no person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control.

(d) Plan terminations

(1) If, in connection with the termination of a pension plan which is a single-employer plan,

there is an election to establish or maintain a qualified replacement plan, or to increase benefits, as provided under section 4980(d) of title 26, a fiduciary shall discharge the fiduciary's duties under this subchapter and subchapter III of this chapter in accordance with the following requirements:

(A) In the case of a fiduciary of the terminated plan, any requirement—

(i) under section 4980(d)(2)(B) of title 26 with respect to the transfer of assets from the terminated plan to a qualified replacement plan, and

(ii) under section 4980(d)(2)(B)(ii) or 4980(d)(3) of title 26 with respect to any increase in benefits under the terminated plan.

(B) In the case of a fiduciary of a qualified replacement plan, any requirement—

(i) under section 4980(d)(2)(A) of title 26 with respect to participation in the qualified replacement plan of active participants in the terminated plan,

(ii) under section 4980(d)(2)(B) of title 26 with respect to the receipt of assets from the terminated plan, and

(iii) under section 4980(d)(2)(C) of title 26 with respect to the allocation of assets to participants of the qualified replacement plan.

(2) For purposes of this subsection—

(A) any term used in this subsection which is also used in section 4980(d) of title 26 shall have the same meaning as when used in such section, and

(B) any reference in this subsection to title 26 shall be a reference to title 26 as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990.

(Pub. L. 93–406, title I, § 404, Sept. 2, 1974, 88 Stat. 877; Pub. L. 96–364, title III, § 309, Sept. 26, 1980, 94 Stat. 1296; Pub. L. 101–508, title XII, § 12002(b)(1), (2)(A), Nov. 5, 1990, 104 Stat. 1388–565, 1388–566.)

REFERENCES IN TEXT

The enactment of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (d)(2)(B), is the enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

AMENDMENTS

1990—Subsec. (a)(1)(D). Pub. L. 101–508, § 12002(b)(2)(A), substituted ''and subchapter III'' for ''or subchapter III''.

Subsec. (d). Pub. L. 101–508, § 12002(b)(1), added subsec. (d).

1980—Subsec. (a)(1)(D). Pub. L. 96–364 inserted reference to subchapter III of this chapter.

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 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 part call for the promulgation of regulations, see sections 1031 and 1114 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1105, 1107, 1344, 1403 of this title.

§ 1105. Liability for breach of co-fiduciary

(a) Circumstances giving rise to liability

In addition to any liability which he may have under any other provisions of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or

(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(b) Assets held by two or more trustees

(1) Except as otherwise provided in subsection (d) of this section and in section 1103(a)(1) and (2) of this title, if the assets of a plan are held by two or more trustees—

(A) each shall use reasonable care to prevent a co-trustee from committing a breach; and

(B) they shall jointly manage and control the assets of the plan, except that nothing in this subparagraph (B) shall preclude any agreement, authorized by the trust instrument, allocating specific responsibilities, obligations, or duties among trustees, in which event a trustee to whom certain responsibilities, obligations, or duties have not been allocated shall not be liable by reason of this subparagraph (B) either individually or as a trustee for any loss resulting to the plan arising from the acts or omissions on the part of another trustee to whom such responsibilities, obligations, or duties have been allocated.

(2) Nothing in this subsection shall limit any liability that a fiduciary may have under subsection (a) of this section or any other provision of this part.

(3)(A) In the case of a plan the assets of which are held in more than one trust, a trustee shall not be liable under paragraph (1) except with respect to an act or omission of a trustee of a trust of which he is a trustee.

(B) No trustee shall be liable under this subsection for following instructions referred to in section 1103(a)(1) of this title.

(c) Allocation of fiduciary responsibility; designated persons to carry out fiduciary responsibilities

(1) The instrument under which a plan is maintained may expressly provide for procedures (A) for allocating fiduciary responsibilities (other than trustee responsibilities) among named fiduciaries, and (B) for named fiduciaries to designate persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan.

(2) If a plan expressly provides for a procedure described in paragraph (1), and pursuant to such procedure any fiduciary responsibility of a named fiduciary is allocated to any person, or a person is designated to carry out any such responsibility, then such named fiduciary shall not be liable for an act or omission of such person in carrying out such responsibility except to the extent that—

(A) the named fiduciary violated section 1104(a)(1) of this title—

(i) with respect to such allocation or designation,

(ii) with respect to the establishment or implementation of the procedure under this paragraph (1), or

(iii) in continuing the allocation or designation; or

(B) the named fiduciary would otherwise be liable in accordance with subsection (a) of this section.

(3) For purposes of this subsection, the term ''trustee responsibility'' means any responsibility provided in the plan's trust instrument (if any) to manage or control the assets of the plan, other than a power under the trust instrument of a named fiduciary to appoint an investment manager in accordance with section 1102(c)(3) of this title.

(d) Investment managers

(1) If an investment manager or managers have been appointed under section 1102(c)(3) of this title, then, notwithstanding subsections (a)(2) and (3) and subsection (b) of this section, no trustees shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.

(2) Nothing in this subsection shall relieve any trustee of any liability under this part for any act of such trustee.

(Pub. L. 93–406, title I, § 405, Sept. 2, 1974, 88 Stat. 878.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1102, 1110, 1114 of this title; title 26 section 4975.

§ 1106. Prohibited transactions

(a) Transactions between plan and party in interest

Except as provided in section 1108 of this title:

(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) lending of money or other extension of credit between the plan and a party in interest;

(C) furnishing of goods, services, or facilities between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan; or

(E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 1107(a) of this title.

(2) No fiduciary who has authority or discretion to control or manage the assets of a plan shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 1107(a) of this title.

(b) Transactions between plan and fiduciary

A fiduciary with respect to a plan shall not—

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

(c) Transfer of real or personal property to plan by party in interest

A transfer of real or personal property by a party in interest to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a party-in-interest placed on the property within the 10-year period ending on the date of the transfer.

(Pub. L. 93–406, title I, § 406, Sept. 2, 1974, 88 Stat. 879.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1108, 1114, 1132, 1203, 1399, 1411 of this title; title 26 section 4975.

§ 1107. Limitation with respect to acquisition and holding of employer securities and employer real property by certain plans

(a) Percentage limitation

Except as otherwise provided in this section and section 1114 of this title:

(1) A plan may not acquire or hold—

(A) any employer security which is not a qualifying employer security, or

(B) any employer real property which is not qualifying employer real property.

(2) A plan may not acquire any qualifying employer security or qualifying employer real property, if immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeds 10 percent of the fair market value of the assets of the plan.

(3)(A) After December 31, 1984, a plan may not hold any qualifying employer securities or qualifying employer real property (or both) to the extent that the aggregate fair market value of such securities and property determined on December 31, 1984, exceeds 10 percent of the greater of—

(i) the fair market value of the assets of the plan, determined on December 31, 1984, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(B) Subparagraph (A) of this paragraph shall not apply to any plan which on any date after December 31, 1974; and before January 1, 1985, did not hold employer securities or employer real property (or both) the aggregate fair market value of which determined on such date exceeded 10 percent of the greater of

(i) the fair market value of the assets of the plan, determined on such date, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(4)(A) After December 31, 1979, a plan may not hold any employer securities or employer real property in excess of the amount specified in regulations under subparagraph (B). This subparagraph shall not apply to a plan after the earliest date after December 31, 1974, on which it complies with such regulations.

(B) Not later than December 31, 1976, the Secretary shall prescribe regulations which shall have the effect of requiring that a plan divest itself of 50 percent of the holdings of employer securities and employer real property which the plan would be required to divest before January 1, 1985, under paragraph (2) or subsection (c) of this section (whichever is applicable).

(b) Exception

(1) Subsection (a) of this section shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property by an eligible individual account plan.

(2) Cross references.—

(A) For exemption from diversification requirements for holding of qualifying employer securities and qualifying employer real property by eligible individual account plans, see section 1104(a)(2) of this title.

(B) For exemption from prohibited transactions for certain acquisitions of qualifying employer securities and qualifying employer real property which are not in violation of 10 percent limitation, see section 1108(e) of this title.

(C) For transitional rules respecting securities or real property subject to binding contracts in effect on June 30, 1974, see section 1114(c) of this title.

(c) Election

(1) A plan which makes the election, under paragraph (3) shall be treated as satisfying the requirement of subsection (a)(3) of this section if and only if employer securities held on any date after December 31, 1974 and before January 1, 1985 have a fair market value, determined as of December 31, 1974, not in excess of 10 percent of the lesser of—

(A) the fair market value of the assets of the plan determined on such date (disregarding any portion of the fair market value of employer securities which is attributable to appreciation of such securities after December 31, 1974) but not less than the fair market value of plan assets on January 1, 1975, or

(B) an amount equal to the sum of (i) the total amount of the contributions to the plan received after December 31, 1974, and prior to such date, plus (ii) the fair market value of the assets of the plan, determined on January 1, 1975.

(2) For purposes of this subsection, in the case of an employer security held by a plan after January 1, 1975, the ownership of which is derived from ownership of employer securities held by the plan on January 1, 1975, or from the exercise of rights derived from such ownership, the value of such security held after January 1, 1975, shall be based on the value as of January 1, 1975, of the security from which ownership was derived. The Secretary shall prescribe regulations to carry out this paragraph.

(3) An election under this paragraph may not be made after December 31, 1975. Such an election shall be made in accordance with regulations prescribed by the Secretary, and shall be irrevocable. A plan may make an election under this paragraph only if on January 1, 1975, the plan holds no employer real property. After such election and before January 1, 1985 the plan may not acquire any employer real property.

(d) Definitions

For purposes of this section—

(1) The term ''employer security'' means a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. A contract to which section 1108(b)(5) of this title applies shall not be treated as a security for purposes of this section.

(2) The term ''employer real property'' means real property (and related personal property) which is leased to an employer of employees covered by the plan, or to an affiliate of such employer. For purposes of determining the time at which a plan acquires employer real property for purposes of this section, such property shall be deemed to be acquired by the plan on the date on which the plan acquires the property or on the date on which the lease to the employer (or affiliate) is entered into, whichever is later.

(3)(A) The term ''eligible individual account plan'' means an individual account plan which is (i) a profit-sharing, stock bonus, thrift, or savings plan; (ii) an employee stock ownership plan; or (iii) a money purchase plan which was in existence on September 2, 1974, and which on such date invested primarily in qualifying

employer securities. Such term excludes an individual retirement account or annuity described in section 408 of title 26.

(B) Notwithstanding subparagraph (A), a plan shall be treated as an eligible individual account plan with respect to the acquisition or holding of qualifying employer real property or qualifying employer securities only if such plan explicitly provides for acquisition and holding of qualifying employer securities or qualifying employer real property (as the case may be). In the case of a plan in existence on September 2, 1974, this subparagraph shall not take effect until January 1, 1976.

(C) The term ''eligible individual account plan'' does not include any individual account plan the benefits of which are taken into account in determining the benefits payable to a participant under any defined benefit plan.

(4) The term ''qualifying employer real property'' means parcels of employer real property—

(A) if a substantial number of the parcels are dispersed geographically;

(B) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use;

(C) even if all of such real property is leased to one lessee (which may be an employer, or an affiliate of an employer); and

(D) if the acquisition and retention of such property comply with the provisions of this part (other than section 1104(a)(1)(B) of this title to the extent it requires diversification, and sections 1104(a)(1)(C), 1106 of this title, and subsection (a) of this section).

(5) The term ''qualifying employer security'' means an employer security which is—

(A) stock,

(B) a marketable obligation (as defined in subsection (e) of this section), or

(C) an interest in a publicly traded partnership (as defined in section 7704(b) of title 26), but only if such partnership is an existing partnership as defined in section 10211(c)(2)(A) of the Revenue Act of 1987 (Public Law 100–203).

After December 17, 1987, in the case of a plan other than an eligible individual account plan, an employer security described in subparagraph (A) or (C) shall be considered a qualifying employer security only if such employer security satisfies the requirements of subsection (f)(1) of this section.

(6) The term ''employee stock ownership plan'' means an individual account plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus plan and money purchase plan both of which are qualified, under section 401 of title 26, and which is designed to invest primarily in qualifying employer securities, and

(B) which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

(7) A corporation is an affiliate of an employer if it is a member of any controlled group of corporations (as defined in section 1563(a) of title 26, except that ''applicable percentage'' shall be substituted for ''80 percent'' wherever the latter percentage appears in such section) of which the employer who maintains the plan is a member. For purposes of the preceding sentence, the term ''applicable percentage'' means 50 percent, or such lower percentage as the Secretary may prescribe by regulation. A person other than a corporation shall be treated as an affiliate of an employer to the extent provided in regulations of the Secretary. An employer which is a person other than a corporation shall be treated as affiliated with another person to the extent provided by regulations of the Secretary. Regulations under this paragraph shall be prescribed only after consultation and coordination with the Secretary of the Treasury.

(8) The Secretary may prescribe regulations specifying the extent to which conversions, splits, the exercise of rights, and similar transactions are not treated as acquisitions.

(9) For purposes of this section, an arrangement which consists of a defined benefit plan and an individual account plan shall be treated as 1 plan if the benefits of such individual account plan are taken into account in determining the benefits payable under such defined benefit plan.

(e) Marketable obligations

For purposes of subsection (d)(5) of this section, the term ''marketable obligation'' means a bond, debenture, note, or certificate, or other evidence of indebtedness (hereinafter in this subsection referred to as ''obligation'') if—

(1) such obligation is acquired—

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the plan than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the plan than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the as-

sets of the plan is invested in obligations of the employer or an affiliate of the employer.

(f) Maximum percentage of stock held by plan; time of holding or acquisition; necessity of legally binding contract

(1) Stock satisfies the requirements of this paragraph if, immediately following the acquisition of such stock—

(A) no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer.

(2) Until January 1, 1993, a plan shall not be treated as violating subsection (a) of this section solely by holding stock which fails to satisfy the requirements of paragraph (1) if such stock—

(A) has been so held since December 17, 1987, or

(B) was acquired after December 17, 1987, pursuant to a legally binding contract in effect on December 17, 1987, and has been so held at all times after the acquisition.

(Pub. L. 93–406, title I, § 407, Sept. 2, 1974, 88 Stat. 880; Pub. L. 100–203, title IX, § 9345(a)(1), (2), (b), Dec. 22, 1987, 101 Stat. 1330–373; Pub. L. 101–239, title VII, §§ 7881(*l*)(1)–(4), 7891(a)(1), 7894(e)(2), Dec. 19, 1989, 103 Stat. 2443, 2445, 2450; Pub. L. 101–540, § 1, Nov. 8, 1990, 104 Stat. 2379.)

REFERENCES IN TEXT

Section 10211(c)(2)(A) of the Revenue Act of 1987 (Public Law 100–203), referred to in subsec. (d)(5)(C), is set out as a note under section 7704 of Title 26, Internal Revenue Code.

AMENDMENTS

1990—Subsec. (d)(5). Pub. L. 101–540 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The term 'qualifying employer security' means an employer security which is stock or a marketable obligation (as defined in subsection (e) of this section). After December 17, 1987, in the case of a plan other than an eligible individual account plan, stock shall be considered a qualifying employer security only if such stock satisfies the requirements of subsection (f)(1) of this section.''

1989—Subsec. (d)(3)(A), (6)(A), (7). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (d)(3)(C). Pub. L. 101–239, § 7881(*l*)(1), realigned margin.

Subsec. (d)(6)(A). Pub. L. 101–239, § 7894(e)(2), substituted ''money purchase plan'' for ''money purchase'' and ''employer securities'' for ''employee securities''.

Subsec. (d)(9). Pub. L. 101–239, § 7881(*l*)(2), substituted ''such individual account plan'' for ''such arrangement'' and realigned margin.

Subsec. (f)(1). Pub. L. 101–239, § 7881(*l*)(3)(A), (4), substituted ''paragraph'' for ''subsection'' and ''if, immediately following the acquisition of such stock'' for ''if''.

Subsec. (f)(3). Pub. L. 101–239, § 7881(*l*)(3)(B), struck out par. (3) which read as follows: ''After December 17, 1987, no plan may acquire stock which does not satisfy the requirements of paragraph (1) unless the acquisition is made pursuant to a legally binding contract in effect on such date.''

1987—Subsec. (d)(3)(C). Pub. L. 100–203, § 9345(a)(1), added subpar. (C).

Subsec. (d)(5). Pub. L. 100–203, § 9345(b)(1), inserted at end ''After December 17, 1987, in the case of a plan other than an eligible individual account plan, stock shall be considered a qualifying employer security only if such stock satisfies the requirements of subsection (f)(1) of this section.''

Subsec. (d)(9). Pub. L. 100–203, § 9345(a)(2), added par. (9).

Subsec. (f). Pub. L. 100–203, § 9345(b)(2), added subsec. (f).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 2 of Pub. L. 101–540 provided that: ''The amendment made by section 1 [amending this section] shall apply to interests in publicly traded partnerships acquired before, on, or after January 1, 1987.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(*l*)(1)–(4) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

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

Amendment by section 7894(e)(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 9345(a)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to arrangements established after December 17, 1987.''

REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031 and 1114 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1104, 1106, 1108, 1114, 1222 of this title; title 19 section 2373.

§ 1108. Exemptions from prohibited transactions

(a) Grant of exemptions

The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 1106 and 1107(a) of this title. Action under this subsection may be taken only after consultation and coordination with the Secretary of the Treasury. An exemption granted under this section shall not relieve a fiduciary from any other applicable provision of this chapter. The Secretary may not grant an exemption under this subsection unless he finds that such exemption is—

(1) administratively feasible,

(2) in the interests of the plan and of its participants and beneficiaries, and

(3) protective of the rights of participants and beneficiaries of such plan.

Before granting an exemption under this subsection from section 1106(a) or 1107(a) of this title, the Secretary shall publish notice in the Federal Register of the pendency of the exemption, shall require that adequate notice be given to interested persons, and shall afford interested persons opportunity to present views. The Secretary may not grant an exemption under this subsection from section 1106(b) of this title unless he affords an opportunity for a hearing and makes a determination on the record with respect to the findings required by paragraphs (1), (2), and (3) of this subsection.

(b) Enumeration of transactions exempted from section 1106 prohibitions

The prohibitions provided in section 1106 of this title shall not apply to any of the following transactions:

(1) Any loans made by the plan to parties in interest who are participants or beneficiaries of the plan if such loans (A) are available to all such participants and beneficiaries on a reasonably equivalent basis, (B) are not made available to highly compensated employees (within the meaning of section 414(q) of title 26) in an amount greater than the amount made available to other employees, (C) are made in accordance with specific provisions regarding such loans set forth in the plan, (D) bear a reasonable rate of interest, and (E) are adequately secured.

(2) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.

(3) A loan to an employee stock ownership plan (as defined in section 1107(d)(6) of this title), if—

(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

(B) such loan is at an interest rate which is not in excess of a reasonable rate.

If the plan gives collateral to a party in interest for such loan, such collateral may consist only of qualifying employer securities (as defined in section 1107(d)(5) of this title).

(4) The investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment.

(5) Any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State, if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

(A) the employer maintaining the plan, or

(B) a party in interest which is wholly owned (directly or indirectly) by the employer maintaining the plan, or by any person which is a party in interest with respect to the plan, but only if the total premiums and annuity consideration written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are parties in interest (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan).

(6) The providing of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and adherence to such guidelines would reasonably preclude such bank or similar financial institution from providing such ancillary service (i) in an excessive or unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans.

Such ancillary services shall not be provided at more than reasonable compensation.

(7) The exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary, but only if the plan receives no less than adequate consideration pursuant to such conversion.

(8) Any transaction between a plan and (i) a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency or (ii) a pooled investment fund of an insurance company qualified to do business in a State, if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance com-

pany, or an affiliate thereof) who has authority to manage and control the assets of the plan.

(9) The making by a fiduciary of a distribution of the assets of the plan in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 1344 of this title (relating to allocation of assets).

(10) Any transaction required or permitted under part 1 of subtitle E of subchapter III of this chapter.

(11) A merger of multiemployer plans, or the transfer of assets or liabilities between multiemployer plans, determined by the Pension Benefit Guaranty Corporation to meet the requirements of section 1411 of this title.

(12) The sale by a plan to a party in interest on or after December 18, 1987, of any stock, if—

(A) the requirements of paragraphs (1) and (2) of subsection (e) of this section are met with respect to such stock,

(B) on the later of the date on which the stock was acquired by the plan, or January 1, 1975, such stock constituted a qualifying employer security (as defined in section 1107(d)(5) of this title as then in effect), and

(C) such stock does not constitute a qualifying employer security (as defined in section 1107(d)(5) of this title as in effect at the time of the sale).

(13) Any transfer in a taxable year beginning before January 1, 2001, of excess pension assets from a defined benefit plan to a retiree health account in a qualified transfer permitted under section 420 of title 26 (as in effect on January 1, 1995).

(c) Fiduciary benefits and compensation not prohibited by section 1106

Nothing in section 1106 of this title shall be construed to prohibit any fiduciary from—

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan; except that no person so serving who already receives full time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in such plan shall receive compensation from such plan, except for reimbursement of expenses properly and actually incurred; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(d) Owner-employees; family members; shareholder employees

Section 1107(b) of this title and subsections (b), (c), and (e) of this section shall not apply to any transaction in which a plan, directly or indirectly—

(1) lends any part of the corpus or income of the plan to;

(2) pays any compensation for personal services rendered to the plan to; or

(3) acquires for the plan any property from or sells any property to;

any person who is with respect to the plan an owner-employee (as defined in section 401(c)(3) of title 26), a member of the family (as defined in section 267(c)(4) of title 26) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of this subsection a shareholder employee (as defined in section 1379 of title 26 as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982) and a participant or beneficiary of an individual retirement account or individual retirement 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) and an employer or association of employers which establishes such an account or annuity under section 408(c) of title 26 shall be deemed to be an owner-employee.

(e) Acquisition or sale by plan of qualifying employer securities; acquisition, sale, or lease by plan of qualifying employer real property

Sections 1106 and 1107 of this title shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 1107(d)(5) of this title) or acquisition, sale or lease by a plan of qualifying employer real property (as defined in section 1107(d)(4) of this title)—

(1) if such acquisition, sale, or lease is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under section 1107(e)(1) of this title),

(2) if no commission is charged with respect thereto, and

(3) if—

(A) the plan is an eligible individual account plan (as defined in section 1107(d)(3) of this title), or

(B) in the case of an acquisition or lease of qualifying employer real property by a plan which is not an eligible individual account plan, or of an acquisition of qualifying employer securities by such a plan, the lease or acquisition is not prohibited by section 1107(a) of this title.

(f) Applicability of statutory prohibitions to mergers or transfers

Section 1106(b)(2) of this title shall not apply to any merger or transfer described in subsection (b)(11) of this section.

(Pub. L. 93–406, title I, §408, Sept. 2, 1974, 88 Stat. 883; Pub. L. 96–364, title III, §308, Sept. 26, 1980, 94 Stat. 1295; Pub. L. 97–354, §5(a)(43), Oct. 19, 1982, 96 Stat. 1697; Pub. L. 99–514, title XI, §1114(b)(15)(B), title XVIII, §1898(i)(1), Oct. 22, 1986, 100 Stat. 2452, 2957; Pub. L. 101–239, title

VII, §§ 7881(*l*)(5), 7891, 7894(e)(4)(A), Dec. 19, 1989, 103 Stat. 2443, 2445, 2450; Pub. L. 101–508, title XII, § 12012(b), Nov. 5, 1990, 104 Stat. 1388–571; Pub. L. 103–465, title VII, § 731(c)(4)(C), Dec. 8, 1994, 108 Stat. 5004.)

REFERENCES IN TEXT

Section 409 of title 26, referred to in subsec. (d), 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 subsec. (a), 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 date of the enactment of the Subchapter S Revision Act of 1982, referred to subsec. (d), is the date of enactment of Pub. L. 97–354, which was approved Oct. 19, 1982.

AMENDMENTS

1994—Subsec. (b)(13). Pub. L. 103–465 substituted ''2001'' for ''1996'' and ''1995'' for ''1991''.

1990—Subsec. (b)(13). Pub. L. 101–508 added par. (13).

1989—Subsec. (b)(12). Pub. L. 101–239, § 7881(*l*)(5), added par. (12).

Subsec. (d). Pub. L. 101–239, § 7891(a)(1), in last sentence, substituted ''section 401(c)(3) of the Internal Revenue Code of 1986'' for ''section 401(c)(3) of the Internal Revenue Code of 1954'', which for purposes of codification was translated as ''section 401(c)(3) of title 26'' thus requiring no change in text.

Pub. L. 101–239, § 7891(a)(2), in last sentence, substituted ''section 408 of the Internal Revenue Code of 1986'' for ''section 408 of the Internal Revenue Code of 1954'' and ''section 408(c) of the Internal Revenue Code of 1986'' for ''section 408(c) of such Code'' which for purposes of codification were translated as ''section 408 of title 26'' and ''section 408(c) of title 26'', respectively, thus requiring no change in text.

Pub. L. 101–239, § 7894(e)(4)(A), in last sentence, substituted ''individual retirement account or individual retirement 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)'' for ''individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409 of title 26)'' and ''section 408(c) of such Code'' for ''section 408(c) of such code'', which for purposes of codification was translated as ''section 408(c) of title 26'' thus requiring no change in text.

1986—Subsec. (b)(1)(B). Pub. L. 99–514, § 1114(b)(15)(B), substituted ''highly compensated employees (within the meaning of section 414(q) of title 26)'' for ''highly compensated employees, officers, or shareholders''.

Subsec. (d). Pub. L. 99–514, § 1898(i)(1), struck out ''(a),'' before ''(b),'' in introductory provisions.

1982—Subsec. (d). Pub. L. 97–354 substituted ''section 1379 of title 26 as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982'' for ''section 1379 of title 26''.

1980—Subsec. (b)(10), (11). Pub. L. 96–364, § 308(a), added pars. (10) and (11).

Subsec. (f). Pub. L. 96–364, § 308(b), added subsec. (f).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to qualified transfers under section 420 of title 26 made after Nov. 5, 1990, see section 12012(e) of Pub. L. 101–508, set out as a note under section 1021 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(*l*)(5) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 7891(a) 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(e)(4)(B) of Pub. L. 101–239 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if originally included in section 491(b) of the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(15)(B) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of Title 26, Internal Revenue Code.

Section 1898(i)(2) of Pub. L. 99–514 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to transactions after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as a note under section 1361 of Title 26, Internal Revenue Code.

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 of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of Title 26, Internal Revenue Code.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031 and 1114 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1106, 1107, 1403 of this title; title 5 section 8477; title 26 section 4975.

§ 1109. Liability for breach of fiduciary duty

(a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal

of such fiduciary. A fiduciary may also be removed for a violation of section 1111 of this title.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this subchapter if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

(Pub. L. 93–406, title I, § 409, Sept. 2, 1974, 88 Stat. 886.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1132 of this title.

§ 1110. Exculpatory provisions; insurance

(a) Except as provided in sections 1105(b)(1) and 1105(d) of this title, any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy.

(b) Nothing in this subpart[1] shall preclude—

(1) a plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;

(2) a fiduciary from purchasing insurance to cover liability under this part from and for his own account; or

(3) an employer or an employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee benefit plan.

(Pub. L. 93–406, title I, § 410, Sept. 2, 1974, 88 Stat. 886.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1114 of this title.

§ 1111. Persons prohibited from holding certain positions

(a) Conviction or imprisonment

No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 802(6) of title 21, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 80a–9(a)(1) of title 15, a violation of any provision of this chapter, a violation of section 186 of this title, a violation of chapter 63 of title 18, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan,

(2) as a consultant or adviser to an employee benefit plan, including but not limited to any entity whose activities are in whole or substantial part devoted to providing goods or services to any employee benefit plan, or

(3) in any capacity that involves decision-making authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan,

during or for the period of thirteen years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period, in the case of a person so convicted or imprisoned (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, the United States district court for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements under section 994(a) of title 28, determines that such person's service in any capacity referred to in paragraphs (1) through (3) would not be contrary to the purposes of this subchapter. Prior to making any such determination the court shall hold a hearing and shall give notice to[1] such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The court's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such court that such service would be inconsistent with the intention of this section.

(b) Penalty

Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(c) Definitions

For the purpose of this section—

(1) A person shall be deemed to have been ''convicted'' and under the disability of ''conviction'' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

[1] So in original. This part does not contain subparts.

[1] So in original. Probably should be ''of''.

(2) The term ''consultant'' means any person who, for compensation, advises, or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(3) A period of parole or supervised release shall not be considered as part of a period of imprisonment.

(d) Salary of person barred from employee benefit plan office during appeal of conviction

Whenever any person—

(1) by operation of this section, has been barred from office or other position in an employee benefit plan as a result of a conviction, and

(2) has filed an appeal of that conviction,

any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of that person's conviction on appeal, the amounts in escrow shall be returned to the individual or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute[2] from assuming any position from which such person was previously barred.

(Pub. L. 93–406, title I, § 411, Sept. 2, 1974, 88 Stat. 887; Pub. L. 98–473, title II, §§ 229, 230, 802, Oct. 12, 1984, 98 Stat. 2031, 2131; Pub. L. 100–182, § 15(b), Dec. 7, 1987, 101 Stat. 1269.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), 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 Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (a), is Pub. L. 86–257, Sept. 14, 1959, 73 Stat. 519, as amended, which is classified principally to chapter 11 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title, and Tables.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–182, in concluding provisions, substituted ''if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, the United States district court for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements under section 994(a) of title 28,'' for ''the United States Parole Commission'', ''court shall'' for ''Commission shall'', ''court's'' for ''Commission's'', ''such court'' for ''such Parole Commission'', and ''a hearing'' for ''an administrative hearing''.

1984—Subsec. (a). Pub. L. 98–473, § 229, which directed substitution of ''if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, on motion of the United States Department of Justice, the district court of the United States for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements issued pursuant to section 994(a) of title 28,'' for ''the Board of Parole of the United States Justice Department'', ''court'' and ''court's'' for ''Board'' and ''Board's'', respectively, and ''a'' for ''an administrative'', was (except for the last substitution) incapable of execution in view of the previous amendment by section 802 of Pub. L. 98–473 which became effective prior to the effective date of the amendment by section 229. See note below.

Pub. L. 98–473, § 802(a), in amending provisions after ''the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401),'' generally, inserted provisions relating to abuse or misuse of employment in a labor organization or employee benefit plan, in cl. (1) substituted ''employee, or representative in any capacity'' for ''or employee'', in cl. (2) substituted ''consultant or adviser to an'' for ''consultant to any'', added cl. (3), substituted ''the period of thirteen years'' for ''five years'', ''unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period,'' for ''unless prior to the end of such five-year period,'', in cl. (B) substituted ''the United States Parole Commission'' for ''the Board of Parole of the United States Department of Justice'' and ''paragraphs (1) through (3)'' for ''paragraph (1) or (2)'', and in provisions following cl. (B) substituted ''Commission'' and ''Commission's'' for ''Board'' and ''Board's'', respectively, inserted provision of notice to the Secretary of Labor, and substituted ''hire, retain, employ, or otherwise place any other person to serve in any capacity'' for ''permit any other person to serve in any capacity referred to in paragraph (1) or (2)'' and ''Parole Commission'' for ''Board of Parole''.

Subsec. (b). Pub. L. 98–473, § 802(b), substituted ''five years'' for ''one year''.

Subsec. (c)(1). Pub. L. 98–473, § 802(c), substituted '', regardless of whether that judgment remains under appeal'' for ''or the date of the final sustaining of such judgment on appeal, whichever is the later event''.

Subsec. (c)(3). Pub. L. 98–473, § 230, inserted ''or supervised release'' after ''parole''.

Subsec. (d). Pub. L. 98–473, § 802(d), added subsec. (d).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100–182, set out as a note under section 3006A of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendments by sections 229 and 230 of Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendments, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

Amendment by section 802 of Pub. L. 98–473 effective with respect to any judgment of conviction entered by the trial court after Oct. 12, 1984, except as otherwise provided, see section 804 of Pub. L. 98–473, set out as a note under section 504 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1109 of this title.

§ 1112. Bonding

(a) Requisite bonding of plan officials

Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan (hereafter in this section referred to as ''plan official'') shall be bonded as provided in this section; except that—

[2] So in original. Probably should be ''section''.

(1) where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section, and

(2) no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary—

(A) is a corporation organized and doing business under the laws of the United States or of any State;

(B) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(C) is subject to supervision or examination by Federal or State authority; and

(D) has at all times a combined capital and surplus in excess of such a minimum amount as may be established by regulations issued by the Secretary, which amount shall be at least $1,000,000. Paragraph (2) shall apply to a bank or other financial institution which is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation, only if such bank or institution meets bonding or similar requirements under State law which the Secretary determines are at least equivalent to those imposed on banks by Federal law.

The amount of such bond shall be fixed at the beginning of each fiscal year of the plan. Such amount shall be not less than 10 per centum of the amount of funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, subject to the 10 per centum limitation of the preceding sentence. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of the plan official, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 9304–9308 of title 31. Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) Unlawful acts

It shall be unlawful for any plan official to whom subsection (a) of this section applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee benefit plan, without being bonded as required by subsection (a) of this section and it shall be unlawful for any plan official of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any plan official, with respect to whom the requirements of subsection (a) of this section have not been met.

(c) Conflict of interest prohibited in procuring bonds

It shall be unlawful for any person to procure any bond required by subsection (a) of this section from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any control or significant financial interest, direct or indirect.

(d) Exclusiveness of statutory basis for bonding requirement for persons handling funds or other property of employee benefit plans

Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) of this section because he handles funds or other property of an employee benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section including exempting a plan from the requirements of this section where he finds that (1) other bonding arrangements or (2) the overall financial condition of the plan would be adequate to protect the interests of the beneficiaries and participants. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.

(Pub. L. 93–406, title I, § 412, Sept. 2, 1974, 88 Stat. 888.)

CODIFICATION

In subsec. (a), ''sections 9304–9308 of title 31'' substituted for ''sections 6 through 13 of title 6, United States Code'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031 and 1114 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1028, 1085b, 1383, 1384 of this title; title 26 section 401.

§ 1113. Limitation of actions

No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of—

(1) six years after (A) the date of the last action which constituted a part of the breach or

violation, or (B) in the case of an omission the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation;

except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

(Pub. L. 93–406, title I, § 413, Sept. 2, 1974, 88 Stat. 889; Pub. L. 100–203, title IX, § 9342(b), Dec. 22, 1987, 101 Stat. 1330–371; Pub. L. 101–239, title VII, §§ 7881(j)(4), 7894(e)(5), Dec. 19, 1989, 103 Stat. 2443, 2450.)

AMENDMENTS

1989—Pub. L. 101–239, § 7894(e)(5), struck out ''(a)'' before ''No action''.

Par. (2). Pub. L. 101–239, § 7881(j)(4), struck out comma after ''violation''.

1987—Subsec. (a)(2). Pub. L. 100–203 struck out ''(A)'' after ''date'' and struck out ''or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Secretary under this subchapter''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(j)(4) 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(e)(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 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.

§ 1114. Effective date

(a) Except as provided in subsections (b), (c), and (d) of this section, this part shall take effect on January 1, 1975.

(b)(1) The provisions of this part authorizing the Secretary to promulgate regulations shall take effect on September 2, 1974.

(2) Upon application of a plan, the Secretary may postpone until not later than January 1, 1976, the applicability of any provision of sections 1102, 1103 (other than 1103(c)), 1105 (other than 1105(a) and (d)), and 1110(a) of this title, as it applies to any plan in existence on September 2, 1974, if he determines such postponement is (A) necessary to amend the instrument establishing the plan under which the plan is maintained and (B) not adverse to the interest of participants and beneficiaries.

(3) This part shall take effect on September 2, 1974, with respect to a plan which terminates after June 30, 1974, and before January 1, 1975, and to which at the time of termination section 1321 of this title applies.

(c) Sections 1106 and 1107(a) of this title (relating to prohibited transactions) shall not apply—

(1) until June 30, 1984, to a loan of money or other extension of credit between a plan and a party in interest under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of title 26 or the corresponding provisions of prior law);

(2) until June 30, 1984, to a lease or joint use of property involving the plan and a party in interest pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of title 26 or the corresponding provisions of prior law);

(3) until June 30, 1984, to the sale, exchange or other disposition of property described in paragraph (2) between a plan and a party in interest if—

(A) in the case of a sale, exchange, or other disposition of the property by the plan to the party in interest, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(B) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition;

(4) until June 30, 1977, to the provision of services, to which paragraphs (1), (2), and (3) do not apply between a plan and a party in interest—

(A) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or

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

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

(d) Any election, or failure to elect, by a disqualified person under section 2003(c)(1)(B) of this Act shall be treated for purposes of this part (but not for purposes of section 1144 of this

title) as an act or omission occurring before the effective date of this part.

(e) The preceding provisions of this section shall not apply with respect to amendments made to this part in provisions enacted after September 2, 1974.

(Pub. L. 93–406, title I, § 414, Sept. 2, 1974, 88 Stat. 889; Pub. L. 101–239, title VII, § 7894(e)(6), (h)(4), Dec. 19, 1989, 103 Stat. 2450, 2451.)

REFERENCES IN TEXT

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

AMENDMENTS

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

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if originally included in the provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, to which such amendment relates, see section 7894(i) of Pub. L. 101–239, set out as a note under section 1002 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1107 of this title.

PART 5—ADMINISTRATION AND ENFORCEMENT

§ 1131. Criminal penalties

Any person who willfully violates any provision of part 1 of this subtitle, or any regulation or order issued under any such provision, shall upon conviction be fined not more than $5,000 or imprisoned not more than one year, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $100,000.

(Pub. L. 93–406, title I, § 501, Sept. 2, 1974, 88 Stat. 891.)

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1028 of this title.

§ 1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

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

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

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

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

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

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

(6) by the Secretary to collect any civil penalty under subsection (c)(2) or (i) or (*l*) of this section;

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

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

(9) in the event that the purchase of an insurance contract or insurance annuity in connection with termination of an individual's status as a participant covered under a pension plan with respect to all or any portion of the participant's pension benefit under such plan constitutes a violation of part 4 of this title[1] or the terms of the plan, by the Secretary, by any individual who was a participant or beneficiary at the time of the alleged violation, or by a fiduciary, to obtain appropriate relief, including the posting of security if necessary, to assure receipt by the participant or beneficiary of the amounts provided or to be provided by such insurance contract or annuity, plus reasonable prejudgment interest on such amounts.

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

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

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

(B) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall pre-

[1] So in original. Probably should be ''subtitle''.

[2] See References in Text note below.

scribe by regulation) that he exercise such authority on their behalf. In the case of such a request under this paragraph he may exercise such authority only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefits under the plan.

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

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

(1) Any administrator (A) who fails to meet the requirements of paragraph (1) or (4) of section 1166[2] of this title or section 1021(e)(1) of this title with respect to a participant or beneficiary, or (B) who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

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

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

(4) The Secretary may assess a civil penalty of not more than $1,000 for each violation by any person of section 1021(f)(1) of this title. For purposes of this paragraph, each violation described in subparagraph (A) with respect to any single participant, and each violation described in subparagraph (B) with respect to any single participant or beneficiary, shall be treated as a separate violation. The Secretary and the Secretary of Health and Human Services shall maintain such ongoing consultation as may be necessary and appropriate to coordinate enforcement under this subsection with enforcement under section 1320b–14(c)(8) of title 42.

(d) Status of employee benefit plan as entity

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

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

(e) Jurisdiction

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

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

(f) Amount in controversy; citizenship of parties

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

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

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

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

(A) the unpaid contributions,

(B) interest on the unpaid contributions,

(C) an amount equal to the greater of—

(i) interest on the unpaid contributions, or

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

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

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

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

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

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

(i) Administrative assessment of civil penalty

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

(j) Direction and control of litigation by Attorney General

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

(k) Jurisdiction of actions against the Secretary of Labor

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

(*l*) Civil penalties on violations by fiduciaries

(1) In the case of—

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

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

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

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

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

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

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

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

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

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

(m) Penalty for improper distribution

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

(Pub. L. 93–406, title I, § 502, Sept. 2, 1974, 88 Stat. 891; Pub. L. 96–364, title III, § 306(b), Sept. 26, 1980, 94 Stat. 1295; Pub. L. 99–272, title X, § 10002(b), Apr. 7, 1986, 100 Stat. 231; Pub. L. 100–203, title IX, §§ 9342(c), 9344, Dec. 22, 1987, 101 Stat. 1330–372, 1330–373; Pub. L. 101–239, title II, § 2101(a), (b), title VII, §§ 7881(b)(5)(B), (j)(2), (3), 7891(a)(1), 7894(f)(1), Dec. 19, 1989, 103 Stat. 2123, 2438, 2442, 2445, 2450; Pub. L. 101–508, title XII, § 12012(d)(2), Nov. 5, 1990, 104 Stat. 1388–573; Pub. L. 103–66, title IV, § 4301(c)(1)–(3), Aug. 10, 1993, 107 Stat. 376; Pub. L. 103–401, §§ 2, 3, Oct. 22, 1994, 108 Stat. 4172; Pub. L. 103–465, title VII, § 761(a)(9)(B)(ii), Dec. 8, 1994, 108 Stat. 5033.)

REFERENCES IN TEXT

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

Paragraphs (1) and (4) of section 1166 of this title, referred to in subsec. (c)(1), were redesignated as pars. (1)

and (4) of section 1166(a) of this title by Pub. L. 101–239, title VII, § 7891(d)(1)(A)(ii)(I), Dec. 19, 1989, 103 Stat. 2445.

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

Pub. L. 101–239, § 2101(b), inserted ''or (*l*)'' after ''subsection (i)''.

Subsec. (b)(1). Pub. L. 101–239, § 7894(f)(1), substituted ''respect'' for ''respct'' before ''to a violation'' in introductory provisions.

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1994 AMENDMENTS

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

Section 5 of Pub. L. 103–401 provided that: ''The amendments made by this Act [amending this section] shall apply to any legal proceeding pending, or brought, on or after May 31, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to qualified transfers under section 420 of title 26 made after Nov. 5, 1990, see section 12012(e) of Pub. L. 101–508, set out as a note under section 1021 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 2101(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply to any breach of fiduciary responsibility or other violation occurring on or after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by section 7881(b)(5)(B), (j)(2), (3) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

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

Amendment by section 7894(f)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if originally included in the provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, to which such amendment relates, see section 7894(i) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9342(d) of Pub. L. 100–203 provided that:

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

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

REGULATIONS

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.

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

Section 4 of Pub. L. 103–401 provided that: ''Nothing in this Act [amending this section and enacting provi-

sions set out as notes under this section and section 1001 of this title] shall be construed to limit the legal standing of individuals to bring a civil action as participants or beneficiaries under section 502(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)), and nothing in this Act shall affect the responsibilities, obligations, or duties imposed upon fiduciaries by title I of the Employee Retirement Income Security Act of 1974 [this subchapter].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1140 of this title.

§ 1133. Claims procedure

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

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

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

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

REGULATIONS

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1022 of this title.

§ 1134. Investigative authority

(a) Investigation and submission of reports, books, etc.

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

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

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

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

(b) Frequency of submission of books and records

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

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

For the purposes of any investigation provided for in this subchapter, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, records, and documents) are hereby made applicable (without regard to any limitation in such sections respecting persons, partnerships, banks, or common carriers) to the jurisdiction, powers, and duties of the Secretary or any officers designated by him. To the extent he considers appropriate, the Secretary may delegate his investigative functions under this section with respect to insured banks acting as fiduciaries of employee benefit plans to the appropriate Federal banking agency (as defined in section 1813(q) of title 12).

(Pub. L. 93–406, title I, § 504, Sept. 2, 1974, 88 Stat. 893; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

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

REGULATIONS

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1135 of this title; title 5 section 8478a.

§ 1135. Regulations

Subject to subchapter II of this chapter and section 1029 of this title, the Secretary may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this subchapter. Among other things, such regulations may define accounting, technical and

trade terms used in such provisions; may prescribe forms; and may provide for the keeping of books and records, and for the inspection of such books and records (subject to section 1134(a) and (b) of this title).

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

REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

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

''(A) Interpretive Bulletin 75–2 (29 CFR 2509.750–2); or

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

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

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

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

''(iv) on February 15, 1985, at 50 Fed. Reg. 6361,

without regard to any limitation of any effective date proposed therein.

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

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

''(2) The term 'real estate asset' means real property (including an interest in real property) and any share of stock or beneficial interest, partnership interest, depository receipt, or any other interest in any other real estate entity.

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

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

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

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

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

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

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

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

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

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

''(E) any requirement that advance notice of a transfer or assignment be given to the entity and any requirement regarding execution of documentation evidencing such transfer or assignment (including documentation setting forth representations from either or both of the transferor or transferee as to compliance with any restriction or re-

quirement described in this section or requiring compliance with the entity's governing instruments);

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

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

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

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

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

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

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

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

(a) Coordination with other agencies and departments

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

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

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

(Pub. L. 93–406, title I, § 506, Sept. 2, 1974, 88 Stat. 894; Pub. L. 98–473, title II, § 805, Oct. 12, 1984, 98 Stat. 2134.)

AMENDMENTS

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

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1144 of this title.

§ 1137. Administration

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

(b) Omitted.

(c) No employee of the Department of Labor or the Department of the Treasury shall administer or enforce this subchapter or the Internal Revenue Code of 1986 with respect to any employee benefit plan under which he is a participant or beneficiary, any employee organization of which he is a member, or any employer organization in which he has an interest. This subsection does not apply to an employee benefit plan which covers only employees of the United States.

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

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (c), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

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

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

EFFECTIVE DATE OF 1989 AMENDMENT

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

REGULATIONS

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1144 of this title.

§ 1138. Appropriations

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

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

REFERENCES IN TEXT

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

REGULATIONS

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

§ 1139. Separability

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

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

REFERENCES IN TEXT

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

REGULATIONS

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

§ 1140. Interference with protected rights

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C. 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this chapter or the Welfare and Pension Plans Disclosure Act. The provisions of section 1132 of this title shall be applicable in the enforcement of this section.

(Pub. L. 93–406, title I, § 510, Sept. 2, 1974, 88 Stat. 895.)

REFERENCES IN TEXT

The Welfare and Pension Plans Disclosure Act, referred to in text, is Pub. L. 85–836, Aug. 28, 1958, 72 Stat. 997, as amended, which was classified generally to chapter 10 (§ 301 et seq.) of this title, and was repealed by Pub. L. 93–406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851 (Employee Retirement Income Security Act of 1974), effective Jan. 1, 1975. Such section 111(a)(1) also provided that the Welfare and Pension Plans Disclosure Act should continue to apply to any conduct and events which occurred before Jan. 1, 1975 (see section 1031 of this title). For complete classification of the Welfare and Pension Plans Disclosure Act to the Code prior to such repeal, see Tables.

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

REGULATIONS

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

§ 1141. Coercive interference

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

(Pub. L. 93–406, title I, § 511, Sept. 2, 1974, 88 Stat. 895.)

REFERENCES IN TEXT

The Welfare and Pension Plans Disclosure Act, referred to in text, is Pub. L. 85–836, Aug. 28, 1958, 72 Stat. 997, as amended, which was classified generally to chapter 10 (§ 301 et seq.) of this title, and was repealed by Pub. L. 93–406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851 (Employee Retirement Income Security Act of 1974), effective Jan. 1, 1975. Such section 111(a)(1) also provided that the Welfare and Pension Plans Disclosure Act should continue to apply to any conduct and events which occurred before Jan. 1, 1975 (see section 1031 of this title). For complete classification of the Welfare and Pension Plans Disclosure Act to the Code prior to such repeal, see Tables.

REGULATIONS

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

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

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

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

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

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

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

(b) Duties and functions

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

(c) Executive secretary; secretarial and clerical services

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

(d) Compensation

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

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

(e) Termination

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

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

REFERENCES IN TEXT

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

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

REGULATIONS

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

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

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 1143. Research, studies, and reports

(a) Authorization to undertake research and surveys

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

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

(3) The Secretary may, as he deems appropriate or necessary, undertake other studies relating to employee benefit plans, the matters

regulated by this subchapter, and the enforcement procedures provided for under this subchapter.

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

(b) Submission of annual report to Congress; contents

The Secretary shall submit annually a report to the Congress covering his administration of this subchapter for the preceding year, and including (1) an explanation of any variances or extensions granted under section 1030, 1057, 1083, or 1084 of this title and the projected date for terminating the variance; (2) the status of cases in enforcement status; (3) recommendations received from the Advisory Council during the preceding year; and (4) such information, data, research findings, studies, and recommendations for further legislation in connection with the matters covered by this subchapter as he may find advisable.

(c) Cooperation with Congress

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

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

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1142 of this title.

§ 1143a. Studies by Comptroller General

(1) In general

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

(2) Access to books, documents, etc.

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

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

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

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

(3) Definitions

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

(4) Effective date

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

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

CODIFICATION

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

§ 1144. Other laws

(a) Supersedure; effective date

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

(b) Construction and application

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

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

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

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

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

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

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

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

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

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

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

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

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

(II) provisions to enforce such standards, and

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

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

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

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

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

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

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

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

(c) Definitions

For purposes of this section:

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

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

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

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

(Pub. L. 93–406, title I, § 514, Sept. 2, 1974, 88 Stat. 897; Pub. L. 97–473, title III, §§ 301(a), 302(b), Jan. 14, 1983, 96 Stat. 2611, 2613; Pub. L. 98–397, title I, § 104(b), Aug. 23, 1984, 98 Stat. 1436; Pub. L. 99–272, title IX, § 9503(d)(1), Apr. 7, 1986, 100 Stat. 207; Pub. L. 101–239, title VII, § 7894(f)(2)(A), (3)(A), Dec. 19, 1989, 103 Stat. 2450, 2451; Pub. L. 103–66, title IV, § 4301(c)(4), Aug. 10, 1993, 107 Stat. 377.)

REFERENCES IN TEXT

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

AMENDMENTS

1993—Subsec. (b)(7). Pub. L. 103–66, § 4301(c)(4)(A), which directed the insertion in par. (7)(D) of ", qualified medical child support orders (within the meaning of section 1169(a)(2)(A) of this title), and the provisions of law referred to in section 1169(a)(2)(B)(ii) of this title to the extent enforced by qualified medical child support orders" before the period, was executed by making the insertion before the period at end of par. (7), to reflect the probable intent of Congress.

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7894(f)(2)(B) of Pub. L. 101–239 provided that: "The amendment made by this paragraph [amending this section] shall take effect as if included in section 301 of Public Law 97–473."

Section 7894(f)(3)(B) of Pub. L. 101–239 provided that: "The amendments made by this paragraph [amending this section] shall take effect as if included in section 302 of Public Law 97–473."

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9503(d)(2) of Pub. L. 99–272 provided that:

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

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

"(i) October 1, 1986; or

"(ii) the earlier of—

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1983 AMENDMENT

Section 301(c) of Pub. L. 97–473 provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Jan. 14, 1983]."

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

REGULATIONS

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

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

TREATMENT OF OTHER STATE LAWS

Section 301(b) of Pub. L. 97–473 provided that: "The amendment made by this section [amending this section] shall not be considered a precedent with respect to extending such amendment to any other State law."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1114 of this title.

§ 1145. Delinquent contributions

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

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

EFFECTIVE DATE

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1132, 1401, 1451 of this title; title 38 section 4318.

PART 6—GROUP HEALTH PLANS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 42 sections 1396a, 1396e.

§ 1161. Plans must provide continuation coverage to certain individuals

(a) In general

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

(b) Exception for certain plans

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

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

AMENDMENTS

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

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7862(c)(1)(B) of Pub. L. 101–239 applicable to years beginning after Dec. 31, 1986, see section 7862(c)(1)(C) of Pub. L. 101–239, set out as a note under section 106 of Title 26, Internal Revenue Code.

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

EFFECTIVE DATE

Section 10002(d) of Pub. L. 99–272 provided that:

''(1) GENERAL RULE.—The amendments made by this section [enacting this part and amending section 1132 of this title] shall apply to plan years beginning on or after July 1, 1986.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this section shall not apply to plan years beginning before the later of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

''(B) January 1, 1987.

For purposes of subparagraph (A), 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.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1162 of this title.

§ 1162. Continuation coverage

For purposes of section 1161 of this title, the term ''continuation coverage'' means coverage under the plan which meets the following requirements:

(1) Type of benefit coverage

The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part in connection with such group.

(2) Period of coverage

The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(A) Maximum required period

(i) General rule for terminations and reduced hours

In the case of a qualifying event described in section 1163(2) of this title, except as provided in clause (ii), the date which is 18 months after the date of the qualifying event.

(ii) Special rule for multiple qualifying events

If a qualifying event (other than a qualifying event described in section 1163(6) of this title) occurs during the 18 months after the date of a qualifying event described in section 1163(2) of this title, the date which is 36 months after the date of the qualifying event described in section 1163(2) of this title.

(iii) Special rule for certain bankruptcy proceedings

In the case of a qualifying event described in section 1163(6) of this title (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in section 1167(3)(C)(iii) of this title), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.

(iv) General rule for other qualifying events

In the case of a qualifying event not described in section 1163(2) or 1163(6) of this title, the date which is 36 months after the date of the qualifying event.

In the case of an individual who is determined, under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], to have been disabled at the time of a qualifying event described in section 1163(2) of this title, any reference in clause (i) or (ii) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under section 1166(3)[1] of this title before the end of such 18 months.

[1] See References in Text note below.

(v)[2] Qualifying event involving medicare entitlement

In the case of an event described in section 1163(4) of this title (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 36-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(B) End of plan

The date on which the employer ceases to provide any group health plan to any employee.

(C) Failure to pay premium

The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

(D) Group health plan coverage or medicare entitlement

The date on which the qualified beneficiary first becomes, after the date of the election—

(i) covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary, or

(ii) in the case of a qualified beneficiary other than a qualified beneficiary described in section 1167(3)(C) of this title, entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(E) Termination of extended coverage for disability

In the case of a qualified beneficiary who is disabled at the time of a qualifying event described in section 1163(2) of this title, the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.] that the qualified beneficiary is no longer disabled.

(3) Premium requirements

The plan may require payment of a premium for any period of continuation coverage, except that such premium—

(A) shall not exceed 102 percent of the applicable premium for such period, and

(B) may, at the election of the payor, be made in monthly installments.

In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage. In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to ''102 percent'' is deemed a reference to ''150 percent'' for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).

(4) No requirement of insurability

The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(5) Conversion option

In the case of a qualified beneficiary whose period of continuation coverage expires under paragraph (2)(A), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

(Pub. L. 93–406, title I, § 602, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 228; amended Pub. L. 99–509, title IX, § 9501(b)(1)(B), (2)(B), Oct. 21, 1986, 100 Stat. 2076, 2077; Pub. L. 99–514, title XVIII, § 1895(d)(1)(B), (2)(B), (3)(B), (4)(B), Oct. 22, 1986, 100 Stat. 2936–2938; Pub. L. 101–239, title VI, § 6703(a), (b), title VII, §§ 7862(c)(3)(B), (4)(A), (5)(B), 7871(c), Dec. 19, 1989, 103 Stat. 2296, 2432, 2433, 2435.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (2)(A), (D)(ii), (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II, XVI, and XVIII of the Social Security Act are classified generally to subchapters II (§ 401 et seq.), XVI (§ 1381 et seq.), and XVIII (§ 1395 et seq.), respectively, 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.

Section 1166(3) of this title, referred to in par. (2)(A), was redesignated as section 1166(a)(3) of this title by Pub. L. 101–239, title VII, § 7891(d)(1)(A)(ii)(I), Dec. 19, 1989, 103 Stat. 2445.

AMENDMENTS

1989—Par. (2)(A). Pub. L. 101–239, § 6703(a)(1), inserted after and below cl. (iv) ''In the case of an individual who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 1163(2) of this title, any reference in clause (i) or (ii) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under section 1166(3) of this title before the end of such 18 months.''

Par. (2)(A)(iii). Pub. L. 101–239, § 7871(c), substituted ''described in section 1163(6)'' for ''described in 1163(6)''.

Par. (2)(A)(v). Pub. L. 101–239, § 7862(c)(5)(B), added cl. (v).

Par. (2)(D). Pub. L. 101–239, § 7862(c)(3)(B), substituted ''entitlement'' for ''eligibility'' in heading and inserted ''which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary'' after ''or otherwise)'' in cl. (i).

Par. (2)(E). Pub. L. 101–239, § 6703(a)(2), added subpar. (E).

Par. (3). Pub. L. 101–239, § 7862(c)(4)(A), which directed substitution of ''In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage.'' for last sentence of par. (3), was executed by making the substitution for the following sentence: ''If an elec-

[2] So in original. Clause (v) probably should immediately follow clause (iv).

tion is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.'', notwithstanding the sentence added at the end of par. (3) by Pub. L. 101–239, § 6703(b).

Pub. L. 101–239, § 6703(b), inserted at end ''In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to '102 percent' is deemed a reference to '150 percent' for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).''

1986—Par. (1). Pub. L. 99–514, § 1895(d)(1)(B), inserted ''If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part in connection with such group.''

Par. (2)(A). Pub. L. 99–514, § 1895(d)(2)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows:

''(A) MAXIMUM PERIOD.—In the case of—

''(i) a qualifying event described in section 1163(2) of this title (relating to terminations and reduced hours), the date which is 18 months after the date of the qualifying event, and

''(ii) any qualifying event not described in clause (i), the date which is 36 months after the date of the qualifying event.''

Par. (2)(A)(ii). Pub. L. 99–509, § 9501(b)(1)(B)(i), inserted ''(other than a qualifying event described in section 1163(6) of this title)''.

Par. (2)(A)(iii). Pub. L. 99–509, § 9501(b)(1)(B)(iv), added cl. (iii). Former cl. (iii) redesignated (iv).

Par. (2)(A)(iv). Pub. L. 99–509, § 9501(b)(1)(B)(ii), (iii), redesignated cl. (iii) as (iv) and inserted ''or 1163(6)''.

Par. (2)(C). Pub. L. 99–514, § 1895(d)(3)(B), inserted ''The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.''

Par. (2)(D). Pub. L. 99–514, § 1895(d)(4)(B)(ii), (iii), substituted ''Group health plan coverage or medicare eligibility'' for ''Reemployment or medicare eligibility'' as heading and substituted ''covered under any other group health plan (as an employee or otherwise)'' for ''a covered employee under any other group health plan'' in cl. (i).

Par. (2)(D)(ii). Pub. L. 99–509, § 9501(b)(2)(B), inserted ''in the case of a qualified beneficiary other than a qualified beneficiary described in section 1167(3)(C) of this title'' before ''entitled''.

Par. (2)(E). Pub. L. 99–514, § 1895(d)(4)(B)(i), struck out subpar. (E), remarriage of spouse, which read as follows: ''In the case of an individual who is a qualified beneficiary by reason of being the spouse of a covered employee, the date on which the beneficiary remarries and becomes covered under a group health plan.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6703(d) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1166 of this title] shall apply to plan years beginning on or after the date of the enactment of this Act [Dec. 19, 1989], regardless of whether the qualifying event occurred before, on, or after such date.''

Amendment by section 7862(c)(3)(B) of Pub. L. 101–239 applicable to (i) qualifying events occurring after Dec. 31, 1989, and (ii) in the case of qualified beneficiaries who elected continuation coverage after Dec. 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such), see section 7862(c)(3)(D) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 7862(c)(4)(A) of Pub. L. 101–239 applicable to plan years beginning after Dec. 31, 1989, see section 7862(c)(4)(C) of Pub. L. 101–239, set out as a note under section 4980B of Title 26.

Amendment by section 7862(c)(5)(B) of Pub. L. 101–239 applicable to plan years beginning after Dec. 31, 1989, see section 7862(c)(5)(C) of Pub. L. 101–239, set out as a note under section 4980B of Title 26.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 99–509 effective, except as otherwise provided, as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 9501(e) of Pub. L. 99–509, set out as a note under section 162 of Title 26.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1167 of this title.

§ 1163. Qualifying event

For purposes of this part, the term ''qualifying event'' means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this part, would result in the loss of coverage of a qualified beneficiary:

(1) The death of the covered employee.

(2) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

(3) The divorce or legal separation of the covered employee from the employee's spouse.

(4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(6) A proceeding in a case under title 11, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in paragraph (6), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in section 1167(3)(C) of this title within one year before or after the date of commencement of the proceeding.

(Pub. L. 93–406, title I, § 603, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 229; amended Pub. L. 99–509, title IX, § 9501(a)(2), Oct. 21, 1986, 100 Stat. 2076.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 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

1986—Pub. L. 99–509 added par. (6) and last sentence.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 effective, except as otherwise provided, as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 9501(e) of Pub. L. 99–509, set out as a note under section 162 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1162, 1166, 1167 of this title.

§ 1164. Applicable premium

For purposes of this part—

(1) In general

The term ''applicable premium'' means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

(2) Special rule for self-insured plans

To the extent that a plan is a self-insured plan—

(A) In general

Except as provided in subparagraph (B), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

(i) is determined on an actuarial basis, and

(ii) takes into account such factors as the Secretary may prescribe in regulations.

(B) Determination on basis of past cost

If an administrator elects to have this subparagraph apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

(i) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under paragraph (3), adjusted by

(ii) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

(C) Subparagraph (B) not to apply where significant change

An administrator may not elect to have subparagraph (B) apply in any case in which there is any significant difference, between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under paragraph (3).

(3) Determination period

The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

(Pub. L. 93–406, title I, § 604, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 229.)

§ 1165. Election

For purposes of this part—

(1) Election period

The term ''election period'' means the period which—

(A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

(B) is of at least 60 days' duration, and

(C) ends not earlier than 60 days after the later of—

(i) the date described in subparagraph (A), or

(ii) in the case of any qualified beneficiary who receives notice under section 1166(4)[1] of this title, the date of such notice.

(2) Effect of election on other beneficiaries

Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of section 1167(3) of this title shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

(Pub. L. 93–406, title I, § 605, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 230; amended Pub. L. 99–514, title XVIII, § 1895(d)(5)(B), Oct. 22, 1986, 100 Stat. 2939.)

REFERENCES IN TEXT

Section 1166(4) of this title, referred to in par. (1)(C)(ii), was redesignated as section 1166(a)(4) of this title by Pub. L. 101–239, title VII, § 7891(d)(1)(A)(ii)(I), Dec. 19, 1989, 103 Stat. 2445.

AMENDMENTS

1986—Par. (2). Pub. L. 99–514 inserted ''of continuation coverage'' after ''any election'' and inserted at end ''If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the

[1] See References in Text note below.

Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

§ 1166. Notice requirements

(a) In general

In accordance with regulations prescribed by the Secretary—

(1) the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection,

(2) the employer of an employee under a plan must notify the administrator of a qualifying event described in paragraph (1), (2), (4), or (6) of section 1163 of this title within 30 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date of the qualifying event,

(3) each covered employee or qualified beneficiary is responsible for notifying the administrator of the occurrence of any qualifying event described in paragraph (3) or (5) of section 1163 of this title within 60 days after the date of the qualifying event and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], to have been disabled at the time of a qualifying event described in section 1163(2) of this title is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled, and

(4) the administrator shall notify—

(A) in the case of a qualifying event described in paragraph (1), (2), (4), or (6) of section 1163 of this title, any qualified beneficiary with respect to such event, and

(B) in the case of a qualifying event described in paragraph (3) or (5) of section 1163 of this title where the covered employee notifies the administrator under paragraph (3), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.

(b) Alternative means of compliance with requirements for notification of multiemployer plans by employers

The requirements of subsection (a)(2) of this section shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (2) of section 1163 of this title if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator.

(c) Rules relating to notification of qualified beneficiaries by plan administrator

For purposes of subsection (a)(4) of this section, any notification shall be made within 14 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date on which the administrator is notified under paragraph (2) or (3), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

(Pub. L. 93–406, title I, § 606, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 230; amended Pub. L. 99–509, title IX, § 9501(d)(2), Oct. 21, 1986, 100 Stat. 2077; Pub. L. 99–514, title XVIII, § 1895(d)(6)(B), Oct. 22, 1986, 100 Stat. 2939; Pub. L. 101–239, title VI, § 6703(c), title VII, § 7891(d)(1)(A), Dec. 19, 1989, 103 Stat. 2296, 2445.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVI of the Social Security Act are classified generally to subchapters II (§ 401 et seq.) and XVI (§ 1381 et seq.), respectively, 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

1989—Pub. L. 101–239, § 7891(d)(1)(A)(ii), designated first sentence as subsec. (a), added subsec. (b), designated second sentence as subsec. (c), and substituted "For purposes of subsection (a)(4) of this section" for "For purposes of paragraph (4)".

Pub. L. 101–239, § 7891(d)(1)(A)(i)(II), inserted in last sentence "(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)" after "14 days".

Pub. L. 101–239, § 7891(d)(1)(A)(i)(I), inserted "(or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan)" after "30 days" in par. (2).

Pub. L. 101–239, § 6703(c), inserted "and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 1163(2) of this title is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled" before comma in par. (3).

1986—Par. (2). Pub. L. 99–509 substituted "(4), or (6)" for "or (4)".

Par. (3). Pub. L. 99–514 inserted "within 60 days after the date of the qualifying event".

Par. (4)(A). Pub. L. 99–509 substituted "(4), or (6)" for "or (4)".

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6703(c) of Pub. L. 101–239 applicable to plan years beginning on or after Dec. 19, 1989,

regardless of whether the qualifying event occurred before, on, or after such date, see section 6703(d) of Pub. L. 101–239, set out as a note under section 1162 of this title.

Amendment by section 7891(d)(1)(A) of Pub. L. 101–239 applicable with respect to plan years beginning on or after Jan. 1, 1990, see section 7891(d)(1)(C) of Pub. L. 101–239, set out as a note under section 4980B of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 applicable only with respect to qualifying events occurring after Oct. 22, 1986, see section 1895(d)(6)(D) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 99–509 effective, except as otherwise provided, as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 9501(e) of Pub. L. 99–509, set out as a note under section 162 of Title 26.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

NOTIFICATION TO COVERED EMPLOYEES

Section 10002(e) of Pub. L. 99–272 provided that: ''At the time that the amendments made by this section [enacting this part and amending section 1132 of this title] apply to a group health plan (within the meaning of section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)]), the plan shall notify each covered employee, and spouse of the employee (if any), who is covered under the plan at that time of the continuation coverage required under part 6 of subtitle B of title I of such Act [this part]. The notice furnished under this subsection is in lieu of notice that may otherwise be required under section 606(1) of such Act [29 U.S.C. 1166(1)] with respect to such individuals.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1132, 1162, 1165, 1167 of this title.

§ 1167. Definitions and special rules

For purposes of this part—

(1) Group health plan

The term ''group health plan'' means an employee welfare benefit plan providing medical care (as defined in section 213(d) of title 26) to participants or beneficiaries directly or through insurance, reimbursement, or otherwise.

(2) Covered employee

The term ''covered employee'' means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of title 26).

(3) Qualified beneficiary

(A) In general

The term ''qualified beneficiary'' means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

(i) as the spouse of the covered employee, or

(ii) as the dependent child of the employee.

(B) Special rule for terminations and reduced employment

In the case of a qualifying event described in section 1163(2) of this title, the term ''qualified beneficiary'' includes the covered employee.

(C) Special rule for retirees and widows

In the case of a qualifying event described in section 1163(6) of this title, the term ''qualified beneficiary'' includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

(i) as the spouse of the covered employee,

(ii) as the dependent child of the employee, or

(iii) as the surviving spouse of the covered employee.

(4) Employer

Subsection (n) (relating to leased employees) and subsection (t) (relating to application of controlled group rules to certain employee benefits) of section 414 of title 26 shall apply for purposes of this part in the same manner and to the same extent as such subsections apply for purposes of section 106 of title 26. Any regulations prescribed by the Secretary pursuant to the preceding sentence shall be consistent and coextensive with any regulations prescribed for similar purposes by the Secretary of the Treasury (or such Secretary's delegate) under such subsections.

(5) Optional extension of required periods

A group health plan shall not be treated as failing to meet the requirements of this part solely because the plan provides both—

(A) that the period of extended coverage referred to in section 1162(2) of this title commences with the date of the loss of coverage, and

(B) that the applicable notice period provided under section 1166(a)(2) of this title commences with the date of the loss of coverage.

(Pub. L. 93–406, title I, § 607, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 231; amended Pub. L. 99–509, title IX, § 9501(c)(2), Oct. 21, 1986, 100 Stat. 2077; Pub. L. 99–514, title XVIII, § 1895(d)(8), (9)(A), Oct. 22, 1986, 100 Stat. 2940; Pub. L. 100–647, title III, § 3011(b)(6), Nov. 10, 1988, 102 Stat. 3625; Pub. L. 101–239, title VII, §§ 7862(c)(2)(A), (6)(A), 7891(a)(1), (d)(2)(B)(i), Dec. 19, 1989, 103 Stat. 2432, 2433, 2445, 2446.)

AMENDMENTS

1989—Pub. L. 101–239, § 7891(d)(2)(B)(i)(I), inserted ''and special rules'' after ''Definitions'' in section catchline.

Par. (1). Pub. L. 101–239, § 7862(c)(6)(A), repealed Pub. L. 100–647, § 3011(b)(6), see 1988 Amendment note below.

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. (2). Pub. L. 101–239, § 7862(c)(2)(A), substituted ''the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of title 26)'' for ''the individual's employment or previous employment with an employer''.

Par. (5). Pub. L. 101–239, § 7891(d)(2)(B)(i)(II), added par. (5).

1988—Par. (1). Pub. L. 100–647, § 3011(b)(6), which directed amendment of par. (1) by substituting ''section 162(i)(2) of title 26'' for ''section 162(i)(3) of title 26'', was repealed by Pub. L. 101–239, § 7862(c)(6)(A).

Pub. L. 99–514, § 1895(d)(8), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'group health plan' means an employee welfare benefit plan that is a group health plan (within the meaning of section 162(i)(3) of title 26).''

Par. (3)(C). Pub. L. 99–509 added subpar. (C).

Par. (4). Pub. L. 99–514, § 1895(d)(9)(A), added par. (4).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7862(c)(2)(A) of Pub. L. 101–239 applicable to plan years beginning after Dec. 31, 1989, see section 7862(c)(2)(C) of Pub. L. 101–239, set out as a note under section 4980B of Title 26, Internal Revenue Code.

Section 7862(c)(6)(B) of Pub. L. 101–239 provided that: ''Subparagraph (A) [repealing section 3011(b)(6) of Pub. L. 100–647, which amended this section] shall be effective as if included in the enactment of section 3011(b) of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100–647].''

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 7891(d)(2)(B)(i) of Pub. L. 101–239 applicable with respect to plan years beginning on or after Jan. 1, 1990, see section 7891(d)(2)(C) of Pub. L. 101–239, set out as a note under section 4980B of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of Title 26, Internal Revenue Code (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of Title 26.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(d)(9)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect in the same manner and to the same extent as the amendments made by subsections (e) and (i) of section 1151 of this Act [amending sections 132 and 414 of Title 26, Internal Revenue Code, see section 1151(k) of Pub. L. 99–514, set out as an Effective Date note under section 89 of Title 26].''

Amendment by section 1895(d)(8) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26.

Amendment by Pub. L. 99–509 effective, except as otherwise provided, as if included in title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 9501(e) of Pub. L. 99–509, set out as a note under section 162 of Title 26.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1144, 1162, 1163, 1165 of this title; title 38 sections 4317, 4318; title 42 sections 1396a, 1396b, 1396g–1.

§ 1168. Regulations

The Secretary may prescribe regulations to carry out the provisions of this part.

(Pub. L. 93–406, title I, § 608, as added Pub. L. 99–272, title X, § 10002(a), Apr. 7, 1986, 100 Stat. 231.)

§ 1169. Additional standards for group health plans

(a) Group health plan coverage pursuant to medical child support orders

(1) In general

Each group health plan shall provide benefits in accordance with the applicable requirements of any qualified medical child support order.

(2) Definitions

For purposes of this subsection—

(A) Qualified medical child support order

The term ''qualified medical child support order'' means a medical child support order—

(i) which creates or recognizes the existence of an alternate recipient's right to, or assigns to an alternate recipient the right to, receive benefits for which a participant or beneficiary is eligible under a group health plan, and

(ii) with respect to which the requirements of paragraphs (3) and (4) are met.

(B) Medical child support order

The term ''medical child support order'' means any judgment, decree, or order (including approval of a settlement agreement) issued by a court of competent jurisdiction which—

(i) provides for child support with respect to a child of a participant under a group health plan or provides for health benefit coverage to such a child, is made pursuant to a State domestic relations law (including a community property law), and relates to benefits under such plan, or

(ii) enforces a law relating to medical child support described in section 1908 of the Social Security Act [42 U.S.C. 1396g–1] (as added by section 13822[1] of the Omnibus

[1] So in original. Probably should be section ''13623''.

Budget Reconciliation Act of 1993) with respect to a group health plan.

(C) Alternate recipient

The term ''alternate recipient'' means any child of a participant who is recognized under a medical child support order as having a right to enrollment under a group health plan with respect to such participant.

(3) Information to be included in qualified order

A medical child support order meets the requirements of this paragraph only if such order clearly specifies—

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate recipient covered by the order,

(B) a reasonable description of the type of coverage to be provided by the plan to each such alternate recipient, or the manner in which such type of coverage is to be determined,

(C) the period to which such order applies, and

(D) each plan to which such order applies.

(4) Restriction on new types or forms of benefits

A medical child support order meets the requirements of this paragraph only if such order does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan, except to the extent necessary to meet the requirements of a law relating to medical child support described in section 1908 of the Social Security Act [42 U.S.C. 1396g–1] (as added by section 13822[1] of the Omnibus Budget Reconciliation Act of 1993).

(5) Procedural requirements

(A) Timely notifications and determinations

In the case of any medical child support order received by a group health plan—

(i) the plan administrator shall promptly notify the participant and each alternate recipient of the receipt of such order and the plan's procedures for determining whether medical child support orders are qualified medical child support orders, and

(ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified medical child support order and notify the participant and each alternate recipient of such determination.

(B) Establishment of procedures for determining qualified status of orders

Each group health plan shall establish reasonable procedures to determine whether medical child support orders are qualified medical child support orders and to administer the provision of benefits under such qualified orders. Such procedures—

(i) shall be in writing,

(ii) shall provide for the notification of each person specified in a medical child support order as eligible to receive benefits under the plan (at the address included in the medical child support order) of such procedures promptly upon receipt by the plan of the medical child support order, and

(iii) shall permit an alternate recipient to designate a representative for receipt of copies of notices that are sent to the alternate recipient with respect to a medical child support order.

(6) Actions taken by fiduciaries

If a plan fiduciary acts in accordance with part 4 of this subtitle in treating a medical child support order as being (or not being) a qualified medical child support order, then the plan's obligation to the participant and each alternate recipient shall be discharged to the extent of any payment made pursuant to such act of the fiduciary.

(7) Treatment of alternate recipients

(A) Treatment as beneficiary generally

A person who is an alternate recipient under a qualified medical child support order shall be considered a beneficiary under the plan for purposes of any provision of this chapter.

(B) Treatment as participant for purposes of reporting and disclosure requirements

A person who is an alternate recipient under any medical child support order shall be considered a participant under the plan for purposes of the reporting and disclosure requirements of part 1 of this subtitle.

(8) Direct provision of benefits provided to alternate recipients

Any payment for benefits made by a group health plan pursuant to a medical child support order in reimbursement for expenses paid by an alternate recipient or an alternate recipient's custodial parent or legal guardian shall be made to the alternate recipient or the alternate recipient's custodial parent or legal guardian.

(b) Rights of States with respect to group health plans where participants or beneficiaries thereunder are eligible for medicaid benefits

(1) Compliance by plans with assignment of rights

A group health plan shall provide that payment for benefits with respect to a participant under the plan will be made in accordance with any assignment of rights made by or on behalf of such participant or a beneficiary of the participant as required by a State plan for medical assistance approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] pursuant to section 1912(a)(1)(A) of such Act [42 U.S.C. 1396k(a)(1)(A)] (as in effect on August 10, 1993).

(2) Enrollment and provision of benefits without regard to medicaid eligibility

A group health plan shall provide that, in enrolling an individual as a participant or beneficiary or in determining or making any payments for benefits of an individual as a participant or beneficiary, the fact that the individual is eligible for or is provided medical as-

sistance under a State plan for medical assistance approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] will not be taken into account.

(3) Acquisition by States of rights of third parties

A group health plan shall provide that, to the extent that payment has been made under a State plan for medical assistance approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] in any case in which a group health plan has a legal liability to make payment for items or services constituting such assistance, payment for benefits under the plan will be made in accordance with any State law which provides that the State has acquired the rights with respect to a participant to such payment for such items or services.

(c) Group health plan coverage of dependent children in cases of adoption

(1) Coverage effective upon placement for adoption

In any case in which a group health plan provides coverage for dependent children of participants or beneficiaries, such plan shall provide benefits to dependent children placed with participants or beneficiaries for adoption under the same terms and conditions as apply in the case of dependent children who are natural children of participants or beneficiaries under the plan, irrespective of whether the adoption has become final.

(2) Restrictions based on preexisting conditions at time of placement for adoption prohibited

A group health plan may not restrict coverage under the plan of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of such child at the time that such child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

(3) Definitions

For purposes of this subsection—

(A) Child

The term ''child'' means, in connection with any adoption, or placement for adoption, of the child, an individual who has not attained age 18 as of the date of such adoption or placement for adoption.

(B) Placement for adoption

The term ''placement'', or being ''placed'', for adoption, in connection with any placement for adoption of a child with any person, means the assumption and retention by such person of a legal obligation for total or partial support of such child in anticipation of adoption of such child. The child's placement with such person terminates upon the termination of such legal obligation.

(d) Continued coverage of costs of a pediatric vaccine under group health plans

A group health plan may not reduce its coverage of the costs of pediatric vaccines (as defined under section 1928(h)(6) of the Social Security Act [42 U.S.C. 1396s(h)(6)] as amended by section 13830[2] of the Omnibus Budget Reconciliation Act of 1993) below the coverage it provided as of May 1, 1993.

(e) Regulations

Any regulations prescribed under this section shall be prescribed by the Secretary of Labor, in consultation with the Secretary of Health and Human Services.

(Pub. L. 93–406, title I, § 609, as added Pub. L. 103–66, title IV, § 4301(a), Aug. 10, 1993, 107 Stat. 371.)

REFERENCES IN TEXT

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1132, 1144 of this title.

SUBCHAPTER II—JURISDICTION, ADMINISTRATION, ENFORCEMENT; JOINT PENSION TASK FORCE, ETC.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1135 of this title.

SUBTITLE A—JURISDICTION, ADMINISTRATION, AND ENFORCEMENT

§ 1201. Procedures in connection with the issuance of certain determination letters by the Secretary of the Treasury covering qualifications under Internal Revenue Code

(a) Additional material required of applicants

Before issuing an advance determination of whether a pension, profit-sharing, or stock bonus plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the requirements of part I of subchapter D of chapter 1 of title 26, the Secretary of the Treasury shall require the person applying for the de-

[2] So in original. Probably should be section ''13631''.

termination to provide, in addition to any material and information necessary for such determination, such other material and information as may reasonably be made available at the time such application is made as the Secretary of Labor may require under subchapter I of this chapter for the administration of that subchapter. The Secretary of the Treasury shall also require that the applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who qualifies as an interested party (within the meaning of regulations prescribed under section 7476(b)(1) of title 26 (relating to declaratory judgements in connection with the qualification of certain retirement plans)) of the application for a determination.

(b) Opportunity to comment on application

(1) Whenever an application is made to the Secretary of the Treasury for a determination of whether a pension, profit-sharing, or stock bonus plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the requirements of part I of subchapter D of chapter 1 of title 26, the Secretary shall upon request afford an opportunity to comment on the application at any time within 45 days after receipt thereof to—

(A) any employee or class of employee qualifying as an interested party within the meaning of the regulations referred to in subsection (a) of this section.

(B) the Secretary of Labor, and

(C) the Pension Benefit Guaranty Corporation.

(2) The Secretary of Labor may not request an opportunity to comment upon such an application unless he has been requested in writing to do so by the Pension Benefit Guaranty Corporation or by the lesser of—

(A) 10 employees, or

(B) 10 percent of the employees

who qualify as interested parties within the meaning of the regulations referred to in subsection (a) of this section. Upon receiving such a request, the Secretary of Labor shall furnish a copy of the request to the Secretary of the Treasury within 5 days (excluding Saturdays, Sundays, and legal public holidays (as set forth in section 6103 of title 5)).

(3) Upon receiving such a request from the Secretary of Labor, the Secretary of the Treasury shall furnish to the Secretary of Labor such information held by the Secretary of the Treasury relating to the application as the Secretary of Labor may request.

(4) The Secretary of Labor shall, within 30 days after receiving a request from the Pension Benefit Guaranty Corporation or from the necessary number of employees who qualify as interested parties, notify the Secretary of the Treasury, the Pension Benefit Guaranty Corporation, and such employees with respect to whether he is going to comment on the application to which the request relates and with respect to any matters raised in such request on which he is not going to comment. If the Secretary of Labor indicates in the notice required under the preceding sentence that he is not going to comment on all or part of the matters raised in such request, the Secretary of the Treasury shall afford the corporation, and such employees, an opportunity to comment on the application with respect to any matter on which the Secretary of Labor has declined to comment.

(c) Intervention by Pension Benefit Guaranty Corporation or Secretary of Labor into declaratory judgment action under section 7476 of title 26, action by Corporation authorized

The Pension Benefit Guaranty Corporation and, upon petition of a group of employees referred to in subsection (b)(2) of this section, the Secretary of Labor, may intervene in any action brought for declaratory judgment under section 7476 of title 26 in accordance with the provisions of such section. The Pension Benefit Guaranty Corporation is permitted to bring an action under such section 7476 under such rules as may be prescribed by the United States Tax Court.

(d) Notification and information by Secretary of the Treasury to Secretary of Labor upon issuance by Secretary of the Treasury of a determination letter to applicant

If the Secretary of the Treasury determines that a plan or trust to which this section applies meets the applicable requirements of part I of subchapter D of chapter 1 of title 26 and issues a determination letter to the applicant, the Secretary shall notify the Secretary of Labor of his determination and furnish such information and material relating to the application and determination held by the Secretary of the Treasury as the Secretary of Labor may request for the proper administration of subchapter I of this chapter. The Secretary of Labor shall accept the determination of the Secretary of the Treasury as prima facie evidence of initial compliance by the plan with the standards of parts 2, 3, and 4 of subtitle B of subchapter I of this chapter. The determination of the Secretary of the Treasury shall not be prima facie evidence on issues relating solely to part 4 of subtitle B of subchapter I of this chapter. If an application for such a determination is withdrawn, or if the Secretary of the Treasury issues a determination that the plan or trust does not meet the requirements of such part I, the Secretary shall notify the Secretary of Labor of the withdrawal or determination.

(e) Effective date

This section does not apply with respect to an application for any plan received by the Secretary of the Treasury before the date on which section 410 of title 26 applies to the plan, or on which such section will apply if the plan is determined by the Secretary to be a qualified plan.

(Pub. L. 93–406, title III, § 3001, Sept. 2, 1974, 88 Stat. 995; Pub. L. 100–203, title IX, § 9343(b), Dec. 22, 1987, 101 Stat. 1330–372; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsecs. (a), (b)(1), (c) to (e). 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.

1987—Subsec. (d). Pub. L. 100–203 inserted after second sentence ''The determination of the Secretary of the Treasury shall not be prima facie evidence on issues relating solely to part 4 of subtitle B of subchapter I of this chapter.''

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1140, 1141 of this title; title 26 section 7476.

§ 1202. Procedures with respect to continued compliance with Internal Revenue requirements relating to participation, vesting, and funding standards

(a) Notification by Secretary of the Treasury to Secretary of Labor of issuance of a preliminary notice of intent to disqualify or of commencement of proceedings to determine satisfaction of requirements

In carrying out the provisions of part I of subchapter D of chapter 1 of title 26 with respect to whether a plan or a trust meets the requirements of section 410(a) or 411 of title 26 (relating to minimum participation standards and minimum vesting standards, respectively), the Secretary of the Treasury shall notify the Secretary of Labor when the Secretary of the Treasury issues a preliminary notice of intent to disqualify related to the plan or trust or, if earlier, at the time of commencing any proceeding to determine whether the plan or trust satisfies such requirements. Unless the Secretary of the Treasury finds that the collection of a tax imposed under the Internal Revenue Code of 1986 is in jeopardy, the Secretary of the Treasury shall not issue a determination that the plan or trust does not satisfy the requirements of such section until the expiration of a period of 60 days after the date on which he notifies the Secretary of Labor of such review. The Secretary of the Treasury, in his discretion, may extend the 60-day period referred to in the preceding sentence if he determines that such an extension would enable the Secretary of Labor to obtain compliance with such requirements by the plan within the extension period. Except as otherwise provided in this chapter, the Secretary of Labor shall not generally apply part 2 of subtitle B of subchapter I of this chapter to any plan or trust subject to sections 410(a) and 411 of title 26, but shall refer alleged general violations of the vesting or participation standards to the Secretary of the Treasury. (The preceding sentence shall not apply to matters relating to individuals benefits.)

(b) Notification to Secretary of Labor before Secretary of the Treasury sends notice of deficiency under section 4971 of title 26; waiver of imposition of tax; requests for investigation; consultation

Unless the Secretary of the Treasury finds that the collection of a tax is in jeopardy, in carrying out the provisions of section 4971 of title 26 (relating to taxes on the failure to meet minimum funding standards), the Secretary of the Treasury shall notify the Secretary of Labor before sending a notice of deficiency with respect to any tax imposed under that section on an employer, and, in accordance with the provisions of subsection (d) of that section, afford the Secretary of Labor an opportunity to comment on the imposition of the tax in the case. The Secretary of the Treasury may waive the imposition of the tax imposed under section 4971(b) of title 26 in appropriate cases. Upon receiving a written request from the Secretary of Labor or from the Pension Benefit Guaranty Corporation, the Secretary of the Treasury shall cause an investigation to be commenced expeditiously with respect to whether the tax imposed under section 4971 of title 26 should be applied with respect to any employer to which the request relates. The Secretary of the Treasury and the Secretary of Labor shall consult with each other from time to time with respect to the provisions of section 412 of title 26 (relating to minimum funding standards) and with respect to the funding standards applicable under subchapter I of this chapter in order to coordinate the rules applicable under such standards.

(c) Extended application of regulations prescribed by Secretary of the Treasury relating to minimum participation standards, minimum vesting standards, and minimum funding standards

Regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, and 412 of title 26 (relating to minimum participation standards, minimum vesting standards, and minimum funding standards, respectively) shall also apply to the minimum participation, vesting, and funding standards set forth in parts 2 and 3 of subtitle B of subchapter I of this chapter. Except as otherwise expressly provided in this chapter, the Secretary of Labor shall not prescribe other regulations under such parts, or apply the regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, 412 of title 26 and applicable to the minimum participation, vesting, and funding standards under such parts in a manner inconsistent with the way such regulations apply under sections 410(a), 411, and 412 of title 26.

(d) Opportunity afforded Secretary of the Treasury to intervene in cases involving construction or application of minimum standards; review of briefs filed by Pension Benefit Guaranty Corporation or Secretary of Labor

The Secretary of Labor and the Pension Benefit Guaranty Corporation, before filing briefs in any case involving the construction or application of minimum participation standards, minimum vesting standards, or minimum funding standards under subchapter I of this chapter shall afford the Secretary of the Treasury a reasonable opportunity to review any such brief. The Secretary of the Treasury shall have the right to intervene in any such case.

(e) Consultative requirements respecting promulgation of proposed or final regulations

The Secretary of the Treasury shall consult with the Pension Benefit Guaranty Corporation with respect to any proposed or final regulation

authorized by subpart C of part I of subchapter D of chapter 1 of title 26, or by sections 1421 through 1426 of this title, before publishing any such proposed or final regulation.

(Pub. L. 93–406, title III, § 3002, Sept. 2, 1974, 88 Stat. 996; Pub. L. 96–364, title IV, § 402(b)(3), Sept. 26, 1980, 94 Stat. 1299; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a), is classified generally to Title 26, Internal Revenue Code.

This chapter, referred to in subsecs. (a), (c), 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.

Subpart C of part I of subchapter D of chapter 1 of title 26, referred to in subsec. (e), commences with section 418 of Title 26, Internal Revenue Code.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239 substituted ''tax imposed under the Internal Revenue Code of 1986'' for ''tax imposed under the Internal Revenue Code of 1954'' and ''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.

Subsecs. (b), (c), (e). 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.

1980—Subsec. (e). Pub. L. 96–364 added subsec. (e).

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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 4971.

§ 1203. Procedures in connection with prohibited transactions

(a) Notification to Secretary of Labor; opportunity to comment on imposition of tax under section 4975 of title 26; waiver; requests for investigations

Unless the Secretary of the Treasury finds that the collection of a tax is in jeopardy, in carrying out the provisions of section 4975 of title 26 (relating to tax on prohibited transactions) the Secretary of the Treasury shall, in accordance with the provisions of subsection (h) of such section, notify the Secretary of Labor before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b) of such section, and, in accordance with the provisions of subsection (h) of such section, afford the Secretary an opportunity to comment on the imposition of the tax in any case. The Secretary of the Treasury shall have authority to waive the imposition of the tax imposed under section 4975(b) in appropriate cases. Upon receiving a written request from the Secretary of Labor or from the Pension Benefit Guaranty Corporation, the Secretary of the Treasury shall cause an investigation to be carried out with respect to whether the tax imposed by section 4975 of title 26 should be applied to any person referred to in the request.

(b) Consultation

The Secretary of the Treasury and the Secretary of Labor shall consult with each other from time to time with respect to the provisions of section 4975 of title 26 (relating to tax on prohibited transactions) and with respect to the provisions of subchapter I of this chapter relating to prohibited transactions and exemptions therefrom in order to coordinate the rules applicable under such standards.

(c) Transmission of information to Secretary of the Treasury

Whenever the Secretary of Labor obtains information indicating that a party-in-interest or disqualified person is violating section 1106 of this title, he shall transmit such information to the Secretary of the Treasury.

(Pub. L. 93–406, title III, § 3003, Sept. 2, 1974, 88 Stat. 998; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsecs. (a), (b). 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 4975.

§ 1204. Coordination between the Department of the Treasury and the Department of Labor

(a) Whenever in this chapter or in any provision of law amended by this chapter the Secretary of the Treasury and the Secretary of Labor are required to carry out provisions relating to the same subject matter (as determined by them) they shall consult with each other and shall develop rules, regulations, practices, and forms which, to the extent appropriate for the efficient administration of such provisions, are designed to reduce duplication of effort, duplication of reporting, conflicting or overlapping requirements, and the burden of compliance with such provisions by plan administrators, employers, and participants and beneficiaries.

(b) In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary of the Treasury and the Secretary of Labor may make such arrangements or agreements for cooperation or mutual assistance in the performance of their functions under this chapter, and the functions of any

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

(Pub. L. 93–406, title III, § 3004, Sept. 2, 1974, 88 Stat. 998.)

REFERENCES IN TEXT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1024 of this title; title 26 sections 6057, 6058, 6059.

SUBTITLE B—JOINT PENSION, PROFIT-SHARING, AND EMPLOYEE STOCK OWNERSHIP PLAN TASK FORCE; STUDIES

PART 1—JOINT PENSION, PROFIT-SHARING, AND EMPLOYEE STOCK OWNERSHIP PLAN TASK FORCE

§ 1221. Establishment

The staffs of the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, the Joint Committee on Taxation, and the Committee on Finance and the Committee on Labor and Human Resources of the Senate shall carry out the duties assigned under this subchapter to the Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force. By agreement among the chairmen of such Committees, the Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force shall be furnished with office space, clerical personnel, and such supplies and equipment as may be necessary for the Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force to carry out its duties under this subchapter.

(Pub. L. 93–406, title III, § 3021, Sept. 2, 1974, 88 Stat. 999; Pub. L. 94–455, title VIII, § 803(i)(2)(A)(iii), title XIX, § 1907(a)(5), Oct. 4, 1976, 90 Stat. 1591, 1836; S. Res. 4, Feb. 4, 1977; S. Res. 30, Mar. 7, 1979.)

AMENDMENTS

1976—Pub. L. 94–455, § 803(i)(2)(A)(iii), substituted ''Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force'' for ''Joint Pension Task Force'' wherever appearing.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Economic and Educational Opportunities of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Human Resources of Senate changed to Committee on Labor and Human Resources of Senate, effective Mar. 7, 1979, by Senate Resolution No. 30, 96th Congress. See, also, Rule XXV of Standing Rules of Senate adopted Nov. 14, 1979.

Joint Committee on Internal Revenue Taxation redesignated Joint Committee on Taxation by section 1907(a)(5) of Pub. L. 94–455.

Committee on Labor and Public Welfare of Senate abolished and replaced by Committee on Human Resources of Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of Senate, as amended by Senate Resolution No. 4 (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1222 of this title.

§ 1222. Duties

(a) The Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force shall, within 24 months after September 2, 1974, make a full study and review of—

(1) the effect of the requirements of section 411 of title 26 and of section 1053 of this title to determine the extent of discrimination, if any, among employees in various age groups resulting from the application of such requirements;

(2) means of providing for the portability of pension rights among different pension plans;

(3) the appropriate treatment under subchapter III of this chapter (relating to termination insurance) of plans established and maintained by small employers;

(4) the broadening of stock ownership, particularly with regard to employee stock ownership plans (as defined in section 4975(e)(7) of title 26 and section 1107(d)(6) of this title) and all other alternative methods for broadening stock ownership to the American labor force and others;

(5) the effects and desirability of the Federal preemption of State and local law with respect to matters relating to pension and similar plans; and

(6) such other matter as any of the committees referred to in section 1221 of this title may refer to it.

(b) The Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force shall report the results of its study and review to each of the committees referred to in section 1221 of this title.

(Pub. L. 93–406, title III, § 3022, Sept. 2, 1974, 88 Stat. 999; Pub. L. 94–455, title VIII, § 803(i)(1), (2)(A)(iii), Oct. 4, 1976, 90 Stat. 1590, 1591; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (a)(1), (4). 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.

1976—Subsec. (a). Pub. L. 94–455, § 803(i)(1), (2)(A)(iii), substituted ''Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force'' for ''Joint Pension Task Force'' in provision preceding par. (1), redesignated pars. (4) and (5) as (5) and (6), respectively, and added par. (4).

Subsec. (b). Pub. L. 94–455, § 803(i)(2)(A)(iii), substituted ''Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force'' for ''Joint Pension Task Force''.

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.

PART 2—OTHER STUDIES

§ 1231. Congressional study

(a) The Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives and the Committee on Finance and the Committee on Labor and Human Resources of the Senate shall study retirement plans established and maintained or financed (directly or indirectly) by the Government of the United States, by any State (including the District of Columbia) or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. Such study shall include an analysis of—

(1) the adequacy of existing levels of participation, vesting, and financing arrangements,

(2) existing fiduciary standards, and

(3) the necessity for Federal legislation and standards with respect to such plans.

In determining whether any such plan is adequately financed, each committee shall consider the necessity for minimum funding standards, as well as the taxing power of the government maintaining the plan.

(b) Not later than December 31, 1976, the Committee on Education and Labor and the Committee on Ways and Means shall each submit to the House of Representatives the results of the studies conducted under this section, together with such recommendations as they deem appropriate. The Committee on Finance and the Committee on Labor and Human Resources shall each submit to the Senate the results of the studies conducted under this section together with such recommendations as they deem appropriate not later than such date.

(Pub. L. 93–406, title III, § 3031, Sept. 2, 1974, 88 Stat. 999; S. Res. 4, Feb. 4, 1977; S. Res. 30, Mar. 7, 1979.)

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Economic and Educational Opportunities of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Human Resources of Senate changed to Committee on Labor and Human Resources of Senate, effective Mar. 7, 1979, by Senate Resolution No. 30, 96th Congress. See, also, Rule XXV of Standing Rules of Senate adopted Nov. 14, 1979.

Committee on Labor and Public Welfare of Senate abolished and replaced by Committee on Human Resources of Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of Senate, as amended by Senate Resolution No. 4 (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977.

§ 1232. Protection for employees under Federal procurement, construction, and research contracts and grants

(a) Study and investigation by Secretary of Labor

The Secretary of Labor shall, during the 2–year period beginning on September 2, 1974, conduct a full and complete study and investigation of the steps necessary to be taken to insure that professional, scientific, and technical personnel and others working in associated occupations employed under Federal procurement, construction, or research contracts or grants will, to the extent feasible, be protected against forfeitures of pension or retirement rights or benefits, otherwise provided, as a consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contracts, grants, or procurement policies. The Secretary of Labor shall report the results of his study and investigation to the Congress within 2 years after September 2, 1974. The Secretary of Labor is authorized, to the extent provided by law, to obtain the services of private research institutions and such other persons by contract or other arrangement as he determines necessary in carrying out the provisions of this section.

(b) Consultation

In the course of conducting the study and investigation described in subsection (a) of this section, and in developing the regulations referred to in subsection (c) of this section, the Secretary of Labor shall consult—

(1) with appropriate professional societies, business organizations, and labor organizations, and

(2) with the heads of interested Federal departments and agencies.

(c) Regulations

Within 1 year after the date on which he submits his report to the Congress under subsection (a) of this section, the Secretary of Labor shall, if he determines it to be feasible, develop regulations, which will provide the protection of pension and retirement rights and benefits referred to in subsection (a) of this section.

(d) Congressional review of regulations; resolution of disapproval

(1) Any regulations developed pursuant to subsection (c) of this section shall take effect if, and only if—

(A) the Secretary of Labor, not later than the day which is 3 years after September 2, 1974, delivers a copy of such regulations to the House of Representatives and a copy to the Senate, and

(B) before the close of the 120–day period which begins on the day on which the copies of

such regulations are delivered to the House of Representatives and to the Senate, neither the House of Representatives nor the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval.

(2) For purposes of this subsection, the term ''resolution of disapproval'' means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: ''That the ____ does not favor the taking effect of the regulations transmitted to the Congress by the Secretary of Labor on ____'', the first blank space therein being filled with the name of the resolving House and the second blank space therein being filled with the day and year.

(3) A resolution of disapproval in the House of Representatives shall be referred to the Committee on Education and Labor. A resolution of disapproval in the Senate shall be referred to the Committee on Labor and Human Resources.

(4)(A) If the committee to which a resolution of disapproval has been referred has not reported it at the end of 7 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution of disapproval which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution of disapproval), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution of disapproval.

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution of disapproval, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on the resolution of disapproval shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee or the consideration of a resolution of disapproval, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the House of Representatives or the Senate, as the case may be, to the procedure relating to any resolution of disapproval shall be decided without debate.

(7) Whenever the Secretary of Labor transmits copies of the regulations to the Congress, a copy of such regulations shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(8) The 120 day period referred to in paragraph (1) shall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(9) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions of disapproval described in paragraph (2); and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(Pub. L. 93–406, title III, § 3032, Sept. 2, 1974, 88 Stat. 1000; S. Res. 4, Feb. 4, 1977; S. Res. 30, Mar. 7, 1979.)

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Economic and Educational Opportunities of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Human Resources of Senate changed to Committee on Labor and Human Resources of Senate, effective Mar. 7, 1979, by Senate Resolution No. 30, 96th Congress. See, also, Rule XXV of Standing Rules of Senate adopted Nov. 14, 1979.

Committee on Labor and Public Welfare of Senate abolished and replaced by Committee on Human Resources of Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of Senate, as amended by Senate Resolution No. 4 (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977.

SUBTITLE C—ENROLLMENT OF ACTUARIES

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 1023 of this title; title 26 section 7701.

§ 1241. Joint Board for the Enrollment of Actuaries

The Secretary of Labor and the Secretary of the Treasury shall, not later than the last day of

the first calendar month beginning after September 2, 1974, establish a Joint Board for the Enrollment of Actuaries (hereinafter in this part referred to as the ''Joint Board'').

(Pub. L. 93–406, title III, § 3041, Sept. 2, 1974, 88 Stat. 1002.)

§ 1242. Enrollment by Board; standards and qualifications; suspension or termination of enrollment

(a) The Joint Board shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services with respect to plans in which this chapter applies and, upon application by any individual, shall enroll such individual if the Joint Board finds that such individual satisfies such standards and qualifications. With respect to individuals applying for enrollment before January 1, 1976, such standards and qualifications shall include a requirement for an appropriate period of responsible actuarial experience relating to pension plans. With respect to individuals applying for enrollment on or after January 1, 1976, such standards and qualifications shall include—

(1) education and training in actuarial mathematics and methodology, as evidenced by—

(A) a degree in actuarial mathematics or its equivalent from an accredited college or university,

(B) successful completion of an examination in actuarial mathematics and methodology to be given by the Joint Board, or

(C) successful completion of other actuarial examinations deemed adequate by the Joint Board, and

(2) an appropriate period of responsible actuarial experience.

Notwithstanding the preceding provisions of this subsection, the Joint Board may provide for the temporary enrollment for the period ending January 1, 1976, of actuaries under such interim standards as it deems adequate.

(b) The Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual under this section if the Joint Board finds that such individual—

(1) has failed to discharge his duties under this chapter, or

(2) does not satisfy the requirements for enrollment as in effect at the time of his enrollment.

The Joint Board may also, after notice and opportunity for hearing, suspend or terminate the temporary enrollment of an individual who fails to discharge his duties under this chapter or who does not satisfy the interim enrollment standards.

(Pub. L. 93–406, title III, § 3042, Sept. 2, 1974, 88 Stat. 1002.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (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.

SUBCHAPTER III—PLAN TERMINATION INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1056, 1058, 1082, 1083, 1103, 1104, 1144, 1222 of this title; title 26 sections 401, 412, 414, 6103; title 45 section 743.

SUBTITLE A—PENSION BENEFIT GUARANTY CORPORATION

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 1371 of this title.

§ 1301. Definitions

(a) For purposes of this subchapter, the term—

(1) ''administrator'' means the person or persons described in paragraph (16) of section 1002 of this title;

(2) ''substantial employer'', for any plan year of a single-employer plan, means one or more persons—

(A) who are contributing sponsors of the plan in such plan year,

(B) who, at any time during such plan year, are members of the same controlled group, and

(C) whose required contributions to the plan for each plan year constituting one of—

(i) the two immediately preceding plan years, or

(ii) the first two of the three immediately preceding plan years,

total an amount greater than or equal to 10 percent of all contributions required to be paid to or under the plan for such plan year;

(3) ''multiemployer plan'' means a plan—

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

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

(C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation,

except that, in applying this paragraph—

(i) a plan shall be considered a multiemployer plan on and after its termination date if the plan was a multiemployer plan under this paragraph for the plan year preceding such termination, and

(ii) for any plan year which began before September 26, 1980, the term ''multiemployer plan'' means a plan described in section 414(f) of title 26 as in effect immediately before such date;

(4) ''corporation'', except where the context clearly requires otherwise, means the Pension Benefit Guaranty Corporation established under section 1302 of this title;

(5) ''fund'' means the appropriate fund established under section 1305 of this title;

(6) ''basic benefits'' means benefits guaranteed under section 1322 of this title (other than under section 1322(c)[1] of this title), or under

[1] See References in Text note below.

section 1322a of this title (other than under section 1322a(g) of this title);

(7) ''non-basic benefits'' means benefits guaranteed under section 1322(c)[1] of this title or 1322a(g) of this title;

(8) ''nonforfeitable benefit'' means, with respect to a plan, a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of this chapter (other than submission of a formal application, retirement, completion of a required waiting period, or death in the case of a benefit which returns all or a portion of a participant's accumulated mandatory employee contributions upon the participant's death), whether or not the benefit may subsequently be reduced or suspended by a plan amendment, an occurrence of any condition, or operation of this chapter or the Internal Revenue Code of 1986;

(9) ''reorganization index'' means the amount determined under section 1421(b) of this title;

(10) ''plan sponsor'' means, with respect to a multiemployer plan—

(A) the plan's joint board of trustees, or

(B) if the plan has no joint board of trustees, the plan administrator;

(11) ''contribution base unit'' means a unit with respect to which an employer has an obligation to contribute under a multiemployer plan, as defined in regulations prescribed by the Secretary of the Treasury;

(12) ''outstanding claim for withdrawal liability'' means a plan's claim for the unpaid balance of the liability determined under part 1 of subtitle E of this subchapter for which demand has been made, valued in accordance with regulations prescribed by the corporation;

(13) ''contributing sponsor'', of a single-employer plan, means a person described in section 1082(c)(11)(A) of this title (without regard to section 1082(c)(11)(B) of this title) or section 412(c)(11)(A) of title 26 (without regard to section 412(c)(11)(B) of such title).[2]

(14) in the case of a single-employer plan—

(A) ''controlled group'' means, in connection with any person, a group consisting of such person and all other persons under common control with such person;

(B) the determination of whether two or more persons are under ''common control'' shall be made under regulations of the corporation which are consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under subsections (b) and (c) of section 414 of title 26; and

(C)(i) notwithstanding any other provision of this subchapter, during any period in which an individual possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an affected air carrier of which he was an accountable owner, whether through the ownership of voting securities, by contract, or otherwise, the affected air carrier shall be considered to be under common control not only with those persons described in subparagraph (B), but also with all related persons; and

(ii) for purposes of this subparagraph, the term—

(I) ''affected air carrier'' means an air carrier, as defined in section 40102(a)(2) of title 49, that holds a certificate of public convenience and necessity under section 41102 of title 49 for route number 147, as of November 12, 1991;

(II) ''related person'' means any person which was under common control (as determined under subparagraph (B)) with an affected air carrier on October 10, 1991, or any successor to such related person;

(III) ''accountable owner'' means any individual who on October 10, 1991, owned directly or indirectly through the application of section 318 of title 26 more than 50 percent of the total voting power of the stock of an affected air carrier;

(IV) ''successor'' means any person that acquires, directly or indirectly through the application of section 318 of title 26, more than 50 percent of the total voting power of the stock of a related person, more than 50 percent of the total value of the securities (as defined in section 1002(20) of this title) of the related person, more than 50 percent of the total value of the assets of the related person, or any person into which such related person shall be merged or consolidated; and

(V) ''individual'' means a living human being;

(15) ''single-employer plan'' means any defined benefit plan (as defined in section 1002(35) of this title) which is not a multiemployer plan;

(16) ''benefit liabilities'' means the benefits of employees and their beneficiaries under the plan (within the meaning of section 401(a)(2) of title 26);

(17) ''amount of unfunded guaranteed benefits'', of a participant or beneficiary as of any date under a single-employer plan, means an amount equal to the excess of—

(A) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title) of the benefits of the participant or beneficiary under the plan which are guaranteed under section 1322 of this title, over

(B) the current value (as of such date) of the assets of the plan which are required to be allocated to those benefits under section 1344 of this title;

(18) ''amount of unfunded benefit liabilities'' means, as of any date, the excess (if any) of—

(A) the value of the benefit liabilities under the plan (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title), over

(B) the current value (as of such date) of the assets of the plan;

[2] So in original. The period probably should be a semicolon.

(19) ''outstanding amount of benefit liabilities'' means, with respect to any plan, the excess (if any) of—

(A) the value of the benefit liabilities under the plan (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title), over

(B) the value of the benefit liabilities which would be so determined by only taking into account benefits which are guaranteed under section 1322 of this title or to which assets of the plan are allocated under section 1344 of this title;

(20) ''person'' has the meaning set forth in section 1002(9) of this title;

(21) ''affected party'' means, with respect to a plan—

(A) each participant in the plan,

(B) each beneficiary under the plan who is a beneficiary of a deceased participant or who is an alternate payee (within the meaning of section 1056(d)(3)(K) of this title) under an applicable qualified domestic relations order (within the meaning of section 1056(d)(3)(B)(i) of this title),

(C) each employee organization representing participants in the plan, and

(D) the corporation,

except that, in connection with any notice required to be provided to the affected party, if an affected party has designated, in writing, a person to receive such notice on behalf of the affected party, any reference to the affected party shall be construed to refer to such person.

(b)(1) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of title 26. For purposes of this subchapter, under regulations prescribed by the corporation, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer and all such trades and businesses as a single employer. The regulations prescribed under the preceding sentence shall be consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under section 414(c) of title 26.

(2) For purposes of subtitle E of this subchapter—

(A) except as otherwise provided in subtitle E of this subchapter, contributions or other payments shall be considered made under a plan for a plan year if they are made within the period prescribed under section 412(c)(10) of title 26 (determined, in the case of a terminated plan, as if the plan had continued beyond the termination date), and

(B) the term ''Secretary of the Treasury'' means the Secretary of the Treasury or such Secretary's delegate.

(Pub. L. 93–406, title IV, § 4001, Sept. 2, 1974, 88 Stat. 1003; Pub. L. 96–364, title IV, § 402(a)(1), Sept. 26, 1980, 94 Stat. 1296; Pub. L. 99–272, title XI, § 11004, Apr. 7, 1986, 100 Stat. 238; Pub. L. 100–203, title IX, §§ 9312(b)(4), (5), 9313(a)(2)(F), Dec. 22, 1987, 101 Stat. 1330–363, 1330–365; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 102–229, title II, § 214, Dec. 12, 1991, 105 Stat. 1718; Pub. L. 103–465, title VII, § 761(a)(11), Dec. 8, 1994, 108 Stat. 5034.)

REFERENCES IN TEXT

Section 1322(c) of this title, referred to in subsec. (a)(6), (7), was redesignated section 1322(d) of this title by Pub. L. 100–203, title IX, § 9312(b)(3)(A)(i), Dec. 22, 1987, 101 Stat. 1330–362.

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

The Internal Revenue Code of 1986, referred to in subsec. (a)(8), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

In subsec. (a)(14)(C)(ii)(I), ''section 40102(a)(2) of title 49'' substituted for ''section 101(3) of the Federal Aviation Act of 1958'' and ''section 41102 of title 49'' substituted for ''section 401 of such Act'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1994—Subsec. (a)(13). Pub. L. 103–465 substituted ''means a person described in section 1082(c)(11)(A) of this title (without regard to section 1082(c)(11)(B) of this title) or section 412(c)(11)(A) of title 26 (without regard to section 412(c)(11)(B) of such title).'' for ''means a person—

''(A) who is responsible, in connection with such plan, for meeting the funding requirements under section 1082 of this title or section 412 of title 26, or

''(B) who is a member of the controlled group of a person described in subparagraph (A), has been responsible for meeting such funding requirements, and has employed a significant number (as may be defined in regulations of the corporation) of participants under such plan while such person was so responsible;''.

1991—Subsec. (a)(14)(C). Pub. L. 102–229, which directed the amendment of section 4001(a)(14) of the Employment Retirement Income Security Act of 1974 by adding subpar. (C), was executed to section 4001(a)(14) of the Employee Retirement Income Security Act of 1974, which is classified to this section, to reflect the probable intent of Congress.

1989—Subsec. (a)(8). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsecs. (a)(13)(A), (14)(B), (b)(1), (2)(A). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1987—Subsec. (a)(16). Pub. L. 100–203, § 9312(b)(4), amended par. (16) generally. Prior to amendment, par. (16) read as follows: ''''benefit commitments', to a participant or beneficiary as of any date under a single-employer plan, means all benefits provided by the plan with respect to the participant or beneficiary which—

''(A) are guaranteed under section 1322 of this title,

''(B) would be guaranteed under section 1322 of this title, but for the operation of subsection 1322(b) of this title, or

''(C) constitute—

''(i) early retirement supplements or subsidies, or

''(ii) plant closing benefits,

irrespective of whether any such supplements, subsidies, or benefits are benefits guaranteed under section 1322 of this title, if the participant or beneficiary has satisfied, as of such date, all of the conditions required of him or her under the provisions of the plan to establish entitlement to the benefits, except for the submission of a formal application, retirement, completion of a required waiting period subsequent to application for benefits, or designation of a beneficiary;''.

Subsec. (a)(18). Pub. L. 100–203, § 9313(a)(2)(F), amended par. (18) generally. Prior to amendment, par. (18) read as follows: '' 'amount of unfunded benefit commitments', of a participant or beneficiary as of any date under a single-employer plan, means an amount equal to the excess of—

''(A) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title) of the benefit commitments to the participant or beneficiary under the plan, over

''(B) the current value (as of such date) of the assets of the plan which are required to be allocated to those benefit commitments under section 1344 of this title;''.

Subsec. (a)(19). Pub. L. 100–203, § 9312(b)(5), amended par. (19) generally. Prior to amendment, par. (19) read as follows: '' 'outstanding amount of benefit commitments', of a participant or beneficiary under a terminated single-employer plan, means the excess of—

''(A) the actuarial present value (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title) of the benefit commitments to such participant or beneficiary under the plan, over

''(B) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title) of the benefits of such participant or beneficiary which are guaranteed under section 1322 of this title or to which assets of the plan are required to be allocated under section 1344 of this title;''.

1986—Subsec. (a)(2). Pub. L. 99–272, § 11004(a)(1), amended par. (2) generally, substituting provisions defining ''substantial employer'' for any plan year of a single-employer plan for provisions defining ''substantial employer'' for any plan year as an employer, treating employers who are members of the same affiliated group as one employer, who has made contributions to or under a plan under which more than one employer, other than a multi-employer plan, makes contributions for each of the two immediately preceding plan years or the second and third preceding plan years equaling or exceeding 10 percent of all employer contributions paid to or under that plan for such year.

Subsec. (a)(13). Pub. L. 99–272, § 11004(a)(2)–(4), added par. (13).

Subsec. (a)(14). Pub. L. 99–272, § 11004(a)(2)–(4), added par. (14).

Subsec. (a)(15) to (21). Pub. L. 99–272, § 11004(a)(2)–(4), added pars. (15) to (21).

Subsec. (b). Pub. L. 99–272, § 11004(b), designated existing provisions as par. (1), added par. (2), and struck out amendments by Pub. L. 96–364, § 402(a)(1)(F), which had been executed by designating existing provisions as par. (1) and adding pars. (2) to (4). See 1980 Amendment note below. For successor provisions to former pars. (2), (3), and (4), see subsecs. (a)(15), (b)(2)(A), and (b)(2)(B), respectively.

1980—Subsec. (a)(2). Pub. L. 96–364, § 402(a)(1)(A), inserted provision excepting multiemployer plan.

Subsec. (a)(3). Pub. L. 96–364, § 402(a)(1)(B), substantially revised definition of term ''multiemployer plan'' by, among other changes, adding subpars. (A) to (C) and cl. (i), and restating existing provisions as cl. (ii) with respect to plan years beginning before Sept. 26, 1980.

Subsec. (a)(6). Pub. L. 96–364, § 402(a)(1)(C), inserted references to section 1322a of this title.

Subsec. (a)(7). Pub. L. 96–364, § 402(a)(1)(D), inserted reference to section 1322a(g) of this title.

Subsec. (a)(8) to (12). Pub. L. 96–364, § 402(a)(1)(E), added pars. (8) to (12).

Subsec. (b). Pub. L. 96–364, § 402(a)(1)(F), which was executed by designating existing provisions as par. (1) and adding pars. (2) to (4), notwithstanding directory language that pars. (2) to (4) be added at end of subsec. (c)(1) as redesignated, was struck out by Pub. L. 99–272, § 11004(b). See 1986 Amendment note above.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective as if included in the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, see section 761(b)(2) of Pub. L. 103–465, set out as a note under section 1056 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.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9312(d)(1) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VII, § 7881(f)(9), Dec. 19, 1989, 103 Stat. 2440, provided that: ''The amendments made by this section [amending this section and sections 1305, 1322, 1341, 1342, 1349, 1362, 1364, and 1368 of this title and repealing section 1349 of this title] shall apply with respect to—

''(A) plan terminations under section 4041 of ERISA [29 U.S.C. 1341] with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987, and

''(B) plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of ERISA [29 U.S.C. 1342] after December 17, 1987.''

Section 9313(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1341 and 1367 of this title] shall apply with respect to plan terminations under section 4041 of ERISA [29 U.S.C. 1341] with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987.''

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.

COORDINATION OF INTERNAL REVENUE CODE OF 1986 WITH EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

This subchapter not applicable in interpreting Internal Revenue Code of 1986, except to the extent specifically provided in such Code, or as determined by the Secretary of the Treasury, see section 9343(a) of Pub. L. 100–203, set out as a note under section 401 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1023, 1056, 1082, 1083, 1085a, 1365, 1366, 1441, 1461 of this title; title 26 sections 412, 418.

§ 1302. Pension Benefit Guaranty Corporation

(a) Establishment within Department of Labor

There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation. In carrying out its functions under this subchapter, the cor-

poration shall be administered by the chairman of the board of directors in accordance with policies established by the board. The purposes of this subchapter, which are to be carried out by the corporation, are—

(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

(2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this subchapter applies, and

(3) to maintain premiums established by the corporation under section 1306 of this title at the lowest level consistent with carrying out its obligations under this subchapter.

(b) Powers of corporation

To carry out the purposes of this subchapter, the corporation has the powers conferred on a nonprofit corporation under the District of Columbia Nonprofit Corporation Act [D.C. Code, § 29–501 et seq.] and, in addition to any specific power granted to the corporation elsewhere in this subchapter or under that Act, the corporation has the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by the board of directors, by laws, rules, and regulations relating to the conduct of its business and the exercise of all other rights and powers granted to it by this chapter and such other bylaws, rules, and regulations as may be necessary to carry out the purposes of this subchapter;

(4) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this chapter in any State or other jurisdiction without regard to qualification, licensing, or other requirements imposed by law in such State or other jurisdiction;

(5) to lease, purchase, accept gifts or donations of, or otherwise to acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of, any property, real, personal, or mixed, or any interest therein wherever situated;

(6) to appoint and fix the compensation of such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, and, to the extent desired by the corporation, require bonds for them and fix the penalty thereof, and to appoint and fix the compensation of experts and consultants in accordance with the provisions of section 3109 of title 5;

(7) to utilize the personnel and facilities of any other agency or department of the United States Government, with or without reimbursement, with the consent of the head of such agency or department; and

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all others acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to the corporation by this chapter.

(c) Omitted

(d) Board of directors; compensation; reimbursement for expenses

The board of directors of the corporation consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce. Members of the Board shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the board. The Secretary of Labor is the chairman of the board of directors.

(e) Meetings

The board of directors shall meet at the call of its chairman, or as otherwise provided by the bylaws of the corporation.

(f) Adoption of bylaws; amendment, alteration; publication in the Federal Register

As soon as practicable, but not later than 180 days after September 2, 1974, the board of directors shall adopt initial bylaws and rules relating to the conduct of the business of the corporation. Thereafter, the board of directors may alter, supplement, or repeal any existing bylaw or rule, and may adopt additional bylaws and rules from time to time as may be necessary. The chairman of the board shall cause a copy of the bylaws of the corporation to be published in the Federal Register not less often than once each year.

(g) Exemption from taxation

(1) The corporation, its property, its franchise, capital, reserves, surplus, and its income (including, but not limited to, any income of any fund established under section 1305 of this title), shall be exempt from all taxation now or hereafter imposed by the United States (other than taxes imposed under chapter 21 of title 26, relating to Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.], and chapter 23 of title 26, relating to Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of the corporation shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed.

(2) The receipts and disbursements of the corporation in the discharge of its functions shall be included in the totals of the budget of the United States Government. The United States is not liable for any obligation or liability incurred by the corporation.

(3) Omitted.

(h) Advisory committee to corporation

(1) There is established an advisory committee to the corporation, for the purpose of advising the corporation as to its policies and procedures relating to (A) the appointment of trustees in termination proceedings, (B) investment of moneys, (C) whether plans being terminated should be liquidated immediately or continued in operation under a trustee, and (D) such other issues as the corporation may request from time to

time. The advisory committee may also recommend persons for appointment as trustees in termination proceedings, make recommendations with respect to the investment of moneys in the funds, and advise the corporation as to whether a plan subject to being terminated should be liquidated immediately or continued in operation under a trustee.

(2) The advisory committee consists of seven members appointed, from among individuals recommended by the board of directors, by the President. Of the seven members, two shall represent the interests of employee organizations, two shall represent the interests of employers who maintain pension plans, and three shall represent the interests of the general public. The President shall designate one member as chairman at the time of the appointment of that member.

(3) Members shall serve for terms of 3 years each, except that, of the members first appointed, one of the members representing the interests of employee organizations, one of the members representing the interests of employers, and one of the members representing the interests of the general public shall be appointed for terms of 2 years each, one of the members representing the interests of the general public shall be appointed for a term of 1 year, and the other members shall be appointed to full 3–year terms. The advisory committee shall meet at least six times each year and at such other times as may be determined by the chairman or requested by any three members of the advisory committee.

(4) Members shall be chosen on the basis of their experience with employee organizations, with employers who maintain pension plans, with the administration of pension plans, or otherwise on account of outstanding demonstrated ability in related fields. Of the members serving on the advisory committee at any time, no more than four shall be affiliated with the same political party.

(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. Any vacancy occurring in the office of a member of the advisory committee shall be filled in the manner in which that office was originally filled.

(6) The advisory committee shall appoint and fix the compensation of such employees as it determines necessary to discharge its duties, including experts and consultants in accordance with the provisions of section 3109 of title 5. The corporation shall furnish to the advisory committee such professional, secretarial, and other services as the committee may request.

(7) Members of the advisory committee shall, for each day (including traveltime) during which they are attending meetings or conferences of the committee or otherwise engaged in the business of the committee, be compensated at a rate fixed by the corporation which is not in excess of the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(8) The Federal Advisory Committee Act does not apply to the advisory committee established by this subsection.

(Pub. L. 93–406, title IV, § 4002, Sept. 2, 1974, 88 Stat. 1004; Pub. L. 94–455, title XV, § 1510(a), Oct. 4, 1976, 90 Stat. 1741; Pub. L. 96–364, title IV, §§ 403(*l*), 406(a), Sept. 26, 1980, 94 Stat. 1302, 1303; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which appears in chapter 5 (§ 29–501 et seq.) of Title 29, Corporations, of the District of Columbia Code.

This chapter, referred to in subsec. (b)(3), (4), and (8), was in 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 Federal Insurance Contributions Act, referred to in subsec. (g)(1), is act Aug. 16, 1954, ch. 736, §§ 3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§ 3101 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3128 of Title 26 and Tables.

The Federal Unemployment Tax Act, referred to in subsec. (g)(1), is act Aug. 16, 1954, ch. 736, §§ 3301 to 3311, 68A Stat. 454, as amended, which is classified generally to chapter 23 (§ 3301 et seq.) of Title 26. For complete classification of this Act to the Code, see section 3311 of Title 26 and Tables.

The Federal Advisory Committee Act, referred to in subsec. (h)(8), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Subsec. (c) amended section 5108 of Title 5, Government Organization and Employees, and subsec. (g)(3) amended section 846 of former Title 31, Money and Finance.

AMENDMENTS

1989—Subsec. (g)(1). 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.

1980—Subsec. (b)(3). Pub. L. 96–364, § 403(*l*), inserted provisions respecting bylaws, etc., to carry out this subchapter.

Subsec. (g)(2). Pub. L. 96–364, § 406(a), substituted provisions relating to inclusion of receipts and disbursements in United States budget totals and nonliability of United States for obligation or liability of corporation, for provisions relating to noninclusion of receipts and disbursements in United States budget totals, exemption from limitations with respect to budget outlays, and restrictions on liability for obligation or liability incurred by the corporation.

1976—Subsec. (g)(1). Pub. L. 94–455 exempted corporation from all taxation now or hereafter imposed by United States (other than taxes imposed under chapter 21 of title 26, relating to Federal Insurance Contributions Act, and chapter 23 of title 26, relating to Federal Unemployment Tax Act).

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.

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.

Section 406(b) of Pub. L. 96–364 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to fiscal years beginning after September 30, 1980.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1510(b) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on September 2, 1974.''

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

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1301 of this title.

§ 1303. Operation of corporation

(a) Investigatory authority; audit of statistically significant number of terminating plans

The corporation may make such investigations as it deems necessary to enforce any provision of this subchapter or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the corporation shall determine, as to all the facts and circumstances concerning the matter to be investigated. The corporation shall annually audit a statistically significant number of plans terminating under section 1341(b) of this title to determine whether participants and beneficiaries have received their benefit commitments and whether section 1350(a) of this title has been satisfied. Each audit shall include a statistically significant number of participants and beneficiaries.

(b) Discovery powers vested in board members or officers designated by the chairman

For the purpose of any such investigation, or any other proceeding under this subchapter, any member of the board of directors of the corporation, or any officer designated by the chairman, may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the corporation deems relevant or material to the inquiry.

(c) Contempt

In the case of contumacy by, or refusal to obey a subpena issued to, any person, the corporation may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. The court may issue an order requiring such person to appear before the corporation, or member or officer designated by the corporation, and to produce records or to give testimony related to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district in which such person is an inhabitant or may be found.

(d) Cooperation with other governmental agencies

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

(e) Civil actions by corporation; jurisdiction; process; expeditious handling of case; costs; limitation on actions

(1) Civil actions may be brought by the corporation for appropriate relief, legal or equitable or both, to enforce (A) the provisions of this subchapter, and (B) in the case of a plan which is covered under this subchapter (other than a multiemployer plan) and for which the conditions for imposition of a lien described in section 1082(f)(1)(A) and (B) of this title or section 412(n)(1)(A) and (B) of title 26 have been met, section 1082 of this title and section 412 of title 26.

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

(3) The district courts of the United States shall have jurisdiction of actions brought by the corporation under this subchapter without regard to the amount in controversy in any such action.

(4) Repealed. Pub. L. 98–620, title IV, § 402(33), Nov. 8, 1984, 98 Stat. 3360.

(5) In any action brought under this subchapter, whether to collect premiums, penalties,

and interest under section 1307 of this title or for any other purpose, the court may award to the corporation all or a portion of the costs of litigation incurred by the corporation in connection with such action.

(6)(A) Except as provided in subparagraph (C), an action under this subsection may not be brought after the later of—

(i) 6 years after the date on which the cause of action arose, or

(ii) 3 years after the applicable date specified in subparagraph (B).

(B)(i) Except as provided in clause (ii), the applicable date specified in this subparagraph is the earliest date on which the corporation acquired or should have acquired actual knowledge of the existence of such cause of action.

(ii) If the corporation brings the action as a trustee, the applicable date specified in this subparagraph is the date on which the corporation became a trustee with respect to the plan if such date is later than the date described in clause (i).

(C) In the case of fraud or concealment, the period described in subparagraph (A)(ii) shall be extended to 6 years after the applicable date specified in subparagraph (B).

(f) Civil actions against corporation; appropriate court; award of costs and expenses; limitation on actions; jurisdiction; removal of actions

(1) Except with respect to withdrawal liability disputes under part 1 of subtitle E of this subchapter, any person who is a fiduciary, employer, contributing sponsor, member of a contributing sponsor's controlled group, participant, or beneficiary, and is adversely affected by any action of the corporation with respect to a plan in which such person has an interest, or who is an employee organization representing such a participant or beneficiary so adversely affected for purposes of collective bargaining with respect to such plan, may bring an action against the corporation for appropriate equitable relief in the appropriate court.

(2) For purposes of this subsection, the term ''appropriate court'' means—

(A) the United States district court before which proceedings under section 1341 or 1342 of this title are being conducted,

(B) if no such proceedings are being conducted, the United States district court for the judicial district in which the plan has its principal office, or

(C) the United States District Court for the District of Columbia.

(3) In any action brought under this subsection, the court may award all or a portion of the costs and expenses incurred in connection with such action to any party who prevails or substantially prevails in such action.

(4) This subsection shall be the exclusive means for bringing actions against the corporation under this subchapter, including actions against the corporation in its capacity as a trustee under section 1342 or 1349[1] of this title.

(5)(A) Except as provided in subparagraph (C), an action under this subsection may not be brought after the later of—

(i) 6 years after the date on which the cause of action arose, or

(ii) 3 years after the applicable date specified in subparagraph (B).

(B)(i) Except as provided in clause (ii), the applicable date specified in this subparagraph is the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

(ii) In the case of a plaintiff who is a fiduciary bringing the action in the exercise of fiduciary duties, the applicable date specified in this subparagraph is the date on which the plaintiff became a fiduciary with respect to the plan if such date is later than the date specified in clause (i).

(C) In the case of fraud or concealment, the period described in subparagraph (A)(ii) shall be extended to 6 years after the applicable date specified in subparagraph (B).

(6) The district courts of the United States have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

(7) In any suit, action, or proceeding in which the corporation is a party, or intervenes under section 1451 of this title, in any State court, the corporation may, without bond or security, remove such suit, action, or proceeding from the State court to the United States district court for the district or division in which such suit, action, or proceeding is pending by following any procedure for removal now or hereafter in effect.

(Pub. L. 93–406, title IV, § 4003, Sept. 2, 1974, 88 Stat. 1006; Pub. L. 96–364, title IV, §§ 402(a)(2), 403(k), Sept. 26, 1980, 94 Stat. 1297, 1302; Pub. L. 98–620, title IV, § 402(33), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 99–272, title XI, §§ 11014(b)(1), (2), 11016(c)(5), Apr. 7, 1986, 100 Stat. 262, 264, 274; Pub. L. 103–465, title VII, §§ 773(a), 776(b)(1), Dec. 8, 1994, 108 Stat. 5044, 5048.)

REFERENCES IN TEXT

Section 1349 of this title, referred to in subsec. (f)(4), was repealed by Pub. L. 100–203, title IX, § 9312(a), Dec. 22, 1987, 101 Stat. 1330–361.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–465, § 776(b)(1), inserted ''and whether section 1350(a) of this title has been satisfied'' before period at end of second sentence.

Subsec. (e)(1). Pub. L. 103–465, § 773(a), inserted ''(A)'' after ''enforce'' and substituted '', and'' and cl. (B) for period at end.

1986—Subsec. (a). Pub. L. 99–272, § 11016(c)(5), inserted provisions directing the corporation to audit annually a statistically significant number of plans terminating under section 1341(b) of this title to determine whether participants and beneficiaries have received their benefit commitments and to include a statistically significant number of participants and beneficiaries in each audit.

Subsec. (e)(6). Pub. L. 99–272, § 11014(b)(2), added par. (6).

Subsec. (f). Pub. L. 99–272, § 11014(b)(1), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''Except as provided in section 1451(a)(2) of this title, any participant, beneficiary, plan administrator, or employee adversely affected by any action of the corporation, or by a receiver or trustee appointed by the corporation, with respect to a plan in which such participant, beneficiary, plan administrator or employer has an interest, may bring an action against

[1] See References in Text note below.

the corporation, receiver, or trustee in the appropriate court. For purposes of this subsection the term 'appropriate court' means the United States district court before which proceedings under section 1341 or 1342 of this title are being conducted, or if no such proceedings are being conducted the United States district court for the district in which the plan has its principal office, or the United States district court for the District of Columbia. The district courts of the United States have jurisdiction of actions brought under this subsection without regard to the amount in controversy. In any suit, action, or proceeding in which the corporation is a party, or intervenes under section 1451 of this title, in any State court, the corporation may, without bond or security, remove such suit, action, or proceeding from the State court to the United States District Court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect.''

1984—Subsec. (e)(4). Pub. L. 98–620 struck out par. (4) which provided that upon application by the corporation to a court of the United States for expedited handling of any case in which the corporation was a party, it was the duty of that court to assign such case for hearing at the earliest practical date and to cause such case to be in every way expedited.

1980—Subsec. (a). Pub. L. 96–364, § 402(a)(2)(A), substituted ''enforce'' for ''determine whether any person has violated or is about to violate''.

Subsec. (e)(1). Pub. L. 96–364, § 402(a)(2)(B), substituted ''enforce'' for ''redress violations of''.

Subsec. (f). Pub. L. 96–364, §§ 402(a)(2)(C), 403(k), substituted ''Except as provided in section 1451(a)(2) of the title, any'' for ''Any'' and inserted provisions relating to removal of actions.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 773(b) of Pub. L. 103–465 provided that: ''The amendments made by this section [amending this section] shall be effective for installments and other payments required under section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082] or section 412 of the Internal Revenue Code of 1986 [26 U.S.C. 412] that become due on or after the date of the enactment of this Act [Dec. 8, 1994].''

Amendment by section 776(b)(1) of Pub. L. 103–465 effective with respect to distributions that occur in plan years commencing after final regulations implementing section 776 of Pub. L. 103–465 are prescribed by the Pension Benefit Guaranty Corporation, see section 776(e) of Pub. L. 103–465, set out as a note under section 1056 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 11014(b)(3) of Pub. L. 99–272 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to actions filed after the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by section 11016(c)(5) of 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 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1341, 1461 of this title.

§ 1304. Repealed. Pub. L. 99–272, title XI, § 11016(c)(6), Apr. 7, 1986, 100 Stat. 274

Section, Pub. L. 93–406, title IV, § 4004, Sept. 2, 1974, 88 Stat. 1008, related to appointment, within 270 days after Sept. 2, 1974, and powers and functions of a receiver to assume control of terminated plan and its assets.

EFFECTIVE DATE OF REPEAL

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

§ 1305. Pension benefit guaranty funds

(a) Establishment of four revolving funds on books of Treasury of the United States

There are established on the books of the Treasury of the United States for revolving funds to be used by the corporation in carrying out its duties under this subchapter. One of the funds shall be used with respect to basic benefits guaranteed under section 1322 of this title, one of the funds shall be used with respect to basic benefits guaranteed under section 1322a of this title, one of the funds shall be used with respect to nonbasic benefits guaranteed under section 1322 of this title (if any), and the remaining fund shall be used with respect to nonbasic benefits guaranteed under section 1322a of this title (if any), other than subsection (g)(2) thereof (if any). Whenever in this subchapter reference is made to the term ''fund'' the reference shall be considered to refer to the appropriate fund established under this subsection.

(b) Credits to funds; availability of funds; investment of moneys in excess of current needs

(1) Each fund established under this section shall be credited with the appropriate portion of—

(A) funds borrowed under subsection (c) of this section,

(B) premiums, penalties, interest, and charges collected under this subchapter,

(C) the value of the assets of a plan administered under section 1342 of this title by a trustee to the extent that they exceed the liabilities of such plan,

(D) the amount of any employer liability payments under subtitle D of this subchapter, to the extent that such payments exceed liabilities of the plan (taking into account all other plan assets),

(E) earnings on investments of the fund or on assets credited to the fund under this subsection,

(F) attorney's fees awarded to the corporation, and

(G) receipts from any other operations under this subchapter.

(2) Subject to the provisions of subsection (a) of this section, each fund shall be available—

(A) for making such payments as the corporation determines are necessary to pay benefits guaranteed under section 1322 or 1322a of this title or benefits payable under section 1350 of this title,

(B) to purchase assets from a plan being terminated by the corporation when the corporation determines such purchase will best pro-

tect the interests of the corporation, participants in the plan being terminated, and other insured plans,

(C) to repay to the Secretary of the Treasury such sums as may be borrowed (together with interest thereon) under subsection (c) of this section,

(D) to pay the operational and administrative expenses of the corporation, including reimbursement of the expenses incurred by the Department of the Treasury in maintaining the funds, and the Comptroller General in auditing the corporation, and

(E) to pay to participants and beneficiaries the estimated amount of benefits which are guaranteed by the corporation under this subchapter and the estimated amount of other benefits to which plan assets are allocated under section 1344 of this title, under single-employer plans which are unable to pay benefits when due or which are abandoned.

(3) Whenever the corporation determines that the moneys of any fund are in excess of current needs, it may request the investment of such amounts as it determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States but, until all borrowings under subsection (c) of this section have been repaid, the obligations in which such excess moneys are invested may not yield a rate of return in excess of the rate of interest payable on such borrowings.

(c) Authority to issue notes or other obligations; purchase by Secretary of the Treasury as public debt transaction

The corporation is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $100,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations of the corporation. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations issued by the corporation under this subsection, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(d) Establishment of fifth fund; purpose, availability, etc.

(1) A fifth fund shall be established for the reimbursement of uncollectible withdrawal liability under section 1402 of this title, and shall be credited with the appropriate—

(A) premiums, penalties, and interest charges collected under this subchapter, and

(B) earnings on investments of the fund or on assets credited to the fund.

The fund shall be available to make payments pursuant to the supplemental program established under section 1402 of this title, including those expenses and other charges determined to be appropriate by the corporation.

(2) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

(e) Establishment of sixth fund; purpose, availability, etc.

(1) A sixth fund shall be established for the supplemental benefit guarantee program provided under section 1322a(g)(2) of this title.

(2) Such fund shall be credited with the appropriate—

(A) premiums, penalties, and interest charges collected under section 1322a(g)(2) of this title, and

(B) earnings on investments of the fund or on assets credited to the fund.

The fund shall be available for making payments pursuant to the supplemental benefit guarantee program established under section 1322a(g)(2) of this title, including those expenses and other charges determined to be appropriate by the corporation.

(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

(f) Deposit of premiums into separate revolving fund

(1) A seventh fund shall be established and credited with—

(A) premiums, penalties, and interest charges collected under section 1306(a)(3)(A)(i) of this title (not described in subparagraph (B)) to the extent attributable to the amount of the premium in excess of $8.50,

(B) premiums, penalties, and interest charges collected under section 1306(a)(3)(E) of this title, and

(C) earnings on investments of the fund or on assets credited to the fund.

(2) Amounts in the fund shall be available for transfer to other funds established under this section with respect to a single-employer plan but shall not be available to pay—

(A) administrative costs of the corporation, or

(B) benefits under any plan which was terminated before October 1, 1988,

unless no other amounts are available for such payment.

(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

(g) Other use of funds; deposits of repayments

(1) Amounts in any fund established under this section may be used only for the purposes for which such fund was established and may not be used to make loans to (or on behalf of) any other

fund or to finance any other activity of the corporation.

(2) None of the funds borrowed under subsection (c) of this section may be used to make loans to (or on behalf of) any fund other than a fund described in the second sentence of subsection (a) of this section.

(3) Any repayment to the corporation of any amount paid out of any fund in connection with a multiemployer plan shall be deposited in such fund.

(h) Voting by corporation of stock paid as liability

Any stock in a person liable to the corporation under this subchapter which is paid to the corporation by such person or a member of such person's controlled group in satisfaction of such person's liability under this subchapter may be voted only by the custodial trustees or outside money managers of the corporation.

(Pub. L. 93–406, title IV, § 4005, Sept. 2, 1974, 88 Stat. 1009; Pub. L. 96–364, title IV, § 403(a), Sept. 26, 1980, 94 Stat. 1300; Pub. L. 99–272, title XI, § 11016(a)(1), (2), (c)(7), Apr. 7, 1986, 100 Stat. 268, 274; Pub. L. 100–203, title IX, §§ 9312(c)(4), 9331(d), Dec. 22, 1987, 101 Stat. 1330–364, 1330–368; Pub. L. 103–465, title VII, § 776(b)(2), Dec. 8, 1994, 108 Stat. 5048.)

CODIFICATION

In subsec. (c), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act, as amended'' and ''that Act, as amended,'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1994—Subsec. (b)(2)(A). Pub. L. 103–465, which directed the amendment of subpar. (A) by inserting ''or benefits payable under section 1350 of this title'' after ''section 1322a of this title'', was executed by making the insertion after ''section 1322 or 1322a of this title'' to reflect the probable intent of Congress.

1987—Subsec. (f). Pub. L. 100–203, § 9331(d), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100–203, § 9331(d), redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Pub. L. 100–203, § 9312(c)(4), struck out ''or fiduciaries with respect to trusts to which the requirements of section 1349 of this title apply'' after ''money managers of the corporation''.

Subsec. (h). Pub. L. 100–203, § 9331(d), redesignated former subsec. (g) as (h).

1986—Subsec. (b)(1)(F), (G). Pub. L. 99–272, § 11016(a)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (b)(2)(E). Pub. L. 99–272, § 11016(a)(1), added subpar. (E).

Subsec. (g). Pub. L. 99–272, § 11016(c)(7), added subsec. (g).

1980—Subsec. (a). Pub. L. 96–364, § 403(a)(1), substituted provisions respecting benefits guaranteed under sections 1322 and 1322a of this title, for provisions respecting benefits guaranteed under sections 1322 and 1323 of this title.

Subsec. (b)(2). Pub. L. 96–364, § 403(a)(2), (3), in subpar. (A) inserted reference to section 1322a of this title, struck out subpar. (B) relating to payments under section 1323 of this title, and redesignated former subpars. (C) to (E) as (B) to (D), respectively.

Subsecs. (d) to (f). Pub. L. 96–364, § 403(a)(4), added subsecs. (d) to (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective with respect to distributions that occur in plan years commencing after final regulations implementing section 776 of Pub. L. 103–465 are prescribed by the Pension Benefit Guaranty Corporation, see section 776(e) of Pub. L. 103–465, set out as a note under section 1056 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9312(c)(4) of Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 of this title.

Section 9331(f) of Pub. L. 100–203 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1306 and 1307 of this title] shall apply to plan years beginning after December 31, 1987.

''(2) SEPARATE ACCOUNTING.—The amendments made by subsection (d) [amending this section] shall apply to fiscal years beginning after September 30, 1988.''

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1301, 1302, 1308, 1322a, 1361, 1461 of this title.

§ 1306. Premium rates

(a) Schedules for premium rates and bases for application; establishment, coverage, etc.

(1) The corporation shall prescribe such schedules of premium rates and bases for the application of those rates as may be necessary to provide sufficient revenue to the fund for the corporation to carry out its functions under this subchapter. The premium rates charged by the corporation for any period shall be uniform for all plans, other than multiemployer plans, insured by the corporation with respect to basic benefits guaranteed by it under section 1322 of this title, and shall be uniform for all multiemployer plans with respect to basic benefits guaranteed by it under section 1322a of this title.

(2) The corporation shall maintain separate schedules of premium rates, and bases for the application of those rates, for—

(A) basic benefits guaranteed by it under section 1322 of this title for single-employer plans,

(B) basic benefits guaranteed by it under section 1322a of this title for multiemployer plans,

(C) nonbasic benefits guaranteed by it under section 1322 of this title for single-employer plans,

(D) nonbasic benefits guaranteed by it under section 1322a of this title for multiemployer plans, and

(E) reimbursements of uncollectible withdrawal liability under section 1402 of this title.

The corporation may revise such schedules whenever it determines that revised schedules are necessary. Except as provided in section 1322a(f) of this title, in order to place a revised schedule described in subparagraph (A) or (B) in effect, the corporation shall proceed in accordance with subsection (b)(1) of this section, and such schedule shall apply only to plan years beginning more than 30 days after the date on which a joint resolution approving such revised schedule is enacted.

(3)(A) Except as provided in subparagraph (C), the annual premium rate payable to the corporation by all plans for basic benefits guaranteed under this subchapter is—

(i) in the case of a single-employer plan, for plan years beginning after December 31, 1990, an amount equal to the sum of $19 plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;

(ii) in the case of a multiemployer plan, for the plan year within which the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980 falls, an amount for each individual who is a participant in such plan for such plan year equal to the sum of—

(I) 50 cents, multiplied by a fraction the numerator of which is the number of months in such year ending on or before such date and the denominator of which is 12, and

(II) $1.00, multiplied by a fraction equal to 1 minus the fraction determined under clause (i),

(iii) in the case of a multiemployer plan, for plan years beginning after September 26, 1980, an amount equal to—

(I) $1.40 for each participant, for the first, second, third, and fourth plan years,

(II) $1.80 for each participant, for the fifth and sixth plan years,

(III) $2.20 for each participant, for the seventh and eighth plan years, and

(IV) $2.60 for each participant, for the ninth plan year, and for each succeeding plan year.

(B) The corporation may prescribe by regulation the extent to which the rate described in subparagraph (A)(i) applies more than once for any plan year to an individual participating in more than one plan maintained by the same employer, and the corporation may prescribe regulations under which the rate described in subparagraph (A)(iii) will not apply to the same participant in any multiemployer plan more than once for any plan year.

(C)(i) If the sum of—

(I) the amounts in any fund for basic benefits guaranteed for multiemployer plans, and

(II) the value of any assets held by the corporation for payment of basic benefits guaranteed for multiemployer plans,

is for any calendar year less than 2 times the amount of basic benefits guaranteed by the corporation under this subchapter for multiemployer plans which were paid out of any such fund or assets during the preceding calendar year, the annual premium rates under subparagraph (A) shall be increased to the next highest premium level necessary to insure that such sum will be at least 2 times greater than such amount during the following calendar year.

(ii) If the board of directors of the corporation determines that an increase in the premium rates under subparagraph (A) is necessary to provide assistance to plans which are receiving assistance under section 1431 of this title and to plans the board finds are reasonably likely to require such assistance, the board may order such increase in the premium rates.

(iii) The maximum annual premium rate which may be established under this subparagraph is $2.60 for each participant.

(iv) The provisions of this subparagraph shall not apply if the annual premium rate is increased to a level in excess of $2.60 per participant under any other provisions of this subchapter.

(D)(i) Not later than 120 days before the date on which an increase under subparagraph (C)(ii) is to become effective, the corporation shall publish in the Federal Register a notice of the determination described in subparagraph (C)(ii), the basis for the determination, the amount of the increase in the premium, and the anticipated increase in premium income that would result from the increase in the premium rate. The notice shall invite public comment, and shall provide for a public hearing if one is requested. Any such hearing shall be commenced not later than 60 days before the date on which the increase is to become effective.

(ii) The board of directors shall review the hearing record established under clause (i) and shall, not later than 30 days before the date on which the increase is to become effective, determine (after consideration of the comments received) whether the amount of the increase should be changed and shall publish its determination in the Federal Register.

(E)(i) The additional premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year.

(ii) The amount determined under this clause for any plan year shall be an amount equal to $9.00 for each $1,000 (or fraction thereof) of unfunded vested benefits under the plan as of the close of the preceding plan year.

(iii) For purposes of clause (ii)—

(I) Except as provided in subclause (II) or (III), the term ''unfunded vested benefits'' means the amount which would be the unfunded current liability (within the meaning of section 1082(d)(8)(A) of this title) if only vested benefits were taken into account.

(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to the applicable percentage of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins. For purposes of this subclause, the applicable percentage is 80 percent for plan years beginning before July 1, 1997, 85 percent for plan years beginning after June 30, 1997, and before the 1st plan year to which the first tables prescribed under section 1082(d)(7)(C)(ii)(II) of this title apply, and 100 percent for such 1st plan year and subsequent plan years.

(III) In the case of any plan year for which the applicable percentage under subclause (II) is 100 percent, the value of the plan's assets used in determining unfunded current liability under subclause (I) shall be their fair market value.

(iv) No premium shall be determined under this subparagraph for any plan year if, as of the close of the preceding plan year, contributions to the plan for the preceding plan year were not less than the full funding limitation for the preceding plan year under section 412(c)(7) of title 26.

(4) The corporation may prescribe, subject to the enactment of a joint resolution in accordance with this section or section 1322a(f) of this title, alternative schedules of premium rates, and bases for the application of those rates, for basic benefits guaranteed by it under sections 1322 and 1322a of this title based, in whole or in part, on the risks insured by the corporation in each plan.

(5)(A) In carrying out its authority under paragraph (1) to establish schedules of premium rates, and bases for the application of those rates, for nonbasic benefits guaranteed under sections 1322 and 1322a of this title the premium rates charged by the corporation for any period for nonbasic benefits guaranteed shall—

(i) be uniform by category of nonbasic benefits guaranteed,

(ii) be based on the risks insured in each category, and

(iii) reflect the experience of the corporation (including experience which may be reasonably anticipated) in guaranteeing such benefits.

(B) Notwithstanding subparagraph (A), premium rates charged to any multiemployer plan by the corporation for any period for supplemental guarantees under section 1322a(g)(2) of this title may reflect any reasonable considerations which the corporation determines to be appropriate.

(6)(A) In carrying out its authority under paragraph (1) to establish premium rates and bases for basic benefits guaranteed under section 1322 of this title with respect to single-employer plans, the corporation shall establish such rates and bases in coverage schedules in accordance with the provisions of this paragraph.

(B) The corporation may establish annual premiums for single-employer plans composed of the sum of—

(i) a charge based on a rate applicable to the excess, if any, of the present value of the basic benefits of the plan which are guaranteed over the value of the assets of the plan, not in excess of 0.1 percent, and

(ii) an additional charge based on a rate applicable to the present value of the basic benefits of the plan which are guaranteed.

The rate for the additional charge referred to in clause (ii) shall be set by the corporation for every year at a level which the corporation estimates will yield total revenue approximately equal to the total revenue to be derived by the corporation from the charges referred to in clause (i) of this subparagraph.

(C) The corporation may establish annual premiums for single-employer plans based on—

(i) the number of participants in a plan, but such premium rates shall not exceed the rates described in paragraph (3),

(ii) unfunded basic benefits guaranteed under this subchapter, but such premium rates shall not exceed the limitations applicable to charges referred to in subparagraph (B)(i), or

(iii) total guaranteed basic benefits, but such premium rates shall not exceed the rates for additional charges referred to in subparagraph (B)(ii).

If the corporation uses two or more of the rate bases described in this subparagraph, the premium rates shall be designed to produce approximately equal amounts of aggregate premium revenue from each of the rate bases used.

(D) For purposes of this paragraph, the corporation shall by regulation define the terms ''value of assets'' and ''present value of the benefits of the plan which are guaranteed'' in a manner consistent with the purposes of this subchapter and the provisions of this section.

(b) Revised schedule; Congressional procedures applicable

(1) In order to place a revised schedule (other than a schedule described in subsection (a)(2)(C), (D), or (E) of this section) in effect, the corporation shall transmit the proposed schedule, its proposed effective date, and the reasons for its proposal to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(2) The succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3). They shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any rule of that House.

(3) For the purpose of the succeeding paragraphs of this subsection, ''resolution'' means only a joint resolution, the matter after the resolving clause of which is as follows: ''The proposed revised schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on ____ is hereby approved.'', the blank space therein being filled with the date on which the corporation's message proposing the rate was delivered.

(4) A resolution shall be referred to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(5) If a committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move

to discharge the committee from further consideration of that resolution, or to discharge the committee from further consideration of any other resolution with respect to the proposed adjustment which has been referred to the committee. The motion to discharge may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposed rate), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same proposed rate.

(6) When a committee has reported, or has been discharged from further consideration of a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(7) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution and motions to proceed to the consideration of other business shall be decided without debate. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(c) Rates for plans for basic benefits

(1) Except as provided in subsection (a)(3) of this section, and subject to paragraph (2), the rate for all plans for basic benefits guaranteed under this subchapter with respect to plan years ending after September 2, 1974, is—

(A) in the case of each plan which was not a multiemployer plan in a plan year—

(i) with respect to each plan year beginning before January 1, 1978, an amount equal to $1 for each individual who was a participant in such plan during the plan year,

(ii) with respect to each plan year beginning after December 31, 1977, and before January 1, 1986, an amount equal to $2.60 for each individual who was a participant in such plan during the plan year, and[1]

(iii) with respect to each plan year beginning after December 31, 1985, and before January 1, 1988, an amount equal to $8.50 for each individual who was a participant in such plan during the plan year, and

(iv) with respect to each plan year beginning after December 31, 1987, and before January 1, 1991, an amount equal to $16 for each individual who was a participant in such plan during the plan year, and

(B) in the case of each plan which was a multiemployer plan in a plan year, an amount equal to 50 cents for each individual who was a participant in such plan during the plan year.

(2) The rate applicable under this subsection for the plan year preceding September 1, 1975, is the product of—

(A) the rate described in the preceding sentence; and

(B) a fraction—

(i) the numerator of which is the number of calendar months in the plan year which ends after September 2, 1974, and before the date on which the new plan year commences, and

(ii) the denominator of which is 12.

(Pub. L. 93–406, title IV, § 4006, Sept. 2, 1974, 88 Stat. 1010; Pub. L. 96–364, title I, § 105, Sept. 26, 1980, 94 Stat. 1264; Pub. L. 99–272, title XI, § 11005(a)–(c)(3), Apr. 7, 1986, 100 Stat. 240–242; Pub. L. 100–203, title IX, § 9331(a), (b), (e), Dec. 22, 1987, 101 Stat. 1330–367, 1330–368; Pub. L. 101–239, title VII, § 7881(h), Dec. 19, 1989, 103 Stat. 2442; Pub. L. 101–508, title XII, § 12021(a), (b), Nov. 5, 1990, 104 Stat. 1388–573; Pub. L. 103–465, title VII, § 774(a)(1), (b)(1), (2), Dec. 8, 1994, 108 Stat. 5045, 5046.)

REFERENCES IN TEXT

The plan year within which the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980 falls, referred to in subsec. (a)(3)(A)(ii), refers to the plan year within which the date of the enactment of Pub. L. 96–364 falls, such enactment being approved Sept. 26, 1980.

AMENDMENTS

1994—Subsec. (a)(3)(E)(iii). Pub. L. 103–465, § 774(b)(1), (2), in subcl. (I), inserted ''or (III)'' after ''subclause (II)'', in subcl. (II), substituted ''equal to the applicable percentage'' for ''equal to 80 percent'' and inserted at end ''For purposes of this subclause, the applicable percentage is 80 percent for plan years beginning before July 1, 1997, 85 percent for plan years beginning after June 30, 1997, and before the 1st plan year to which the first tables prescribed under section 1082(d)(7)(C)(ii)(II) of this title apply, and 100 percent for such 1st plan year and subsequent plan years.'', and added subcl. (III).

Subsec. (a)(3)(E)(iv), (v). Pub. L. 103–465, § 774(a)(1), redesignated cl. (v) as (iv) and struck out former cl. (iv) which read as follows:

''(iv)(I) Except as provided in this clause, the aggregate increase in the premium payable with respect to any participant by reason of this subparagraph shall not exceed $53.

''(II) If an employer made contributions to a plan during 1 or more of the 5 plan years preceding the 1st plan year to which this subparagraph applies in an amount not less than the maximum amount allowable as a deduction with respect to such contributions under section 404 of title 26, the dollar amount in effect under subclause (I) for the 1st 5 plan years to which this subparagraph applies shall be reduced by $3 for each plan

[1] So in original. The word ''and'' probably should not appear.

year for which such contributions were made in such amount.''

1990—Subsec. (a)(3)(A)(i). Pub. L. 101–508, § 12021(a)(1), substituted ''for plan years beginning after December 31, 1990, an amount equal to the sum of $19'' for ''for plan years beginning after December 31, 1987, an amount equal to the sum of $16''.

Subsec. (a)(3)(E)(ii). Pub. L. 101–508, § 12021(b)(1), substituted ''$9.00'' for ''$6.00''.

Subsec. (a)(3)(E)(iv)(I). Pub. L. 101–508, § 12021(b)(2), substituted ''$53'' for ''$34''.

Subsec. (c)(1)(A)(iv). Pub. L. 101–508, § 12021(a)(2), added cl. (iv).

1989—Subsec. (a)(3)(E)(v). Pub. L. 101–239, § 7881(h)(1), added cl. (v).

Subsec. (c)(1)(A)(iii). Pub. L. 101–239, § 7881(h)(2), realigned margin.

1987—Subsec. (a)(3)(A)(i). Pub. L. 100–203, § 9331(a), substituted ''for plan years beginning after December 31, 1987, an amount equal to the sum of $16 plus the additional premium (if any) determined under subparagraph (E)'' for ''for plan years beginning after December 31, 1985, an amount equal to $8.50''.

Subsec. (a)(3)(E). Pub. L. 100–203, § 9331(b), added subpar. (E).

Subsec. (c)(1)(A). Pub. L. 100–203, § 9331(e), struck out ''and'' at end of cl. (i), inserted ''and before January 1, 1986,'' in cl. (ii), and added cl. (iii).

1986—Subsec. (a)(1). Pub. L. 99–272, § 11005(b)(1), struck out provision that in establishing annual premiums with respect to plans, other than multiemployer plans, pars. (5) and (6) of this subsection, as in effect before Sept. 26, 1980, would continue to apply.

Subsec. (a)(2). Pub. L. 99–272, § 11005(c)(1), substituted ''a joint resolution approving such revised schedule is enacted'' for ''the Congress approves such revised schedule by a concurrent resolution''.

Subsec. (a)(3)(A)(i). Pub. L. 99–272, § 11005(a)(1), substituted ''December 31, 1985, an amount equal to $8.50'' for ''December 31, 1977, an amount equal to $2.60''.

Subsec. (a)(4). Pub. L. 99–272, § 11005(c)(2), substituted ''the enactment of a joint resolution'' for ''approval by the Congress''.

Subsec. (a)(6). Pub. L. 99–272, § 11005(b)(2), added par. (6).

Subsec. (b)(3). Pub. L. 99–272, § 11005(c)(3), substituted ''joint'' for ''concurrent'' and ''The'' for ''That the Congress favors the'' and inserted ''is hereby approved''.

Subsec. (c)(1)(A). Pub. L. 99–272, § 11005(a)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''in the case of each plan which was not a multiemployer plan in a plan year, an amount equal to $1 for each individual who was a participant in such plan during the plan year, and''.

1980—Subsec. (a). Pub. L. 96–364, § 105(a), substituted provisions setting forth authority of corporation to prescribe schedules of premium rates and bases for the application of such rates and provisions respecting contents, coverages, alternate schedules, etc., of schedules and application bases, for provisions setting forth authority of corporation to prescribe insurance premium rates and coverage schedules for the application of such rates and provisions respecting contents, coverages, rates, etc., of schedules and premium rates.

Subsec. (b). Pub. L. 96–364, § 105(b), in par. (1) substituted ''(C), (D), or (E)'' for ''(B) or (C)'', ''revised schedule'' for ''revised coverage schedule'', and ''Human Resources'' for ''Public Welfare'', in par. (3) substituted ''revised schedule'' for ''revised coverage schedule'', and in par. (4) substituted ''Human Resources'' for ''Public Welfare''.

Subsec. (c). Pub. L. 96–364, § 105(c), added subsec. (c).

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Economic and Educational Opportunities of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 774(a)(2) of Pub. L. 103–465 provided that:

''(A) IN GENERAL.—The amendments made by this subsection [amending this section] shall be effective for plan years beginning on or after July 1, 1994.

''(B) TRANSITION RULE.—In the case of plan years beginning on or after July 1, 1994, and before July 1, 1996, the additional premium payable with respect to any participant by reason of the amendments made by this section shall not exceed the sum of—

''(i) $53, and

''(ii) the product derived by multiplying—

''(I) the excess (if any) of the amount determined under clause (i) of section 4006(a)(3)(E) of the Employee Retirement Income Security Act of 1974 [subsec. (a)(3)(E) of this section], over $53, by

''(II) the applicable percentage.

For purposes of this subparagraph, the applicable percentage shall be the percentage specified in the following table:

For the plan year beginning: on or after	but before	The applicable percentage is:
July 1, 1994	July 1, 1995	20 percent
July 1, 1995	July 1, 1996	60 percent.''

Section 774(b)(3) of Pub. L. 103–465 provided that: ''The amendments made by this subsection [amending this section] shall apply to plan years beginning after the date of the enactment of this Act [Dec. 8, 1994].

EFFECTIVE DATE OF 1990 AMENDMENT

Section 12021(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1990.''

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 to plan years beginning after Dec. 31, 1987, see section 9331(f)(1) of Pub. L. 100–203, set out as a note under section 1305 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 11005(d) of Pub. L. 99–272 provided that:

''(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1322a of this title] shall be effective for plan years commencing after December 31, 1985.

''(2) SPECIAL RULE.—The amendments made by subsection (b) [amending this section] shall be effective as of the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980 [Sept. 26, 1980].''

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.

TRANSITIONAL RULE

Section 774(c) of Pub. L. 103–465 provided that: ''In the case of a regulated public utility described in section 7701(a)(33)(A)(i) of the Internal Revenue Code of 1986 [26 U.S.C. 7701(a)(33)(A)(i)], the amendments made by this section [amending this section] shall not apply to plan years beginning before the earlier of—

''(1) January 1, 1998, or

''(2) the date the regulated public utility begins to collect from utility customers rates that reflect the costs incurred or projected to be incurred for addi-

tional premiums under section 4006(a)(3)(E) of the Employee Retirement Income Security Act of 1974 [subsec. (a)(3)(E) of this section] pursuant to final and nonappealable determinations by all public utility commissions (or other authorities having jurisdiction over the rates and terms of service by the regulated public utility) that the costs are just and reasonable and recoverable from customers of the regulated public utility.''

Section 11005(e) of Pub. L. 99–272 provided that:

''(1) NOTICE OF PREMIUM INCREASE.—Not later than 30 days after the date of the enactment of this Act [Apr. 7, 1986], the Pension Benefit Guaranty Corporation shall send a notice to the plan administrator of each single-employer plan affected by the premium increase established by the amendment made by subsection (a)(1) [amending this section]. Such notice shall describe such increase and the requirements of this subsection.

''(2) DUE DATE FOR UNPAID PREMIUMS.—With respect to any plan year beginning during the period beginning on January 1, 1986, and ending 30 days after the date of the enactment of this Act, any unpaid amount of such premium increase shall be due and payable no later than the earlier of 60 days after the date of the enactment of this Act or 30 days after the date on which the notice required by paragraph (1) is sent, except that in no event shall the amount of the premium increase established under the amendment made by subsection (a)(1) be due and payable for a plan year earlier than the date on which premiums for the plan would have been due for such plan year had this Act [probably means the Single-Employee Pension Plan Amendments Act of 1986, title XI of Pub. L. 99–272, see Short Title of 1986 Amendment note set out under section 1001 of this title] not been enacted.

''(3) ENFORCEMENT.—For purposes of enforcement, the requirements of paragraphs (1) and (2) shall be considered to be requirements of sections 4006 and 4007 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306 and 1307).''

SINGLE-EMPLOYER PENSION PLAN TERMINATION INSURANCE PREMIUM STUDY

Section 11017(a) of Pub. L. 99–272 directed Pension Benefit Guaranty Corporation to conduct a study of, and submit to an advisory council not later than one year after Apr. 7, 1986, a report on the premiums established under the single-employer pension plan termination insurance program under this subchapter, including (1) the long-term stability of the program, (2) alternatives with respect to proposals for changes in the premium levels under such program, (3) methods currently used in projecting future costs, (4) alternative methods of projecting such future costs, (5) methods currently used in determining premiums needed to allocate and adequately fund such future costs, along with any alternative methods of making such premium determinations, and (6) alternative premium bases upon which some or all of such projected future costs would be allocated on an exposure-related or risk-related computation; and further provided for submission of the advisory council's report to Congress 180 days after submission of the Corporation's report to the advisory council, as well as the cooperation and consultation with other Federal agencies in compilation of reports.

STUDIES AND REPORTS RESPECTING GRADUATED PREMIUM RATE SCHEDULES AND UNION MANDATED WITHDRAWALS FROM MULTIEMPLOYER PENSION PLANS

Section 412(a) of Pub. L. 96–364 directed Pension Benefit Guaranty Corporation to conduct a separate study with respect to advantages and disadvantages of establishing a graduated premium rate schedule under this section which is based on risk, and necessity of adopting special rules in cases of union-mandated withdrawal from multiemployer pension plans, and to report to Congress the results of the studies conducted, including its recommendations with respect thereto.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1082, 1302, 1305, 1310, 1311, 1322a, 1343 of this title; title 26 section 412.

§ 1307. Payment of premiums

(a) Premiums payable when due; accrual; waiver or reduction

The designated payor of each plan shall pay the premiums imposed by the corporation under this subchapter with respect to that plan when they are due. Premiums under this subchapter are payable at the time, and on an estimated, advance, or other basis, as determined by the corporation. Premiums imposed by this subchapter on September 2, 1974 (applicable to that portion of any plan year during which such date occurs) are due within 30 days after such date. Premiums imposed by this subchapter on the first plan year commencing after September 2, 1974, are due within 30 days after such plan year commences. Premiums shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure, or until a trustee is appointed pursuant to section 1342 of this title, whichever is earlier. The corporation may waive or reduce premiums for a multiemployer plan for any plan year during which such plan receives financial assistance from the corporation under section 1431 of this title, except that any amount so waived or reduced shall be treated as financial assistance under such section.

(b) Late payment charge; waiver

If any basic benefit premium is not paid when it is due the corporation is authorized to assess a late payment charge of not more than 100 percent of the premium payment which was not timely paid. The preceding sentence shall not apply to any payment of premium made within 60 days after the date on which payment is due, if before such date, the designated payor obtains a waiver from the corporation based upon a showing of substantial hardship arising from the timely payment of the premium. The corporation is authorized to grant a waiver under this subsection upon application made by the designated payor, but the corporation may not grant a waiver if it appears that the designated payor will be unable to pay the premium within 60 days after the date on which it is due. If any premium is not paid by the last date prescribed for a payment, interest on the amount of such premium at the rate imposed under section 6601(a) of title 26 (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) shall be paid for the period from such last date to the date paid.

(c) Civil action to recover premium penalty and interest

If any designated payor fails to pay a premium when due, the corporation is authorized to bring a civil action in any district court of the United States within the jurisdiction of which the plan assets are located, the plan is administered, or in which a defendant resides or is found for the recovery of the amount of the premium penalty, and interest, and process may be served in any other district. The district courts of the United States shall have jurisdiction over actions brought under this subsection by the corpora-

tion without regard to the amount in controversy.

(d) Basic benefits guarantee not stopped by designated payor's failure to pay premiums when due

The corporation shall not cease to guarantee basic benefits on account of the failure of a designated payor to pay any premium when due.

(e) Designated payor

(1) For purposes of this section, the term ''designated payor'' means—

(A) the contributing sponsor or plan administrator in the case of a single-employer plan, and

(B) the plan administrator in the case of a multiemployer plan.

(2) If the contributing sponsor of any single-employer plan is a member of a controlled group, each member of such group shall be jointly and severally liable for any premiums required to be paid by such contributing sponsor. For purposes of the preceding sentence, the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 of title 26.

(Pub. L. 93–406, title IV, § 4007, Sept. 2, 1974, 88 Stat. 1013; Pub. L. 96–364, title IV, §§ 402(a)(3), 403(b), Sept. 26, 1980, 94 Stat. 1298, 1300; Pub. L. 100–203, title IX, § 9331(c), Dec. 22, 1987, 101 Stat. 1330–368; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (b). 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.

1987—Subsecs. (a) to (d). Pub. L. 100–203, § 9331(c)(1), substituted ''designated payor'' for ''plan administrator'' wherever appearing.

Subsec. (e). Pub. L. 100–203, § 9331(c)(2), added subsec. (e).

1980—Subsec. (a). Pub. L. 96–364 inserted provisions relating to waiver or reduction of premiums, and struck out provisions relating to payment of premiums under statutory requirements respecting contingent liability coverage.

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.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to plan years beginning after Dec. 31, 1987, see section 9331(f)(1) of Pub. L. 100–203, set out as a note under section 1305 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1303 of this title.

§ 1308. Annual report by the corporation

As soon as practicable after the close of each fiscal year the corporation shall transmit to the President and the Congress a report relative to the conduct of its business under this subchapter for that fiscal year. The report shall include financial statements setting forth the finances of the corporation at the end of such fiscal year and the result of its operations (including the source and application of its funds) for the fiscal year and shall include an actuarial evaluation of the expected operations and status of the funds established under section 1305 of this title for the next five years (including a detailed statement of the actuarial assumptions and methods used in making such evaluation).

(Pub. L. 93–406, title IV, § 4008, Sept. 2, 1974, 88 Stat. 1014.)

§ 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 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);

(2) the conditions for imposition of a lien described in section 1082(f)(1)(A) and (B) of this title or section 412(n)(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.

(Pub. L. 93–406, title IV, § 4010, as added Pub. L. 103–465, title VII, § 772(a), Dec. 8, 1994, 108 Stat. 5044.)

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].''

§ 1311. Notice to participants

(a) In general

The plan administrator of a plan subject to the additional premium under section 1306(a)(3)(E) of this title shall provide, in a form and manner and at such time as prescribed in regulations of the corporation, notice to plan participants and beneficiaries of the plan's funding status and the limits on the corporation's guaranty should the plan terminate while underfunded. Such notice shall be written in a manner so as to be understood by the average plan participant.

(b) Exception

Subsection (a) of this section shall not apply to any plan to which section 1082(d) of this title does not apply for the plan year by reason of paragraph (9) thereof.

(Pub. L. 93–406, title IV, § 4011, as added Pub. L. 103–465, title VII, § 775(a), Dec. 8, 1994, 108 Stat. 5046.)

EFFECTIVE DATE

Section 775(c) of Pub. L. 103–465 provided that: ''The amendment made by this section [enacting this section] shall be effective for plan years beginning after the date of enactment of this Act [Dec. 8, 1994].''

SUBTITLE B—COVERAGE

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1361, 1371 of this title.

§ 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,

(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,

(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,

(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 maintained for such purpose, that part shall be treated for purposes of this subchapter, as a separate plan which is an excess benefit plan;

(9) which is established and maintained exclusively for substantial owners as defined in section 1322(b)(6)[1] of this title;

(10) of an international organization which is exempt from taxation under the International Organizations Immunities Act [22 U.S.C. 288 et seq.];

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

(12) which is a defined benefit plan, to the extent that it is treated as an individual account plan under paragraph (35)(B) of section 1002 of this title; or

(13) established and maintained by a professional service employer which does not at any time after September 2, 1974, have more than 25 active participants in the plan.

(c) Definitions

(1) For purposes of subsection (b)(1) of this section, the term ''individual account plan'' does not include a plan under which a fixed benefit is promised if the employer or his representative participated in the determination of that benefit.

(2) For purposes of this paragraph and for purposes of subsection (b)(13) of this section.

(A) the term ''professional service employer'' means any proprietorship, partnership, corporation, or other association or organization (i) owned or controlled by professional individuals or by executors or administrators of professional individuals, (ii) the principal business of which is the performance of professional services, and

(B) the term ''professional individuals'' includes but is not limited to, physicians, dentists, chiropractors, osteopaths, optometrists, other licensed practitioners of the healing arts, attorneys at law, public accountants, public engineers, architects, draftsmen, actuaries, psychologists, social or physical scientists, and performing artists.

(3) In the case of a plan established and maintained by more than one professional service employer, the plan shall not be treated as a plan described in subsection (b)(13) of this section if, at any time after September 2, 1974, the plan has more than 25 active participants.

(Pub. L. 93–406, title IV, § 4021, Sept. 2, 1974, 88 Stat. 1014; Pub. L. 96–364, title IV, § 402(a)(4), Sept. 26, 1980, 94 Stat. 1298; Pub. L. 101–239, title VII, §§ 7891(a)(1), 7894(g)(3)(A), Dec. 19, 1989, 103 Stat. 2445, 2451.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1935 or 1937, referred to in subsec. (b)(2), means act Aug. 29, 1935, ch. 812, 49 Stat. 867, known as the Railroad Retirement Act of 1935. The Railroad Retirement Act of 1935 was amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and was known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

Paragraph (6) of section 1322(b) of this title, referred to in subsec. (b)(9), was redesignated as par. (5) by Pub. L. 96–364, title IV, § 403(c)(4), Sept. 26, 1980, 94 Stat. 1301.

The International Organizations Immunities Act, referred to in subsec. (b)(10), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§ 288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 7894(g)(3)(A), substituted ''this subchapter applies'' for ''this section applies'' in introductory provisions.

Subsecs. (a)(1), (2), (b)(3), (4)(A), (8). 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.

1980—Subsec. (a). Pub. L. 96–364 inserted ''unless otherwise specifically indicated in this subchapter,'' after ''For this purpose,''.

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(g)(3)(A) 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 1980 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1023, 1054, 1081, 1082, 1103, 1114, 1322, 1322a, 1323, 1341, 1341a, 1343, 1344, 1365, 1461 of this title; title 26 sections 401, 412, 4972.

§ 1322. Single-employer plan benefits guaranteed

(a) Nonforfeitable benefits

Subject to the limitations contained in subsection (b) of this section, the corporation shall

[1] See References in Text note below.

guarantee, in accordance with this section, the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under a single-employer plan which terminates at a time when this subchapter applies to it.

(b) Exceptions

(1) Except to the extent provided in paragraph (7)—

(A) no benefits provided by a plan which has been in effect for less than 60 months at the time the plan terminates shall be guaranteed under this section, and

(B) any increase in the amount of benefits under a plan resulting from a plan amendment which was made, or became effective, whichever is later, within 60 months before the date on which the plan terminates shall be disregarded.

(2) For purposes of this subsection, the time a successor plan (within the meaning of section 1321(a) of this title) has been in effect includes the time a previously established plan (within the meaning of section 1321(a) of this title) was in effect. For purposes of determining what benefits are guaranteed under this section in the case of a plan to which section 1321 of this title does not apply on September 3, 1974, the 60-month period referred to in paragraph (1) shall be computed beginning on the first date on which such section does apply to the plan.

(3) The amount of monthly benefits described in subsection (a) of this section provided by a plan, which are guaranteed under this section with respect to a participant, shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income from that employer was greater than during any other such period with that employer determined by dividing 1/12 of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) $750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act [42 U.S.C. 430]) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974.

The provisions of this paragraph do not apply to non-basic benefits. The maximum guaranteed monthly benefit shall not be reduced solely on account of the age of a participant in the case of a benefit payable by reason of disability that occurred on or before the termination date, if the participant demonstrates to the satisfaction of the corporation that the Social Security Administration has determined that the participant satisfies the definition of disability under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq.; 1381 et seq.], and the regulations thereunder. If a benefit payable by reason of disability is converted to an early or normal retirement benefit for reasons other than a change in the health of the participant, such early or normal retirement benefit shall be treated as a continuation of the benefit payable by reason of disability and this subparagraph shall continue to apply.

(4)(A) The actuarial value of a benefit, for purposes of this subsection, shall be determined in accordance with regulations prescribed by the corporation.

(B) For purposes of paragraph (3)—

(i) the term ''gross income'' means ''earned income'' within the meaning of section 911(b) of title 26 (determined without regard to any community property laws),

(ii) in the case of a participant in a plan under which contributions are made by more than one employer, amounts received as gross income from any employer under that plan shall be aggregated with amounts received from any other employer under that plan during the same period, and

(iii) any non-basic benefit shall be disregarded.

(5)(A) For purposes of this subchapter, the term ''substantial owner'' means an individual who—

(i) owns the entire interest in an unincorporated trade or business,

(ii) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

(iii) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii) the constructive ownership rules of section 1563(e) of title 26 shall apply (determined without regard to section 1563(e)(3)(C)). For purposes of this subchapter an individual is also treated as a substantial owner with respect to a plan if, at any time within the 60 months preceding the date on which the determination is made, he was a substantial owner under the plan.

(B) In the case of a participant in a plan under which benefits have not been increased by reason of any plan amendments and who is covered by the plan as a substantial owner, the amount of benefits guaranteed under this section shall not exceed the product of—

(i) a fraction (not to exceed 1) the numerator of which is the number of years the substantial owner was an active participant in the plan, and the denominator of which is 30, and

(ii) the amount of the substantial owner's monthly benefits guaranteed under subsection (a) of this section (as limited under paragraph (3) of this subsection).

(C) In the case of a participant in a plan, other than a plan described in subparagraph (B), who is covered by the plan as a substantial owner, the amount of the benefit guaranteed under this section shall, under regulations prescribed by the corporation, treat each benefit increase attributable to a plan amendment as if it were provided under a new plan. The benefits guaran-

teed under this section with respect to all such amendments shall not exceed the amount which would be determined under subparagraph (B) if subparagraph (B) applied.

(6)(A) No benefits accrued under a plan after the date on which the Secretary of the Treasury issues notice that he has determined that any trust which is a part of a plan does not meet the requirements of section 401(a) of title 26, or that the plan does not meet the requirements of section 404(a)(2) of title 26, are guaranteed under this section unless such determination is erroneous. This subparagraph does not apply if the Secretary subsequently issues a notice that such trust meets the requirements of section 401(a) of title 26 or that the plan meets the requirements of section 404(a)(2) of title 26 and if the Secretary determines that the trust or plan has taken action necessary to meet such requirements during the period between the issuance of the notice referred to in the preceding sentence and the issuance of the notice referred to in this sentence.

(B) No benefits accrued under a plan after the date on which an amendment of the plan is adopted which causes the Secretary of the Treasury to determine that any trust under the plan has ceased to meet the requirements of section 401(a) of title 26 or that the plan has ceased to meet the requirements of section 404(a)(2) of title 26, are guaranteed under this section unless such determination is erroneous. This subparagraph shall not apply if the amendment is revoked as of the date it was first effective or amended to comply with such requirements.

(7) Benefits described in paragraph (1) are guaranteed only to the extent of the greater of—

(A) 20 percent of the amount which, but for the fact that the plan or amendment has not been in effect for 60 months or more, would be guaranteed under this section, or

(B) $20 per month,

multiplied by the number of years (but not more than 5) the plan or amendment, as the case may be, has been in effect. In determining how many years a plan or amendment has been in effect for purposes of this paragraph, the first 12 months beginning with the date on which the plan or amendment is made or first becomes effective (whichever is later) constitutes one year, and each consecutive period of 12 months thereafter constitutes an additional year. This paragraph does not apply to benefits payable under a plan unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this subchapter.

(c) Payment by corporation to participants and beneficiaries of recovery percentage of outstanding amount of benefit liabilities

(1) In addition to benefits paid under the preceding provisions of this section with respect to a terminated plan, the corporation shall pay the portion of the amount determined under paragraph (2) which is allocated with respect to each participant under section 1344(a) of this title. Such payment shall be made to such participant or to such participant's beneficiaries (including alternate payees, within the meaning of section 1056(d)(3)(K) of this title).

(2) The amount determined under this paragraph is an amount equal to the product derived by multiplying—

(A) the outstanding amount of benefit liabilities under the plan (including interest calculated from the termination date), by

(B) the applicable recovery ratio.

(3)(A) Except as provided in subparagraph (C), for purposes of this subsection, the term ''recovery ratio'' means the average ratio, with respect to prior plan terminations described in subparagraph (B), of—

(i) the value of the recovery of the corporation under section 1362, 1363, or 1364 of this title in connection with such prior terminations, to

(ii) the amount of unfunded benefit liabilities under such plans as of the termination date in connection with such prior terminations.

(B) A plan termination described in this subparagraph is a termination with respect to which—

(i) the corporation has determined the value of recoveries under section 1362, 1363, or 1364 of this title, and

(ii) notices of intent to terminate were provided after December 17, 1987, and during the 5-Federal fiscal year period ending with the fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate with respect to the plan termination for which the recovery ratio is being determined.

(C) In the case of a terminated plan with respect to which the outstanding amount of benefit liabilities exceeds $20,000,000, for purposes of this section, the term ''recovery ratio'' means, with respect to the termination of such plan, the ratio of—

(i) the value of the recoveries of the corporation under section 1362, 1363, or 1364 of this title in connection with such plan, to

(ii) the amount of unfunded benefit liabilities under such plan as of the termination date.

(4) Determinations under this subsection shall be made by the corporation. Such determinations shall be binding unless shown by clear and convincing evidence to be unreasonable.

(d) Authorization to guarantee other classes of benefits

The corporation is authorized to guarantee the payment of such other classes of benefits and to establish the terms and conditions under which such other classes of benefits are guaranteed as it determines to be appropriate.

(e) Nonforfeitability of preretirement survivor annuity

For purposes of subsection (a) of this section, a qualified preretirement survivor annuity (as defined in section 1055(e)(1) of this title) with respect to a participant under a terminated single-employer plan shall not be treated as forfeitable solely because the participant has not died as of the termination date.

(f) Effective date of plan amendments

For purposes of this section, the effective date of a plan amendment described in section

1054(i)(1) of this title shall be the effective date of the plan of reorganization of the employer described in section 1054(i)(1) of this title or, if later, the effective date stated in such amendment.

(Pub. L. 93–406, title IV, § 4022, Sept. 2, 1974, 88 Stat. 1016; Pub. L. 96–364, title IV, § 403(c), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99–272, title XI, § 11016(c)(8), (9), Apr. 7, 1986, 100 Stat. 274; Pub. L. 100–203, title IX, § 9312(b)(3)(A), Dec. 22, 1987, 101 Stat. 1330–362; Pub. L. 101–239, title VII, §§ 7881(f)(4), (5), (11), 7891(a)(1), 7894(g)(1), (3)(B), Dec. 19, 1989, 103 Stat. 2440, 2441, 2445, 2451; Pub. L. 103–465, title VII, §§ 766(c), 777(a), Dec. 8, 1994, 108 Stat. 5037, 5049.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II, and XVI of the Act are classified generally to subchapters II (§ 401 et seq.) and XVI (§ 1381 et seq.), respectively, 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

1994—Subsec. (b)(3). Pub. L. 103–465, § 777(a), inserted at end ''The maximum guaranteed monthly benefit shall not be reduced solely on account of the age of a participant in the case of a benefit payable by reason of disability that occurred on or before the termination date, if the participant demonstrates to the satisfaction of the corporation that the Social Security Administration has determined that the participant satisfies the definition of disability under title II or XVI of the Social Security Act, and the regulations thereunder. If a benefit payable by reason of disability is converted to an early or normal retirement benefit for reasons other than a change in the health of the participant, such early or normal retirement benefit shall be treated as a continuation of the benefit payable by reason of disability and this subparagraph shall continue to apply.''

Subsec. (f). Pub. L. 103–465, § 766(c), added subsec. (f).

1989—Subsec. (a). Pub. L. 101–239, § 7894(g)(3)(B), substituted ''this subchapter'' for ''section 1321 of this title''.

Subsec. (b)(2). Pub. L. 101–239, § 7894(g)(1), substituted ''60-month'' for ''60 month''.

Subsec. (b)(4)(B)(i), (5)(A), (6). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (c)(1). Pub. L. 101–239, § 7881(f)(11), substituted ''under section 1344(a) of this title. Such payment shall be made to such participant'' for ''under section 1344(a) of this title, to such participant''.

Pub. L. 101–239, § 7881(f)(4), struck out ''(in the case of a deceased participant)'' before ''to such participant's beneficiaries''.

Subsec. (c)(3)(B)(ii). Pub. L. 101–239, § 7881(f)(5), inserted before period at end '', and during the 5-Federal fiscal year period ending with the fiscal year preceding the fiscal year in which occurs the date of the notice of intent to terminate with respect to the plan termination for which the recovery ratio is being determined''.

1987—Subsecs. (c) to (e). Pub. L. 100–203 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (b)(7). Pub. L. 99–272, § 11016(c)(8), in provisions following subpar. (B) substituted ''12 months beginning with'' for ''12 months following''.

Subsec. (d). Pub. L. 99–272, § 11016(c)(9), added subsec. (d).

1980—Subsec. (a). Pub. L. 96–364, § 403(c)(2), inserted '', in accordance with this section,'' after ''guarantee'' and ''single-employer'' before ''plan which'', and struck out ''the terms of'' after ''under''.

Subsec. (b). Pub. L. 96–364, § 403(c)(3), (4), in par. (1) substituted ''(7)'' for ''(8)'', struck out par. (5) relating to receipt of a life annuity commencing at age 65, and redesignated pars. (6) to (8) as (5) to (7), respectively.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 766(c) of Pub. L. 103–465 applicable to plan amendments adopted on or after Dec. 8, 1994, see section 766(d) of Pub. L. 103–465, set out as a note under section 401 of Title 26, Internal Revenue Code.

Section 777(b) of Pub. L. 103–465 provided that: ''The amendment made by this section [amending this section] shall be effective for plan terminations under section 4041(c) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1341(c)] with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act [29 U.S.C. 1342], or under section 4042 of such Act with respect to which proceedings are instituted by the corporation, on or after the date of enactment of this Act [Dec. 8, 1994].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(4), (5), (11) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

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

Amendment by section 7894(g)(1), (3)(B) 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

Amendment by Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 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.

TRANSITIONAL RULE REGARDING AMENDMENTS BY SECTION 9312 OF PUB. L. 100–203

Section 9312(b)(3)(B) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VII, § 7881(f)(1), (6), Dec. 19, 1989, 103 Stat. 2440, provided that:

''(i) IN GENERAL.—In the case of any plan termination to which the amendments made by this section [amending sections 1301, 1305, 1322, 1341, 1342, 1349, 1362, 1364, and 1368 of this title and repealing section 1349 of this title] apply and with respect to which notices of intent

to terminate were provided on or before December 17, 1990—

''(I) subparagraph (A) of section 4022(c)(3) of ERISA [29 U.S.C. 1322(c)(3)(A)] (as amended by this paragraph) shall not apply, and

''(II) subparagraph (C) of section 4022(c)(3) of ERISA (as so amended) shall apply irrespective of the outstanding amount of benefit liabilities under the plan.

''(ii) [Repealed. Pub. L. 101–239, title VII, § 7881(f)(6), Dec. 19, 1989, 103 Stat. 2440.]''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1301, 1305, 1306, 1321, 1322a, 1322b, 1341, 1343, 1344, 1346, 1350, 1361, 1412, 1461 of this title; title 26 section 404; title 42 section 430.

§ 1322a. Multiemployer plan benefits guaranteed

(a) Benefits of covered plans subject to guarantee

The corporation shall guarantee, in accordance with this section, the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under a multiemployer plan—

(1) to which this subchapter applies, and

(2) which is insolvent under section 1426(b) or 1441(d)(2) of this title.

(b) Benefits or benefit increases not eligible for guarantee

(1)(A) For purposes of this section, a benefit or benefit increase which has been in effect under a plan for less than 60 months is not eligible for the corporation's guarantee. For purposes of this paragraph, any month of any plan year during which the plan was insolvent or terminated (within the meaning of section 1341a(a)(2) of this title) shall not be taken into account.

(B) For purposes of this section, a benefit or benefit increase which has been in effect under a plan for less than 60 months before the first day of the plan year for which an amendment reducing the benefit or the benefit increase is taken into account under section 1425(a)(2) of this title in determining the minimum contribution requirement for the plan year under section 1423(b) of this title is not eligible for the corporation's guarantee.

(2) For purposes of this section—

(A) the date on which a benefit or a benefit increase under a plan is first in effect is the later of—

(i) the date on which the documents establishing or increasing the benefit were executed, or

(ii) the effective date of the benefit or benefit increase;

(B) the period of time for which a benefit or a benefit increase has been in effect under a successor plan includes the period of time for which the benefit or benefit increase was in effect under a previously established plan; and

(C) in the case of a plan to which section 1321 of this title did not apply on September 3, 1974, the time periods referred to in this section are computed beginning on the date on which section 1321 of this title first applies to the plan.

(c) Determinations respecting amount of guarantee

(1) Except as provided in subsection (g) of this section, the monthly benefit of a participant or a beneficiary which is guaranteed under this section by the corporation with respect to a plan is the product of—

(A) 100 percent of the accrual rate up to $5, plus 75 percent of the lesser of—

(i) $15, or

(ii) the accrual rate, if any, in excess of $5, and

(B) the number of the participant's years of credited service.

(2) Except as provided in paragraph (6) of this subsection and in subsection (g) of this section, in applying paragraph (1) with respect to a plan described in paragraph (5)(A), the term ''65 percent'' shall be substituted in paragraph (1)(A) for the term ''75 percent''.

(3) For purposes of this section, the accrual rate is—

(A) the monthly benefit of the participant or beneficiary which is described in subsection (a) of this section and which is eligible for the corporation's guarantee under subsection (b) of this section, except that such benefit shall be—

(i) no greater than the monthly benefit which would be payable under the plan at normal retirement age in the form of a single life annuity, and

(ii) determined without regard to any reduction under section 411(a)(3)(E) of title 26; divided by

(B) the participant's years of credited service.

(4) For purposes of this subsection—

(A) a year of credited service is a year in which the participant completed—

(i) a full year of participation in the plan, or

(ii) any period of service before participation which is credited for purposes of benefit accrual as the equivalent of a full year of participation;

(B) any year for which the participant is credited for purposes of benefit accrual with a fraction of the equivalent of a full year of participation shall be counted as such a fraction of a year of credited service; and

(C) years of credited service shall be determined by including service which may otherwise be disregarded by the plan under section 411(a)(3)(E) of title 26.

(5)(A) A plan is described in this subparagraph if—

(i) the first plan year—

(I) in which the plan is insolvent under section 1426(b) or 1441(d)(2) of this title, and

(II) for which benefits are required to be suspended under section 1426 of this title, or reduced or suspended under section 1441 of this title, until they do not exceed the levels provided in this subsection,

begins before the year 2000; and

(ii) the plan sponsor has not established to the satisfaction of the corporation that, during the period of 10 consecutive plan years (or of such lesser number of plan years for which the plan was maintained) immediately preceding the first plan year to which the minimum

funding standards of section 412 of title 26 apply, the total amount of the contributions required under the plan for each plan year was at least equal to the sum of—

(I) the normal cost for that plan year, and

(II) the interest for the plan year (determined under the plan) on the unfunded past service liability for that plan year, determined as of the beginning of that plan year.

(B) A plan shall not be considered to be described in subparagraph (A) if—

(i) it is established to the satisfaction of the corporation that—

(I) the total amount of the contributions received under the plan for the plan years for which the actuarial valuations (performed during the period described in subparagraph (A)(ii)) were performed was at least equal to the sum described in subparagraph (A)(ii); or

(II) the rates of contribution to the plan under the collective bargaining agreements negotiated when the findings of such valuations were available were reasonably expected to provide such contributions;

(ii) the number of actuarial valuations performed during the period described in subparagraph (A)(ii) is—

(I) at least 2, in any case in which such period consists of more than 6 plan years, and

(II) at least 1, in any case in which such period consists of 6 or fewer plan years; and

(iii) if the proposition described in clause (i)(I) is to be established, the plan sponsor certifies that to the best of the plan sponsor's knowledge there is no information available which establishes that the total amount of the contributions received under the plan for any plan year during the period described in subparagraph (A)(ii) for which no valuation was performed is less than the sum described in subparagraph (A)(ii).

(6) Notwithstanding paragraph (2), in the case of a plan described in paragraph (5)(A), if for any period of 3 consecutive plan years beginning with the first plan year to which the minimum funding standards of section 412 of title 26 apply, the value of the assets of the plan for each such plan year is an amount equal to at least 8 times the benefit payments for such plan year—

(A) paragraph (2) shall not apply to such plan; and

(B) the benefit of a participant or beneficiary guaranteed by the corporation with respect to the plan shall be an amount determined under paragraph (1).

(d) Amount of guarantee of reduced benefit

In the case of a benefit which has been reduced under section 411(a)(3)(E) of title 26, the corporation shall guarantee the lesser of—

(1) the reduced benefit, or

(2) the amount determined under subsection (c) of this section.

(e) Ineligibility of benefits for guarantee

The corporation shall not guarantee benefits under a multiemployer plan which, under section 1322(b)(6) of this title, would not be guaranteed under a single-employer plan.

(f) Study, report, etc., respecting premium increase in existing basic-benefit guarantee levels; Congressional procedures applicable for revision of schedules

(1) No later than 5 years after September 26, 1980, and at least every fifth year thereafter, the corporation shall—

(A) conduct a study to determine—

(i) the premiums needed to maintain the basic-benefit guarantee levels for multiemployer plans described in subsection (c) of this section, and

(ii) whether the basic-benefit guarantee levels for multiemployer plans may be increased without increasing the basic-benefit premiums for multiemployer plans under this subchapter; and

(B) report such determinations to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(2)(A) If the last report described in paragraph (1) indicates that a premium increase is necessary to support the existing basic-benefit guarantee levels for multiemployer plans, the corporation shall transmit to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate by March 31 of any calendar year in which congressional action under this subsection is requested—

(i) a revised schedule of basic-benefit guarantees for multiemployer plans which would be necessary in the absence of an increase in premiums approved in accordance with section 1306(b) of this title,

(ii) a revised schedule of basic-benefit premiums for multiemployer plans which is necessary to support the existing basic-benefit guarantees for such plans, and

(iii) a revised schedule of basic-benefit guarantees for multiemployer plans for which the schedule of premiums necessary is higher than the existing premium schedule for such plans but lower than the revised schedule of premiums for such plans specified in clause (ii), together with such schedule of premiums.

(B) The revised schedule of increased premiums referred to in subparagraph (A)(ii) or (A)(iii) shall go into effect as approved by the enactment of a joint resolution.

(C) If an increase in premiums is not so enacted, the revised guarantee schedule described in subparagraph (A)(i) shall go into effect on the first day of the second calendar year following the year in which such revised guarantee schedule was submitted to the Congress.

(3)(A) If the last report described in paragraph (1) indicates that basic-benefit guarantees for multiemployer plans can be increased without increasing the basic-benefit premiums for multiemployer plans under this subchapter, the corporation shall submit to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representa-

tives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate by March 31 of the calendar year in which congressional action under this paragraph is requested—

(i) a revised schedule of increases in the basic-benefit guarantees which can be supported by the existing schedule of basic-benefit premiums for multiemployer plans, and

(ii) a revised schedule of basic-benefit premiums sufficient to support the existing basic-benefit guarantees.

(B) The revised schedules referred to in subparagraph (A)(i) or subparagraph (A)(ii) shall go into effect as approved by the enactment of a joint resolution.

(4)(A) The succeeding subparagraphs of this paragraph are enacted by the Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of joint resolutions (as defined in subparagraph (B)). Such subparagraphs shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any rule of that House.

(B) For purposes of this subsection, ''joint resolution'' means only a joint resolution, the matter after the resolving clause of which is as follows: ''The proposed schedule described in trans- mitted to the Congress by the Pension Benefit Guaranty Corporation on is hereby approved.'', the first blank space therein being filled with ''section 4022A(f)(2)(A)(ii) of the Employee Retirement Income Security Act of 1974'', ''section 4022A(f)(2)(A)(iii) of the Employee Retirement Income Security Act of 1974'', ''section 4022A(f)(3)(A)(i) of the Employee Retirement Income Security Act of 1974'', or ''section 4022A(f)(3)(A)(ii) of the Employee Retirement Income Security Act of 1974'' (whichever is applicable), and the second blank space therein being filled with the date on which the corporation's message proposing the revision was submitted.

(C) The procedure for disposition of a joint resolution shall be the procedure described in section 1306(b)(4) through (7) of this title.

(g) Guarantee of payment of other classes of benefits and establishment of terms and conditions of guarantee; promulgation of regulations for establishment of supplemental program to guarantee benefits otherwise ineligible; status of benefits; applicability of revised schedule of premiums

(1) The corporation may guarantee the payment of such other classes of benefits under multiemployer plans, and establish the terms and conditions under which those other classes of benefits are guaranteed, as it determines to be appropriate.

(2)(A) The corporation shall prescribe regulations to establish a supplemental program to guarantee benefits under multiemployer plans which would be guaranteed under this section but for the limitations in subsection (c) of this section. Such regulations shall be proposed by the corporation no later than the end of the 18th calendar month following September 26, 1980. The regulations shall make coverage under the supplemental program available no later than January 1, 1983. Any election to participate in the supplemental program shall be on a voluntary basis, and a plan electing such coverage shall continue to pay the premiums required under section 1306(a)(2)(B) of this title to the revolving fund used pursuant to section 1305 of this title in connection with benefits otherwise guaranteed under this section. Any such election shall be irrevocable, except to the extent otherwise provided by regulations prescribed by the corporation.

(B) The regulations prescribed under this paragraph shall provide—

(i) that a plan must elect coverage under the supplemental program within the time permitted by the regulations;

(ii) unless the corporation determines otherwise, that a plan may not elect supplemental coverage unless the value of the assets of the plan as of the end of the plan year preceding the plan year in which the election must be made is an amount equal to 15 times the total amount of the benefit payments made under the plan for that year; and

(iii) such other reasonable terms and conditions for supplemental coverage, including funding standards and any other reasonable limitations with respect to plans or benefits covered or to means of program financing, as the corporation determines are necessary and appropriate for a feasible supplemental program consistent with the purposes of this subchapter.

(3) Any benefits guaranteed under this subsection shall be considered nonbasic benefits for purposes of this subchapter.

(4)(A) No revised schedule of premiums under this subsection, after the initial schedule, shall go into effect unless—

(i) the revised schedule is submitted to the Congress, and

(ii) a joint resolution described in subparagraph (B) is not enacted before the close of the 60th legislative day after such schedule is submitted to the Congress.

(B) For purposes of subparagraph (A), a joint resolution described in this subparagraph is a joint resolution the matter after the resolving clause of which is as follows: ''The revised premium schedule transmitted to the Congress by the Pension Benefit Guaranty Corporation under section 4022A(g)(4) of the Employee Retirement Income Security Act of 1974 on is hereby disapproved.'', the blank space therein being filled with the date on which the revised schedule was submitted.

(C) For purposes of subparagraph (A), the term ''legislative day'' means any calendar day other than a day on which either House is not in session because of a sine die adjournment or an adjournment of more than 3 days to a day certain.

(D) The procedure for disposition of a joint resolution described in subparagraph (B) shall be

the procedure described in paragraphs (4) through (7) of section 1306(b) of this title.

(5) Regulations prescribed by the corporation to carry out the provisions of this subsection, may, to the extent provided therein, supersede the requirements of sections 1426, 1431, and 1441 of this title, and the requirements of section 418E of title 26, but only with respect to benefits guaranteed under this subsection.

(h) Applicability to nonforfeitable benefits accrued as of July 30, 1980; manner and extent of guarantee

(1) Except as provided in paragraph (3), subsections (b) and (c) of this section shall not apply with respect to the nonforfeitable benefits accrued as of July 29, 1980, with respect to a participant or beneficiary under a multiemployer plan—

(1) who is in pay status on July 29, 1980, or

(2) who is within 36 months of the normal retirement age and has a nonforfeitable right to a pension as of that date.

(2) The benefits described in paragraph (1) shall be guaranteed by the corporation in the same manner and to the same extent as benefits are guaranteed by the corporation under section 1322 of this title (without regard to this section).

(3) This subsection does not apply with respect to a plan for plan years following a plan year—

(A) in which the plan has terminated within the meaning of section 1341a(a)(2) of this title, or

(B) in which it is determined by the corporation that substantially all the employers have withdrawn from the plan pursuant to an agreement or arrangement to withdraw.

(Pub. L. 93–406, title IV, § 4022A, as added Pub. L. 93–364, title I, § 102, Sept. 26, 1980, 94 Stat. 1210; amended Pub. L. 99–272, title XI, § 11005(c)(4)–(12), Apr. 7, 1986, 100 Stat. 242; Pub. L. 101–239, title VII, §§ 7891(a)(1), 7893(b), 7894(g)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2445, 2447, 2451.)

REFERENCES IN TEXT

Section 4022A(f)(2)(A)(ii), (iii), (3)(A)(i), and (ii) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(4)(B), is classified to subsec. (f)(2)(A)(ii), (iii), (3)(A)(i) and (ii) of this section.

Section 4022A(g)(4) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (g)(4)(B), is classified to subsec. (g)(4) of this section.

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–239, § 7894(g)(3)(C)(i), substituted ''this subchapter'' for ''section 1321 of this title''.

Subsecs. (c)(3)(A)(ii), (4)(C), (5)(A)(ii), (6), (d), (g)(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.

Subsec. (f)(2)(B). Pub. L. 101–239, § 7893(b), substituted ''the enactment'' for ''the the enactment''.

1986—Subsec. (f)(2)(B). Pub. L. 99–272, § 11005(c)(4), substituted ''the enactment of a joint resolution'' for ''Congress by concurrent resolution''.

Subsec. (f)(2)(C). Pub. L. 99–272, § 11005(c)(5), substituted ''so enacted'' for ''approved''.

Subsec. (f)(3)(B). Pub. L. 99–272, § 11005(c)(6), substituted ''enactment of a joint resolution'' for ''Congress by concurrent resolution''.

Subsec. (f)(4)(A). Pub. L. 99–272, § 11005(c)(7), substituted ''joint'' for ''concurrent''.

Subsec. (f)(4)(B). Pub. L. 99–272, § 11005(c)(8), substituted ''joint'' for ''concurrent'' in two places and ''The'' for ''That the Congress favors the'' and inserted ''is hereby approved''.

Subsec. (f)(4)(C). Pub. L. 99–272, § 11005(c)(9), substituted ''joint'' for ''concurrent''.

Subsec. (g)(4)(A)(ii). Pub. L. 99–272, § 11005(c)(10), substituted ''joint'' for ''concurrent'' and ''enacted'' for ''adopted''.

Subsec. (g)(4)(B). Pub. L. 99–272, § 11005(c)(11), substituted ''joint'' for ''concurrent'' in two places and ''The'' for ''That the Congress disapproves the'' and inserted ''is hereby disapproved''.

Subsec. (g)(4)(D). Pub. L. 99–272, § 11005(c)(12), substituted ''joint'' for ''concurrent''.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Economic and Educational Opportunities of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

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 7893(b) of Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101–239, set out as a note under section 1002 of this title.

Section 7894(g)(3)(C)(ii) of Pub. L. 101–239 provided that: ''The amendment made by clause (i) [amending this section] shall take effect as if originally included in section 102 of the Multiemployer Pension Plan Amendments Act of 1980 [Pub. L. 96–364].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective for plan years commencing after Dec. 31, 1985, see section 11005(d)(1) of Pub. L. 99–272, set out as a note under section 1306 of this title.

EFFECTIVE DATE

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1301, 1305, 1306, 1322b, 1346, 1361, 1411, 1413, 1424, 1425, 1426, 1441, 1461 of this title; title 26 sections 418C, 418D, 418E.

§ 1322b. Aggregate limit on benefits guaranteed; criteria applicable

(a) Notwithstanding sections 1322 and 1322a of this title, no person shall receive from the corporation pursuant to a guarantee by the corporation of basic benefits with respect to a participant under all multiemployer and single employer plans an amount, or amounts, with an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the amount determined under section 1322(b)(3)(B) of this title as of the date of the last plan termination.

(b) For purposes of this section—

(1) the receipt of benefits under a multiemployer plan receiving financial assistance from the corporation shall be considered the receipt of amounts from the corporation pursuant to a guarantee by the corporation of basic benefits

except to the extent provided in regulations prescribed by the corporation, and

(2) the date on which a multiemployer plan, whether or not terminated, begins receiving financial assistance from the corporation shall be considered a date of plan termination.

(Pub. L. 93–406, title IV, § 4022B, as added Pub. L. 96–364, title I, § 102, Sept. 26, 1980, 94 Stat. 1215.)

EFFECTIVE DATE

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1344, 1346 of this title.

§ 1323. Plan fiduciaries

Notwithstanding any other provision of this chapter, a fiduciary of a plan to which section 1321 of this title applies is not in violation of the fiduciary's duties as a result of any act or of any withholding of action required by this subchapter.

(Pub. L. 93–406, title IV, § 4023, as added Pub. L. 96–364, title IV, § 402(a)(5), Sept. 26, 1980, 94 Stat. 1298.)

REFERENCES IN TEXT

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

PRIOR PROVISIONS

A prior section 1323, Pub. L. 93–406, title IV, § 4023, Sept. 2, 1974, 88 Stat. 1019, related to contingent liability coverage, prior to repeal by Pub. L. 96–364, title I, § 107, Sept. 26, 1980, 94 Stat. 1267.

EFFECTIVE DATE

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

SUBTITLE C—TERMINATIONS

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1361, 1371 of this title.

§ 1341. Termination of single-employer plans

(a) General rules governing single-employer plan terminations

(1) Exclusive means of plan termination

Except in the case of a termination for which proceedings are otherwise instituted by the corporation as provided in section 1342 of this title, a single-employer plan may be terminated only in a standard termination under subsection (b) of this section or a distress termination under subsection (c) of this section.

(2) 60-day notice of intent to terminate

Not less than 60 days before the proposed termination date of a standard termination under subsection (b) of this section or a distress termination under subsection (c) of this section, the plan administrator shall provide to each affected party (other than the corporation in the case of a standard termination) a written notice of intent to terminate stating that such termination is intended and the proposed termination date. The written notice shall include any related additional information required in regulations of the corporation.

(3) Adherence to collective bargaining agreements

The corporation shall not proceed with a termination of a plan under this section if the termination would violate the terms and conditions of an existing collective bargaining agreement. Nothing in the preceding sentence shall be construed as limiting the authority of the corporation to institute proceedings to involuntarily terminate a plan under section 1342 of this title.

(b) Standard termination of single-employer plans

(1) General requirements

A single-employer plan may terminate under a standard termination only if—

(A) the plan administrator provides the 60-day advance notice of intent to terminate to affected parties required under subsection (a)(2) of this section,

(B) the requirements of subparagraphs (A) and (B) of paragraph (2) are met,

(C) the corporation does not issue a notice of noncompliance under subparagraph (C) of paragraph (2), and

(D) when the final distribution of assets occurs, the plan is sufficient for benefit liabilities (determined as of the termination date).

(2) Termination procedure

(A) Notice to the corporation

As soon as practicable after the date on which the notice of intent to terminate is provided pursuant to subsection (a)(2) of this section, the plan administrator shall send a notice to the corporation setting forth—

(i) certification by an enrolled actuary—

(I) of the projected amount of the assets of the plan (as of a proposed date of final distribution of assets),

(II) of the actuarial present value (as of such date) of the benefit liabilities (determined as of the proposed termination date) under the plan, and

(III) that the plan is projected to be sufficient (as of such proposed date of final distribution) for such benefit liabilities,

(ii) such information as the corporation may prescribe in regulations as necessary to enable the corporation to make determinations under subparagraph (C), and

(iii) certification by the plan administrator that—

(I) the information on which the enrolled actuary based the certification under clause (i) is accurate and complete, and

(II) the information provided to the corporation under clause (ii) is accurate and complete.

Clause (i) and clause (iii)(I) shall not apply to a plan described in section 412(i) of title 26.

(B) Notice to participants and beneficiaries of benefit commitments [1]

No later than the date on which a notice is sent by the plan administrator under subparagraph (A), the plan administrator shall send a notice to each person who is a participant or beneficiary under the plan—

(i) specifying the amount of the benefit liabilities (if any) attributable to such person as of the proposed termination date and the benefit form on the basis of which such amount is determined, and

(ii) including the following information used in determining such benefit liabilities:

(I) the length of service,

(II) the age of the participant or beneficiary,

(III) wages,

(IV) the assumptions, including the interest rate, and

(V) such other information as the corporation may require.

Such notice shall be written in such manner as is likely to be understood by the participant or beneficiary and as may be prescribed in regulations of the corporation.

(C) Notice from the corporation of noncompliance

(i) In general

Within 60 days after receipt of the notice under subparagraph (A), the corporation shall issue a notice of noncompliance to the plan administrator if—

(I) it determines, based on the notice sent under paragraph (2)(A) of subsection (b) of this section, that there is reason to believe that the plan is not sufficient for benefit liabilities,

(II) it otherwise determines, on the basis of information provided by affected parties or otherwise obtained by the corporation, that there is reason to believe that the plan is not sufficient for benefit liabilities, or

(III) it determines that any other requirement of subparagraph (A) or (B) of this paragraph or of subsection (a)(2) of this section has not been met, unless it further determines that the issuance of such notice would be inconsistent with the interests of participants and beneficiaries.

(ii) Extension

The corporation and the plan administrator may agree to extend the 60-day period referred to in clause (i) by a written agreement signed by the corporation and the plan administrator before the expiration of the 60-day period. The 60-day period shall be extended as provided in the agreement and may be further extended by subsequent written agreements signed by the corporation and the plan administrator made before the expiration of a previously agreed upon extension of the 60-day period. Any extension may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator.

(D) Final distribution of assets in absence of notice of noncompliance

The plan administrator shall commence the final distribution of assets pursuant to the standard termination of the plan as soon as practicable after the expiration of the 60-day (or extended) period referred to in subparagraph (C), but such final distribution may occur only if—

(i) the plan administrator has not received during such period a notice of noncompliance from the corporation under subparagraph (C), and

(ii) when such final distribution occurs, the plan is sufficient for benefit liabilities (determined as of the termination date).

(3) Methods of final distribution of assets

(A) In general

In connection with any final distribution of assets pursuant to the standard termination of the plan under this subsection, the plan administrator shall distribute the assets in accordance with section 1344 of this title. In distributing such assets, the plan administrator shall—

(i) purchase irrevocable commitments from an insurer to provide all benefit liabilities under the plan, or

(ii) in accordance with the provisions of the plan and any applicable regulations, otherwise fully provide all benefit liabilities under the plan. A transfer of assets to the corporation in accordance with section 1350 of this title on behalf of a missing participant shall satisfy this subparagraph with respect to such participant.

(B) Certification to the corporation of final distribution of assets

Within 30 days after the final distribution of assets is completed pursuant to the standard termination of the plan under this subsection, the plan administrator shall send a notice to the corporation certifying that the assets of the plan have been distributed in accordance with the provisions of subparagraph (A) so as to pay all benefit liabilities under the plan.

(4) Continuing authority

Nothing in this section shall be construed to preclude the continued exercise by the corporation, after the termination date of a plan terminated in a standard termination under this subsection, of its authority under section 1303 of this title with respect to matters relating to the termination. A certification under paragraph (3)(B) shall not affect the corporation's obligations under section 1322 of this title.

(c) Distress termination of single-employer plans

(1) In general

A single-employer plan may terminate under a distress termination only if—

[1] So in original. Probably should be ''benefit liabilities''.

(A) the plan administrator provides the 60-day advance notice of intent to terminate to affected parties required under subsection (a)(2) of this section,

(B) the requirements of subparagraph (A) of paragraph (2) are met, and

(C) the corporation determines that the requirements of subparagraph (B) of paragraph (2) are met.

(2) Termination requirements

(A) Information submitted to the corporation

As soon as practicable after the date on which the notice of intent to terminate is provided pursuant to subsection (a)(2) of this section, the plan administrator shall provide the corporation, in such form as may be prescribed by the corporation in regulations, the following information:

(i) such information as the corporation may prescribe by regulation as necessary to make determinations under subparagraph (B) and paragraph (3);

(ii) unless the corporation determines the information is not necessary for purposes of paragraph (3)(A) or section 1362 of this title, certification by an enrolled actuary of—

(I) the amount (as of the proposed termination date and, if applicable, the proposed distribution date) of the current value of the assets of the plan,

(II) the actuarial present value (as of such dates) of the benefit liabilities under the plan,

(III) whether the plan is sufficient for benefit liabilities as of such dates,

(IV) the actuarial present value (as of such dates) of benefits under the plan guaranteed under section 1322 of this title, and

(V) whether the plan is sufficient for guaranteed benefits as of such dates;

(iii) in any case in which the plan is not sufficient for benefit liabilities as of such date—

(I) the name and address of each participant and beneficiary under the plan as of such date, and

(II) such other information as shall be prescribed by the corporation by regulation as necessary to enable the corporation to be able to make payments to participants and beneficiaries as required under section 1322(c) of this title; and

(iv) certification by the plan administrator that—

(I) the information on which the enrolled actuary based the certifications under clause (ii) is accurate and complete, and

(II) the information provided to the corporation under clauses (i) and (iii) is accurate and complete.

Clause (ii) and clause (iv)(I) shall not apply to a plan described in section 412(i) of title 26.

(B) Determination by the corporation of necessary distress criteria

Upon receipt of the notice of intent to terminate required under subsection (a)(2) of this section and the information required under subparagraph (A), the corporation shall determine whether the requirements of this subparagraph are met as provided in clause (i), (ii), or (iii). The requirements of this subparagraph are met if each person who is (as of the proposed termination date) a contributing sponsor of such plan or a member of such sponsor's controlled group meets the requirements of any of the following clauses:

(i) Liquidation in bankruptcy or insolvency proceedings

The requirements of this clause are met by a person if—

(I) such person has filed or has had filed against such person, as of the proposed termination date, a petition seeking liquidation in a case under title 11 or under any similar Federal law or law of a State or political subdivision of a State (or a case described in clause (ii) filed by or against such person has been converted, as of such date, to a case in which liquidation is sought), and

(II) such case has not, as of the proposed termination date, been dismissed.

(ii) Reorganization in bankruptcy or insolvency proceedings

The requirements of this clause are met by a person if—

(I) such person has filed, or has had filed against such person, as of the proposed termination date, a petition seeking reorganization in a case under title 11 or under any similar law of a State or political subdivision of a State (or a case described in clause (i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought),

(II) such case has not, as of the proposed termination date, been dismissed,

(III) such person timely submits to the corporation any request for the approval of the bankruptcy court (or other appropriate court in a case under such similar law of a State or political subdivision) of the plan termination, and

(IV) the bankruptcy court (or such other appropriate court) determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination.

(iii) Termination required to enable payment of debts while staying in business or to avoid unreasonably burdensome pension costs caused by declining workforce

The requirements of this clause are met by a person if such person demonstrates to the satisfaction of the corporation that—

(I) unless a distress termination occurs, such person will be unable to pay such person's debts when due and will be unable to continue in business, or

(II) the costs of providing pension coverage have become unreasonably burdensome to such person, solely as a result of a decline of such person's workforce covered as participants under all single-employer plans of which such person is a contributing sponsor.

(C) Notification of determinations by the corporation

The corporation shall notify the plan administrator as soon as practicable of its determinations made pursuant to subparagraph (B).

(3) Termination procedure

(A) Determinations by the corporation relating to plan sufficiency for guaranteed benefits and for benefit liabilities

If the corporation determines that the requirements for a distress termination set forth in paragraphs (1) and (2) are met, the corporation shall—

(i) determine that the plan is sufficient for guaranteed benefits (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation,

(ii) determine that the plan is sufficient for benefit liabilities (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation, and

(iii) notify the plan administrator of the determinations made pursuant to this subparagraph as soon as practicable.

(B) Implementation of termination

After the corporation notifies the plan administrator of its determinations under subparagraph (A), the termination of the plan shall be carried out as soon as practicable, as provided in clause (i), (ii), or (iii).

(i) Cases of sufficiency for benefit liabilities

In any case in which the corporation determines that the plan is sufficient for benefit liabilities, the plan administrator shall proceed to distribute the plan's assets, and make certification to the corporation with respect to such distribution, in the manner described in subsection (b)(3) of this section, and shall take such other actions as may be appropriate to carry out the termination of the plan.

(ii) Cases of sufficiency for guaranteed benefits without a finding of sufficiency for benefit liabilities

In any case in which the corporation determines that the plan is sufficient for guaranteed benefits, but further determines that it is unable to determine that the plan is sufficient for benefit liabilities on the basis of the information made available to it, the plan administrator shall proceed to distribute the plan's assets in the manner described in subsection (b)(3) of this section, make certification to the corporation that the distribution has occurred, and take such actions as may be appropriate to carry out the termination of the plan.

(iii) Cases without any finding of sufficiency

In any case in which the corporation determines that it is unable to determine that the plan is sufficient for guaranteed benefits on the basis of the information made available to it, the corporation shall commence proceedings in accordance with section 1342 of this title.

(C) Finding after authorized commencement of termination that plan is unable to pay benefits

(i) Finding with respect to benefit liabilities which are not guaranteed benefits

If, after the plan administrator has begun to terminate the plan as authorized under subparagraph (B)(i), the plan administrator finds that the plan is unable, or will be unable, to pay benefit liabilities which are not benefits guaranteed by the corporation under section 1322 of this title, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter.

(ii) Finding with respect to guaranteed benefits

If, after the plan administrator has begun to terminate the plan as authorized by subparagraph (B)(i) or (ii), the plan administrator finds that the plan is unable, or will be unable, to pay all benefits under the plan which are guaranteed by the corporation under section 1322 of this title, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation concurs in the finding of the plan administrator (or the corporation itself makes such a finding), the corporation shall institute appropriate proceedings under section 1342 of this title.

(D) Administration of the plan during interim period

(i) In general

The plan administrator shall—

(I) meet the requirements of clause (ii) for the period commencing on the date on which the plan administrator provides a notice of distress termination to the corporation under subsection (a)(2) of this section and ending on the date on which the plan administrator receives notification from the corporation of its determinations under subparagraph (A), and

(II) meet the requirements of clause (ii) commencing on the date on which the plan administrator or the corporation makes a finding under subparagraph (C)(ii).

(ii) Requirements

The requirements of this clause are met by the plan administrator if the plan administrator—

(I) refrains from distributing assets or taking any other actions to carry out the proposed termination under this subsection,

(II) pays benefits attributable to employer contributions, other than death benefits, only in the form of an annuity,

(III) does not use plan assets to purchase irrevocable commitments to provide benefits from an insurer, and

(IV) continues to pay all benefit liabilities under the plan, but, commencing on the proposed termination date, limits the payment of benefits under the plan to those benefits which are guaranteed by the corporation under section 1322 of this title or to which assets are required to be allocated under section 1344 of this title.

In the event the plan administrator is later determined not to have met the requirements for distress termination, any benefits which are not paid solely by reason of compliance with subclause (IV) shall be due and payable immediately (together with interest, at a reasonable rate, in accordance with regulations of the corporation).

(d) Sufficiency

For purposes of this section—

(1) Sufficiency for benefit liabilities

A single-employer plan is sufficient for benefit liabilities if there is no amount of unfunded benefit liabilities under the plan.

(2) Sufficiency for guaranteed benefits

A single-employer plan is sufficient for guaranteed benefits if there is no amount of unfunded guaranteed benefits under the plan.

(e) Limitation on the conversion of a defined benefit plan to a defined contribution plan

The adoption of an amendment to a plan which causes the plan to become a plan described in section 1321(b)(1) of this title constitutes a termination of the plan. Such an amendment may take effect only after the plan satisfies the requirements for standard termination under subsection (b) of this section or distress termination under subsection (c) of this section.

(Pub. L. 93–406, title IV, § 4041, Sept. 2, 1974, 88 Stat. 1020; Pub. L. 96–364, title IV, § 403(d), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99–272, title XI, §§ 11007, 11008(a), (b), 11009, Apr. 7, 1986, 100 Stat. 244, 247, 248; Pub. L. 100–203, title IX, §§ 9312(c)(1), (2), 9313(a)(1)–(2)(E), (b)(1)–(5), 9314(a), Dec. 22, 1987, 101 Stat. 1330–363 to 1330–366; Pub. L. 101–239, title VII, §§ 7881(f)(7), (g)(1)–(6), 7893(c), (d), Dec. 19, 1989, 103 Stat. 2440, 2441, 2447; Pub. L. 103–465, title VII, §§ 776(b)(3), 778(a)(1), (b)(1), Dec. 8, 1994, 108 Stat. 5048–5050.)

REFERENCES IN TEXT

Chapter 11, referred to in subsec. (c)(2)(B)(ii)(IV), probably means chapter 11 of Title 11, Bankruptcy.

AMENDMENTS

1994—Subsec. (b)(2)(C)(i)(I). Pub. L. 103–465, § 778(a)(1)(A), added subcl. (I) and struck out former subcl. (I) which read as follows: ''It has reason to believe that any requirement of subsection (a)(2) of this section or subparagraph (A) or (B) has not been met, or''.

Subsec. (b)(2)(C)(i)(III). Pub. L. 103–465, § 778(a)(1)(B), (C), added subcl. (III).

Subsec. (b)(3)(A)(ii). Pub. L. 103–465, § 776(b)(3), inserted at end ''A transfer of assets to the corporation in accordance with section 1350 of this title on behalf of a missing participant shall satisfy this subparagraph with respect to such participant.''

Subsec. (c)(2)(B)(i)(I). Pub. L. 103–465, § 778(b)(1), inserted ''Federal law or'' after ''under any similar''.

1989—Subsec. (b)(2)(A). Pub. L. 101–239, § 7881(g)(6), realigned margin of last sentence.

Subsec. (b)(2)(B). Pub. L. 101–239, § 7893(c), realigned margin of last sentence.

Subsec. (b)(3)(B). Pub. L. 101–239, § 7881(g)(4), inserted period at end.

Subsec. (c)(2)(A)(ii). Pub. L. 101–239, § 7881(g)(3), in introductory provisions, inserted ''unless the corporation determines the information is not necessary for purposes of paragraph (3)(A) or section 1362 of this title,'' before ''certification'', in subcl. (I), inserted ''and, if applicable, the proposed distribution date'' after ''termination date'', and in subcls. (II) to (V), substituted ''dates'' for ''date''.

Subsec. (c)(2)(A)(iii)(II). Pub. L. 101–239, § 7881(f)(7)(A), (B), struck out ''(or its designee under section 1349(b) of this title)'' before ''to be able'' and substituted ''section 1322(c) of this title'' for ''section 1349 of this title''.

Subsec. (c)(2)(B). Pub. L. 101–239, § 7881(g)(2), substituted ''(as of the proposed termination date)'' for ''(as of the termination date)''.

Subsec. (c)(2)(B)(i), (ii). Pub. L. 101–239, § 7881(g)(5), made clarifying amendment to directory language of Pub. L. 100–203, § 9313(b)(3), see 1987 Amendment note below.

Subsec. (c)(3)(C)(i). Pub. L. 101–239, § 7881(f)(7)(C), struck out at end ''If the corporation concurs in the finding of the plan administrator (or the corporation itself makes such a finding) the corporation shall take the actions set forth in subparagraph (B)(ii)(II) relating to the trust established for purposes of section 1349 of this title.''

Subsec. (c)(3)(D). Pub. L. 101–239, § 7893(d)(1), realigned margins.

Subsec. (c)(3)(D)(ii)(I). Pub. L. 101–239, § 7893(d)(2), substituted ''under this subsection'' for ''of this subsection''.

Subsec. (d)(1). Pub. L. 101–239, § 7881(g)(1), substituted ''sufficient for benefit liabilities'' for ''sufficient for benefit commitments''.

1987—Subsec. (b)(1)(D). Pub. L. 100–203, § 9313(a)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''when the final distribution of assets occurs, the plan is sufficient for benefit commitments (determined as of the termination date).''

Subsec. (b)(2)(A). Pub. L. 100–203, § 9314(a)(1)(B), inserted at end ''Clause (i) and clause (iii)(I) shall not apply to a plan described in section 412(i) of title 26.''

Subsec. (b)(2)(A)(i). Pub. L. 100–203, § 9313(a)(2)(A), substituted ''benefit liabilities'' for ''benefit commitments'' in subcls. (II) and (III).

Subsec. (b)(2)(A)(iii). Pub. L. 100–203, § 9314(a)(1)(A), added cl. (iii) and struck out former cl. (iii) which read as follows: ''certification by the plan administrator that the information on which the enrolled actuary based the certification under clause (i) and the information provided to the corporation under clause (ii) are accurate and complete.''

Subsec. (b)(2)(B). Pub. L. 100–203, § 9313(a)(2)(B), substituted ''the amount of the benefit liabilities (if any) attributable to such person'' for ''the amount of such person's benefit commitments (if any)'' in cl. (i), and ''such benefit liabilities'' for ''such benefit commitments'' in cl. (ii).

Subsec. (b)(2)(C)(i)(II), (D)(ii). Pub. L. 100–203, § 9313(a)(2)(A), substituted ''benefit liabilities'' for ''benefit commitments''.

Subsec. (b)(3)(A)(i). Pub. L. 100–203, § 9313(a)(2)(C)(i), added cl. (i) and struck out former cl. (i) which read as follows: ''purchase irrevocable commitments from an insurer to provide the benefit liabilities under the plan and all other benefits (if any) under the plan to which assets are required to be allocated under section 1344 of this title, or''.

Pub. L. 100–203, § 9313(a)(2)(A), substituted ''benefit liabilities'' for ''benefit commitments''.

Subsec. (b)(3)(A)(ii). Pub. L. 100–203, § 9313(a)(2)(C)(i), added cl. (ii) and struck out former cl. (ii) which read as follows: ''in accordance with the provisions of the plan and any applicable regulations of the corporation, otherwise fully provide the benefit liabilities under the plan and all other benefits (if any) under the plan to which assets are required to be allocated under section 1344 of this title.''

Pub. L. 100–203, § 9313(a)(2)(A), substituted ''benefit liabilities'' for ''benefit commitments''.

Subsec. (b)(3)(B). Pub. L. 100–203, § 9313(a)(2)(C)(ii), substituted ''so as to pay all benefit liabilities under the plan'' for ''so as to pay the benefit liabilities under the plan and all other benefits under the plan to which assets are required to be allocated under section 1344 of this title.''

Pub. L. 100–203, § 9313(a)(2)(A), substituted ''benefit liabilities'' for ''benefit commitments''.

Subsec. (c)(2)(A). Pub. L. 100–203, § 9314(a)(1)(B), inserted at end ''Clause (ii) and clause (iv)(I) shall not apply to a plan described in section 412(i) of title 26.''

Subsec. (c)(2)(A)(ii). Pub. L. 100–203, § 9313(a)(2)(D), substituted ''benefit liabilities'' for ''benefit commitments'' in subcls. (II) and (III).

Subsec. (c)(2)(A)(iii). Pub. L. 100–203, § 9313(a)(2)(D), substituted ''benefit liabilities'' for ''benefit commitments'' in introductory provision.

Subsec. (c)(2)(A)(iv). Pub. L. 100–203, § 9314(a)(2)(A), added cl. (iv) and struck out former cl. (iv) which read as follows: ''certification by the plan administrator that the information on which the enrolled actuary based the certifications under clause (ii) and the information provided to the corporation under clauses (i) and (iii) are accurate and complete.''

Subsec. (c)(2)(B). Pub. L. 100–203, § 9313(b)(1)(A), substituted ''a member'' for ''a substantial member'' in introductory provisions.

Subsec. (c)(2)(B)(i). Pub. L. 100–203, § 9313(b)(3), as amended by Pub. L. 101–239, § 7881(g)(5), substituted ''proposed termination date'' for ''termination date'' in subcls. (I) and (II).

Pub. L. 100–203, § 9313(b)(4), inserted ''(or a case described in clause (ii) filed by or against such person has been converted, as of such date, to a case in which liquidation is sought)'' in subcl. (I).

Subsec. (c)(2)(B)(ii)(I). Pub. L. 100–203, § 9313(b)(3), as amended by Pub. L. 101–239, § 7881(g)(5), substituted ''proposed termination date'' for ''termination date''.

Subsec. (c)(2)(B)(ii)(II). Pub. L. 100–203 § 9313(b)(5)(A), struck out ''and'' at end.

Pub. L. 100–203, § 9313(b)(3), as amended by Pub. L. 101–239, § 7881(g)(5), substituted ''proposed termination date'' for ''termination date''.

Subsec. (c)(2)(B)(ii)(III). Pub. L. 100–203, § 9313(b)(5)(C), added subcl. (III). Former subcl. (III) redesignated (IV).

Subsec. (c)(2)(B)(ii)(IV). Pub. L. 100–203, § 9313(b)(2), (5)(B), (D), redesignated former subcl. (III) as (IV) and substituted ''(or such other appropriate court) determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the chapter 11 reorganization process and approves the termination'' for ''(or other appropriate court in a case under such similar law of a State or political subdivision) approves the termination''.

Subsec. (c)(2)(C), (D). Pub. L. 100–203, § 9313(b)(1)(B), redesignated former subpar. (D) as (C) and struck out former subpar. (C) which read as follows: ''For purposes of subparagraph (B), the term 'substantial member' of a controlled group means a person whose assets comprise 5 percent or more of the total assets of the controlled group as a whole.''

Subsec. (c)(3)(A). Pub. L. 100–203, § 9313(a)(2)(D), substituted ''benefit liabilities'' for ''benefit commitments'' in heading and in cl. (ii).

Subsec. (c)(3)(B)(i). Pub. L. 100–203, § 9313(a)(2)(D), substituted in heading and text ''benefit liabilities'' for ''benefit commitments''.

Subsec. (c)(3)(B)(ii). Pub. L. 100–203, § 9313(a)(2)(D), substituted in heading and text ''benefit liabilities'' for ''benefit commitments''.

Pub. L. 100–203, § 9312(c)(1), struck out former subcl. (I) designation and substituted comma for dash before ''the plan administrator'', substituted period for '', and'' after ''termination of the plan'', and struck out former subcl. (II) which read as follows: ''the corporation shall establish a separate trust in connection with the plan for purposes of section 1349 of this title.''

Subsec. (c)(3)(B)(iii). Pub. L. 100–203, § 9312(c)(2), struck out former subcl. (I) designation and substituted comma for dash before ''the corporation shall commence'', substituted period for '', and'' after ''section 1342 of this title'', and struck out former subcl. (II) which read as follows: ''the corporation shall establish a separate trust in connection with the plan for purposes of section 1349 of this title unless the corporation determines that all benefit commitments under the plan are benefits guaranteed by the corporation under section 1322 of this title.''

Subsec. (c)(3)(C)(i). Pub. L. 100–203, § 9313(a)(2)(D), substituted in heading and text ''benefit liabilities'' for ''benefit commitments''.

Subsec. (c)(3)(D)(ii)(IV). Pub. L. 100–203, § 9313(a)(2)(D), substituted ''benefit liabilities'' for ''benefit commitments''.

Subsec. (d)(1). Pub. L. 100–203, § 9313(a)(2)(E), substituted in text, ''no amount of unfunded benefit liabilities'' for ''no amount of unfunded benefit commitments'' and in heading, ''benefit liabilities'' for ''benefit commitments''.

1986—Subsec. (a). Pub. L. 99–272, § 11007(a), added subsec. (a) relating to general rules governing single-employer plan terminations and struck out former subsec. (a) relating to filing of notice that the plan is to be terminated.

Subsec. (b). Pub. L. 99–272, §§ 11007(a), 11008(a), added subsec. (b) relating to standard termination of single-employer plans and struck out former subsec. (b) relating to notice of sufficiency of plan assets.

Subsec. (c). Pub. L. 99–272, §§ 11007(a), 11009(a), added subsec. (c) relating to distress termination of single-employer plans and struck out former subsec. (c) relating to a finding and notice of inability to determine that the assets of a plan are sufficient.

Subsec. (d). Pub. L. 99–272, § 11007(b), amended subsec. (d) generally, substituting provisions relating to sufficiency for benefit commitments and for guaranteed benefits, for provisions relating to an extension of the 90-day period upon written agreement.

Subsec. (e). Pub. L. 99–272, § 11009(b), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to notification and appropriate proceedings upon a finding after authorized commencement of termination that the plan is unable to pay basic benefits when due.

Subsec. (f). Pub. L. 99–272, § 11009(b)(2), redesignated subsec. (f) as (e).

Pub. L. 99–272, § 11008(b), amended subsec. (f) generally, substituting provisions relating to limitation on the conversion of a defined benefit plan to a defined contribution plan, for provisions relating to amendment of a plan with respect to which basic benefits are guaranteed.

1980—Subsec. (a). Pub. L. 96–364, § 403(d)(2), inserted ''single-employer'' after ''termination of a''.

Subsec. (g). Pub. L. 96–364, § 403(d)(3), struck out subsec. (g) which related to petition to the appropriate court for appointment of a trustee.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 776(b)(3) of Pub. L. 103–465 effective with respect to distributions that occur in plan

years commencing after final regulations implementing section 776 of Pub. L. 103–465 are prescribed by the Pension Benefit Guaranty Corporation, see section 776(e) of Pub. L. 103–465, set out as a note under section 1056 of this title.

Section 778(a)(2) of Pub. L. 103–465 provided that: ''The amendments made by this subsection [amending this section] shall apply to any plan termination under section 4041(b) of the Employee Retirement Income Security Act of 1974 [subsec. (b) of this section] with respect to which the Pension Benefit Guaranty Corporation has not, as of the date of enactment of this Act [Dec. 8, 1994], issued a notice of noncompliance that has become final, or otherwise issued a final determination that the plan termination is nullified.''

Section 778(b)(2) of Pub. L. 103–465 provided that: ''The amendment made by this subsection [amending this section] shall be effective as if included in the Single-Employer Pension Plan Amendments Act of 1986 [Pub. L. 99–272, title XI].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(7), (g)(1)–(6) 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 7893(c), (d) of Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9312(c)(1), (2) of Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 of this title.

Amendment by section 9313(a)(1)–(2)(E), (b)(1)–(5) of Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, see section 9313(c) of Pub. L. 100–203, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 11019 of title XI of Pub. L. 99–272 provided that:

''(a) IN GENERAL.—Except as otherwise provided in this title, the amendments made by this title [see Short Title of 1986 Amendment note set out under section 1001 of this title] shall be effective as of January 1, 1986, except that such amendments shall not apply with respect to terminations for which—

''(1) notices of intent to terminate were filed with the Pension Benefit Guaranty Corporation under section 4041 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1341] before such date, or

''(2) proceedings were commenced under section 4042 of such Act [29 U.S.C. 1342] before such date.

''(b) TRANSITIONAL RULES.—

''(1) IN GENERAL.—In the case of a single-employer plan termination for which a notice of intent to terminate was filed with the Pension Benefit Guaranty Corporation under section 4041 of the Employee Retirement Income Security Act of 1974 (as in effect before the amendments made by this title) [29 U.S.C. 1341] on or after January 1, 1986, but before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this title [see Short Title of 1986 Amendment note set out under section 1001 of this title] shall apply with respect to such termination, as modified by paragraphs (2) and (3).

''(2) DEEMED COMPLIANCE WITH NOTICE REQUIREMENTS.—The requirements of subsections (a)(2), (b)(1)(A), and (c)(1)(A) of section 4041 of the Employee Retirement Income Security Act of 1974 (as amended by this title) [29 U.S.C. 1341] shall be considered to have been met with respect to a termination described in paragraph (1) if—

''(A) the plan administrator provided notice to the participants in the plan regarding the termination in compliance with applicable regulations of the Pension Benefit Guaranty Corporation as in effect on the date of the notice, and

''(B) the notice of intent to terminate provided to the Pension Benefit Guaranty Corporation in connection with the termination was filed with the Corporation not less than 10 days before the proposed date of termination specified in the notice.

For purposes of section 4041 of such Act (as amended by this title), the proposed date of termination specified in the notice of intent to terminate referred to in subparagraph (B) shall be considered the proposed termination date.

''(3) SPECIAL TERMINATION PROCEDURES.—

''(A) IN GENERAL.—This paragraph shall apply with respect to any termination described in paragraph (1) if, within 90 days after the date of enactment of this Act [Apr. 7, 1986], the plan administrator notifies the Corporation in writing—

''(i) that the plan administrator wishes the termination to proceed as a standard termination under section 4041(b) of the Employee Retirement Income Security Act of 1974 (as amended by this title) [29 U.S.C. 1341(b)] in accordance with subparagraph (B),

''(ii) that the plan administrator wishes the termination to proceed as a distress termination under section 4041(c) of such Act (as amended by this title) in accordance with subparagraph (C), or

''(iii) that the plan administrator wishes to stop the termination proceedings in accordance with subparagraph (D).

''(B) TERMINATIONS PROCEEDING AS STANDARD TERMINATION.—

''(i) TERMINATIONS FOR WHICH SUFFICIENCY NOTICES HAVE NOT BEEN ISSUED.—

''(I) IN GENERAL.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(i) and with respect to which a notice of sufficiency has not been issued by the Corporation before the date of the enactment of this Act, if, during the 90-day period commencing on the date of the notice required in subclause (II), all benefit commitments under the plan have been satisfied, the termination shall be treated as a standard termination under section 4041(b) of such Act (as amended by this title).

''(II) SPECIAL NOTICE REGARDING SUFFICIENCY FOR TERMINATIONS FOR WHICH NOTICES OF SUFFICIENCY HAVE NOT BEEN ISSUED AS OF DATE OF ENACTMENT.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(i) and with respect to which a notice of sufficiency has not been issued by the Corporation before the date of the enactment of this Act, the Corporation shall make the determinations described in section 4041(c)(3)(A)(i) and (ii) (as amended by this title) and notify the plan administrator of such determinations as provided in section 4041(c)(3)(A)(iii) (as amended by this title).

''(ii) TERMINATIONS FOR WHICH NOTICES OF SUFFICIENCY HAVE BEEN ISSUED.—In the case of a plan termination described in paragraph (1) with re-

spect to which the Corporation has been provided the notification described in subparagraph (A)(i) and with respect to which a notice of sufficiency has been issued by the Corporation before the date of the enactment of this Act, clause (i)(I) shall apply, except that the 90-day period referred to in clause (i)(I) shall begin on the date of the enactment of this Act.

''(C) TERMINATIONS PROCEEDING AS DISTRESS TERMINATION.—In the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(ii), if the requirements of section 4041(c)(2)(B) of such Act (as amended by this title) are met, the termination shall be treated as a distress termination under section 4041(c) of such Act (as amended by this title).

''(D) TERMINATION OF PROCEEDINGS BY PLAN ADMINISTRATOR.—

''(i) IN GENERAL.—Except as provided in clause (ii), in the case of a plan termination described in paragraph (1) with respect to which the Corporation has been provided the notification described in subparagraph (A)(iii), the termination shall not take effect.

''(ii) TERMINATIONS WITH RESPECT TO WHICH FINAL DISTRIBUTION OF ASSETS HAS COMMENCED.—Clause (i) shall not apply with respect to a termination with respect to which the final distribution of assets has commenced before the date of the enactment of this Act unless, within 90 days after the date of the enactment of this Act, the plan has been restored in accordance with procedures issued by the Corporation pursuant to subsection (c).

''(E) AUTHORITY OF CORPORATION TO EXTEND 90-DAY PERIODS TO PERMIT STANDARD TERMINATION.—The Corporation may, on a case-by-case basis in accordance with subsection (c), provide for extensions of the applicable 90-day period referred to in clause (i) or (ii) of subparagraph (B) if it is demonstrated to the satisfaction of the Corporation that—

''(i) the plan could not otherwise, pursuant to the preceding provisions of this paragraph, terminate in a termination treated as a standard termination under section 4041(b) of the Employee Retirement Income Security Act of 1974 (as amended by this title), and

''(ii) the extension would result in a greater likelihood that benefit commitments under the plan would be paid in full,

except that any such period may not be so extended beyond one year after the date of the enactment of this Act.

''(c) AUTHORITY TO PRESCRIBE TEMPORARY PROCEDURES.—The Pension Benefit Guaranty Corporation may prescribe temporary procedures for purposes of carrying out the amendments made by this title [see Short Title of 1986 Amendment note set out under section 1001 of this title] during the 180-day period beginning on the date described in subsection (a).''

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.

60-DAY EXTENSION BY PENSION BENEFIT GUARANTY CORPORATION FOR NOTICE OF NONCOMPLIANCE

Section 11008(c) of Pub. L. 99–272 provided that: ''In the case of a standard termination of a plan under section 4041(b) of the Employee Retirement Income Security Act of 1974 (as amended by this section) [29 U.S.C. 1341(b)] with respect to which a notice of intent to terminate is filed before 120 days after the date of the enactment of this Act [Apr. 7, 1986], the Pension Benefit Guaranty Corporation may, without the consent of the plan administrator, extend the 60-day period under section 4041(b)(2)(C)(i) of such Act (as so amended) for a period not to exceed 60 days.''

SPECIAL TEMPORARY RULE FOR TERMINATION OF SINGLE-EMPLOYER PLAN

Section 11008(d) of Pub. L. 99–272 provided that:

''(1) REQUIREMENTS TO BE MET BEFORE FINAL DISTRIBUTION OF ASSETS.—In the case of the termination of a single-employer plan described in paragraph (2) with respect to which the amount payable to the employer pursuant to section 4044(d) [29 U.S.C. 1344(d)] exceeds $1,000,000 (determined as of the proposed date of final distribution of assets), the final distribution of assets pursuant to such termination may not occur unless the Pension Benefit Guaranty Corporation—

''(A) determines that the assets of the plan are sufficient for benefit commitments (within the meaning of section 4041(d)(1) of the Employee Retirement Income Security Act of 1974 (as amended by section 11007) [29 U.S.C. 1341(d)(1)]) under the plan, and

''(B) issues to the plan administrator a written notice setting forth the determination described in subparagraph (A).

''(2) PLANS TO WHICH SUBSECTION APPLIES.—A single-employer plan is described in this paragraph if—

''(A) the plan administrator has filed a notice of intent to terminate with the Pension Benefit Guaranty Corporation, and—

''(i) the filing was made before January 1, 1986, and the Corporation has not issued a notice of sufficiency for such plan before the date of the enactment of this Act [Apr. 7, 1986], or

''(ii) the filing is made on or after January 1, 1986, and before 60 days after the date of the enactment of this Act and the Corporation has not issued a notice of sufficiency for such plan before the date of the enactment of this Act, and

''(B) of the persons who are (as of the termination date) participants in the plan, the lesser of 10 percent or 200 have filed complaints with the Corporation regarding such termination—

''(i) in the case of plans described in subparagraph (A)(i), before 15 days after the date of the enactment of this Act, or

''(ii) in any other case, before the later of 15 days after the date of the enactment of this Act or 45 days after the date of the filing of such notice.

''(3) CONSIDERATION OF COMPLAINTS.—The Corporation shall consider and respond to such complaints not later than 90 days after the date on which the Corporation makes the determination described in paragraph (1)(A). The Corporation may hold informal hearings to expedite consideration of such complaints. Any such hearing shall be exempt from the requirements of chapter 5 of title 5, United States Code.

''(4) DELAY ON ISSUANCE OF NOTICE.—

''(A) GENERAL RULE.—Except as provided in subparagraph (B), the Corporation shall not issue any notice described in paragraph (1)(B) until 90 days after the date on which the Corporation makes the determination described in paragraph (1)(A).

''(B) EXCEPTION IN CASES OF SUBSTANTIAL BUSINESS HARDSHIP.—Except in the case of an acquisition, takeover, or leveraged buyout, the preceding provisions of this subsection shall not apply if the contributing sponsor demonstrates to the satisfaction of the Corporation that the contributing sponsor is experiencing substantial business hardship. For purposes of this subparagraph, a contributing sponsor shall be considered as experiencing substantial business hardship if the contributing sponsor has been operating, and can demonstrate that the contributing sponsor will continue to operate, at an economic loss.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1342, 1348, 1350, 1362, 1363, 1364, 1370 of this title; title 26 sections 404, 418, 4972.

§ 1341a. Termination of multiemployer plans

(a) Determinative factors

Termination of a multiemployer plan under this section occurs as a result of—

(1) the adoption after September 26, 1980, of a plan amendment which provides that participants will receive no credit for any purpose under the plan for service with any employer after the date specified by such amendment;

(2) the withdrawal of every employer from the plan, within the meaning of section 1383 of this title, or the cessation of the obligation of all employers to contribute under the plan; or

(3) the adoption of an amendment to the plan which causes the plan to become a plan described in section 1321(b)(1) of this title.

(b) Date of termination

(1) The date on which a plan terminates under paragraph (1) or (3) of subsection (a) of this section is the later of—

(A) the date on which the amendment is adopted, or

(B) the date on which the amendment takes effect.

(2) The date on which a plan terminates under paragraph (2) of subsection (a) of this section is the earlier of—

(A) the date on which the last employer withdraws, or

(B) the first day of the first plan year for which no employer contributions were required under the plan.

(c) Duties of plan sponsor of amended plan

Except as provided in subsection (f)(1) of this section, the plan sponsor of a plan which terminates under paragraph (2) of subsection (a) of this section shall—

(1) limit the payment of benefits to benefits which are nonforfeitable under the plan as of the date of the termination, and

(2) pay benefits attributable to employer contributions, other than death benefits, only in the form of an annuity, unless the plan assets are distributed in full satisfaction of all nonforfeitable benefits under the plan.

(d) Duties of plan sponsor of nonoperative plan

The plan sponsor of a plan which terminates under paragraph (2) of subsection (a) of this section shall reduce benefits and suspend benefit payments in accordance with section 1441 of this title.

(e) Amount of contribution of employer under amended plan for each plan year subsequent to plan termination date

In the case of a plan which terminates under paragraph (1) or (3) of subsection (a) of this section, the rate of an employer's contributions under the plan for each plan year beginning on or after the plan termination date shall equal or exceed the highest rate of employer contributions at which the employer had an obligation to contribute under the plan in the 5 preceding plan years ending on or before the plan termination date, unless the corporation approves a reduction in the rate based on a finding that the plan is or soon will be fully funded.

(f) Payment of benefits; reporting requirements for terminated plans and rules and standards for administration of such plans

(1) The plan sponsor of a terminated plan may authorize the payment other than in the form of an annuity of a participant's entire nonforfeitable benefit attributable to employer contributions, other than a death benefit, if the value of the entire nonforfeitable benefit does not exceed $1,750. The corporation may authorize the payment of benefits under the terms of a terminated plan other than nonforfeitable benefits, or the payment other than in the form of an annuity of benefits having a value greater than $1,750, if the corporation determines that such payment is not adverse to the interest of the plan's participants and beneficiaries generally and does not unreasonably increase the corporation's risk of loss with respect to the plan.

(2) The corporation may prescribe reporting requirements for terminated plans, and rules and standards for the administration of such plans, which the corporation considers appropriate to protect the interests of plan participants and beneficiaries or to prevent unreasonable loss to the corporation.

(Pub. L. 93–406, title IV, § 4041A, as added Pub. L. 96–364, title I, § 103, Sept. 26, 1980, 94 Stat. 1216.)

EFFECTIVE DATE

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1081, 1322a, 1342, 1348, 1383, 1396, 1412, 1413, 1421, 1441, 1461 of this title; title 26 sections 412, 418.

§ 1342. Institution of termination proceedings by the corporation

(a) Authority to institute proceedings to terminate a plan

The corporation may institute proceedings under this section to terminate a plan whenever it determines that—

(1) the plan has not met the minimum funding standard required under section 412 of title 26, or has been notified by the Secretary of the Treasury that a notice of deficiency under section 6212 of title 26 has been mailed with respect to the tax imposed under section 4971(a) of title 26,

(2) the plan will be unable to pay benefits when due,

(3) the reportable event described in section 1343(c)(7) of this title has occurred, or

(4) the possible long-run loss of the corporation with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.

The corporation shall as soon as practicable institute proceedings under this section to terminate a single-employer plan whenever the corporation determines that the plan does not have assets available to pay benefits which are currently due under the terms of the plan. The corporation may prescribe a simplified procedure to follow in terminating small plans as long as that procedure includes substantial safeguards for the rights of the participants and beneficiaries under the plans, and for the employers who maintain such plans (including the requirement for a court decree under subsection (c) of this section). Notwithstanding any other provision of this subchapter, the corporation is au-

thorized to pool assets of terminated plans for purposes of administration, investment, payment of liabilities of all such terminated plans, and such other purposes as it determines to be appropriate in the administration of this subchapter.

(b) Appointment of trustee

(1) Whenever the corporation makes a determination under subsection (a) of this section with respect to a plan or is required under subsection (a) of this section to institute proceedings under this section, it may, upon notice to the plan, apply to the appropriate United States district court for the appointment of a trustee to administer the plan with respect to which the determination is made pending the issuance of a decree under subsection (c) of this section ordering the termination of the plan. If within 3 business days after the filing of an application under this subsection, or such other period as the court may order, the administrator of the plan consents to the appointment of a trustee, or fails to show why a trustee should not be appointed, the court may grant the application and appoint a trustee to administer the plan in accordance with its terms until the corporation determines that the plan should be terminated or that termination is unnecessary. The corporation may request that it be appointed as trustee of a plan in any case.

(2) Notwithstanding any other provision of this subchapter—

(A) upon the petition of a plan administrator or the corporation, the appropriate United States district court may appoint a trustee in accordance with the provisions of this section if the interests of the plan participants would be better served by the appointment of the trustee, and

(B) upon the petition of the corporation, the appropriate United States district court shall appoint a trustee proposed by the corporation for a multiemployer plan which is in reorganization or to which section 1341a(d) of this title applies, unless such appointment would be adverse to the interests of the plan participants and beneficiaries in the aggregate.

(3) The corporation and plan administrator may agree to the appointment of a trustee without proceeding in accordance with the requirements of paragraphs (1) and (2).

(c) Adjudication that plan must be terminated

If the corporation is required under subsection (a) of this section to commence proceedings under this section with respect to a plan or, after issuing a notice under this section to a plan administrator, has determined that the plan should be terminated, it may, upon notice to the plan administrator, apply to the appropriate United States district court for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the liability of the fund. If the trustee appointed under subsection (b) of this section disagrees with the determination of the corporation under the preceding sentence he may intervene in the proceeding relating to the application for the decree, or make application for such decree himself. Upon granting a decree for which the corporation or trustee has applied under this subsection the court shall authorize the trustee appointed under subsection (b) of this section (or appoint a trustee if one has not been appointed under such subsection and authorize him) to terminate the plan in accordance with the provisions of this subtitle. If the corporation and the plan administrator agree that a plan should be terminated and agree to the appointment of a trustee without proceeding in accordance with the requirements of this subsection (other than this sentence) the trustee shall have the power described in subsection (d)(1) of this section and, in addition to any other duties imposed on the trustee under law or by agreement between the corporation and the plan administrator, the trustee is subject to the duties described in subsection (d)(3) of this section. Whenever a trustee appointed under this subchapter is operating a plan with discretion as to the date upon which final distribution of the assets is to be commenced, the trustee shall notify the corporation at least 10 days before the date on which he proposes to commence such distribution.

(3)[1] In the case of a proceeding initiated under this section, the plan administrator shall provide the corporation, upon the request of the corporation, the information described in clauses (ii), (iii), and (iv) of section 1341(c)(2)(A) of this title.

(d) Powers of trustee

(1)(A) A trustee appointed under subsection (b) of this section shall have the power—

(i) to do any act authorized by the plan or this subchapter to be done by the plan administrator or any trustee of the plan;

(ii) to require the transfer of all (or any part) of the assets and records of the plan to himself as trustee;

(iii) to invest any assets of the plan which he holds in accordance with the provisions of the plan, regulations of the corporation, and applicable rules of law;

(iv) to limit payment of benefits under the plan to basic benefits or to continue payment of some or all of the benefits which were being paid prior to his appointment;

(v) in the case of a multiemployer plan, to reduce benefits or suspend benefit payments under the plan, give appropriate notices, amend the plan, and perform other acts required or authorized by subtitle (E) of this subchapter to be performed by the plan sponsor or administrator;

(vi) to do such other acts as he deems necessary to continue operation of the plan without increasing the potential liability of the corporation, if such acts may be done under the provisions of the plan; and

(vii) to require the plan sponsor, the plan administrator, any contributing or withdrawn employer, and any employee organization representing plan participants to furnish any information with respect to the plan which the trustee may reasonably need in order to administer the plan.

[1] So in original. No pars. (1) and (2) have been designated.

If the court to which application is made under subsection (c) of this section dismisses the application with prejudice, or if the corporation fails to apply for a decree under subsection (c) of this section, within 30 days after the date on which the trustee is appointed under subsection (b) of this section, the trustee shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of such 30-day period, and shall not be liable to the plan or any other person for his acts as trustee except for willful misconduct, or for conduct in violation of the provisions of part 4 of subtitle B of subchapter I of this chapter (except as provided in subsection (d)(1)(A)(v) of this section). The 30-day period referred to in this subparagraph may be extended as provided by agreement between the plan administrator and the corporation or by court order obtained by the corporation.

(B) If the court to which an application is made under subsection (c) of this section issues the decree requested in such application, in addition to the powers described in subparagraph (A), the trustee shall have the power—

(i) to pay benefits under the plan in accordance with the requirements of this subchapter;

(ii) to collect for the plan any amounts due the plan, including but not limited to the power to collect from the persons obligated to meet the requirements of section 1082 of this title or the terms of the plan;

(iii) to receive any payment made by the corporation to the plan under this subchapter;

(iv) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan;

(v) to issue, publish, or file such notices, statements, and reports as may be required by the corporation or any order of the court;

(vi) to liquidate the plan assets;

(vii) to recover payments under section 1345(a) of this title; and

(viii) to do such other acts as may be necessary to comply with this subchapter or any order of the court and to protect the interests of plan participants and beneficiaries.

(2) As soon as practicable after his appointment, the trustee shall give notice to interested parties of the institution of proceedings under this subchapter to determine whether the plan should be terminated or to terminate the plan, whichever is applicable. For purposes of this paragraph, the term ''interested party'' means—

(A) the plan administrator,

(B) each participant in the plan and each beneficiary of a deceased participant,

(C) each employer who may be subject to liability under section 1362, 1363, or 1364 of this title,

(D) each employer who is or may be liable to the plan under section[2] part 1 of subtitle E of this subchapter,

(E) each employer who has an obligation to contribute, within the meaning of section 1392(a) of this title, under a multiemployer plan, and

(F) each employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer described in subparagraph (C), (D), or (E).

(3) Except to the extent inconsistent with the provisions of this chapter, or as may be otherwise ordered by the court, a trustee appointed under this section shall be subject to the same duties as those of a trustee under section 704 of title 11, and shall be, with respect to the plan, a fiduciary within the meaning of paragraph (21) of section 1002 of this title and under section 4975(e) of title 26 (except to the extent that the provisions of this subchapter are inconsistent with the requirements applicable under part 4 of subtitle B of subchapter I of this chapter and of such section 4975).

(e) Filing of application notwithstanding pendency of other proceedings

An application by the corporation under this section may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

(f) Exclusive jurisdiction; stay of other proceedings

Upon the filing of an application for the appointment of a trustee or the issuance of a decree under this section, the court to which an application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of the United States having jurisdiction over cases under chapter 11 of title 11. Pending an adjudication under subsection (c) of this section such court shall stay, and upon appointment by it of a trustee, as provided in this section such court shall continue the stay of, any pending mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan or its property and any other suit against any receiver, conservator, or trustee of the plan or its property. Pending such adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the plan or any other suit against the plan.

(g) Venue

An action under this subsection may be brought in the judicial district where the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

(h) Compensation of trustee and professional service personnel appointed or retained by trustee

(1) The amount of compensation paid to each trustee appointed under the provisions of this subchapter shall require the prior approval of the corporation, and, in the case of a trustee appointed by a court, the consent of that court.

(2) Trustees shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel in accordance with regulations prescribed by the corporation.

[2] So in original.

(Pub. L. 93–406, title IV, § 4042, Sept. 2, 1974, 88 Stat. 1021; Pub. L. 95–598, title III, § 321(a), Nov. 6, 1978, 92 Stat. 2678; Pub. L. 96–364, title IV, § 402(a)(6), Sept. 26, 1980, 94 Stat. 1298; Pub. L. 99–272, title XI, §§ 11010, 11016(c)(10), (11), Apr. 7, 1986, 100 Stat. 253, 274; Pub. L. 100–203, title IX, §§ 9312(c)(3), 9314(b), 9314(b), Dec. 22, 1987, 101 Stat. 1330–363, 1330–366, 1330–367; Pub. L. 101–239, title VII, §§ 7881(g)(7), 7891(a)(1), 7893(e), Dec. 19, 1989, 103 Stat. 2441, 2445, 2447; Pub. L. 103–465, title VII, § 771(e)(2), Dec. 8, 1994, 108 Stat. 5043.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(3), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103–465 substituted ''1343(c)(7)'' for ''1343(b)(7)''.

1989—Subsec. (a). Pub. L. 101–239, § 7893(e), inserted period after ''terms of the plan'' at end of second sentence.

Pub. L. 101–239, § 7881(g)(7), made technical correction to directory language of Pub. L. 100–203, § 9314(b), see 1987 Amendment note below.

Subsecs. (a)(1), (d)(3). 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.

1987—Subsec. (a). Pub. L. 100–203, § 9314(b), as amended by Pub. L. 101–239, § 7881(g)(7), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The corporation is authorized to pool the assets of terminated plans for purposes of administration and such other purposes, not inconsistent with its duties to the plan participants and the employer maintaining the plan under this subchapter, as it determines to be required for the efficient administration of this subchapter.'' Another section 9314(b) of Pub. L. 100–203 amended subsec. (c) of this section, see below.

Subsec. (c)(3). Pub. L. 100–203, § 9314(b), added par. (3). Another section 9314(b) of Pub. L. 100–203 amended subsec. (a) of this section, see above.

Subsec. (i). Pub. L. 100–203, § 9312(c)(3), struck out subsec. (i) which read as follows: ''In any case in which a plan is terminated under this section in a termination proceeding initiated by the corporation pursuant to subsection (a) of this section, the corporation shall establish a separate trust in connection with the plan for purposes of section 1349 of this title, unless the corporation determines that all benefit commitments under the plan are benefits guaranteed by the corporation under section 1322 of this title or that there is no amount of unfunded benefit commitments under the plan.''

1986—Pub. L. 99–272, § 11010(c), substituted ''Institution of termination proceedings by the corporation'' for ''Termination by corporation'' in section catchline.

Subsec. (a). Pub. L. 99–272, § 11010(a)(1)(B), in provision following par. (4) inserted provision that the corporation as soon as practicable institute proceedings under this section to terminate a single-employer plan whenever the corporation determines that the plan does not have assets available to pay benefits currently due under the terms of the plan.

Subsec. (a)(2). Pub. L. 99–272, § 11010(a)(1)(A), substituted ''will be'' for ''is''.

Subsec. (b)(1). Pub. L. 99–272, § 11010(a)(2)(A), inserted ''or is required under subsection (a) of this section to institute proceedings under this section,''.

Subsec. (c). Pub. L. 99–272, § 11010(a)(2)(B), substituted ''is required under subsection (a) of this section to commence proceedings under this section with respect to a plan or, after issuing a notice under this section to a plan administrator,'' for ''has issued a notice under this section to a plan administrator and (whether or not a trustee has been appointed under subsection (b) of this section)''.

Subsec. (d)(1)(B)(ii). Pub. L. 99–272, § 11016(c)(10), inserted '', including but not limited to the power to collect from the persons obligated to meet the requirements of section 1082 of this title or the terms of the plan''.

Subsec. (d)(3). Pub. L. 99–272, § 11016(c)(11), substituted ''those of a trustee under section 704 of title 11'' for ''a trustee appointed under section 75 of title 11''.

Subsec. (i). Pub. L. 99–272, § 11010(b), added subsec. (i).

1980—Subsec. (a). Pub. L. 96–364, § 402(a)(6)(A), substituted ''terminated plans'' for ''such small plans''.

Subsec. (b). Pub. L. 96–364, § 402(a)(6)(B), redesignated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (c). Pub. L. 96–364, § 402(a)(6)(C), (D), substituted ''unreasonable'' for ''further'' wherever appearing, and ''of the participants or'' for ''of the participants and''.

Subsec. (d)(1)(A). Pub. L. 96–364, § 402(a)(6)(E), added cls. (v) and (vii) and redesignated former cl. (v) as (vi).

Subsec. (d)(1)(B). Pub. L. 96–364, § 402(a)(6)(F), (G), in cl. (i) substituted ''requirements of this subchapter'' for ''allocation requirements of section 1344 of this title'', and in cl. (iv) struck out exception respecting adverse party status of corporation.

Subsec. (d)(2)(D) to (F). Pub. L. 96–364, § 402(a)(6)(H)–(J), added subpars. (D) to (F).

1978—Subsec. (f). Pub. L. 95–598 substituted ''of a court of the United States having jurisdiction over cases under chapter 11 of title 11'' for ''of a court of bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act'' in first sentence and struck out ''bankruptcy,'' before ''mortgage foreclosure'' in second sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 771(f) of Pub. L. 103–465 provided that: ''The amendments made by this section [amending this section and section 1343 of this title] shall be effective for events occurring 60 days or more after the date of enactment of this Act [Dec. 8, 1994].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(g)(7) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

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

Amendment by section 7893(e) of Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101–239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9312(c)(3) of Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under this section after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1103, 1104, 1303, 1305, 1307, 1341, 1344, 1347, 1348, 1350, 1362, 1363, 1364, 1370, 1413 of this title.

§ 1343. Reportable events

(a) Notification that event has occurred

Within 30 days after the plan administrator or the contributing sponsor knows or has reason to know that a reportable event described in subsection (c) of this section has occurred, he shall notify the corporation that such event has occurred, unless a notice otherwise required under this subsection has already been provided with respect to such event. The corporation is authorized to waive the requirement of the preceding sentence with respect to any or all reportable events with respect to any plan, and to require the notification to be made by including the event in the annual report made by the plan.

(b) Notification that event is about to occur

(1) The requirements of this subsection shall be applicable to a contributing sponsor if, as of the close of the preceding plan year—

(A) the aggregate unfunded vested benefits (as determined under section 1306(a)(3)(E)(iii) of this title) of plans subject to this subchapter which are maintained by such sponsor and members of such sponsor's controlled groups (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and

(B) the funded vested benefit percentage for such plans is less than 90 percent.

For purposes of subparagraph (B), the funded vested benefit percentage means the percentage which the aggregate value of the assets of such plans bears to the aggregate vested benefits of such plans (determined in accordance with section 1306(a)(3)(E)(iii) of this title).

(2) This subsection shall not apply to an event if the contributing sponsor, or the member of the contributing sponsor's controlled group to which the event relates, is—

(A) a person subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m, 78*o*(d)], or

(B) a subsidiary (as defined for purposes of such Act [15 U.S.C. 78a et seq.]) of a person subject to such reporting requirements.

(3) No later than 30 days prior to the effective date of an event described in paragraph (9), (10), (11), (12), or (13) of subsection (c) of this section, a contributing sponsor to which the requirements of this subsection apply shall notify the corporation that the event is about to occur.

(4) The corporation may waive the requirement of this subsection with respect to any or all reportable events with respect to any contributing sponsor.

(c) Enumeration of reportable events

For purposes of this section a reportable event occurs—

(1) when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 1321(a)(2) of this title, or when the Secretary of Labor determines the plan is not in compliance with subchapter I of this chapter;

(2) when an amendment of the plan is adopted if, under the amendment, the benefit payable with respect to any participant may be decreased;

(3) when the number of active participants is less than 80 percent of the number of such participants at the beginning of the plan year, or is less than 75 percent of the number of such participants at the beginning of the previous plan year;

(4) when the Secretary of the Treasury determines that there has been a termination or partial termination of the plan within the meaning of section 411(d)(3) of title 26, but the occurrence of such a termination or partial termination does not, by itself, constitute or require a termination of a plan under this subchapter;

(5) when the plan fails to meet the minimum funding standards under section 412 of title 26 (without regard to whether the plan is a plan described in section 1321(a)(2) of this title) or under section 1082 of this title;

(6) when the plan is unable to pay benefits thereunder when due;

(7) when there is a distribution under the plan to a participant who is a substantial owner as defined in section 1322(b)(6)[1] of this title if—

(A) such distribution has a value of $10,000 or more;

(B) such distribution is not made by reason of the death of the participant; and

(C) immediately after the distribution, the plan has nonforfeitable benefits which are not funded;

(8) when a plan merges, consolidates, or transfers its assets under section 1058 of this title, or when an alternative method of compliance is prescribed by the Secretary of Labor under section 1030 of this title;

(9) when, as a result of an event, a person ceases to be a member of the controlled group;

(10) when a contributing sponsor or a member of a contributing sponsor's controlled group liquidates in a case under title 11, or under any similar Federal law or law of a State or political subdivision of a State;

(11) when a contributing sponsor or a member of a contributing sponsor's controlled group declares an extraordinary dividend (as defined in section 1059(c) of title 26) or redeems, in any 12-month period, an aggregate of 10 percent or more of the total combined voting power of all classes of stock entitled to

[1] See References in Text note below.

vote, or an aggregate of 10 percent or more of the total value of shares of all classes of stock, of a contributing sponsor and all members of its controlled group;

(12) when, in any 12-month period, an aggregate of 3 percent or more of the benefit liabilities of a plan covered by this subchapter and maintained by a contributing sponsor or a member of its controlled group are transferred to a person that is not a member of the controlled group or to a plan or plans maintained by a person or persons that are not such a contributing sponsor or a member of its controlled group; or

(13) when any other event occurs that may be indicative of a need to terminate the plan and that is prescribed by the corporation in regulations.

For purposes of paragraph (7), all distributions to a participant within any 24-month period are treated as a single distribution.

(d) Notification to corporation by Secretary of the Treasury

The Secretary of the Treasury shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (4), or (5) of subsection (c) of this section occurs, or

(2) whenever any other event occurs which the Secretary of the Treasury believes indicates that the plan may not be sound.

(e) Notification to corporation by Secretary of Labor

The Secretary of Labor shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (5), or (8) of subsection (c) of this section occurs, or

(2) whenever any other event occurs which the Secretary of Labor believes indicates that the plan may not be sound.

(f) Disclosure exemption

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.

(Pub. L. 93–406, title IV, § 4043, Sept. 2, 1974, 88 Stat. 1024; Pub. L. 101–239, title VII, § 7891(a), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 103–465, title VII, § 771(a)–(e)(1), Dec. 8, 1994, 108 Stat. 5042, 5043.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (b)(2)(B), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Paragraph (6) of section 1322(b) of this title, referred to in subsec. (c)(7), was redesignated as par. (5) by Pub. L. 96–364, title IV, § 403(c)(4), Sept. 26, 1980, 94 Stat. 1301.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–465, § 771(a), (e)(1), in first sentence, inserted ''or the contributing sponsor'' after ''administrator'', substituted ''subsection (c)'' for ''subsection (b)'', and inserted before period at end '', unless a notice otherwise required under this subsection has already been provided with respect to such event'', and struck out last sentence which read as follows: ''Whenever an employer making contributions under a plan to which section 1321 of this title applies knows or has reason to know that a reportable event has occurred he shall notify the plan administrator immediately.''

Subsec. (b). Pub. L. 103–465, § 771(b), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 103–465, § 771(b), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (c)(8) to (13). Pub. L. 103–465, § 771(c), struck out ''or'' at end of par. (8), added pars. (9) to (13), and struck out former par. (9) which read as follows: ''when any other event occurs which the corporation determines may be indicative of a need to terminate the plan.''.

Subsecs. (d), (e). Pub. L. 103–465, § 771(b), (e)(1), redesignated subsecs. (c) and (d) as (d) and (e), respectively, and substituted ''subsection (c)'' for ''subsection (b)'' in par. (1) of each subsec.

Subsec. (f). Pub. L. 103–465, § 771(d), added subsec. (f).

1989—Subsec. (b)(4). 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 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective for events occurring 60 days or more after Dec. 8, 1994, see section 771(f) of Pub. L. 103–465, set out as a note under section 1342 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1342, 1345, 1365 of this title.

§ 1344. Allocation of assets

(a) Order of priority of participants and beneficiaries

In the case of the termination of a single-employer plan, the plan administrator shall allocate the assets of the plan (available to provide benefits) among the participants and beneficiaries of the plan in the following order:

(1) First, to that portion of each individual's accrued benefit which is derived from the participant's contributions to the plan which were not mandatory contributions.

(2) Second, to that portion of each individual's accrued benefit which is derived from the participant's mandatory contributions.

(3) Third, in the case of benefits payable as an annuity—

(A) in the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the plan, to each such benefit, based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least,

(B) in the case of a participant's or beneficiary's benefit (other than a benefit de-

scribed in subparagraph (A)) which would have been in pay status as of the beginning of such 3-year period if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of annuity under the plan) as of the beginning of such period, to each such benefit based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

For purposes of subparagraph (A), the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

(4) Fourth—

(A) to all other benefits (if any) of individuals under the plan guaranteed under this subchapter (determined without regard to section 1322b(a) of this title), and

(B) to the additional benefits (if any) which would be determined under subparagraph (A) if section 1322(b)(5) of this title did not apply.

For purposes of this paragraph, section 1321 of this title shall be applied without regard to subsection (c) thereof.

(5) Fifth, to all other nonforfeitable benefits under the plan.

(6) Sixth, to all other benefits under the plan.

(b) Adjustment of allocations; reallocations; mandatory contributions; establishment of subclasses and categories

For purposes of subsection (a) of this section—

(1) The amount allocated under any paragraph of subsection (a) of this section with respect to any benefit shall be properly adjusted for any allocation of assets with respect to that benefit under a prior paragraph of subsection (a) of this section.

(2) If the assets available for allocation under any paragraph of subsection (a) of this section (other than paragraphs (5) and (6)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in that paragraph.

(3) This paragraph applies if the assets available for allocation under paragraph (5) of subsection (a) of this section are not sufficient to satisfy in full the benefits of individuals described in that paragraph.

(A) If this paragraph applies, except as provided in subparagraph (B), the assets shall be allocated to the benefits of individuals described in such paragraph (5) on the basis of the benefits of individuals which would have been described in such paragraph (5) under the plan as in effect at the beginning of the 5-year period ending on the date of plan termination.

(B) If the assets available for allocation under subparagraph (A) are sufficient to satisfy in full the benefits described in such subparagraph (without regard to this subparagraph), then for purposes of subparagraph (A), benefits of individuals described in such subparagraph shall be determined on the basis of the plan as amended by the most recent plan amendment effective during such 5-year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in subparagraph (A) and any assets remaining to be allocated under such subparagraph shall be allocated under subparagraph (A) on the basis of the plan as amended by the next succeeding plan amendment effective during such period.

(4) If the Secretary of the Treasury determines that the allocation made pursuant to this section (without regard to this paragraph) results in discrimination prohibited by section 401(a)(4) of title 26 then, if required to prevent the disqualification of the plan (or any trust under the plan) under section 401(a) or 403(a) of title 26, the assets allocated under subsections (a)(4)(B), (a)(5), and (a)(6) of this section shall be reallocated to the extent necessary to avoid such discrimination.

(5) The term ''mandatory contributions'' means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions. For this purpose, the total amount of mandatory contributions of a participant is the amount of such contributions reduced (but not below zero) by the sum of the amounts paid or distributed to him under the plan before its termination.

(6) A plan may establish subclasses and categories within the classes described in paragraphs (1) through (6) of subsection (a) of this section in accordance with regulations prescribed by the corporation.

(c) Increase or decrease in value of assets

Any increase or decrease in the value of the assets of a single-employer plan occurring during the period beginning on the later of (1) the date a trustee is appointed under section 1342(b) of this title or (2) the date on which the plan is terminated is to be allocated between the plan and the corporation in the manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the corporation and the plan administrator in any other case. Any increase or decrease in the value of the assets of a single-employer plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the corporation.

(d) Distribution of residual assets; restrictions on reversions pursuant to recently amended plans; assets attributable to employee contributions; calculation of remaining assets

(1) Subject to paragraph (3), any residual assets of a single-employer plan may be distributed to the employer if—

(A) all liabilities of the plan to participants and their beneficiaries have been satisfied,

(B) the distribution does not contravene any provision of law, and

(C) the plan provides for such a distribution in these circumstances.

(2)(A) In determining the extent to which a plan provides for the distribution of plan assets to the employer for purposes of paragraph (1)(C), any such provision, and any amendment increasing the amount which may be distributed to the employer, shall not be treated as effective before the end of the fifth calendar year following the date of the adoption of such provision or amendment.

(B) A distribution to the employer from a plan shall not be treated as failing to satisfy the requirements of this paragraph if the plan has been in effect for fewer than 5 years and the plan has provided for such a distribution since the effective date of the plan.

(C) Except as otherwise provided in regulations of the Secretary of the Treasury, in any case in which a transaction described in section 1058 of this title occurs, subparagraph (A) shall continue to apply separately with respect to the amount of any assets transferred in such transaction.

(D) For purposes of this subsection, the term ''employer'' includes any member of the controlled group of which the employer is a member. For purposes of the preceding sentence, the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m) or (*o*) of section 414 of title 26.

(3)(A) Before any distribution from a plan pursuant to paragraph (1), if any assets of the plan attributable to employee contributions remain after satisfaction of all liabilities described in subsection (a) of this section, such remaining assets shall be equitably distributed to the participants who made such contributions or their beneficiaries (including alternate payees, within the meaning of section 1056(d)(3)(K) of this title).

(B) For purposes of subparagraph (A), the portion of the remaining assets which are attributable to employee contributions shall be an amount equal to the product derived by multiplying—

(i) the market value of the total remaining assets, by

(ii) a fraction—

(I) the numerator of which is the present value of all portions of the accrued benefits with respect to participants which are derived from participants' mandatory contributions (referred to in subsection (a)(2) of this section), and

(II) the denominator of which is the present value of all benefits with respect to which assets are allocated under paragraphs (2) through (6) of subsection (a) of this section.

(C) For purposes of this paragraph, each person who is, as of the termination date—

(i) a participant under the plan, or

(ii) an individual who has received, during the 3-year period ending with the termination date, a distribution from the plan of such individual's entire nonforfeitable benefit in the form of a single sum distribution in accordance with section 1053(e) of this title or in the form of irrevocable commitments purchased by the plan from an insurer to provide such nonforfeitable benefit,

shall be treated as a participant with respect to the termination, if all or part of the nonforfeitable benefit with respect to such person is or was attributable to participants' mandatory contributions (referred to in subsection (a)(2) of this section).

(4) Nothing in this subsection shall be construed to limit the requirements of section 4980(d) of title 26 (as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990) or section 1104(d) of this title with respect to any distribution of residual assets of a single-employer plan to the employer.

(Pub. L. 93–406, title IV, § 4044, Sept. 2, 1974, 88 Stat. 1025; Pub. L. 96–364, title IV, § 402(a)(7), Sept. 26, 1980, 94 Stat. 1299; Pub. L. 99–272, title XI, § 11016(c)(12), (13), Apr. 7, 1986, 100 Stat. 274; Pub. L. 100–203, title IX, § 9311(a)(1), (b), (c), Dec. 22, 1987, 101 Stat. 1330–359, 1330–360; Pub. L. 101–239, title VII, §§ 7881(e)(3), 7891(a)(1), 7894(g)(2), Dec. 19, 1989, 103 Stat. 2440, 2445, 2451; Pub. L. 101–508, title XII, § 12002(b)(2)(B), Nov. 5, 1990, 104 Stat. 1388–566.)

REFERENCES IN TEXT

The enactment of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (d)(4), is the enactment of Pub. L. 101–508, which was approved Nov. 5, 1990.

AMENDMENTS

1990—Subsec. (d)(4). Pub. L. 101–508 added par. (4).

1989—Subsec. (a)(1). Pub. L. 101–239, § 7894(g)(2), substituted ''accrued'' for ''accured''.

Subsec. (b)(4). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (d)(3). Pub. L. 101–239, § 7881(e)(3), made technical correction to directory language of Pub. L. 100–203, § 9311(b)(2), see 1987 Amendment note below.

1987—Subsec. (b)(4). Pub. L. 100–203, § 9311(c), struck out reference to section 405(a) of title 26.

Subsec. (d)(1). Pub. L. 100–203, § 9311(b)(1), substituted ''Subject to paragraph (3), any'' for ''Any''.

Subsec. (d)(2). Pub. L. 100–203, § 9311(a)(1)(B), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 100–203, § 9311(b)(2), as amended by Pub. L. 101–239, § 7881(e)(3), added par. (3), and struck out former par. (3) which read as follows: ''Notwithstanding the provisions of paragraph (1), if any assets of the plan attributable to employee contributions, remain after all liabilities of the plan to participants and their beneficiaries have been satisfied, such assets shall be equitably distributed to the employees who made such contributions (or their beneficiaries) in accordance with their rate of contributions.''

Pub. L. 100–203, § 9311(a)(1)(A), redesignated former par. (2) as (3).

1986—Subsec. (a). Pub. L. 99–272, § 11016(c)(12), in provision preceding par. (1) struck out ''defined benefit'' after ''single-employer''.

Subsec. (a)(4)(A). Pub. L. 99–272, § 11016(c)(13)(A), substituted ''section 1322b(a)'' for ''section 1322(b)(5)''.

Subsec. (a)(4)(B). Pub. L. 99–272, § 11016(c)(13)(B), substituted ''section 1322(b)(5)'' for ''section 1322(b)(6)''.

1980—Subsec. (a). Pub. L. 96–364, § 402(a)(7)(A), inserted ''single-employer'' before ''defined benefit''.

Subsec. (c). Pub. L. 96–364, § 402(a)(7)(B), inserted ''single-employer'' before ''plan occurring'' wherever appearing.

Subsec. (d)(1). Pub. L. 96–364, § 402(a)(7)(C), inserted ''single-employer'' after ''assets of a''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to reversions occurring after Sept. 30, 1990, but not applicable

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

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(e)(3) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

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

Amendment by section 7894(g)(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 9311(d) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VII, §7881(e)(2), Dec. 19, 1989, 103 Stat. 2439, provided that: ''The amendments made by this section [amending this section] shall apply with respect to—

''(1) plan terminations under section 4041 of ERISA [29 U.S.C. 1341] with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 17, 1987, and

''(2) plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 4042 of ERISA [29 U.S.C. 1342] after December 17, 1987.

Except as provided in subsection (a)(2) [set out below], the amendments made by subsection (a) [amending this section] shall apply to any provision of the plan or plan amendment adopted after December 17, 1987.''

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.

TRANSITIONAL RULE RELATING TO RESTRICTIONS ON EMPLOYER REVERSIONS UPON PLAN TERMINATION PURSUANT TO RECENTLY AMENDED PLANS

Section 9311(a)(2) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VII, §7881(e)(1), (4), Dec. 19, 1989, 103 Stat. 2439, 2440, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply, in the case of plans which, as of December 17, 1987, have no provision relating to the distribution of residual plan assets upon termination, only with respect to plan amendments providing for the distribution of plan assets to the employer which are adopted after December 17, 1988.''

SPECIAL TEMPORARY RULE FOR TERMINATION OF SINGLE-EMPLOYER PLAN

For special temporary rule relating to requirements to be met before the final distribution of assets in the case of the termination of certain single-employer plans with respect to which the amount payable to the employer pursuant to subsec. (d) of this section exceeds $1,000,000, see section 11008(d) of Pub. L. 99–272, set out as a note under section 1341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1103, 1104, 1108, 1301, 1305, 1322, 1341, 1346 of this title; title 26 section 4975.

§ 1345. Recapture of payments

(a) Authorization to recover benefits

Except as provided in subsection (c) of this section, the trustee is authorized to recover for the benefit of a plan from a participant the recoverable amount (as defined in subsection (b) of this section) of all payments from the plan to him which commenced within the 3-year period immediately preceding the time the plan is terminated.

(b) Recoverable amount

For purposes of subsection (a) of this section the recoverable amount is the excess of the amount determined under paragraph (1) over the amount determined under paragraph (2).

(1) The amount determined under this paragraph is the sum of the amount of the actual payments received by the participant within the 3-year period.

(2) The amount determined under this paragraph is the sum of—

(A) the sum of the amount such participant would have received during each consecutive 12-month period within the 3 years if the participant received the benefit in the form described in paragraph (3),

(B) the sum for each of the consecutive 12-month periods of the lesser of—

(i) the excess, if any, of $10,000 over the benefit in the form described in paragraph (3), or

(ii) the excess of the actual payment, if any, over the benefit in the form described in paragraph (3), and

(C) the present value at the time of termination of the participant's future benefits guaranteed under this subchapter as if the benefits commenced in the form described in paragraph (3).

(3) The form of benefit for purposes of this subsection shall be the monthly benefit the participant would have received during the consecutive 12-month period, if he had elected at the time of the first payment made during the 3-year period, to receive his interest in the plan as a monthly benefit in the form of a life annuity commencing at the time of such first payment.

(c) Payments made on or after death or disability of participant; waiver of recovery in case of hardship

(1) In the event of a distribution described in section 1343(b)(7)[1] of this title the 3-year period referred to in subsection (b) of this section shall not end sooner than the date on which the corporation is notified of the distribution.

(2) The trustee shall not recover any payment made from a plan after or on account of the death of a participant, or to a participant who is disabled (within the meaning of section 72(m)(7) of title 26).

(3) The corporation is authorized to waive, in whole or in part, the recovery of any amount which the trustee is authorized to recover for the benefit of a plan under this section in any case in which it determines that substantial economic hardship would result to the participant or his beneficiaries from whom such amount is recoverable.

(Pub. L. 93–406, title IV, § 4045, Sept. 2, 1974, 88 Stat. 1027; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

REFERENCES IN TEXT

Section 1343(b)(7) of this title, referred to in subsec. (c)(1), was redesignated section 1343(c)(7) of this title by Pub. L. 103–465, title VII, § 771(b), Dec. 8, 1994, 108 Stat. 5042.

AMENDMENTS

1989—Subsec. (c)(2). 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1342 of this title; title 26 section 6511.

§ 1346. Reports to trustee

The corporation and the plan administrator of any plan to be terminated under this subtitle shall furnish to the trustee such information as the corporation or the plan administrator has and, to the extent practicable, can obtain regarding—

(1) the amount of benefits payable with respect to each participant under a plan to be terminated,

(2) the amount of basic benefits guaranteed under section 1322 or 1322a of this title which are payable with respect to each participant in the plan,

(3) the present value, as of the time of termination, of the aggregate amount of basic benefits payable under section 1322 or 1322a of this title (determined without regard to section 1322b of this title),

(4) the fair market value of the assets of the plan at the time of termination,

(5) the computations under section 1344 of this title, and all actuarial assumptions under which the items described in paragraphs (1) through (4) were computed, and

(6) any other information with respect to the plan the trustee may require in order to terminate the plan.

(Pub. L. 93–406, title IV, § 4046, Sept. 2, 1974, 88 Stat. 1028; Pub. L. 96–364, title IV, § 403(e), Sept. 26, 1980, 94 Stat. 1301.)

AMENDMENTS

1980—Par. (2). Pub. L. 96–364, § 403(e)(1), inserted ''basic'' before ''benefits'' and ''or 1322a'' after ''1322''.

Par. (3). Pub. L. 96–364, § 403(e), inserted ''basic'' before ''benefits'' and ''or 1322a'' after ''1322'', and substituted ''1322b'' for ''1322(b)(5)''.

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.

§ 1347. Restoration of plans

Whenever the corporation determines that a plan which is to be terminated under section 1341 or 1342 of this title, or which is in the process of being terminated under section 1341 or 1342 of this title, should not be terminated under section 1341 or 1342 of this title as a result of such circumstances as the corporation determines to be relevant, the corporation is authorized to cease any activities undertaken to terminate the plan, and to take whatever action is necessary and within its power to restore the plan to its status prior to the determination that the plan was to be terminated under section 1341 or 1342 of this title. In the case of a plan which has been terminated under section 1341 or 1342 of this title the corporation is authorized in any such case in which the corporation determines such action to be appropriate and consistent with its duties under this subchapter, to take such action as may be necessary to restore the plan to its pretermination status, including, but not limited to, the transfer to the employer or a plan administrator of control of part or all of the remaining assets and liabilities of the plan.

(Pub. L. 93–406, title IV, § 4047, Sept. 2, 1974, 88 Stat. 1028; Pub. L. 99–272, title XI, § 11016(a)(3), Apr. 7, 1986, 100 Stat. 268; Pub. L. 101–239, title VII, § 7893(g)(1), Dec. 19, 1989, 103 Stat. 2447.)

AMENDMENTS

1989—Pub. L. 101–239 struck out ''under this subtitle'' before ''should not be terminated''.

1986—Pub. L. 99–272 inserted ''under section 1341 or 1342 of this title'' after ''terminated'' in four places and substituted ''section 1341 or 1342 of this title the corporation'' for ''section 1342 of this title the corporation''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101–239, set out as a note under section 1002 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.

[1] See References in Text note below.

§ 1348. Termination date

(a) For purposes of this subchapter the termination date of a single-employer plan is—

(1) in the case of a plan terminated in a standard termination in accordance with the provisions of section 1341(b) of this title, the termination date proposed in the notice provided under section 1341(a)(2) of this title,

(2) in the case of a plan terminated in a distress termination in accordance with the provisions of section 1341(c) of this title, the date established by the plan administrator and agreed to by the corporation,

(3) in the case of a plan terminated in accordance with the provisions of section 1342 of this title, the date established by the corporation and agreed to by the plan administrator, or

(4) in the case of a plan terminated under section 1341(c) or 1342 of this title in any case in which no agreement is reached between the plan administrator and the corporation (or the trustee), the date established by the court.

(b) For purposes of this subchapter, the date of termination of a multiemployer plan is—

(1) in the case of a plan terminated in accordance with the provisions of section 1341a of this title, the date determined under subsection (b) of that section; or

(2) in the case of a plan terminated in accordance with the provisions of section 1342 of this title the date agreed to between the plan administrator and the corporation (or the trustee appointed under section 1342(b)(2) of this title, if any), or, if no agreement is reached, the date established by the court.

(Pub. L. 93–406, title IV, § 4048, Sept. 2, 1974, 88 Stat. 1028; Pub. L. 96–364, title IV, § 402(a)(8), Sept. 26, 1980, 94 Stat. 1299; Pub. L. 99–272, title XI, § 11016(a)(4), Apr. 7, 1986, 100 Stat. 268.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–272 in provisions preceding par. (1) substituted ''termination date'' for ''date of termination'', redesignated pars. (1) to (3) as (2) to (4), respectively, added par. (1), in par. (2), as so redesignated, inserted ''in a distress termination'' after ''terminated'' and substituted ''section 1341(c)'' for ''section 1341'', and in par. (4), as so redesignated, substituted ''under section 1341(c) or 1342 of this title'' for ''in accordance with the provisions of either section''.

1980—Subsec. (a). Pub. L. 96–364, § 402(a)(8)(A), (B), designated existing provisions as subsec. (a), and inserted applicability to a single-employer plan.

Subsec. (b). Pub. L. 96–364, § 402(a)(8)(C), added subsec. (b).

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1461 of this title; title 26 section 411.

§ 1349. Repealed. Pub. L. 100–203, title IX, § 9312(a), Dec. 22, 1987, 101 Stat. 1330–361

Section, Pub. L. 93–406, title IV, § 4049, as added Pub. L. 99–272, title XI, § 11012(a), Apr. 7, 1986, 100 Stat. 258; amended Pub. L. 99–514, title XVIII, § 1879(u)(2), Oct. 22, 1986, 100 Stat. 2913; Pub. L. 100–203, title IX, § 9312(d)(2), Dec. 22, 1987, 101 Stat. 1330–364, related to distribution of liability payments to participants and beneficiaries.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as an Effective Date of 1987 Amendment note under section 1301 of this title.

§ 1350. Missing participants

(a) General rule

(1) Payment to the corporation

A plan administrator satisfies section 1341(b)(3)(A) of this title in the case of a missing participant only if the plan administrator—

(A) transfers the participant's designated benefit to the corporation or purchases an irrevocable commitment from an insurer in accordance with clause (i) of section 1341(b)(3)(A) of this title, and

(B) provides the corporation such information and certifications with respect to such designated benefits or irrevocable commitments as the corporation shall specify.

(2) Treatment of transferred assets

A transfer to the corporation under this section shall be treated as a transfer of assets from a terminated plan to the corporation as trustee, and shall be held with assets of terminated plans for which the corporation is trustee under section 1342 of this title, subject to the rules set forth in that section.

(3) Payment by the corporation

After a missing participant whose designated benefit was transferred to the corporation is located—

(A) in any case in which the plan could have distributed the benefit of the missing participant in a single sum without participant or spousal consent under section 1055(g) of this title, the corporation shall pay the participant or beneficiary a single sum benefit equal to the designated benefit paid the corporation plus interest as specified by the corporation, and

(B) in any other case, the corporation shall pay a benefit based on the designated benefit and the assumptions prescribed by the corporation at the time that the corporation received the designated benefit.

The corporation shall make payments under subparagraph (B) available in the same forms and at the same times as a guaranteed benefit under section 1322 of this title would be available to be paid, except that the corporation may make a benefit available in the form of a

single sum if the plan provided a single sum benefit (other than a single sum described in subsection (b)(2)(A) of this section).

(b) Definitions

For purposes of this section—

(1) Missing participant

The term ''missing participant'' means a participant or beneficiary under a terminating plan whom the plan administrator cannot locate after a diligent search.

(2) Designated benefit

The term ''designated benefit'' means the single sum benefit the participant would receive—

(A) under the plan's assumptions, in the case of a distribution that can be made without participant or spousal consent under section 1055(g) of this title;

(B) under the assumptions of the corporation in effect on the date that the designated benefit is transferred to the corporation, in the case of a plan that does not pay any single sums other than those described in subparagraph (A); or

(C) under the assumptions of the corporation or of the plan, whichever provides the higher single sum, in the case of a plan that pays a single sum other than those described in subparagraph (A).

(c) Regulatory authority

The corporation shall prescribe such regulations as are necessary to carry out the purposes of this section, including rules relating to what will be considered a diligent search, the amount payable to the corporation, and the amount to be paid by the corporation.

(Pub. L. 93–406, title IV, § 4050, as added Pub. L. 103–465, title VII, § 776(a), Dec. 8, 1994, 108 Stat. 5047.)

EFFECTIVE DATE

Section effective with respect to distributions that occur in plan years commencing after final regulations implementing section 776 of Pub. L. 103–465 are prescribed by the Pension Benefit Guaranty Corporation, see section 776(e) of Pub. L. 103–465, set out as an Effective Date of 1994 Amendment note under section 1056 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1056, 1303, 1305, 1341 of this title; title 26 section 401.

SUBTITLE D—LIABILITY

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1305, 1461 of this title.

§ 1361. Amounts payable by corporation

The corporation shall pay benefits under a single-employer plan terminated under this subchapter subject to the limitations and requirements of subtitle B of this subchapter. The corporation shall provide financial assistance to pay benefits under a multiemployer plan which is insolvent under section 1426 or 1441(d)(2)(A) of this title, subject to the limitations and requirements of subtitles B, C, and E of this subchapter. Amounts guaranteed by the corporation under sections 1322 and 1322a of this title shall be paid by the corporation only out of the appropriate fund. The corporation shall make payments under the supplemental program to reimburse multiemployer plans for uncollectible withdrawal liability only out of the fund established under section 1305(e) of this title.

(Pub. L. 93–406, title IV, § 4061, Sept. 2, 1974, 88 Stat. 1029; Pub. L. 96–364, title IV, § 403(f), Sept. 26, 1980, 94 Stat. 1301.)

AMENDMENTS

1980—Pub. L. 96–364 substituted provisions relating to payment of benefits under a single-employer plan terminated under this subchapter subject to limitations and requirements of subtitle B of this subchapter for provisions relating to payment of benefits under a plan terminated under this subchapter subject to limitations and requirements of subtitle B of this subchapter.

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.

§ 1362. Liability for termination of single-employer plans under a distress termination or a termination by corporation

(a) In general

In any case in which a single-employer plan is terminated in a distress termination under section 1341(c) of this title or a termination otherwise instituted by the corporation under section 1342 of this title, any person who is, on the termination date, a contributing sponsor of the plan or a member of such a contributing sponsor's controlled group shall incur liability under this section. The liability under this section of all such persons shall be joint and several. The liability under this section consists of—

(1) liability to the corporation, to the extent provided in subsection (b) of this section, and

(2) liability to the trustee appointed under subsection (b) or (c) of section 1342 of this title, to the extent provided in subsection (c) of this section.

(b) Liability to corporation

(1) Amount of liability

(A) In general

Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) of this section shall be the total amount of the unfunded benefit liabilities (as of the termination date) to all participants and beneficiaries under the plan, together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation.

(B) Special rule in case of subsequent insufficiency

For purposes of subparagraph (A), in any case described in section 1341(c)(3)(C)(ii) of this title, actuarial present values shall be determined as of the date of the notice to the corporation (or the finding by the corporation) described in such section.

(2) Payment of liability

(A) In general

Except as provided in subparagraph (B), the liability to the corporation under this subsection shall be due and payable to the corporation as of the termination date, in cash or securities acceptable to the corporation.

(B) Special rule

Payment of so much of the liability under paragraph (1)(A) as exceeds 30 percent of the collective net worth of all persons described in subsection (a) of this section (including interest) shall be made under commercially reasonable terms prescribed by the corporation. The parties involved shall make a reasonable effort to reach agreement on such commercially reasonable terms. Any such terms prescribed by the corporation shall provide for deferral of 50 percent of any amount of liability otherwise payable for any year under this subparagraph if a person subject to such liability demonstrates to the satisfaction of the corporation that no person subject to such liability has any individual pre-tax profits for such person's fiscal year ending during such year.

(3) Alternative arrangements

The corporation and any person liable under this section may agree to alternative arrangements for the satisfaction of liability to the corporation under this subsection.

(c) Liability to section 1342 trustee

A person described in subsection (a) of this section shall be subject to liability under this subsection to the trustee appointed under subsection (b) or (c) of section 1342 of this title. The liability of such person under this subsection shall consist of—

(1) the outstanding balance of the accumulated funding deficiencies (within the meaning of section 1082(a)(2) of this title and section 412(a) of title 26) of the plan (if any) (which, for purposes of this subparagraph, shall include the amount of any increase in such accumulated funding deficiencies of the plan which would result if all pending applications for waivers of the minimum funding standard under section 1083 of this title or section 412(d) of title 26 and for extensions of the amortization period under section 1084 of this title or section 412(e) of title 26 with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year),

(2) the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date under section 1083 of this title or section 412(d) of title 26 (if any), and

(3) the outstanding balance of the amount of decreases in the minimum funding standard allowed before such date under section 1084 of this title or section 412(e) of title 26 (if any),

together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation. The liability under this subsection shall be due and payable to such trustee as of the termination date, in cash or securities acceptable to such trustee.

(d) Definitions

(1) Collective net worth of persons subject to liability

(A) In general

The collective net worth of persons subject to liability in connection with a plan termination consists of the sum of the individual net worths of all persons who—

(i) have individual net worths which are greater than zero, and

(ii) are (as of the termination date) contributing sponsors of the terminated plan or members of their controlled groups.

(B) Determination of net worth

For purposes of this paragraph, the net worth of a person is—

(i) determined on whatever basis best reflects, in the determination of the corporation, the current status of the person's operations and prospects at the time chosen for determining the net worth of the person, and

(ii) increased by the amount of any transfers of assets made by the person which are determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under title 11 if the person were a debtor in a case under chapter 7 of such title.

(C) Timing of determination

For purposes of this paragraph, determinations of net worth shall be made as of a day chosen by the corporation (during the 120-day period ending with the termination date) and shall be computed without regard to any liability under this section.

(2) Pre-tax profits

The term ''pre-tax profits'' means—

(A) except as provided in subparagraph (B), for any fiscal year of any person, such person's consolidated net income (excluding any extraordinary charges to income and including any extraordinary credits to income) for such fiscal year, as shown on audited financial statements prepared in accordance with generally accepted accounting principles, or

(B) for any fiscal year of an organization described in section 501(c) of title 26, the excess of income over expenses (as such terms are defined for such organizations under generally accepted accounting principles),

before provision for or deduction of Federal or other income tax, any contribution to any single-employer plan of which such person is a contributing sponsor at any time during the period beginning on the termination date and ending with the end of such fiscal year, and any amounts required to be paid for such fiscal year under this section. The corporation may by regulation require such information to be filed on such forms as may be necessary to

determine the existence and amount of such pre-tax profits.

(e) Treatment of substantial cessation of operations

If an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20 percent of the total number of his employees who are participants under a plan established and maintained by him are separated from employment, the employer shall be treated with respect to that plan as if he were a substantial employer under a plan under which more than one employer makes contributions and the provisions of sections 1363, 1364, and 1365 of this title shall apply.

(Pub. L. 93–406, title IV, § 4062, Sept. 2, 1974, 88 Stat. 1029; Pub. L. 95–598, title III, § 321(b), Nov. 6, 1978, 92 Stat. 2678; Pub. L. 96–364, title IV, § 403(g), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99–272, title XI, § 11011(a), (b), Apr. 7, 1986, 100 Stat. 253, 257; Pub. L. 100–203, title IX, § 9312(b)(1), (2)(A), (B)(ii), Dec. 22, 1987, 101 Stat. 1330–361; Pub. L. 101–239, title VII, §§ 7881(f)(2), (10)(A), (B), 7891(a)(1), Dec. 19, 1989, 103 Stat. 2440, 2441, 2445.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 7881(f)(2), inserted ''and'' at end of par. (1), redesignated par. (3) as (2), substituted ''subsection (c)'' for ''subsection (d)'', and struck out former par. (2) which read as follows: ''liability to the trust established pursuant to section 1341(c)(3)(B)(ii) or (iii) of this title or section 1342(i) of this title, to the extent provided in subsection (c) of this section, and''.

Subsec. (b)(2)(B). Pub. L. 101–239, § 7881(f)(10)(A), substituted ''so much of the liability under paragraph (1)(A) as exceeds 30 percent of the collective net worth of all persons described in subsection (a) of this section (including interest)'' for ''the liability under paragraph (1)(A)(ii)''.

Subsecs. (c)(1), (d)(2)(B). Pub. L. 101–239, § 7891(a)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (d)(3). Pub. L. 101–239, § 7881(f)(10)(B), amended Pub. L. 100–203, § 9312(b)(2)(B)(ii), see 1987 Amendment note below.

1987—Subsec. (b)(1)(A). Pub. L. 100–203, § 9312(b)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Except as provided in subparagraph (B), the liability to the corporation of a person described in subsection (a) of this section shall consist of the sum of—

''(i) the lesser of—

''(I) the total amount of unfunded guaranteed benefits (as of the termination date) of all participants and beneficiaries under the plan, or

''(II) 30 percent of the collective net worth of all persons described in subsection (a) of this section, and

''(ii) the excess (if any) of—

''(I) 75 percent of the amount described in clause (i)(I), over

''(II) the amount described in clause (i)(II),

together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation.''

Subsec. (c). Pub. L. 100–203, § 9312(b)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to liability to section 1349 trust.

Subsec. (d). Pub. L. 100–203, § 9312(b)(1)(B), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(3). Pub. L. 100–203, § 9312(b)(2)(B)(ii), as amended by Pub. L. 101–239, § 7881(f)(10)(B), struck out par. (3) which read as follows: ''The liability payment years in connection with a terminated plan consist of the consecutive one-year periods following the last plan year preceding the termination date, excluding the first such year in any case in which the first such year ends less than 180 days after the termination date.''

Subsecs. (e), (f). Pub. L. 100–203, § 9312(b)(1)(B), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1986—Pub. L. 99–272, § 11011(a)(2), substituted ''Liability for termination of single-employer plans under a distress termination or a termination by the corporation'' for ''Liability of employer'' in section catchline.

Subsec. (a). Pub. L. 99–272, § 11011(a)(2), added subsec. (a) specifying persons liable and the nature and extent of liability and struck out former subsec. (a) specifying employers covered.

Subsec. (b). Pub. L. 99–272, § 11011(a)(2), added subsec. (b) relating to liability to corporation and struck out former subsec. (b) relating to amount of liability.

Subsec. (c). Pub. L. 99–272, § 11011(a)(2), added subsec. (c) relating to liability to section 1349 trust and struck out former subsec. (c) relating to method of determining net worth of employer.

Subsec. (d). Pub. L. 99–272, § 11011(a)(2), added subsec. (d) relating to liability to section 1342 trustee and struck out former subsec. (d) relating to corporate reorganizations.

Subsec. (e). Pub. L. 99–272, § 11011(a), added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 99–272, § 11011(a)(1), (b), redesignated former subsec. (e) as (f), and substituted in heading ''Treatment of substantial cessation of operations'' for ''Cessation of operations at one facility''.

1980—Subsec. (a). Pub. L. 96–364 substituted ''single-employee plan'' for ''plan (other than a multiemployer plan)''.

1978—Subsec. (c)(2). Pub. L. 95–598 substituted ''title 11'' and ''a debtor in a case under chapter 7 of such title'' for ''the Bankruptcy Act'' and ''the subject of a proceeding under that Act'', respectively.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(2), (10)(A), (B) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

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

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SPECIAL DELAYED PAYMENT RULE

Section 11012(d) of Pub. L. 99–272 provided that: ''In the case of a distress termination under section 4041(c) of the Employee Retirement Income Security Act of 1974 (as amended by section 11009) [29 U.S.C. 1341(c)] pursuant to a notice of intent to terminate filed before January 1, 1987, no payment of liability otherwise payable as provided in section 4062(c)(2)(B) of such Act [29 U.S.C. 1362(c)(2)(B)] (as amended by this section [Act]) shall be required to be made before January 1, 1989.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1322, 1341, 1342, 1363, 1364, 1367, 1368, 1370, 1398, 1412 of this title; title 26 section 404.

§ 1363. Liability of substantial employer for withdrawal from single-employer plans under multiple controlled groups

(a) Single-employer plans with two or more contributing sponsors

Except as provided in subsection (d) of this section, the plan administrator of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control—

(1) shall notify the corporation of the withdrawal during a plan year of a substantial employer for such plan year from the plan, within 60 days after such withdrawal, and

(2) request that the corporation determine the liability of all persons with respect to the withdrawal of the substantial employer.

The corporation shall, as soon as practicable thereafter, determine whether there is liability resulting from the withdrawal of the substantial employer and notify the liable persons of such liability.

(b) Computation of liability

Except as provided in subsection (c) of this section, any one or more contributing sponsors who withdraw, during a plan year for which they constitute a substantial employer, from a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control, shall, upon notification of such contributing sponsors by the corporation as provided by subsection (a) of this section, be liable, together with the members of their controlled groups, to the corporation in accordance with the provisions of section 1362 of this title and this section. The amount of liability shall be computed on the basis of an amount determined by the corporation to be the amount described in section 1362 of this title for the entire plan, as if the plan had been terminated by the corporation on the date of the withdrawal referred to in subsection (a)(1) of this section multiplied by a fraction—

(1) the numerator of which is the total amount required to be contributed to the plan by such contributing sponsors for the last 5 years ending prior to the withdrawal, and

(2) the denominator of which is the total amount required to be contributed to the plan by all contributing sponsors for such last 5 years.

In addition to and in lieu of the manner prescribed in the preceding sentence, the corporation may also determine such liability on any other equitable basis prescribed by the corporation in regulations. Any amount collected by the corporation under this subsection shall be held in escrow subject to disposition in accordance with the provisions of paragraphs (2) and (3) of subsection (c) of this section.

(c) Bond in lieu of payment of liability; 5-year termination period

(1) In lieu of payment of a contributing sponsor's liability under this section, the contributing sponsor may be required to furnish a bond to the corporation in an amount not exceeding 150 percent of his liability to insure payment of his liability under this section. The bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury under sections 9304–9308 of title 31. Any such bond shall be in a form or of a type approved by the Secretary including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(2) If the plan is not terminated under section 1341(c) or 1342 of this title within the 5-year period commencing on the day of withdrawal, the liability is abated and any payment held in escrow shall be refunded without interest (or the bond cancelled) in accordance with bylaws or rules prescribed by the corporation.

(3) If the plan terminates under section 1341(c) or 1342 of this title within the 5-year period commencing on the day of withdrawal, the corporation shall—

(A) demand payment or realize on the bond and hold such amount in escrow for the benefit of the plan;

(B) treat any escrowed payments under this section as if they were plan assets and apply them in a manner consistent with this subtitle; and

(C) refund any amount to the contributing sponsor which is not required to meet any obligation of the corporation with respect to the plan.

(d) Alternate appropriate procedure

The provisions of this subsection apply in the case of a withdrawal described in subsection (a) of this section, and the provisions of subsections (b) and (c) of this section shall not apply, if the corporation determines that the procedure provided for under this subsection is consistent with the purposes of this section and section 1364 of this title and is more appropriate in the particular case. Upon a showing by the plan administrator of the plan that the withdrawal from the plan by one or more contributing sponsors has resulted, or will result, in a significant reduction in the amount of aggregate contributions to or under the plan, the corporation may—

(1) require the plan fund to be equitable allocated between those participants no longer working in covered service under the plan as a result of the withdrawal, and those partici-

pants who remain in covered service under the plan;

(2) treat that portion of the plan funds allocable under paragraph (1) to participants no longer in covered service as a plan terminated under section 1342 of this title; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a separate plan.

(e) Indemnity agreement

The corporation is authorized to waive the application of the provisions of subsections (b), (c), and (d) of this section whenever it determines that there is an indemnity agreement in effect among contributing sponsors under the plan which is adequate to satisfy the purposes of this section and of section 1364 of this title.

(Pub. L. 93–406, title IV, § 4063, Sept. 2, 1974, 88 Stat. 1030; Pub. L. 96–364, title IV, § 403(h), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99–272, title XI, § 11016(a)(5)(A), Apr. 7, 1986, 100 Stat. 268.)

CODIFICATION

In subsec. (c)(1), ''sections 9304–9308 of title 31'' substituted for ''sections 6 through 13 of title 6, United States Code'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Pub. L. 99–272, § 11016(a)(5)(A)(vi), inserted ''from single-employer plans under multiple controlled groups'' in section catchline.

Subsec. (a). Pub. L. 99–272, § 11016(a)(5)(A)(i), in introductory par., substituted ''single-employer plan which has two or more contributing sponsors at least two of whom are not under common control'' for ''plan under which more than one employer makes contributions (other than a multiemployer plan)'', in par. (1), substituted ''withdrawal during a plan year of a substantial employer for such plan year'' for ''withdrawal of a substantial employer'', in par. (2), substituted ''of all persons with respect to the withdrawal of the substantial employer'' for ''of such employer under this subtitle with respect to such withdrawal'', and in concluding provision substituted ''whether there is liability resulting from the withdrawal of the substantial employer'' for ''whether such employer is liable for any amount under this subtitle with respect to the withdrawal'' and ''notify the liable persons'' for ''notify such employer''.

Subsec. (b). Pub. L. 99–272, § 11016(a)(5)(A)(ii), in introductory par., substituted ''any one or more contributing sponsors who withdraw, during a plan year for which they constitute a substantial employer, from a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control, shall, upon notification of such contributing sponsors by the corporation as provided by subsection (a) of this section, be liable, together with the members of their controlled groups,'' for ''an employer who withdraws from a plan to which section 1321 of this title applies, during a plan year for which he was a substantial employer, and who is notified by the corporation as provided by subsection (a) of this section, shall be liable'', ''amount of liability'' for ''amount of such employer's liability'', and ''the withdrawal referred to in subsection (a)(1) of this section'' for ''the employer's withdrawal'', in par. (1), substituted ''such contributing sponsors'' for ''such employer'', in par. (2), substituted ''all contributing sponsors'' for ''all employers'', and in concluding provision substituted ''such liability'' for ''the liability of each such employer''.

Subsec. (c)(1). Pub. L. 99–272, § 11016(a)(5)(A)(iii)(I), substituted ''of a contributing sponsor's liability under this section, the contributing sponsor'' for ''of his liability under this section the employer''.

Subsec. (c)(2). Pub. L. 99–272, § 11016(a)(5)(A)(iii)(II), inserted ''under section 1341(c) or 1342 of this title'' and substituted ''liability is'' for ''liability of such employer is'' and ''(or the bond cancelled)'' for ''to the employer (or his bond cancelled)''.

Subsec. (c)(3). Pub. L. 99–272, § 11016(a)(5)(A)(iii)(III), in introductory par., inserted ''under section 1341(c) or 1342 of this title'' and, in subpar. (C), substituted ''contributing sponsor'' for ''employer''.

Subsec. (d). Pub. L. 99–272, § 11016(a)(5)(A)(iv), in introductory par., substituted ''of the plan that the withdrawal from the plan by one or more contributing sponsors'' for ''of a plan (other than a multiemployer plan) that the withdrawal from the plan by any employer or employers'' and struck out ''by employers'' after ''contributions to or under the plan'', in par. (1), substituted ''the withdrawal'' for ''their employer's withdrawal'', and in par. (2), substituted ''plan terminated under section 1342 of this title'' for ''termination''.

Subsec. (e). Pub. L. 99–272, § 11016(a)(5)(A)(v), struck out ''to any employer or plan administrator'' before ''whenever it determines'' and substituted ''contributing sponsors'' for ''all other employers''.

1980—Subsecs. (a), (d). Pub. L. 96–364 inserted provisions excepting a multiemployer plan.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1322, 1342, 1362, 1365, 1367, 1368, 1370, 1461 of this title; title 26 section 404.

§ 1364. Liability on termination of single-employer plans under multiple controlled groups

(a) This section applies to all contributing sponsors of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control at the time such plan is terminated under section 1341(c) or 1342 of this title, or who, at any time within the 5 plan years preceding the date of termination, made contributions under the plan.

(b) The corporation shall determine the liability with respect to each contributing sponsor and each member of its controlled group in a manner consistent with section 1362 of this title, except that the amount of liability determined under section 1362(b)(1) of this title with respect to the entire plan shall be allocated to each controlled group by multiplying such amount by a fraction—

(1) the numerator of which is the amount required to be contributed to the plan for the last 5 plan years ending prior to the termination date by persons in such controlled group as contributing sponsors, and

(2) the denominator of which is the total amount required to be contributed to the plan for such last 5 plan years by all persons as contributing sponsors,

and section 1368(a) of this title shall be applied separately with respect to each controlled

group. The corporation may also determine the liability of each such contributing sponsor and member of its controlled group on any other equitable basis prescribed by the corporation in regulations.

(Pub. L. 93–406, title IV, § 4064, Sept. 2, 1974, 88 Stat. 1031; Pub. L. 96–364, title IV, § 403(i), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99–272, title XI, § 11016(a)(5)(B), Apr. 7, 1986, 100 Stat. 270; Pub. L. 100–203, title IX, § 9312(b)(2)(C)(i), Dec. 22, 1987, 101 Stat. 1330–361; Pub. L. 101–239, title VII, § 7881(f)(3)(A), Dec. 19, 1989, 103 Stat. 2440.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted ''section 1368(a)'' for ''clauses (i)(II) and (ii) of section 1362(b)(1)(A)''.

1987—Subsec. (b). Pub. L. 100–203 amended first sentence generally. Prior to amendment, first sentence read as follows: ''The corporation shall determine the liability with respect to each contributing sponsor and each member of its controlled group in a manner consistent with section 1362 of this title, except that—

''(1) the amount of the liability determined under section 1362(b)(1) of this title with respect to the entire plan—

''(A) shall be determined without regard to clauses (i)(II) and (ii) of section 1362(b)(1)(A) of this title, and

''(B) shall be allocated to each controlled group by multiplying such amount by a fraction—

''(i) the numerator of which is the amount required to be contributed to the plan for the last 5 plan years ending prior to the termination date by persons in such controlled group as contributing sponsors, and

''(ii) the denominator of which is the total amount required to be contributed to the plan for such last 5 plan years by all persons as contributing sponsors,

and clauses (i)(II) and (ii) of section 1362(b)(1)(A) of this title shall be applied separately with respect to each such controlled group, and

''(2) the amount of the liability determined under section 1362(c)(1) of this title with respect to the entire plan shall be allocated to each controlled group by multiplying such amount by the fraction described in paragraph (1)(B) in connection with such controlled group.''

1986—Pub. L. 99–272, § 11016(a)(5)(B)(iii), substituted ''on termination of single-employer plans under multiple controlled groups'' for ''of employers on termination of plan maintained by more than one employer'' in section catchline.

Subsec. (a). Pub. L. 99–272, § 11016(a)(5)(B)(i), substituted ''all contributing sponsors of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control'' for ''all employers who maintain a plan under which more than one employer makes contributions (other than a multiemployer plan)'' and inserted ''under section 1341(c) or 1342 of this title'' after ''terminated''.

Subsec. (b). Pub. L. 99–272, § 11016(a)(5)(B)(ii), amended subsec. (b) generally, substituting reference to each contributing sponsor and each member of its controlled group for reference to each employer of a plan maintained by more than one employer and inserted provisions that liability determined under section 1362(b)(1) of this title with respect to the entire plan be determined without regard to cls. (i)(II) and (ii) of section 1362(b)(1)(A) of this title and that the amount of liability determined under section 1362(c)(1) of this title with respect to the entire plan be allocated to each controlled group by multiplying such amount by the fraction described in par. (1)(B) in connection with such controlled group.

1980—Subsec. (a). Pub. L. 96–364 inserted provisions excepting a multiemployer plan.

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 plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1322, 1342, 1362, 1363, 1367, 1368, 1370, 1412 of this title; title 26 section 404.

§ 1365. Annual report of plan administrator

For each plan year for which section 1321 of this title applies to a plan, the plan administrator shall file with the corporation, on a form prescribed by the corporation, an annual report which identifies the plan and plan administrator and which includes—

(1) a copy of each notification required under section 1363 of this title with respect to such year,

(2) a statement disclosing whether any reportable event (described in section 1343(b)[1] of this title) occurred during the plan year except to the extent the corporation waives such requirement, and

(3) in the case of a multiemployer plan, information with respect to such plan which the corporation determines is necessary for the enforcement of subtitle E of this subchapter and requires by regulation, which may include—

(A) a statement certified by the plan's enrolled actuary of—

(i) the value of all vested benefits under the plan as of the end of the plan year, and

(ii) the value of the plan's assets as of the end of the plan year;

(B) a statement certified by the plan sponsor of each claim for outstanding withdrawal liability (within the meaning of section 1301(a)(12) of this title) and its value as of the end of that plan year and as of the end of the preceding plan year; and

(C) the number of employers having an obligation to contribute to the plan and the number of employers required to make withdrawal liability payments.

[1] See References in Text note below.

The report shall be filed within 6 months after the close of the plan year to which it relates. The corporation shall cooperate with the Secretary of the Treasury and the Secretary of Labor in an endeavor to coordinate the timing and content, and possibly obtain the combination, of reports under this section with reports required to be made by plan administrators to such Secretaries.

(Pub. L. 93–406, title IV, § 4065, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 96–364, title I, § 106, Sept. 26, 1980, 94 Stat. 1266.)

REFERENCES IN TEXT

Section 1343(b) of this title, referred to in par. (2), was redesignated section 1343(c) of this title and a new section 1343(b) was added by Pub. L. 103–465, title VII, § 771(b), Dec. 8, 1994, 108 Stat. 5042.

AMENDMENTS

1980—Pub. L. 96–364 inserted provisions in par. (2) respecting waiver by corporation and added par. (3).

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1362 of this title.

§ 1366. Annual notification to substantial employers

The plan administrator of each single-employer plan which has at least two contributing sponsors at least two of whom are not under common control shall notify, within 6 months after the close of each plan year, any contributing sponsor of the plan who is described in section 1301(a)(2) of this title that such contributing sponsor (alone or together with members of such contributing sponsor's controlled group) constitutes a substantial employer for that year.

(Pub. L. 93–406, title IV, § 4066, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 96–364, title IV, § 403(j), Sept. 26, 1980, 94 Stat. 1301; Pub. L. 99–272, title XI, § 11016(a)(5)(C), Apr. 7, 1986, 100 Stat. 271; Pub. L. 101–239, title VII, § 7893(g)(2), Dec. 19, 1989, 103 Stat. 2447.)

AMENDMENTS

1989—Pub. L. 101–239 inserted ''any'' before ''contributing sponsor of the plan''.

1986—Pub. L. 99–272 substituted ''each single-employer plan which has at least two contributing sponsors at least two of whom are not under common control'' for ''each plan under which contributions are made by more than one employer (other than a multiemployer plan)'', ''contributing sponsor of the plan'' for ''any employer making contributions under that plan'', and ''that such contributing sponsor (alone or together with members of such contributing sponsor's controlled group) constitutes a substantial employer'' for ''that he is a substantial employer''.

1980—Pub. L. 96–364 inserted provisions excepting a multiemployer plan.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101–239, set out as a note under section 1002 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.

§ 1367. Recovery of liability for plan termination

The corporation is authorized to make arrangements with contributing sponsors and members of their controlled groups who are or may become liable under section 1362, 1363, or 1364 of this title for payment of their liability, including arrangements for deferred payment of amounts of liability to the corporation accruing as of the termination date on such terms and for such periods as the corporation deems equitable and appropriate.

(Pub. L. 93–406, title IV, § 4067, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 99–272, title XI, § 11016(a)(6)(A), Apr. 7, 1986, 100 Stat. 271; Pub. L. 100–203, title IX, § 9313(b)(6), Dec. 22, 1987, 101 Stat. 1330–366; Pub. L. 101–239, title VII, § 7893(g)(3), Dec. 19, 1989, 103 Stat. 2448.)

AMENDMENTS

1989—Pub. L. 101–239 amended directory language of Pub. L. 99–272, § 11016(a)(6)(A)(ii), see 1986 Amendment note below.

1987—Pub. L. 100–203 inserted ''or may become'' after ''who are''.

1986—Pub. L. 99–272, § 11016(a)(6)(A)(i), (iii), substituted ''of liability'' for ''of employer liability'' in section catchline and inserted ''of amounts of liability to the corporation accruing as of the termination date'' in text.

Pub. L. 99–272, § 11016(a)(6)(A)(ii), as amended by Pub. L. 101–239, substituted ''contributing sponsors and members of their controlled groups'' for ''employers''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) 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 plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, see section 9313(c) of Pub. L. 100–203, set out as a note under section 1301 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.

§ 1368. Lien for liability

(a) Creation of lien

If any person liable to the corporation under section 1362, 1363, or 1364 of this title neglects or refuses to pay, after demand, the amount of such liability (including interest), there shall be a lien in favor of the corporation in the amount of

such liability (including interest) upon all property and rights to property, whether real or personal, belonging to such person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 1362(a) of this title[1]

(b) Term of lien

The lien imposed by subsection (a) of this section arises on the date of termination of a plan, and continues until the liability imposed under section 1362, 1363, or 1364 of this title is satisfied or becomes unenforceable by reason of lapse of time.

(c) Priority

(1) Except as otherwise provided under this section, the priority of a lien imposed under subsection (a) of this section shall be determined in the same manner as under section 6323 of title 26 (as in effect on April 7, 1986). Such section 6323 shall be applied for purposes of this section by disregarding subsection (g)(4) and by substituting—

(A) ''lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1368]'' for ''lien imposed by section 6321'' each place it appears in subsections (a), (b), (c)(1), (c)(4)(B), (d), (e), and (h)(5);

(B) ''the corporation'' for ''the Secretary'' in subsections (a) and (b)(9)(C);

(C) ''the payment of the amount on which the section 4068(a) lien is based'' for ''the collection of any tax under this title'' in subsection (b)(3);

(D) ''a person whose property is subject to the lien'' for ''the taxpayer'' in subsections (b)(8), (c)(2)(A)(i) (the first place it appears), (c)(2)(A)(ii), (c)(2)(B), (c)(4)(B), and (c)(4)(C) (in the matter preceding clause (i));

(E) ''such person'' for ''the taxpayer'' in subsections (c)(2)(A)(i) (the second place it appears) and (c)(4)(C)(ii);

(F) ''payment of the loan value of the amount on which the lien is based is made to the corporation'' for ''satisfaction of a levy pursuant to section 6332(b)'' in subsection (b)(9)(C);

(G) ''section 4068(a) lien'' for ''tax lien'' each place it appears in subsections (c)(1), (c)(2)(A), (c)(2)(B), (c)(3)(B)(iii), (c)(4)(B), (d), and (h)(5); and

(H) ''the date on which the lien is first filed'' for ''the date of the assessment of the tax'' in subsection (g)(3)(A).

(2) In a case under title 11 or in insolvency proceedings, the lien imposed under subsection (a) of this section shall be treated in the same manner as a tax due and owing to the United States for purposes of title 11 or section 3713 of title 31.

(3) For purposes of applying section 6323(a) of title 26 to determine the priority between the lien imposed under subsection (a) of this section and a Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(4) For purposes of this subsection, notice of the lien imposed by subsection (a) of this section shall be filed in the same manner as under section 6323(f) and (g) of title 26.

(d) Civil action; limitation period

(1) In any case where there has been a refusal or neglect to pay the liability imposed under section 1362, 1363, or 1364 of this title, the corporation may bring civil action in a district court of the United States to enforce the lien of the corporation under this section with respect to such liability or to subject any property, of whatever nature, of the liable person, or in which he has any right, title, or interest to the payment of such liability.

(2) The liability imposed by section 1362, 1363, or 1364 of this title may be collected by a proceeding in court if the proceeding is commenced within 6 years after the date upon which the plan was terminated or prior to the expiration of any period for collection agreed upon in writing by the corporation and the liable person before the expiration of such 6-year period. The period of limitations provided under this paragraph shall be suspended for the period the assets of the liable person are in the control or custody of any court of the United States, or of any State, or of the District of Columbia, and for 6 months thereafter, and for any period during which the liable person is outside the United States if such period of absence is for a continuous period of at least 6 months.

(e) Release or subordination

If the corporation determines that release of the lien or subordination of the lien to any other creditor of the liable person would not adversely affect the collection of the liability imposed under section 1362, 1363, or 1364 of this title, or that the amount realizable by the corporation from the property to which the lien attaches will ultimately be increased by such release or subordination, and that the ultimate collection of the liability will be facilitated by such release or subordination, the corporation may issue a certificate of release or subordination of the lien with respect to such property, or any part thereof.

(f) Definitions

For purposes of this section—

(1) The collective net worth of persons subject to liability in connection with a plan termination shall be determined as provided in section 1362(d)(1) of this title.

(2) The term ''pre-tax profits'' has the meaning provided in section 1362(d)(2) of this title.

(Pub. L. 93–406, title IV, § 4068, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 95–598, title III, § 321(c), Nov. 6, 1978, 92 Stat. 2678; Pub. L. 99–272, title XI, § 11016(a)(6)(B), (c)(14), Apr. 7, 1986, 100 Stat. 271, 275; Pub. L. 100–203, title IX, § 9312(b)(2)(B)(i), (C)(ii), Dec. 22, 1987, 101 Stat. 1330–361, 1330–362; Pub. L. 101–239, title VII, §§ 7881(f)(3)(B), (10)(C), (12), 7891(a)(1), 7894(g)(4)(A), Dec. 19, 1989, 103 Stat. 2440, 2441, 2445, 2451.)

CODIFICATION

A former subsec. (f) of this section was originally subsec. (e) of section 1362 of this title and was redesignated as subsec. (f) of this section by Pub. L. 100–203, § 9312(b)(2)(B)(ii). Subsequently, Pub. L. 100–203, § 9312(b)(2)(B)(ii), was amended generally by Pub. L.

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

101–239, § 7881(f)(10)(B), and, as so amended, no longer contains language redesignating subsec. (e) of section 1362 as subsec. (f) of this section. As a result of that amendment, the transfer of subsec. (e) of section 1362 to subsec. (f) of this section was rescinded.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 7881(f)(12), struck out ''to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 1362(a) of this title'' after ''the amount of such liability'' and substituted ''in the amount of such liability (including interest) upon all property and rights to property, whether real or personal, belonging to such person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 1362(a) of this title'' for ''to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 1362(a) of this title upon all property and rights to property, whether real or personal, belonging to such person.''

Pub. L. 101–239, § 7881(f)(3)(B), struck out at end ''The preceding provisions of this subsection shall be applied in a manner consistent with the provisions of section 1364(d) of this title relating to treatment of multiple controlled groups.''

Subsec. (c). Pub. L. 101–239, § 7891(a)(1), in pars. (1), (3), and (4), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (c)(2). Pub. L. 101–239, § 7894(g)(4)(A), substituted ''section 3713 of title 31'' for ''section 3466 of the Revised Statutes (31 U.S.C. 191)''.

Subsec. (f). Pub. L. 101–239, § 7881(f)(10)(C), added subsec. (f).

1987—Subsec. (a). Pub. L. 100–203, § 9312(b)(2)(B)(i), substituted ''to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 1362(a) of this title'' for ''to the extent of an amount equal to the unpaid amount described in section 1362(b)(1)(A)(i) of this title'' in two places.

Pub. L. 100–203, § 9312(b)(2)(C)(ii), inserted at end ''The preceding provisions of this subsection shall be applied in a manner consistent with the provisions of section 1364(d) of this title relating to treatment of multiple controlled groups.''

1986—Pub. L. 99–272, § 11016(a)(6)(B)(i), struck out ''of employer'' after ''liability'' in section catchline.

Subsec. (a). Pub. L. 99–272, § 11016(a)(6)(B)(ii), substituted ''person liable'' for ''employer or employers liable'', ''neglects or refuses'' for ''neglect or refuse'', and ''such person'' for ''such employer or employers'' and inserted ''to the extent of an amount equal to the unpaid amount described in section 1362(b)(1)(A)(i) of this title'' in two places.

Subsec. (c)(1). Pub. L. 99–272, § 11016(a)(6)(B)(vi), substituted par. (1) for former par. (1) which read as follows: ''Except as otherwise provided under this section, the priority of the lien imposed under subsection (a) of this section shall be determined in the same manner as under section 6323 of title 26. Such section 6323 shall be applied by substituting 'lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974' for 'lien imposed by section 6321'; 'corporation' for 'Secretary or his delegate'; 'employer liability lien' for 'tax lien'; 'employer' for 'taxpayer'; 'lien arising under section 4068(a) of the Employee Retirement Income Security Act of 1974' for 'assessment of the tax'; and 'payment of the loan value is made to the corporation' for 'satisfaction of a levy pursuant to section 6332(b)'; each place such terms appear.''

Subsec. (d)(1), (2). Pub. L. 99–272, § 11016(a)(6)(B)(iii), (iv), substituted ''liable person'' for ''employer'' wherever appearing.

Subsec. (e). Pub. L. 99–272, § 11016(a)(6)(B)(v), (c)(14), struck out '', with the consent of the board of directors,'' after ''corporation determines'' and substituted ''liable person'' for ''employer or employers''.

1978—Subsec. (c)(2). Pub. L. 95–598 substituted ''a case under title 11 or in'' and ''title 11'' for ''the case of bankruptcy or'' and ''the Bankruptcy Act''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(3)(B), (10)(C), (12) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of Title 26, Internal Revenue Code.

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

Section 7894(g)(4)(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 3 of Public Law 97–258.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100–203, as amended, set out as a note under section 1301 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 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1082, 1364, 1413 of this title; title 26 section 412.

§ 1369. Treatment of transactions to evade liability; effect of corporate reorganization

(a) Treatment of transactions to evade liability

If a principal purpose of any person in entering into any transaction is to evade liability to which such person would be subject under this subtitle and the transaction becomes effective within five years before the termination date of the termination on which such liability would be based, then such person and the members of such person's controlled group (determined as of the termination date) shall be subject to liability under this subtitle in connection with such termination as if such person were a contributing sponsor of the terminated plan as of the termination date. This subsection shall not cause any person to be liable under this subtitle in connection with such plan termination for any increases or improvements in the benefits provided under the plan which are adopted after the date on which the transaction referred to in the preceding sentence becomes effective.

(b) Effect of corporate reorganization

For purposes of this subtitle, the following rules apply in the case of certain corporate reorganizations:

(1) Change of identity, form, etc.

If a person ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the person to whom this subtitle applies.

(2) Liquidation into parent corporation

If a person ceases to exist by reason of liquidation into a parent corporation, the parent corporation shall be treated as the person to whom this subtitle applies.

(3) Merger, consolidation, or division

If a person ceases to exist by reason of a merger, consolidation, or division, the successor corporation or corporations shall be treated as the person to whom this subtitle applies.

(Pub. L. 93–406, title IV, § 4069, as added Pub. L. 99–272, title XI, § 11013(a), Apr. 7, 1986, 100 Stat. 260.)

EFFECTIVE DATE

Section 11013(b) of Pub. L. 99–272 provided that: ''Section 4069(a) of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)) [subsec. (a) of this section] shall apply with respect to transactions becoming effective on or after January 1, 1986.''

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1370, 1398 of this title.

§ 1370. Enforcement authority relating to terminations of single-employer plans

(a) In general

Any person who is with respect to a single-employer plan a fiduciary, contributing sponsor, member of a contributing sponsor's controlled group, participant, or beneficiary, and is adversely affected by an act or practice of any party (other than the corporation) in violation of any provision of section 1341, 1342, 1362, 1363, 1364, or 1369 of this title, or who is an employee organization representing such a participant or beneficiary so adversely affected for purposes of collective bargaining with respect to such plan, may bring an action—

(1) to enjoin such act or practice, or

(2) to obtain other appropriate equitable relief (A) to redress such violation or (B) to enforce such provision.

(b) Status of plan as party to action and with respect to legal process

A single-employer plan may be sued under this section as an entity. Service of summons, subpoena, or other legal process of a court upon a trustee or an administrator of a single-employer plan in such trustee's or administrator's capacity as such shall constitute service upon the plan. If a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon any contributing sponsor of the plan shall constitute such service. Any money judgment under this section against a single-employer plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in such person's individual capacity.

(c) Jurisdiction and venue

The district courts of the United States shall have exclusive jurisdiction of civil actions under this section. Such actions may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found. The district courts of the United States shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(d) Right of corporation to intervene

A copy of the complaint or notice of appeal in any action under this section shall be served upon the corporation by certified mail. The corporation shall have the right in its discretion to intervene in any action.

(e) Awards of costs and expenses

(1) General rule

In any action brought under this section, the court in its discretion may award all or a portion of the costs and expenses incurred in connection with such action, including reasonable attorney's fees, to any party who prevails or substantially prevails in such action.

(2) Exemption for plans

Notwithstanding the preceding provisions of this subsection, no plan shall be required in any action to pay any costs and expenses (including attorney's fees).

(f) Limitation on actions

(1) In general

Except as provided in paragraph (3), an action under this section may not be brought after the later of—

(A) 6 years after the date on which the cause of action arose, or

(B) 3 years after the applicable date specified in paragraph (2).

(2) Applicable date

(A) General rule

Except as provided in subparagraph (B), the applicable date specified in this paragraph is the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

(B) Special rule for plaintiffs who are fiduciaries

In the case of a plaintiff who is a fiduciary bringing the action in the exercise of fiduciary duties, the applicable date specified in this paragraph is the date on which the plaintiff became a fiduciary with respect to the plan if such date is later than the date described in subparagraph (A).

(3) Cases of fraud or concealment

In the case of fraud or concealment, the period described in paragraph (1)(B) shall be ex-

tended to 6 years after the applicable date specified in paragraph (2).

(Pub. L. 93–406, title IV, § 4070, as added Pub. L. 99–272, title XI, § 11014(a), Apr. 7, 1986, 100 Stat. 261; amended Pub. L. 101–239, title VII, § 7881(f)(8), Dec. 19, 1989, 103 Stat. 2440.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239 struck out ''1349,'' after ''section 1341, 1342,''.

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

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

§ 1371. Penalty for failure to timely provide required information

The corporation may assess a penalty, payable to the corporation, against any person who fails to provide any notice or other material information required under this subtitle, subtitle A, B, or C of this subchapter, as[1] section 1082(f)(4) or 1085b(e) of this title, or any regulations prescribed under any such subtitle or such section, within the applicable time limit specified therein. Such penalty shall not exceed $1,000 for each day for which such failure continues.

(Pub. L. 93–406, title IV, § 4071, as added Pub. L. 100–203, title IX, § 9314(c)(1), Dec. 22, 1987, 101 Stat. 1330–367; amended Pub. L. 101–239, title VII, § 7881(g)(8), (i)(3)(B), Dec. 19, 1989, 103 Stat. 2442.)

AMENDMENTS

1989—Pub. L. 101–239, § 7881(i)(3)(B), substituted '', subtitle A, B, or C of this subchapter, as section 1082(f)(4) or 1085b(e) of this title'' for ''or subtitle A, B, or C'' and inserted ''or such section'' after ''such subtitle''.

Pub. L. 101–239, § 7881(g)(8), made clarifying amendment to directory language of Pub. L. 100–203, § 9314(c)(1), resulting in 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 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.

SUBTITLE E—SPECIAL PROVISIONS FOR MULTIEMPLOYER PLANS

AMENDMENTS

1980—Pub. L. 96–364, title I, § 104, Sept. 26, 1980, 94 Stat. 1217, added subtitle heading. Former subtitle E heading ''Effective Date; Special Rules'' was struck out. See subtitle F of this subchapter.

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1301, 1342, 1361, 1365 of this title; title 26 section 9721.

[1] So in original. Probably should be ''or''.

PART 1—EMPLOYER WITHDRAWALS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1082, 1103, 1108, 1301, 1303, 1342, 1415, 1424, 1461 of this title; title 26 sections 404, 412, 413, 418C, 4975.

§ 1381. Withdrawal liability established; criteria and definitions

(a) If an employer withdraws from a multiemployer plan in a complete withdrawal or a partial withdrawal, then the employer is liable to the plan in the amount determined under this part to be the withdrawal liability.

(b) For purposes of subsection (a) of this section—

(1) The withdrawal liability of an employer to a plan is the amount determined under section 1391 of this title to be the allocable amount of unfunded vested benefits, adjusted—

(A) first, by any de minimis reduction applicable under section 1389 of this title,

(B) next, in the case of a partial withdrawal, in accordance with section 1386 of this title,

(C) then, to the extent necessary to reflect the limitation on annual payments under section 1399(c)(1)(B) of this title, and

(D) finally, in accordance with section 1405 of this title.

(2) The term ''complete withdrawal'' means a complete withdrawal described in section 1383 of this title.

(3) The term ''partial withdrawal'' means a partial withdrawal described in section 1385 of this title.

(Pub. L. 93–406, title IV, § 4201, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1217.)

PRIOR PROVISIONS

A prior section 1381, Pub. L. 93–406, title IV, § 4402, formerly § 4082, Sept. 2, 1974, 88 Stat. 1034; S.Res. 4, Feb. 4, 1977; Pub. L. 95–214, § 1, Dec. 19, 1977, 91 Stat. 1501; S.Res. 30, Mar. 7, 1979; Pub. L. 96–24, June 19, 1979, 93 Stat. 70; Pub. L. 96–239, § 1, Apr. 30, 1980, 94 Stat. 341; Pub. L. 96–293, § 1, June 30, 1980, 94 Stat. 610, renumbered § 4402 and amended Pub. L. 96–364, title I, § 108(a)-(c)(1), Sept. 26, 1980, 94 Stat. 1267, relating to the effective dates and special rules for this subchapter, was transferred to section 1461 of this title.

EFFECTIVE DATE

Part effective Sept. 26, 1980, see section 1461(e)(2) of this title.

ELIMINATION OF RETROACTIVE APPLICATION OF AMENDMENTS MADE BY MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980, PUB. L. 96–364

Pub. L. 98–369, div. A, title V, § 558(a), (c), (d), July 18, 1984, 98 Stat. 899, provided that:

''(a) IN GENERAL.—

''(1) LIABILITY.—Any withdrawal liability incurred by an employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.) as a result of the complete or partial withdrawal of such employer from a multiemployer plan before September 26, 1980, shall be void.

''(2) REFUNDS.—Any amounts paid by an employer to a plan sponsor as a result of such withdrawal liability shall be refunded by the plan sponsor to the

employer with interest (in accordance with section 401(a)(2) [26 U.S.C. 401(a)(2)]), less a reasonable amount for administrative expenses incurred by the plan sponsor (other than legal expenses incurred with respect to the plan) in calculating, assessing, and refunding such amounts.

''(c) NO INCREASE IN LIABILITY.—The amendments made by this section [amending sections 1391, 1397, 1399, 1415 and 1461 of this title and provisions set out as a note under section 1385 of this title] shall not be construed to increase the liability incurred by any employer pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.), as in effect immediately before the amendments made by subsection (b) [amending sections 1391, 1397, 1399, 1415, and 1461 of this title and provisions set out as a note under section 1385 of this title], as a result of the complete or partial withdrawal of such employer from a multiemployer plan prior to September 26, 1980.

''(d) SPECIAL RULE FOR CERTAIN BINDING AGREEMENTS.—In the case of an employer who, on September 26, 1980, has a binding agreement to withdraw from a multiemployer plan, subsection (a)(1) shall be applied by substituting 'December 31, 1980' for 'September 26, 1980'.''

APPLICABILITY TO CERTAIN EMPLOYERS WITHDRAWN BEFORE SEPT. 26, 1980, FROM MULTIEMPLOYER PLAN COVERING EMPLOYEES IN SEAGOING INDUSTRY; EFFECTIVE DATE, COVERAGE, ETC.

Section 108(c)(4) of Pub. L. 96–364 provided that: ''In the case of an employer who withdrew before the date of enactment of this Act [Sept. 26, 1980] from a multiemployer plan covering employees in the seagoing industry (as determined by the corporation), sections 4201 through 4219 of the Employee Retirement Income Security Act of 1974, as added by this Act, [section 1381 through 1399 of this title], are effective as of May 3, 1979. For the purpose of applying section 4217 [section 1397 of this title] for purposes of the preceding sentence, the date 'May 2, 1979,' shall be substituted for 'April 28, 1980,' and the date 'May 3, 1979' shall be substituted for 'April 29, 1980'. For purposes of this paragraph, terms which are used in title IV of the Employee Retirement Income Security Act of 1974 [this subchapter], or in regulations prescribed under that title, and which are used in the preceding sentence have the same meaning as when used in that Act [see Short Title note set out under sections 1001 of this title] or those regulations. For purposes of this paragraph, the term 'employer' includes only a substantial employer covering employees in the seagoing industry (as so determined) in connection with ports on the West Coast of the United States, but does not include an employer who withdrew from a plan because of a change in the collective bargaining representative.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1415, 1422 of this title.

§ 1382. Determination and collection of liability; notification of employer

When an employer withdraws from a multiemployer plan, the plan sponsor, in accordance with this part, shall—

(1) determine the amount of the employer's withdrawal liability,

(2) notify the employer of the amount of the withdrawal liability, and

(3) collect the amount of the withdrawal liability from the employer.

(Pub. L. 93–406, title IV, § 4202, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1218.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1383. Complete withdrawal

(a) Determinative factors

For purposes of this part, a complete withdrawal from a multiemployer plan occurs when an employer—

(1) permanently ceases to have an obligation to contribute under the plan, or

(2) permanently ceases all covered operations under the plan.

(b) Building and construction industry

(1) Notwithstanding subsection (a) of this section, in the case of an employer that has an obligation to contribute under a plan for work performed in the building and construction industry, a complete withdrawal occurs only as described in paragraph (2), if—

(A) substantially all the employees with respect to whom the employer has an obligation to contribute under the plan perform work in the building and construction industry, and

(B) the plan—

(i) primarily covers employees in the building and construction industry, or

(ii) is amended to provide that this subsection applies to employers described in this paragraph.

(2) A withdrawal occurs under this paragraph if—

(A) an employer ceases to have an obligation to contribute under the plan, and

(B) the employer—

(i) continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or

(ii) resumes such work within 5 years after the date on which the obligation to contribute under the plan ceases, and does not renew the obligation at the time of the resumption.

(3) In the case of a plan terminated by mass withdrawal (within the meaning of section 1341a(a)(2) of this title), paragraph (2) shall be applied by substituting ''3 years'' for ''5 years'' in subparagraph (B)(ii).

(c) Entertainment industry

(1) Notwithstanding subsection (a) of this section, in the case of an employer that has an obligation to contribute under a plan for work performed in the entertainment industry, primarily on a temporary or project-by-project basis, if the plan primarily covers employees in the entertainment industry, a complete withdrawal occurs only as described in subsection (b)(2) of this section applied by substituting ''plan'' for ''collective bargaining agreement'' in subparagraph (B)(i) thereof.

(2) For purposes of this subsection, the term ''entertainment industry'' means—

(A) theater, motion picture (except to the extent provided in regulations prescribed by the corporation), radio, television, sound or visual recording, music, and dance, and

(B) such other entertainment activities as the corporation may determine to be appropriate.

(3) The corporation may by regulation exclude a group or class of employers described in the

preceding sentence from the application of this subsection if the corporation determines that such exclusion is necessary—

(A) to protect the interest of the plan's participants and beneficiaries, or

(B) to prevent a significant risk of loss to the corporation with respect to the plan.

(4) A plan may be amended to provide that this subsection shall not apply to a group or class of employers under the plan.

(d) Other determinative factors

(1) Notwithstanding subsection (a) of this section, in the case of an employer who—

(A) has an obligation to contribute under a plan described in paragraph (2) primarily for work described in such paragraph, and

(B) does not continue to perform work within the jurisdiction of the plan,

a complete withdrawal occurs only as described in paragraph (3).

(2) A plan is described in this paragraph if substantially all of the contributions required under the plan are made by employers primarily engaged in the long and short haul trucking industry, the household goods moving industry, or the public warehousing industry.

(3) A withdrawal occurs under this paragraph if—

(A) an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan, and

(B) either—

(i) the corporation determines that the plan has suffered substantial damage to its contribution base as a result of such cessation, or

(ii) the employer fails to furnish a bond issued by a corporate surety company that is an acceptable surety for purposes of section 1112 of this title, or an amount held in escrow by a bank or similar financial institution satisfactory to the plan, in an amount equal to 50 percent of the withdrawal liability of the employer.

(4) If, after an employer furnishes a bond or escrow to a plan under paragraph (3)(B)(ii), the corporation determines that the cessation of the employer's obligation to contribute under the plan (considered together with any cessations by other employers), or cessation of covered operations under the plan, has resulted in substantial damage to the contribution base of the plan, the employer shall be treated as having withdrawn from the plan on the date on which the obligation to contribute or covered operations ceased, and such bond or escrow shall be paid to the plan. The corporation shall not make a determination under this paragraph more than 60 months after the date on which such obligation to contribute or covered operations ceased.

(5) If the corporation determines that the employer has no further liability under the plan either—

(A) because it determines that the contribution base of the plan has not suffered substantial damage as a result of the cessation of the employer's obligation to contribute or cessation of covered operations (considered together with any cessation of contribution obligation, or of covered operations, with respect to other employers), or

(B) because it may not make a determination under paragraph (4) because of the last sentence thereof,

then the bond shall be cancelled or the escrow refunded.

(6) Nothing in this subsection shall be construed as a limitation on the amount of the withdrawal liability of any employer.

(e) Date of complete withdrawal

For purposes of this part, the date of a complete withdrawal is the date of the cessation of the obligation to contribute or the cessation of covered operations.

(f) Special liability withdrawal rules for industries other than construction and entertainment industries; procedures applicable to amend plans

(1) The corporation may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules similar to the rules described in subsections (b) and (c) of this section.

(2) Regulations under paragraph (1) shall permit use of special withdrawal liability rules—

(A) only in industries (or portions thereof) in which, as determined by the corporation, the characteristics that would make use of such rules appropriate are clearly shown, and

(B) only if the corporation determines, in each instance in which special withdrawal liability rules are permitted, that use of such rules will not pose a significant risk to the corporation under this subchapter.

(Pub. L. 93–406, title IV, § 4203, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1218.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1341a, 1381, 1388, 1391, 1401 of this title; title 26 section 411.

§ 1384. Sale of assets

(a) Complete or partial withdrawal not occurring as a result of sale and subsequent cessation of covered operations or cessation of obligation to contribute to covered operations; continuation of liability of seller

(1) A complete or partial withdrawal of an employer (hereinafter in this section referred to as the ''seller'') under this section does not occur solely because, as a result of a bona fide, arm's-length sale of assets to an unrelated party (hereinafter in this section referred to as the ''purchaser''), the seller ceases covered operations or ceases to have an obligation to contribute for such operations, if—

(A) the purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller had an obligation to contribute to the plan;

(B) the purchaser provides to the plan for a period of 5 plan years commencing with the first plan year beginning after the sale of as-

sets, a bond issued by a corporate surety company that is an acceptable surety for purposes of section 1112 of this title, or an amount held in escrow by a bank or similar financial institution satisfactory to the plan, in an amount equal to the greater of—

(i) the average annual contribution required to be made by the seller with respect to the operations under the plan for the 3 plan years preceding the plan year in which the sale of the employer's assets occurs, or

(ii) the annual contribution that the seller was required to make with respect to the operations under the plan for the last plan year before the plan year in which the sale of the assets occurs,

which bond or escrow shall be paid to the plan if the purchaser withdraws from the plan, or fails to make a contribution to the plan when due, at any time during the first 5 plan years beginning after the sale; and

(C) the contract for sale provides that, if the purchaser withdraws in a complete withdrawal, or a partial withdrawal with respect to operations, during such first 5 plan years, the seller is secondarily liable for any withdrawal liability it would have had to the plan with respect to the operations (but for this section) if the liability of the purchaser with respect to the plan is not paid.

(2) If the purchaser—

(A) withdraws before the last day of the fifth plan year beginning after the sale, and

(B) fails to make any withdrawal liability payment when due,

then the seller shall pay to the plan an amount equal to the payment that would have been due from the seller but for this section.

(3)(A) If all, or substantially all, of the seller's assets are distributed, or if the seller is liquidated before the end of the 5 plan year period described in paragraph (1)(C), then the seller shall provide a bond or amount in escrow equal to the present value of the withdrawal liability the seller would have had but for this subsection.

(B) If only a portion of the seller's assets are distributed during such period, then a bond or escrow shall be required, in accordance with regulations prescribed by the corporation, in a manner consistent with subparagraph (A).

(4) The liability of the party furnishing a bond or escrow under this subsection shall be reduced, upon payment of the bond or escrow to the plan, by the amount thereof.

(b) Liability of purchaser

(1) For the purposes of this part, the liability of the purchaser shall be determined as if the purchaser had been required to contribute to the plan in the year of the sale and the 4 plan years preceding the sale the amount the seller was required to contribute for such operations for such 5 plan years.

(2) If the plan is in reorganization in the plan year in which the sale of assets occurs, the purchaser shall furnish a bond or escrow in an amount equal to 200 percent of the amount described in subsection (a)(1)(B) of this section.

(c) Variances or exemptions from continuation of liability of seller; procedures applicable

The corporation may by regulation vary the standards in subparagraphs (B) and (C) of subsection (a)(1) of this section if the variance would more effectively or equitably carry out the purposes of this subchapter. Before it promulgates such regulations, the corporation may grant individual or class variances or exemptions from the requirements of such subparagraphs if the particular case warrants it. Before granting such an individual or class variance or exemption, the corporation—

(1) shall publish notice in the Federal Register of the pendency of the variance or exemption,

(2) shall require that adequate notice be given to interested persons, and

(3) shall afford interested persons an opportunity to present their views.

(d) "Unrelated party" defined

For purposes of this section, the term ''unrelated party'' means a purchaser or seller who does not bear a relationship to the seller or purchaser, as the case may be, that is described in section 267(b) of title 26, or that is described in regulations prescribed by the corporation applying principles similar to the principles of such section.

(Pub. L. 93–406, title IV, § 4204, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1220; amended Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (d). 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1391, 1401, 1405 of this title.

§ 1385. Partial withdrawals

(a) Determinative factors

Except as otherwise provided in this section, there is a partial withdrawal by an employer from a plan on the last day of a plan year if for such plan year—

(1) there is a 70-percent contribution decline, or

(2) there is a partial cessation of the employer's contribution obligation.

(b) Criteria applicable

For purposes of subsection (a) of this section—

(1)(A) There is a 70-percent contribution decline for any plan year if during each plan year in the 3-year testing period the employer's contribution base units do not exceed 30 percent of the employer's contribution base units for the high base year.

(B) For purposes of subparagraph (A)—

(i) The term ''3-year testing period'' means the period consisting of the plan year and the immediately preceding 2 plan years.

(ii) The number of contribution base units for the high base year is the average number of such units for the 2 plan years for which the employer's contribution base units were the highest within the 5 plan years immediately preceding the beginning of the 3-year testing period.

(2)(A) There is a partial cessation of the employer's contribution obligation for the plan year if, during such year—

(i) the employer permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan but continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location, or

(ii) an employer permanently ceases to have an obligation to contribute under the plan with respect to work performed at one or more but fewer than all of its facilities, but continues to perform work at the facility of the type for which the obligation to contribute ceased.

(B) For purposes of subparagraph (A), a cessation of obligations under a collective bargaining agreement shall not be considered to have occurred solely because, with respect to the same plan, one agreement that requires contributions to the plan has been substituted for another agreement.

(c) Retail food industry

(1) In the case of a plan in which a majority of the covered employees are employed in the retail food industry, the plan may be amended to provide that this section shall be applied with respect to such plan—

(A) by substituting ''35 percent'' for ''70 percent'' in subsections (a) and (b) of this section, and

(B) by substituting ''65 percent'' for ''30 percent'' in subsection (b) of this section.

(2) Any amendment adopted under paragraph (1) shall provide rules for the equitable reduction of withdrawal liability in any case in which the number of the plan's contribution base units, in the 2 plan years following the plan year of withdrawal of the employer, is higher than such number immediately after the withdrawal.

(3) Section 1388 of this title shall not apply to a plan which has been amended under paragraph (1).

(d) Continuation of liability of employer for partial withdrawal under amended plan

In the case of a plan described in section 404(c) of title 26, or a continuation thereof, the plan may be amended to provide rules setting forth other conditions consistent with the purposes of this chapter under which an employer has liability for partial withdrawal.

(Pub. L. 93–406, title IV, § 4205, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1221; amended Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), 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—Subsec. (d). 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.

APPLICABILITY TO CERTAIN EMPLOYERS ENGAGED IN TRADE OR BUSINESS OF SHIPPING BULK CARGOES IN GREAT LAKES MARITIME INDUSTRY

Section 108(c)(2) of Pub. L. 96–364 provided that:

''(A) For the purpose of applying section 4205 of the Employee Retirement Income Security Act of 1974 [this section] in the case of an employer described in subparagraph (B)—

''(i) 'more than 75 percent' shall be substituted for '70 percent' in subsections (a) and (b) of such section.

''(ii) '25 percent or less' shall be substituted for '30 percent' in subsection (b) of such section, and

''(iii) the number of contribution units for the high base year shall be the average annual number of such units for calendar years 1970 and 1971.

''(B) An employer is described in this subparagraph if—

''(i) the employer is engaged in the trade or business of shipping bulk cargoes in the Great Lakes Maritime Industry, and whose fleet consists of vessels the gross registered tonnage of which was at least 7,800, as stated in the American Bureau of Shipping Record, and

''(ii) whose fleet during any 5 years from the period 1970 through and including 1979 has experienced a 33 percent or more increase in the contribution units as measured from the average annual contribution units for the calendar years 1970 and 1971.''

APPLICABILITY TO SPECIFIED PLAN YEAR, CESSATION OF CONTRIBUTION OBLIGATIONS, AND CONTRIBUTION BASE UNITS OF EMPLOYER

Section 108(d) of Pub. L. 96–364, as amended by Pub. L. 98–369, div. A, title V, § 558(b)(2), July 18, 1984, 98 Stat. 899, provided that: ''For purposes of section 4205 of the Employee Retirement Income Security Act of 1974 [this section]—

''(1) subsection (a)(1) of such section shall not apply to any plan year beginning before September 26, 1982,

''(2) subsection (a)(2) of such section shall not apply with respect to any cessation of contribution obligations occurring before September 26, 1980, and

''(3) in applying subsection (b) of such section, the employer's contribution base units for any plan year ending before September 26, 1980, shall be deemed to be equal to the employer's contribution base units for the last plan year ending before such date.''

LIABILITY OF CERTAIN EMPLOYERS ANNOUNCING PUBLICLY BEFORE DECEMBER 13, 1979, TOTAL CESSATION OF COVERED OPERATIONS AT A FACILITY IN A STATE; AMOUNT, COVERAGE, DETERMINATIVE FACTORS, ETC.

Section 108(e) of Pub. L. 96–364 provided that:

''(1) In the case of a partial withdrawal under section 4205 of the Employee Retirement Income Security Act of 1974 [this section], an employer who—

''(A) before December 13, 1979, had publicly announced the total cessation of covered operations at a facility in a State (and such cessation occurred within 12 months after the announcement),

''(B) had not been obligated to make contributions to the plan on behalf of the employees at such facility for more than 8 years before the discontinuance of contributions, and

''(C) after the discontinuance of contributions does not within 1 year after the date of the partial withdrawal perform work in the same State of the type for which contributions were previously required,

shall be liable under such section with respect to such partial withdrawal in an amount not greater than the amount determined under paragraph (2).

''(2) The amount determined under this paragraph is the excess (if any) of—

''(A) the present value (on the withdrawal date) of the benefits under the plan which—

''(i) were vested on the withdrawal date (or, if earlier, at the time of separation from service with the employer at the facility),

''(ii) were accrued by employees who on December 13, 1979 (or, if earlier, at the time of separation from service with the employer at the facility), were employed at the facility, and

''(iii) are attributable to service with the withdrawing employer, over

''(B)(i) the sum of—

''(I) all employer contributions to the plan on behalf of employees at the facility before the withdrawal date,

''(II) interest (to the withdrawal date) on amounts described in subclause (I), and

''(III) $100,000, reduced by

''(ii) the sum of—

''(I) the benefits paid under the plan on or before the withdrawal date with respect to former employees who separated from employment at the facility, and

''(II) interest (to the withdrawal date) on amounts described in subclause (I).

''(3) For purposes of paragraph (2)—

''(A) actuarial assumptions shall be those used in the last actuarial report completed before December 13, 1979,

''(B) the term 'withdrawal date' means the date on which the employer ceased work at the facility of the type for which contributions were previously required, and

''(C) the term 'facility' means the facility referred to in paragraph (1).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1381, 1386, 1388, 1399, 1401 of this title; title 26 section 411.

§ 1386. Adjustment for partial withdrawal; determination of amount; reduction for partial withdrawal liability; procedures applicable

(a) The amount of an employer's liability for a partial withdrawal, before the application of sections 1399(c)(1) and 1405 of this title, is equal to the product of—

(1) the amount determined under section 1391 of this title, and adjusted under section 1389 of this title if appropriate, determined as if the employer had withdrawn from the plan in a complete withdrawal—

(A) on the date of the partial withdrawal, or

(B) in the case of a partial withdrawal described in section 1385(a)(1) of this title (relating to 70-percent contribution decline), on the last day of the first plan year in the 3-year testing period,

multiplied by

(2) a fraction which is 1 minus a fraction—

(A) the numerator of which is the employer's contribution base units for the plan year following the plan year in which the partial withdrawal occurs, and

(B) the denominator of which is the average of the employer's contribution base units for—

(i) except as provided in clause (ii), the 5 plan years immediately preceding the plan year in which the partial withdrawal occurs, or

(ii) in the case of a partial withdrawal described in section 1385(a)(1) of this title (relating to 70-percent contribution decline), the 5 plan years immediately preceding the beginning of the 3-year testing period.

(b)(1) In the case of an employer that has withdrawal liability for a partial withdrawal from a plan, any withdrawal liability of that employer for a partial or complete withdrawal from that plan in a subsequent plan year shall be reduced by the amount of any partial withdrawal liability (reduced by any abatement or reduction of such liability) of the employer with respect to the plan for a previous plan year.

(2) The corporation shall prescribe such regulations as may be necessary to provide for proper adjustments in the reduction provided by paragraph (1) for—

(A) changes in unfunded vested benefits arising after the close of the prior year for which partial withdrawal liability was determined,

(B) changes in contribution base units occurring after the close of the prior year for which partial withdrawal liability was determined, and

(C) any other factors for which it determines adjustment to be appropriate,

so that the liability for any complete or partial withdrawal in any subsequent year (after the application of the reduction) properly reflects the employer's share of liability with respect to the plan.

(Pub. L. 93–406, title IV, § 4206, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1222.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1381, 1388, 1399, 1401 of this title.

§ 1387. Reduction or waiver of complete withdrawal liability; procedures and standards applicable

(a) The corporation shall provide by regulation for the reduction or waiver of liability for a complete withdrawal in the event that an employer who has withdrawn from a plan subsequently resumes covered operations under the plan or renews an obligation to contribute under the plan, to the extent that the corporation determines that reduction or waiver of withdrawal liability is consistent with the purposes of this chapter.

(b) The corporation shall prescribe by regulation a procedure and standards for the amendment of plans to provide alternative rules for the reduction or waiver of liability for a complete withdrawal in the event that an employer who has withdrawn from the plan subsequently resumes covered operations or renews an obligation to contribute under the plan. The rules may apply only to the extent that the rules are consistent with the purposes of this chapter.

(Pub. L. 93–406, title IV, § 4207, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1223.)

REFERENCES IN TEXT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1388. Reduction of partial withdrawal liability

(a) Obligation of employer for payments for partial withdrawal for plan years beginning after the second consecutive plan year following the partial withdrawal year; criteria applicable; furnishing of bond in lieu of payment of partial withdrawal liability

(1) If, for any 2 consecutive plan years following the plan year in which an employer has partially withdrawn from a plan under section 1385(a)(1) of this title (referred to elsewhere in this section as the ''partial withdrawal year''), the number of contribution base units with respect to which the employer has an obligation to contribute under the plan for each such year is not less than 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the high base year (within the meaning of section 1385(b)(1)(B)(ii) of this title), then the employer shall have no obligation to make payments with respect to such partial withdrawal (other than delinquent payments) for plan years beginning after the second consecutive plan year following the partial withdrawal year.

(2)(A) For any plan year for which the number of contribution base units with respect to which an employer who has partially withdrawn under section 1385(a)(1) of this title has an obligation to contribute under the plan equals or exceeds the number of units for the highest year determined under paragraph (1) without regard to ''90 percent of'', the employer may furnish (in lieu of payment of the partial withdrawal liability determined under section 1386 of this title) a bond to the plan in the amount determined by the plan sponsor (not exceeding 50 percent of the annual payment otherwise required).

(B) If the plan sponsor determines under paragraph (1) that the employer has no further liability to the plan for the partial withdrawal, then the bond shall be cancelled.

(C) If the plan sponsor determines under paragraph (1) that the employer continues to have liability to the plan for the partial withdrawal, then—

(i) the bond shall be paid to the plan,

(ii) the employer shall immediately be liable for the outstanding amount of liability due with respect to the plan year for which the bond was posted, and

(iii) the employer shall continue to make the partial withdrawal liability payments as they are due.

(b) Obligation of employer for payments for partial withdrawal for plan years beginning after the second consecutive plan year; other criteria applicable

If—

(1) for any 2 consecutive plan years following a partial withdrawal under section 1385(a)(1) of this title, the number of contribution base units with respect to which the employer has an obligation to contribute for each such year exceeds 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute for the high base year (within the meaning of section 1385(b)(1)(B)(ii) of this title,[1] and

(2) the total number of contribution base units with respect to which all employers under the plan have obligations to contribute in each of such 2 consecutive years is not less than 90 percent of the total number of contribution base units for which all employers had obligations to contribute in the partial withdrawal plan year;

then, the employer shall have no obligation to make payments with respect to such partial withdrawal (other than delinquent payments) for plan years beginning after the second such consecutive plan year.

(c) Pro rata reduction of amount of partial withdrawal liability payment of employer for plan year following partial withdrawal year

In any case in which, in any plan year following a partial withdrawal under section 1385(a)(1) of this title, the number of contribution base units with respect to which the employer has an obligation to contribute for such year equals or exceeds 110 percent (or such other percentage as the plan may provide by amendment and which is not prohibited under regulations prescribed by the corporation) of the number of contribution base units with respect to which the employer had an obligation to contribute in the partial withdrawal year, then the amount of the employer's partial withdrawal liability payment for such year shall be reduced pro rata, in accordance with regulations prescribed by the corporation.

(d) Building and construction industry; entertainment industry

(1) An employer to whom section 1383(b)[2] of this title (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bar-

[1] So in original. Probably should be ''title),''.

[2] See References in Text note below.

gaining agreement of the type for which contributions are required.

(2) An employer to whom section 1383(c)[2] of this title (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by the corporation by regulation.

(e) Reduction or elimination of partial withdrawal liability under any conditions; criteria; procedures applicable

(1) The corporation may prescribe regulations providing for the reduction or elimination of partial withdrawal liability under any conditions with respect to which the corporation determines that reduction or elimination of partial withdrawal liability is consistent with the purposes of this chapter.

(2) Under such regulations, reduction of withdrawal liability shall be provided only with respect to subsequent changes in the employer's contributions for the same operations, or under the same collective bargaining agreement, that gave rise to the partial withdrawal, and changes in the employer's contribution base units with respect to other facilities or other collective bargaining agreements shall not be taken into account.

(3) The corporation shall prescribe by regulation a procedure by which a plan may by amendment adopt rules for the reduction or elimination of partial withdrawal liability under any other conditions, subject to the approval of the corporation based on its determination that adoption of such rules by the plan is consistent with the purposes of this chapter.

(Pub. L. 93–406, title IV, § 4208, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1224.)

REFERENCES IN TEXT

"Section 1383(b) of this title" and "section 1383(c) of this title", referred to in subsec. (d), were in the original "section 4202(b)" and "section 4202(c)", respectively, meaning section 4202(b) and section 4202(c) of the Employee Retirement Income Security Act of 1974 and were editorially translated as the probable intent of Congress in view of section 4202 of the Employee Retirement Income Security Act of 1974, which is classified to section 1382 of this title, not having subsection designations and the subject matter of section 4203 of the Act which is classified to section 1383 of this title.

This chapter, referred to in subsec. (e)(1), (3), was in the original "this Act", meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1385, 1401, 1403 of this title.

§ 1389. De minimis rule

(a) Reduction of unfunded vested benefits allocable to employer withdrawn from plan

Except in the case of a plan amended under subsection (b) of this section, the amount of the unfunded vested benefits allocable under section 1391 of this title to an employer who withdraws from a plan shall be reduced by the smaller of—

(1) ¾ of 1 percent of the plan's unfunded vested obligations (determined as of the end of the plan year ending before the date of withdrawal), or

(2) $50,000,

reduced by the amount, if any, by which the unfunded vested benefits allowable to the employer, determined without regard to this subsection, exceeds $100,000.

(b) Amendment of plan for reduction of amount of unfunded vested benefits allocable to employer withdrawn from plan

A plan may be amended to provide for the reduction of the amount determined under section 1391 of this title by not more than the greater of—

(1) the amount determined under subsection (a) of this section, or

(2) the lesser of—

(A) the amount determined under subsection (a)(1) of this section, or

(B) $100,000,

reduced by the amount, if any, by which the amount determined under section 1391 of this title for the employer, determined without regard to this subsection, exceeds $150,000.

(c) Nonapplicability

This section does not apply—

(1) to an employer who withdraws in a plan year in which substantially all employers withdraw from the plan, or

(2) in any case in which substantially all employers withdraw from the plan during a period of one or more plan years pursuant to an agreement or arrangement to withdraw, to an employer who withdraws pursuant to such agreement or arrangement.

(d) Presumption of employer withdrawal from plan pursuant to agreement or arrangement applicable in action or proceeding to determine or collect withdrawal liability

In any action or proceeding to determine or collect withdrawal liability, if substantially all employers have withdrawn from a plan within a period of 3 plan years, an employer who has withdrawn from such plan during such period shall be presumed to have withdrawn from the plan pursuant to an agreement or arrangement, unless the employer proves otherwise by a preponderance of the evidence.

(Pub. L. 93–406, title IV, § 4209, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1225.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1381, 1386, 1391, 1394, 1399, 1401, 1403 of this title.

§ 1390. Nonapplicability of withdrawal liability for certain temporary contribution obligation periods; exception

(a) An employer who withdraws from a plan in complete or partial withdrawal is not liable to the plan if the employer—

(1) first had an obligation to contribute to the plan after September 26, 1980,

(2) had an obligation to contribute to the plan for no more than the lesser of—

(A) 6 consecutive plan years preceding the date on which the employer withdraws, or

(B) the number of years required for vesting under the plan,

(3) was required to make contributions to the plan for each such plan year in an amount equal to less than 2 percent of the sum of all employer contributions made to the plan for each such year, and

(4) has never avoided withdrawal liability because of the application of this section with respect to the plan.

(b) Subsection (a) of this section shall apply to an employer with respect to a plan only if—

(1) the plan is not a plan which primarily covers employees in the building and construction industry;

(2) the plan is amended to provide that subsection (a) of this section applies;

(3) the plan provides, or is amended to provide, that the reduction under section 411(a)(3)(E) of title 26 applies with respect to the employees of the employer; and

(4) the ratio of the assets of the plan for the plan year preceding the first plan year for which the employer was required to contribute to the plan to the benefit payments made during that plan year was at least 8 to 1.

(Pub. L. 93–406, title IV, § 4210, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1226; amended Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (b)(3). 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1391. Methods for computing withdrawal liability

(a) Determination of amount of unfunded vested benefits allocable to employer withdrawn from plan

The amount of the unfunded vested benefits allocable to an employer that withdraws from a plan shall be determined in accordance with subsection (b), (c), or (d) of this section.

(b) Factors determining computation of amount of unfunded vested benefits allocable to employer withdrawn from plan

(1) Except as provided in subsections (c) and (d) of this section, the amount of unfunded vested benefits allocable to an employer that withdraws is the sum of—

(A) the employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, as determined under paragraph (2),

(B) the employer's proportional share, if any, of the unamortized amount of the plan's unfunded vested benefits at the end of the plan year ending before September 26, 1980, as determined under paragraph (3); and

(C) the employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits (if any) as determined under paragraph (4).

If the sum of the amounts determined with respect to an employer under paragraphs (2), (3), and (4) is negative, the unfunded vested benefits allocable to the employer shall be zero.

(2)(A) An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after September 25, 1980, is the sum of the employer's proportional shares of the unamortized amount of the change in unfunded vested benefits for each plan year in which the employer has an obligation to contribute under the plan ending—

(i) after such date, and

(ii) before the plan year in which the withdrawal of the employer occurs.

(B) The change in a plan's unfunded vested benefits for a plan year is the amount by which—

(i) the unfunded vested benefits at the end of the plan year; exceeds

(ii) the sum of—

(I) the unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, and

(II) the sum of the unamortized amounts of the change in unfunded vested benefits for each plan year ending after September 25, 1980, and preceding the plan year for which the change is determined.

(C) The unamortized amount of the change in a plan's unfunded vested benefits with respect to a plan year is the change in unfunded vested benefits for the plan year, reduced by 5 percent of such change for each succeeding plan year.

(D) The unamortized amount of the unfunded vested benefits for the last plan year ending before September 26, 1980, is the amount of the unfunded vested benefits as of the end of that plan year reduced by 5 percent of such amount for each succeeding plan year.

(E) An employer's proportional share of the unamortized amount of a change in unfunded vested benefits is the product of—

(i) the unamortized amount of such change (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

(ii) a fraction—

(I) the numerator of which is the sum of the contributions required to be made under the plan by the employer for the year in which such change arose and for the 4 preceding plan years, and

(II) the denominator of which is the sum for the plan year in which such change arose and the 4 preceding plan years of all contributions made by employers who had an obligation to contribute under the plan for the plan year in which such change arose reduced by the contributions made in such

years by employers who had withdrawn from the plan in the year in which the change arose.

(3) An employer's proportional share of the unamortized amount of the plan's unfunded vested benefits for the last plan year ending before September 26, 1980, is the product of—

(A) such unamortized amount; multiplied by—

(B) a fraction—

(i) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the most recent 5 plan years ending before September 26, 1980, and

(ii) the denominator of which is the sum of all contributions made for the most recent 5 plan years ending before September 26, 1980, by all employers—

(I) who had an obligation to contribute under the plan for the first plan year ending on or after such date, and

(II) who had not withdrawn from the plan before such date.

(4)(A) An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits is the sum of the employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits for each plan year ending before the plan year in which the employer withdrew from the plan.

(B) Except as otherwise provided in regulations prescribed by the corporation, the reallocated unfunded vested benefits for a plan year is the sum of—

(i) any amount which the plan sponsor determines in that plan year to be uncollectible for reasons arising out of cases or proceedings under title 11, or similar proceedings.[1]

(ii) any amount which the plan sponsor determines in that plan year will not be assessed as a result of the operation of section 1389, 1399(c)(1)(B), or 1405 of this title against an employer to whom a notice described in section 1399 of this title has been sent, and

(iii) any amount which the plan sponsor determines to be uncollectible or unassessable in that plan year for other reasons under standards not inconsistent with regulations prescribed by the corporation.

(C) The unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the reallocated unfunded vested benefits for the plan year, reduced by 5 percent of such reallocated unfunded vested benefits for each succeeding plan year.

(D) An employer's proportional share of the unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the product of—

(i) the unamortized amount of the reallocated unfunded vested benefits (as of the end of the plan year preceding the plan year in which the employer withdraws); multiplied by

(ii) the fraction defined in paragraph (2)(E)(ii).

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

(c) Amendment of multiemployer plan for determination respecting amount of unfunded vested benefits allocable to employer withdrawn from plan; factors determining computation of amount

(1) A multiemployer plan, other than a plan which primarily covers employees in the building and construction industry, may be amended to provide that the amount of unfunded vested benefits allocable to an employer that withdraws from the plan is an amount determined under paragraph (2), (3), (4), or (5) of this subsection, rather than under subsection (b) or (d) of this section. A plan described in section 1383(b)(1)(B)(i) of this title (relating to the building and construction industry) may be amended, to the extent provided in regulations prescribed by the corporation, to provide that the amount of the unfunded vested benefits allocable to an employer not described in section 1383(b)(1)(A) of this title shall be determined in a manner different from that provided in subsection (b) of this section.

(2)(A) The amount of the unfunded vested benefits allocable to any employer under this paragraph is the sum of the amounts determined under subparagraphs (B) and (C).

(B) The amount determined under this subparagraph is the product of—

(i) the plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning with the first plan year ending on or after such date; multiplied by

(ii) a fraction—

(I) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the last 5 plan years ending before September 26, 1980, and

(II) the denominator of which is the sum of all contributions made for the last 5 plan years ending before September 26, 1980, by all employers who had an obligation to contribute under the plan for the first plan year ending after September 25, 1980, and who had not withdrawn from the plan before such date.

(C) The amount determined under this subparagraph is the product of—

(i) an amount equal to—

(I) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less

(II) the sum of the value as of such date of all outstanding claims for withdrawal liability which can reasonably be expected to be collected, with respect to employers withdrawing before such plan year, and that portion of the amount determined under subparagraph (B)(i) which is allocable to employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws and who also had an obligation to contribute under the plan for the first plan year ending after September 25, 1980; multiplied by

(ii) a fraction—

(I) the numerator of which is the total amount required to be contributed under the plan by the employer for the last 5 plan years ending before the date on which the employer withdraws, and

(II) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the date on which the employer withdraws, increased by the amount of any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed by an employer who withdrew from the plan under this part during those plan years.

(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this subchapter, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

(3) The amount of the unfunded vested benefits allocable to an employer under this paragraph is the product of—

(A) the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, less the value as of the end of such year of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from employers withdrawing before such year; multiplied by

(B) a fraction—

(i) the numerator of which is the total amount required to be contributed by the employer under the plan for the last 5 plan years ending before the withdrawal, and

(ii) the denominator of which is the total amount contributed under the plan by all employers for the last 5 plan years ending before the withdrawal, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed to the plan during those plan years by employers who withdrew from the plan under this section during those plan years.

(4)(A) The amount of the unfunded vested benefits allocable to an employer under this paragraph is equal to the sum of—

(i) the plan's unfunded vested benefits which are attributable to participants' service with the employer (determined as of the end of the plan year preceding the plan year in which the employer withdraws), and

(ii) the employer's proportional share of any unfunded vested benefits which are not attributable to service with the employer or other employers who are obligated to contribute under the plan in the plan year preceding the plan year in which the employer withdraws (determined as of the end of the plan year preceding the plan year in which the employer withdraws).

(B) The plan's unfunded vested benefits which are attributable to participants' service with the employer is the amount equal to the value of nonforfeitable benefits under the plan which are attributable to participants' service with such employer (determined under plan rules not inconsistent with regulations of the corporation) decreased by the share of plan assets determined under subparagraph (C) which is allocated to the employer as provided under subparagraph (D).

(C) The value of plan assets determined under this subparagraph is the value of plan assets allocated to nonforfeitable benefits which are attributable to service with the employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws, which is determined by multiplying—

(i) the value of the plan assets as of the end of the plan year preceding the plan year in which the employer withdraws, by

(ii) a fraction—

(I) the numerator of which is the value of nonforfeitable benefits which are attributable to service with such employers, and

(II) the denominator of which is the value of all nonforfeitable benefits under the plan as of the end of the plan year.

(D) The share of plan assets, determined under subparagraph (C), which is allocated to the employer shall be determined in accordance with one of the following methods which shall be adopted by the plan by amendment:

(i) by multiplying the value of plan assets determined under subparagraph (C) by a fraction—

(I) the numerator of which is the value of the nonforfeitable benefits which are attributable to service with the employer, and

(II) the denominator of which is the value of the nonforfeitable benefits which are attributable to service with all employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which the employer withdraws;

(ii) by multiplying the value of plan assets determined under subparagraph (C) by a fraction—

(I) the numerator of which is the sum of all contributions (accumulated with interest) which have been made to the plan by the employer for the plan year preceding the plan year in which the employer withdraws and all preceding plan years; and

(II) the denominator of which is the sum of all contributions (accumulated with interest) which have been made to the plan (for the plan year preceding the plan year in which the employer withdraws and all preceding plan years) by all employers who have an obligation to contribute to the plan for the plan year preceding the plan year in which the employer withdraws; or

(iii) by multiplying the value of plan assets under subparagraph (C) by a fraction—

(I) the numerator of which is the amount determined under clause (ii)(I) of this subparagraph, less the sum of benefit payments (accumulated with interest) made to participants (and their beneficiaries) for the plan years described in such clause (ii)(I) which

are attributable to service with the employer; and

(II) the denominator of which is the amount determined under clause (ii)(II) of this subparagraph, reduced by the sum of benefit payments (accumulated with interest) made to participants (and their beneficiaries) for the plan years described in such clause (ii)(II) which are attributable to service with respect to the employers described in such clause (ii)(II).

(E) The amount of the plan's unfunded vested benefits for a plan year preceding the plan year in which an employer withdraws, which is not attributable to service with employers who have an obligation to contribute under the plan in the plan year preceding the plan year in which such employer withdraws, is equal to—

(i) an amount equal to—

(I) the value of all nonforfeitable benefits under the plan at the end of such plan year, reduced by

(II) the value of nonforfeitable benefits under the plan at the end of such plan year which are attributable to participants' service with employers who have an obligation to contribute under the plan for such plan year; reduced by

(ii) an amount equal to—

(I) the value of the plan assets as of the end of such plan year, reduced by

(II) the value of plan assets as of the end of such plan year as determined under subparagraph (C); reduced by

(iii) the value of all outstanding claims for withdrawal liability which can reasonably be expected to be collected with respect to employers withdrawing before the year preceding the plan year in which the employer withdraws.

(F) The employer's proportional share described in subparagraph (A)(ii) for a plan year is the amount determined under subparagraph (E) for the employer, but not in excess of an amount which bears the same ratio to the sum of the amounts determined under subparagraph (E) for all employers under the plan as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan.

(G) The corporation may prescribe by regulation other methods which a plan may adopt for allocating assets to determine the amount of the unfunded vested benefits attributable to service with the employer and to determine the employer's share of unfunded vested benefits not attributable to service with employers who have an obligation to contribute under the plan in the plan year in which the employer withdraws.

(5)(A) The corporation shall prescribe by regulation a procedure by which a plan may, by amendment, adopt any other alternative method for determining an employer's allocable share of unfunded vested benefits under this section, subject to the approval of the corporation based on its determination that adoption of the method by the plan would not significantly increase the risk of loss to plan participants and beneficiaries or to the corporation.

(B) The corporation may prescribe by regulation standard approaches for alternative methods, other than those set forth in the preceding paragraphs of this subsection, which a plan may adopt under subparagraph (A), for which the corporation may waive or modify the approval requirements of subparagraph (A). Any alternative method shall provide for the allocation of substantially all of a plan's unfunded vested benefits among employers who have an obligation to contribute under the plan.

(C) Unless the corporation by regulation provides otherwise, a plan may be amended to provide that a period of more than 5 but not more than 10 plan years may be used for determining the numerator and denominator of any fraction which is used under any method authorized under this section for determining an employer's allocable share of unfunded vested benefits under this section.

(D) The corporation may by regulation permit adjustments in any denominator under this section, consistent with the purposes of this subchapter, where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators.

(d) Method of calculating allocable share of employer of unfunded vested benefits set forth in subsection (c)(3) of this section; applicability of certain statutory provisions

(1) The method of calculating an employer's allocable share of unfunded vested benefits set forth in subsection (c)(3) of this section shall be the method for calculating an employer's allocable share of unfunded vested benefits under a plan to which section 404(c) of title 26, or a continuation of such a plan, applies, unless the plan is amended to adopt another method authorized under subsection (b) or (c) of this section.

(2) Sections 1384, 1389, 1399(c)(1)(B), and 1405 of this title shall not apply with respect to the withdrawal of an employer from a plan described in paragraph (1) unless the plan is amended to provide that any of such sections apply.

(e) Reduction of liability of withdrawn employer in case of transfer of liabilities to another plan incident to withdrawal or partial withdrawal of employer

In the case of a transfer of liabilities to another plan incident to an employer's withdrawal or partial withdrawal, the withdrawn employer's liability under this part shall be reduced in an amount equal to the value, as of the end of the last plan year ending on or before the date of the withdrawal, of the transferred unfunded vested benefits.

(f) Computations applicable in case of withdrawal following merger of multiemployer plans

In the case of a withdrawal following a merger of multiemployer plans, subsection (b), (c), or (d) of this section shall be applied in accordance with regulations prescribed by the corporation; except that, if a withdrawal occurs in the first plan year beginning after a merger of multiemployer plans, the determination under this section shall be made as if each of the multiemployer plans had remained separate plans.

(Pub. L. 93–406, title IV, § 4211, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1226;

amended Pub. L. 98–369, div. A, title V, § 558(b)(1)(A), (B), July 18, 1984, 98 Stat. 899; Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (d)(1). 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.

1984—Subsec. (b). Pub. L. 98–369, § 558(b)(1)(A), (B), substituted ''September 25, 1980'' for ''April 28, 1980'' in pars. (1)(A) and (2)(A), (B)(ii)(II), and ''September 26, 1980'' for ''April 29, 1980'' in pars. (1)(B) and (2)(B)(ii)(I), (D), and in par. (3) in provisions preceding subpar. (A) and in subpar. (B)(i), (ii).

Subsec. (c)(2). Pub. L. 98–369, § 558(b)(1)(A), (B), substituted ''September 25, 1980'' for ''April 28, 1980'' in subpars. (B)(ii)(II) and (C)(i)(II) and ''September 26, 1980'' for ''April 29, 1980'' in subpar. (B)(i), (ii)(I), (II).

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1381, 1386, 1389, 1394, 1399, 1400, 1401, 1415 of this title.

§ 1392. Obligation to contribute

(a) "Obligation to contribute" defined

For purposes of this part, the term ''obligation to contribute'' means an obligation to contribute arising—

(1) under one or more collective bargaining (or related) agreements, or

(2) as a result of a duty under applicable labor-management relations law, but

does not include an obligation to pay withdrawal liability under this section or to pay delinquent contributions.

(b) Payments of withdrawal liability not considered contributions

Payments of withdrawal liability under this part shall not be considered contributions for purposes of this part.

(c) Transactions to evade or avoid liability

If a principal purpose of any transaction is to evade or avoid liability under this part, this part shall be applied (and liability shall be determined and collected) without regard to such transaction.

(Pub. L. 93–406, title IV, § 4212, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1233.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1342, 1401, 1425 of this title; title 26 sections 418A, 418D.

§ 1393. Actuarial assumptions

(a) Use by plan actuary in determining unfunded vested benefits of a plan for computing withdrawal liability of employer

The corporation may prescribe by regulation actuarial assumptions which may be used by a plan actuary in determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part. Withdrawal liability under this part shall be determined by each plan on the basis of—

(1) actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan, or

(2) actuarial assumptions and methods set forth in the corporation's regulations for purposes of determining an employer's withdrawal liability.

(b) Factors determinative of unfunded vested benefits of plan for computing withdrawal liability of employer

In determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability under this part, the plan actuary may—

(1) rely on the most recent complete actuarial valuation used for purposes of section 412 of title 26 and reasonable estimates for the interim years of the unfunded vested benefits, and

(2) in the absence of complete data, rely on the data available or on data secured by a sampling which can reasonably be expected to be representative of the status of the entire plan.

(c) Determination of amount of unfunded vested benefits

For purposes of this part, the term ''unfunded vested benefits'' means with respect to a plan, an amount equal to—

(A) the value of nonforfeitable benefits under the plan, less

(B) the value of the assets of the plan.

(Pub. L. 93–406, title IV, § 4213, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1233; amended Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (b)(1). 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1394. Application of plan amendments; exception

(a) No plan rule or amendment adopted after January 31, 1981, under section 1389 or 1391(c) of this title may be applied without the employer's consent with respect to liability for a withdrawal or partial withdrawal which occurred before the date on which the rule or amendment was adopted.

(b) All plan rules and amendments authorized under this part shall operate and be applied uniformly with respect to each employer, except that special provisions may be made to take into account the creditworthiness of an employer. The plan sponsor shall give notice to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan of any plan rules or amendments adopted pursuant to this section.

(Pub. L. 93–406, title IV, § 4214, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1234.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1395. Plan notification to corporation of potentially significant withdrawals

The corporation may, by regulation, require the plan sponsor of a multiemployer plan to provide notice to the corporation when the withdrawal from the plan by any employer has resulted, or will result, in a significant reduction in the amount of aggregate contributions under the plan made by employers.

(Pub. L. 93–406, title IV, § 4215, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1234.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1396. Special rules for plans under section 404(c) of title 26

(a) Amount of withdrawal liability; determinative factors

In the case of a plan described in subsection (b) of this section—

(1) if an employer withdraws prior to a termination described in section 1341a(a)(2) of this title, the amount of withdrawal liability to be paid in any year by such employer shall be an amount equal to the greater of—

(A) the amount determined under section 1399(c)(1)(C)(i) of this title, or

(B) the product of—

(i) the number of contribution base units for which the employer would have been required to make contributions for the prior plan year if the employer had not withdrawn, multiplied by

(ii) the contribution rate for the plan year which would be required to meet the amortization schedules contained in section 1423(d)(3)(B)(ii) of this title (determined without regard to any limitation on such rate otherwise provided by this subchapter)

except that an employer shall not be required to pay an amount in excess of the withdrawal liability computed with interest; and

(2) the withdrawal liability of an employer who withdraws after December 31, 1983, as a result of a termination described in section 1341a(a)(2) of this title which is agreed to by the labor organization that appoints the employee representative on the joint board of trustees which sponsors the plan, shall be determined under subsection (c) of this section if—

(A) as a result of prior employer withdrawals in any plan year commencing after January 1, 1980, the number of contribution base units is reduced to less than 67 percent of the average number of such units for the calendar years 1974 through 1979; and

(B) at least 50 percent of the withdrawal liability attributable to the first 33 percent decline described in subparagraph (A) has been determined by the plan sponsor to be uncollectible within the meaning of regulations of the corporation of general applicability; and

(C) the rate of employer contributions under the plan for each plan year following the first plan year beginning after September 26, 1980 and preceding the termination date equals or exceeds the rate described in section 1423(d)(3) of this title.

(b) Covered plans

A plan is described in this subsection if—

(1) it is a plan described in section 404(c) of title 26 or a continuation thereof; and

(2) participation in the plan is substantially limited to individuals who retired prior to January 1, 1976.

(c) Amount of liability of employer; "a year of signatory service" defined

(1) The amount of an employer's liability under this paragraph is the product of—

(A) the amount of the employer's withdrawal liability determined without regard to this section, and

(B) the greater of 90 percent, or a fraction—

(i) the numerator of which is an amount equal to the portion of the plan's unfunded vested benefits that is attributable to plan participants who have a total of 10 or more years of signatory service, and

(ii) the denominator of which is an amount equal to the total unfunded vested benefits of the plan.

(2) For purposes of paragraph (1), the term ''a year of signatory service'' means a year during any portion of which a participant was employed for an employer who was obligated to contribute in that year, or who was subsequently obligated to contribute.

(Pub. L. 93–406, title IV, § 4216, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1234.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1423 of this title; title 26 section 418B.

§ 1397. Application of part in case of certain pre-1980 withdrawals; adjustment of covered plan

(a) For the purpose of determining the amount of unfunded vested benefits allocable to an employer for a partial or complete withdrawal from a plan which occurs after September 25, 1980, and for the purpose of determining whether there has been a partial withdrawal after such date, the amount of contributions, and the number of

contribution base units, of such employer properly allocable—

(1) to work performed under a collective bargaining agreement for which there was a permanent cessation of the obligation to contribute before September 26, 1980, or

(2) to work performed at a facility at which all covered operations permanently ceased before September 26, 1980, or for which there was a permanent cessation of the obligation to contribute before that date,

shall not be taken into account.

(b) A plan may, in a manner not inconsistent with regulations, which shall be prescribed by the corporation, adjust the amount of unfunded vested benefits allocable to other employers under a plan maintained by an employer described in subsection (a) of this section.

(Pub. L. 93–406, title IV, § 4217, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1235; amended Pub. L. 98–369, div. A, title V, § 558(b)(1)(A), (B), July 18, 1984, 98 Stat. 899.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369, § 558(b)(1)(A), (B), substituted ''September 25, 1980'' for ''April 28, 1980'' in provisions preceding par. (1) and ''September 26, 1980'' for ''April 29, 1980'' in pars. (1) and (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1398. Withdrawal not to occur because of change in business form or suspension of contributions during labor dispute

Notwithstanding any other provision of this part, an employer shall not be considered to have withdrawn from a plan solely because—

(1) an employer ceases to exist by reason of—

(A) a change in corporate structure described in section 1369(b) of this title, or

(B) a change to an unincorporated form of business enterprise,

if the change causes no interruption in employer contributions or obligations to contribute under the plan, or

(2) an employer suspends contributions under the plan during a labor dispute involving its employees.

For purposes of this part, a successor or parent corporation or other entity resulting from any such change shall be considered the original employer.

(Pub. L. 93–406, title IV, § 4218, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1236; amended Pub. L. 99–514, title XVIII, § 1879(u)(4), as added Pub. L. 101–239, title VII, § 7862(b)(1)(C), Dec. 19, 1989, 103 Stat. 2432; Pub. L. 101–239, title VII, § 7893(f), Dec. 19, 1989, 103 Stat. 2447.)

AMENDMENTS

1989—Par. (1)(A). Pub. L. 101–239, § 7893(f), made identical amendment to that of Pub. L. 99–514, § 1879(u)(4), as added by Pub. L. 101–239, § 7862(b)(1)(C), see below.

Pub. L. 101–239, § 7862(b)(1)(C), added Pub. L. 99–514, § 1879(u)(4), see 1986 Amendment note below.

1986—Par. (1)(A). Pub. L. 99–514, § 1879(u)(4), as added by Pub. L. 101–239, § 7862(b)(1)(C), substituted ''section 1369(b) of this title'' for ''section 1362(d) of this title''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7862(b)(1)(C) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 of Title 26, Internal Revenue Code.

Amendment by section 7893(f) of Pub. L. 101–239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99–272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101–239, set out as a note under section 1002 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1401 of this title.

§ 1399. Notice, collection, etc., of withdrawal liability

(a) Furnishing of information by employer to plan sponsor

An employer shall, within 30 days after a written request from the plan sponsor, furnish such information as the plan sponsor reasonably determines to be necessary to enable the plan sponsor to comply with the requirements of this part.

(b) Notification, demand for payment, and review upon complete or partial withdrawal by employer

(1) As soon as practicable after an employer's complete or partial withdrawal, the plan sponsor shall—

(A) notify the employer of—

(i) the amount of the liability, and

(ii) the schedule for liability payments, and

(B) demand payment in accordance with the schedule.

(2)(A) No later than 90 days after the employer receives the notice described in paragraph (1), the employer—

(i) may ask the plan sponsor to review any specific matter relating to the determination of the employer's liability and the schedule of payments,

(ii) may identify any inaccuracy in the determination of the amount of the unfunded vested benefits allocable to the employer, and

(iii) may furnish any additional relevant information to the plan sponsor.

(B) After a reasonable review of any matter raised, the plan sponsor shall notify the employer of—

(i) the plan sponsor's decision,

(ii) the basis for the decision, and

(iii) the reason for any change in the determination of the employer's liability or schedule of liability payments.

(c) Payment requirements; amount, etc.

(1)(A)(i) Except as provided in subparagraphs (B) and (D) of this paragraph and in paragraphs (4) and (5), an employer shall pay the amount determined under section 1391 of this title, adjusted if appropriate first under section 1389 of this title and then under section 1386 of this title over the period of years necessary to amortize the amount in level annual payments determined under subparagraph (C), calculated as if the first payment were made on the first day of the plan year following the plan year in which the withdrawal occurs and as if each subsequent payment were made on the first day of each subsequent plan year. Actual payment shall commence in accordance with paragraph (2).

(ii) The determination of the amortization period described in clause (i) shall be based on the assumptions used for the most recent actuarial valuation for the plan.

(B) In any case in which the amortization period described in subparagraph (A) exceeds 20 years, the employer's liability shall be limited to the first 20 annual payments determined under subparagraph (C).

(C)(i) Except as provided in subparagraph (E), the amount of each annual payment shall be the product of—

(I) the average annual number of contribution base units for the period of 3 consecutive plan years, during the period of 10 consecutive plan years ending before the plan year in which the withdrawal occurs, in which the number of contribution base units for which the employer had an obligation to contribute under the plan is the highest, and

(II) the highest contribution rate at which the employer had an obligation to contribute under the plan during the 10 plan years ending with the plan year in which the withdrawal occurs.

For purposes of the preceding sentence, a partial withdrawal described in section 1385(a)(1) of this title shall be deemed to occur on the last day of the first year of the 3-year testing period described in section 1385(b)(1)(B)(i) of this title.

(ii)(I) A plan may be amended to provide that for any plan year ending before 1986 the amount of each annual payment shall be (in lieu of the amount determined under clause (i)) the average of the required employer contributions under the plan for the period of 3 consecutive plan years (during the period of 10 consecutive plan years ending with the plan year preceding the plan year in which the withdrawal occurs) for which such required contributions were the highest.

(II) Subparagraph (B) shall not apply to any plan year to which this clause applies.

(III) This clause shall not apply in the case of any withdrawal described in subparagraph (D).

(IV) If under a plan this clause applies to any plan year but does not apply to the next plan year, this clause shall not apply to any plan year after such next plan year.

(V) For purposes of this clause, the term ''required contributions'' means, for any period, the amounts which the employer was obligated to contribute for such period (not taking into account any delinquent contribution for any other period).

(iii) A plan may be amended to provide that for the first plan year ending on or after September 26, 1980, the number ''5'' shall be substituted for the number ''10'' each place it appears in clause (i) or clause (ii) (whichever is appropriate). If the plan is so amended, the number ''5'' shall be increased by one for each succeeding plan year until the number ''10'' is reached.

(D) In any case in which a multiemployer plan terminates by the withdrawal of every employer from the plan, or in which substantially all the employers withdraw from a plan pursuant to an agreement or arrangement to withdraw from the plan—

(i) the liability of each such employer who has withdrawn shall be determined (or redetermined) under this paragraph without regard to subparagraph (B), and

(ii) notwithstanding any other provision of this part, the total unfunded vested benefits of the plan shall be fully allocated among all such employers in a manner not inconsistent with regulations which shall be prescribed by the corporation.

Withdrawal by an employer from a plan, during a period of 3 consecutive plan years within which substantially all the employers who have an obligation to contribute under the plan withdraw, shall be presumed to be a withdrawal pursuant to an agreement or arrangement, unless the employer proves otherwise by a preponderance of the evidence.

(E) In the case of a partial withdrawal described in section 1385(a) of this title, the amount of each annual payment shall be the product of—

(i) the amount determined under subparagraph (C) (determined without regard to this subparagraph), multiplied by

(ii) the fraction determined under section 1386(a)(2) of this title.

(2) Withdrawal liability shall be payable in accordance with the schedule set forth by the plan sponsor under subsection (b)(1) of this section beginning no later than 60 days after the date of the demand notwithstanding any request for review or appeal of determinations of the amount of such liability or of the schedule.

(3) Each annual payment determined under paragraph (1)(C) shall be payable in 4 equal installments due quarterly, or at other intervals specified by plan rules. If a payment is not made when due, interest on the payment shall accrue from the due date until the date on which the payment is made.

(4) The employer shall be entitled to prepay the outstanding amount of the unpaid annual withdrawal liability payments determined under paragraph (1)(C), plus accrued interest, if any, in whole or in part, without penalty. If the prepayment is made pursuant to a withdrawal which is later determined to be part of a withdrawal described in paragraph (1)(D), the withdrawal liability of the employer shall not be limited to the amount of the prepayment.

(5) In the event of a default, a plan sponsor may require immediate payment of the outstanding amount of an employer's withdrawal liability, plus accrued interest on the total out-

standing liability from the due date of the first payment which was not timely made. For purposes of this section, the term ''default'' means—

(A) the failure of an employer to make, when due, any payment under this section, if the failure is not cured within 60 days after the employer receives written notification from the plan sponsor of such failure, and

(B) any other event defined in rules adopted by the plan which indicates a substantial likelihood that an employer will be unable to pay its withdrawal liability.

(6) Except as provided in paragraph (1)(A)(ii), interest under this subsection shall be charged at rates based on prevailing market rates for comparable obligations, in accordance with regulations prescribed by the corporation.

(7) A multiemployer plan may adopt rules for other terms and conditions for the satisfaction of an employer's withdrawal liability if such rules—

(A) are consistent with this chapter, and

(B) are not inconsistent with regulations of the corporation.

(8) In the case of a terminated multiemployer plan, an employer's obligation to make payments under this section ceases at the end of the plan year in which the assets of the plan (exclusive of withdrawal liability claims) are sufficient to meet all obligations of the plan, as determined by the corporation.

(d) Applicability of statutory prohibitions

The prohibitions provided in section 1106(a) of this title do not apply to any action required or permitted under this part.

(Pub. L. 93–406, title IV, § 4219, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1236; amended Pub. L. 98–369, div. A, title V, § 558(b)(1)(B), July 18, 1984, 98 Stat. 899.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(7)(A), 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

1984—Subsec. (c)(1)(C)(iii). Pub. L. 98–369 substituted ''September 26, 1980'' for ''April 29, 1980''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1381, 1386, 1391, 1396, 1401, 1403, 1415 of this title.

§ 1400. Approval of amendments

(a) Amendment of covered multiemployer plan; procedures applicable

Except as provided in subsection (b) of this section, if an amendment to a multiemployer plan authorized by any preceding section of this part is adopted more than 36 months after the effective date of this section, the amendment shall be effective only if the corporation approves the amendment, or, within 90 days after the corporation receives notice and a copy of the amendment from the plan sponsor, fails to disapprove the amendment.

(b) Amendment respecting methods for computing withdrawal liability

An amendment permitted by section 1391(c)(5) of this title may be adopted only in accordance with that section.

(c) Criteria for disapproval by corporation

The corporation shall disapprove an amendment referred to in subsection (a) or (b) of this section only if the corporation determines that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the corporation.

(Pub. L. 93–406, title IV, § 4220, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1239.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsec. (a), see 1461(e)(2) of this title.

§ 1401. Resolution of disputes

(a) Arbitration proceedings; matters subject to arbitration, procedures applicable, etc.

(1) Any dispute between an employer and the plan sponsor of a multiemployer plan concerning a determination made under sections 1381 through 1399 of this title shall be resolved through arbitration. Either party may initiate the arbitration proceeding within a 60-day period after the earlier of—

(A) the date of notification to the employer under section 1399(b)(2)(B) of this title, or

(B) 120 days after the date of the employer's request under section 1399(b)(2)(A) of this title.

The parties may jointly initiate arbitration within the 180-day period after the date of the plan sponsor's demand under section 1399(b)(1) of this title.

(2) An arbitration proceeding under this section shall be conducted in accordance with fair and equitable procedures to be promulgated by the corporation. The plan sponsor may purchase insurance to cover potential liability of the arbitrator. If the parties have not provided for the costs of the arbitration, including arbitrator's fees, by agreement, the arbitrator shall assess such fees. The arbitrator may also award reasonable attorney's fees.

(3)(A) For purposes of any proceeding under this section, any determination made by a plan sponsor under sections 1381 through 1399 of this title and section 1405 of this title is presumed correct unless the party contesting the determination shows by a preponderance of the evidence that the determination was unreasonable or clearly erroneous.

(B) In the case of the determination of a plan's unfunded vested benefits for a plan year, the determination is presumed correct unless a party contesting the determination shows by a preponderance of evidence that—

(i) the actuarial assumptions and methods used in the determination were, in the aggregate, unreasonable (taking into account the experience of the plan and reasonable expectations), or

(ii) the plan's actuary made a significant error in applying the actuarial assumptions or methods.

(b) Alternative collection proceedings; civil action subsequent to arbitration award; conduct of arbitration proceedings

(1) If no arbitration proceeding has been initiated pursuant to subsection (a) of this section, the amounts demanded by the plan sponsor under section 1399(b)(1) of this title shall be due and owing on the schedule set forth by the plan sponsor. The plan sponsor may bring an action in a State or Federal court of competent jurisdiction for collection.

(2) Upon completion of the arbitration proceedings in favor of one of the parties, any party thereto may bring an action, no later than 30 days after the issuance of an arbitrator's award, in an appropriate United States district court in accordance with section 1451 of this title to enforce, vacate, or modify the arbitrator's award.

(3) Any arbitration proceedings under this section shall, to the extent consistent with this subchapter, be conducted in the same manner, subject to the same limitations, carried out with the same powers (including subpena power), and enforced in United States courts as an arbitration proceeding carried out under title 9.

(c) Presumption respecting finding of fact by arbitrator

In any proceeding under subsection (b) of this section, there shall be a presumption, rebuttable only by a clear preponderance of the evidence, that the findings of fact made by the arbitrator were correct.

(d) Payments by employer prior and subsequent to determination by arbitrator; adjustments; failure of employer to make payments

Payments shall be made by an employer in accordance with the determinations made under this part until the arbitrator issues a final decision with respect to the determination submitted for arbitration, with any necessary adjustments in subsequent payments for overpayments or underpayments arising out of the decision of the arbitrator with respect to the determination. If the employer fails to make timely payment in accordance with such final decision, the employer shall be treated as being delinquent in the making of a contribution required under the plan (within the meaning of section 1145 of this title).

(e) Furnishing of information by plan sponsor to employer respecting computation of withdrawal liability of employer; fees

If any employer requests in writing that the plan sponsor make available to the employer general information necessary for the employer to compute its withdrawal liability with respect to the plan (other than information which is unique to that employer), the plan sponsor shall furnish the information to the employer without charge. If any employer requests in writing that the plan sponsor make an estimate of such employer's potential withdrawal liability with respect to the plan or to provide information unique to that employer, the plan sponsor may require the employer to pay the reasonable cost of making such estimate or providing such information.

(Pub. L. 93–406, title IV, § 4221, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1239.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1451 of this title.

§ 1402. Reimbursements for uncollectible withdrawal liability

(a) Required supplemental program to reimburse for payments due from employers uncollectible as a result of employer involvement in bankruptcy case or proceedings; program participation, premiums, etc.

By May 1, 1982, the corporation shall establish by regulation a supplemental program to reimburse multiemployer plans for withdrawal liability payments which are due from employers and which are determined to be uncollectible for reasons arising out of cases or proceedings involving the employers under title 11, or similar cases or proceedings. Participation in the supplemental program shall be on a voluntary basis, and a plan which elects coverage under the program shall pay premiums to the corporation in accordance with a premium schedule which shall be prescribed from time to time by the corporation. The premium schedule shall contain such rates and bases for the application of such rates as the corporation considers to be appropriate.

(b) Discretionary supplemental program to reimburse for payments due from employers uncollectible for other appropriate reasons

The corporation may provide under the program for reimbursement of amounts of withdrawal liability determined to be uncollectible for any other reasons the corporation considers appropriate.

(c) Payment of cost of program

The cost of the program (including such administrative and legal costs as the corporation considers appropriate) may be paid only out of premiums collected under such program.

(d) Terms and conditions, limitations, etc., of supplemental program

The supplemental program may be offered to eligible plans on such terms and conditions, and with such limitations with respect to the payment of reimbursements (including the exclusion of de minimis amounts of uncollectible employer liability, and the reduction or elimination of reimbursements which cannot be paid from collected premiums) and such restrictions on withdrawal from the program, as the corporation considers necessary and appropriate.

(e) Arrangements by corporation with private insurers for implementation of program; election of coverage by participating plans with private insurers

The corporation may enter into arrangements with private insurers to carry out in whole or in part the program authorized by this section and may require plans which elect coverage under the program to elect coverage by those private insurers.

(Pub. L. 93–406, title IV, § 4222, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1240.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1082, 1305, 1306, 1403 of this title; title 26 section 412.

§ 1403. Withdrawal liability payment fund

(a) Establishment of or participation in fund by plan sponsors

The plan sponsors of multiemployer plans may establish or participate in a withdrawal liability payment fund.

(b) Definitions

For purposes of this section, the term ''withdrawal liability payment fund'', and the term ''fund'', mean a trust which—

(1) is established and maintained under section 501(c)(22) of title 26,

(2) maintains agreements which cover a substantial portion of the participants who are in multiemployer plans which (under the rules of the trust instrument) are eligible to participate in the fund,

(3) is funded by amounts paid by the plans which participate in the fund, and

(4) is administered by a Board of Trustees, and in the administration of the fund there is equal representation of—

(A) trustees representing employers who are obligated to contribute to the plans participating in the fund, and

(B) trustees representing employees who are participants in plans which participate in the fund.

(c) Payments to plan; amount, criteria, etc.

(1) If an employer withdraws from a plan which participates in a withdrawal liability payment fund, then, to the extent provided in the trust, the fund shall pay to that plan—

(A) the employer's unattributable liability,

(B) the employer's withdrawal liability payments which would have been due but for section 1388, 1389, 1399, or 1405 of this title,

(C) the employer's withdrawal liability payments to the extent they are uncollectible.

(2) The fund may provide for the payment of the employer's attributable liability if the fund—

(A) provides for the payment of both the attributable and the unattributable liability of the employer in a single payment, and

(B) is subrogated to all rights of the plan against the employer.

(3) For purposes of this section, the term—

(A) ''attributable liability'' means the excess, if any, determined under the provisions of a plan not inconsistent with regulations of the corporation, of—

(i) the value of vested benefits accrued as a result of service with the employer, over

(ii) the value of plan assets attributed to the employer, and

(B) ''unattributable liability'' means the excess of withdrawal liability over attributable liability.

Such terms may be further defined, and the manner in which they shall be applied may be prescribed, by the corporation by regulation.

(4)(A) The trust of a fund shall be maintained for the exclusive purpose of paying—

(i) any amount described in paragraph (1) and paragraph (2), and

(ii) reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the fund.

(B) The amounts paid by a plan to a fund shall be deemed a reasonable expense of administering the plan under sections 1103(c)(1) and 1104(a)(1)(A)(ii) of this title, and the payments made by a fund to a participating plan shall be deemed services necessary for the operation of the plan within the meaning of section 1108(b)(2) of this title or within the meaning of section 4975(d)(2) of title 26.

(d) Application of payments by plan

(1) For purposes of this part—

(A) only amounts paid by the fund to a plan under subsection (c)(1)(A) of this section shall be credited to withdrawal liability otherwise payable by the employer, unless the plan otherwise provides, and

(B) any amounts paid by the fund under subsection (c) of this section to a plan shall be treated by the plan as a payment of withdrawal liability to such plan.

(2) For purposes of applying provisions relating to the funding standard accounts (and minimum contribution requirements), amounts paid from the plan to the fund shall be applied to reduce the amount treated as contributed to the plan.

(e) Subrogation of fund to rights of plan

The fund shall be subrogated to the rights of the plan against the employer that has withdrawn from the plan for amounts paid by a fund to a plan under—

(1) subsection (c)(1)(A) of this section, to the extent not credited under subsection (d)(1)(A) of this section, and

(2) subsection (c)(1)(C) of this section.

(f) Discharge of rights of fiduciary of fund; standards applicable, etc.

Notwithstanding any other provision of this chapter, a fiduciary of the fund shall discharge the fiduciary's duties with respect to the fund in accordance with the standards for fiduciaries prescribed by this chapter (to the extent not inconsistent with the purposes of this section), and in accordance with the documents and instruments governing the fund insofar as such documents and instruments are consistent with the provisions of this chapter (to the extent not inconsistent with the purposes of this section). The provisions of the preceding sentence shall supersede any and all State laws relating to fiduciaries insofar as they may now or hereafter relate to a fund to which this section applies.

(g) Prohibition on payments from fund to plan where certain labor negotiations involve employer withdrawn or partially withdrawn from plan and continuity of labor organization representing employees continues

No payments shall be made from a fund to a plan on the occasion of a withdrawal or partial withdrawal of an employer from such plan if the employees representing the withdrawn contribu-

tion base units continue, after such withdrawal, to be represented under section 159 of this title (or other applicable labor laws) in negotiations with such employer by the labor organization which represented such employees immediately preceding such withdrawal.

(h) Purchase of insurance by employer

Nothing in this section shall be construed to prohibit the purchase of insurance by an employer from any other person, to limit the circumstances under which such insurance would be payable, or to limit in any way the terms and conditions of such insurance.

(i) Promulgation of regulations for establishment and maintenance of fund

The corporation may provide by regulation rules not inconsistent with this section governing the establishment and maintenance of funds, but only to the extent necessary to carry out the purposes of this part (other than section 1402 of this title).

(Pub. L. 93–406, title IV, § 4223, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1241; amended Pub. L. 101–239, title VII, § 7891(a), Dec. 19, 1989, 103 Stat. 2445.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (f), 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—Subsecs. (b)(1), (c)(4)(B). 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1082 of this title; title 26 sections 194A, 412, 501, 4975.

§ 1404. Alternative method of withdrawal liability payments

A multiemployer plan may adopt rules providing for other terms and conditions for the satisfaction of an employer's withdrawal liability if such rules are consistent with this chapter and with such regulations as may be prescribed by the corporation.

(Pub. L. 93–406, title IV, § 4224, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1242.)

REFERENCES IN TEXT

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

§ 1405. Limitation on withdrawal liability

(a) Unfunded vested benefits allocable to employer in bona fide sale of assets of employer in arms-length transaction to unrelated party; maximum amount; determinative factors

(1) In the case of bona fide sale of all or substantially all of the employer's assets in an arm's-length transaction to an unrelated party (within the meaning of section 1384(d) of this title), the unfunded vested benefits allocable to an employer (after the application of all sections of this part having a lower number designation than this section), other than an employer undergoing reorganization under title 11 or similar provisions of State law, shall not exceed the greater of—

(A) a portion (determined under paragraph (2)) of the liquidation or dissolution value of the employer (determined after the sale or exchange of such assets), or

(B) the unfunded vested benefits attributable to employees of the employer.

(2) For purposes of paragraph (1), the portion shall be determined in accordance with the following table:

If the liquidation or dissolution value of the employer after the sale or exchange is—	The portion is—
Not more than $2,000,000.	30 percent of the amount.
More than $2,000,000, but not more than $4,000,000.	$600,000, plus 35 percent of the amount in excess of $2,000,000.
More than $4,000,000, but not more than $6,000,000.	$1,300,000, plus 40 percent of the amount in excess of $4,000,000.
More than $6,000,000, but not more than $7,000,000.	$2,100,000, plus 45 percent of the amount in excess of $6,000,000.
More than $7,000,000, but not more than $8,000,000.	$2,550,000, plus 50 percent of the amount in excess of $7,000,000.
More than $8,000,000, but not more than $9,000,000.	$3,050,000, plus 60 percent of the amount in excess of $8,000,000.
More than $9,000,000, but not more than $10,000,000.	$3,650,000, plus 70 percent of the amount in excess of $9,000,000.
More than $10,000,000	$4,350,000, plus 80 percent of the amount in excess of $10,000,000.

(b) Unfunded vested benefits allocable to insolvent employer undergoing liquidation or dissolution; maximum amount; determinative factors

In the case of an insolvent employer undergoing liquidation or dissolution, the unfunded vested benefits allocable to that employer shall not exceed an amount equal to the sum of—

(1) 50 percent of the unfunded vested benefits allocable to the employer (determined without regard to this section), and

(2) that portion of 50 percent of the unfunded vested benefits allocable to the employer (as determined under paragraph (1)) which does

not exceed the liquidation or dissolution value of the employer determined—

(A) as of the commencement of liquidation or dissolution, and

(B) after reducing the liquidation or dissolution value of the employer by the amount determined under paragraph (1).

(c) Property not subject to enforcement of liability; precondition

To the extent that the withdrawal liability of an employer is attributable to his obligation to contribute to or under a plan as an individual (whether as a sole proprietor or as a member of a partnership), property which may be exempt from the estate under section 522 of title 11 or under similar provisions of law, shall not be subject to enforcement of such liability.

(d) Insolvency of employer; liquidation or dissolution value of employer

For purposes of this section—

(1) an employer is insolvent if the liabilities of the employer, including withdrawal liability under the plan (determined without regard to subsection (b) of this section), exceed the assets of the employer (determined as of the commencement of the liquidation or dissolution), and

(2) the liquidation or dissolution value of the employer shall be determined without regard to such withdrawal liability.

(e) One or more withdrawals of employer attributable to same sale, liquidation, or dissolution

In the case of one or more withdrawals of an employer attributable to the same sale, liquidation, or dissolution, under regulations prescribed by the corporation—

(1) all such withdrawals shall be treated as a single withdrawal for the purpose of applying this section, and

(2) the withdrawal liability of the employer to each plan shall be an amount which bears the same ratio to the present value of the withdrawal liability payments to all plans (after the application of the preceding provisions of this section) as the withdrawal liability of the employer to such plan (determined without regard to this section) bears to the withdrawal liability of the employer to all such plans (determined without regard to this section).

(Pub. L. 93–406, title IV, § 4225, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1243.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1381, 1386, 1391, 1401, 1403 of this title.

PART 2—MERGER OR TRANSFER OF PLAN ASSETS OR LIABILITIES

§ 1411. Mergers and transfers between multiemployer plans

(a) Authority of plan sponsor

Unless otherwise provided in regulations prescribed by the corporation, a plan sponsor may not cause a multiemployer plan to merge with one or more multiemployer plans, or engage in a transfer of assets and liabilities to or from another multiemployer plan, unless such merger or transfer satisfies the requirements of subsection (b) of this section.

(b) Criteria

A merger or transfer satisfies the requirements of this section if—

(1) in accordance with regulations of the corporation, the plan sponsor of a multiemployer plan notifies the corporation of a merger with or transfer of plan assets or liabilities to another multiemployer plan at least 120 days before the effective date of the merger or transfer;

(2) no participant's or beneficiary's accrued benefit will be lower immediately after the effective date of the merger or transfer than the benefit immediately before that date;

(3) the benefits of participants and beneficiaries are not reasonably expected to be subject to suspension under section 1426 of this title; and

(4) an actuarial valuation of the assets and liabilities of each of the affected plans has been performed during the plan year preceding the effective date of the merger or transfer, based upon the most recent data available as of the day before the start of that plan year, or other valuation of such assets and liabilities performed under such standards and procedures as the corporation may prescribe by regulation.

(c) Actions not deemed violation of section 1106(a) or (b)(2) of this title

The merger of multiemployer plans or the transfer of assets or liabilities between multiemployer plans, shall be deemed not to constitute a violation of the provisions of section 1106(a) of this title or section 1106(b)(2) of this title if the corporation determines that the merger or transfer otherwise satisfies the requirements of this section.

(d) Nature of plan to which liabilities are transferred

A plan to which liabilities are transferred under this section is a successor plan for purposes of section 1322a(b)(2)(B) of this title.

(Pub. L. 93–406, title IV, § 4231, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1244.)

EFFECTIVE DATE

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1108, 1415 of this title; title 26 section 4975.

§ 1412. Transfers between a multiemployer plan and a single-employer plan

(a) General authority

A transfer of assets or liabilities between, or a merger of, a multiemployer plan and a single-employer plan shall satisfy the requirements of this section.

(b) Accrued benefit of participant or beneficiary not lower immediately after effective date of transfer or merger

No accrued benefit of a participant or beneficiary may be lower immediately after the effective date of a transfer or merger described in subsection (a) of this section than the benefit immediately before that date.

(c) Liability of multiemployer plan to corporation where single-employer plan terminates within 60 months after effective date of transfer; amount of liability, exemption, etc.

(1) Except as provided in paragraphs (2) and (3), a multiemployer plan which transfers liabilities to a single-employer plan shall be liable to the corporation if the single-employer plan terminates within 60 months after the effective date of the transfer. The amount of liability shall be the lesser of—

(A) the amount of the plan asset insufficiency of the terminated single-employer plan, less 30 percent of the net worth of the employer who maintained the single-employer plan, determined in accordance with section 1362 or 1364 this title, or

(B) the value, on the effective date of the transfer, of the unfunded benefits transferred to the single-employer plan which are guaranteed under section 1322 of this title.

(2) A multiemployer plan shall be liable to the corporation as provided in paragraph (1) unless, within 180 days after the corporation receives an application (together with such information as the corporation may reasonably require for purposes of such application) from the multiemployer plan sponsor for a determination under this paragraph—

(A) the corporation determines that the interests of the plan participants and beneficiaries and of the corporation are adequately protected, or

(B) fails to make any determination regarding the adequacy with which such interests are protected with respect to such transfer of liabilities.

If, after the receipt of such application, the corporation requests from the plan sponsor additional information necessary for the determination, the running of the 180-day period shall be suspended from the date of such request until the receipt by the corporation of the additional information requested. The corporation may by regulation prescribe procedures and standards for the issuance of determinations under this paragraph. This paragraph shall not apply to any application submitted less than 180 days after September 26, 1980.

(3) A multiemployer plan shall not be liable to the corporation as provided in paragraph (1) in the case of a transfer from the multiemployer plan to a single-employer plan of liabilities which accrued under a single-employer plan which merged with the multiemployer plan, if, the value of liabilities transferred to the single-employer plan does not exceed the value of the liabilities for benefits which accrued before the merger, and the value of the assets transferred to the single-employer plan is substantially equal to the value of the assets which would have been in the single-employer plan if the employer had maintained and funded it as a separate plan under which no benefits accrued after the date of the merger.

(4) The corporation may make equitable arrangements with multiemployer plans which are liable under this subsection for satisfaction of their liability.

(d) Guarantee of benefits under single-employer plan

Benefits under a single-employer plan to which liabilities are transferred in accordance with this section are guaranteed under section 1322 of this title to the extent provided in that section as of the effective date of the transfer and the plan is a successor plan.

(e) Transfer of liabilities by multiemployer plan to single-employer plan

(1) Except as provided in paragraph (2), a multiemployer plan may not transfer liabilities to a single-employer plan unless the plan sponsor of the plan to which the liabilities would be transferred agrees to the transfer.

(2) In the case of a transfer described in subsection (c)(3) of this section, paragraph (1) of this subsection is satisfied by the advance agreement to the transfer by the employer who will be obligated to contribute to the single-employer plan.

(f) Additional requirements by corporation for protection of interests of plan participants, beneficiaries and corporation; approval by corporation of transfer of assets or liabilities to single-employer plan from plan in reorganization; covered transfers in connection with termination

(1) The corporation may prescribe by regulation such additional requirements with respect to the transfer of assets or liabilities as may be necessary to protect the interests of plan participants and beneficiaries and the corporation.

(2) Except as otherwise determined by the corporation, a transfer of assets or liabilities to a single-employer plan from a plan in reorganization under section 1421 of this title is not effective unless the corporation approves such transfer.

(3) No transfer to which this section applies, in connection with a termination described in section 1341a(a)(2) of this title shall be effective unless the transfer meets such requirements as may be established by the corporation to prevent an increase in the risk of loss to the corporation.

(Pub. L. 93–406, title IV, § 4232, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1245.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1414 of this title.

§ 1413. Partition

(a) Authority of corporation

The corporation may order the partition of a multiemployer plan in accordance with this section.

(b) Authority of plan sponsor upon application to corporation for partition order; procedures applicable to corporation

A plan sponsor may apply to the corporation for an order partitioning a plan. The corporation may not order the partition of a plan except upon notice to the plan sponsor and the participants and beneficiaries whose vested benefits will be affected by the partition of the plan, and upon finding that—

(1) a substantial reduction in the amount of aggregate contributions under the plan has resulted or will result from a case or proceeding under title 11 with respect to an employer;

(2) the plan is likely to become insolvent;

(3) contributions will have to be increased significantly in reorganization to meet the minimum contribution requirement and prevent insolvency; and

(4) partition would significantly reduce the likelihood that the plan will become insolvent.

(c) Authority of corporation notwithstanding pendency of partition proceeding

The corporation may order the partition of a plan notwithstanding the pendency of a proceeding described in subsection (b)(1) of this section.

(d) Scope of partition order

The corporation's partition order shall provide for a transfer of no more than the nonforfeitable benefits directly attributable to service with the employer referred to in subsection (b)(1) of this section and an equitable share of assets.

(e) Nature of plan created by partition

The plan created by the partition is—

(1) a successor plan to which section 1322a of this title applies, and

(2) a terminated multiemployer plan to which section 1341a(d) of this title applies, with respect to which only the employer described in subsection (b)(1) of this section has withdrawal liability, and to which section 1368 of this title applies.

(f) Authority of corporation to obtain decree partitioning plan and appointing trustee for terminated portion of partitioned plan

The corporation may proceed under section 1342(c) through (h) of this title for a decree partitioning a plan and appointing a trustee for the terminated portion of a partitioned plan. The court may order the partition of a plan upon making the findings described in subsection (b)(1) through (4) of this section, and subject to the conditions set forth in subsections (c) through (e) of this section.

(Pub. L. 93–406, title IV, § 4233, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1246.)

§ 1414. Asset transfer rules

(a) Applicability and scope

A transfer of assets from a multiemployer plan to another plan shall comply with asset-transfer rules which shall be adopted by the multiemployer plan and which—

(1) do not unreasonably restrict the transfer of plan assets in connection with the transfer of plan liabilities, and

(2) operate and are applied uniformly with respect to each proposed transfer, except that the rules may provide for reasonable variations taking into account the potential financial impact of a proposed transfer on the multiemployer plan.

Plan rules authorizing asset transfers consistent with the requirements of section 1412(c)(3) of this title shall be considered to satisfy the requirements of this subsection.

(b) Exemption of de minimis transfers

The corporation shall prescribe regulations which exempt de minimis transfers of assets from the requirements of this part.

(c) Written reciprocity agreements

This part shall not apply to transfers of assets pursuant to written reciprocity agreements, except to the extent provided in regulations prescribed by the corporation.

(Pub. L. 93–406, title IV, § 4234, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1247.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1415 of this title.

§ 1415. Transfers pursuant to change in bargaining representative

(a) Authority to transfer from old plan to new plan pursuant to employee participation in another multiemployer plan after certified change of representative

In any case in which an employer has completely or partially withdrawn from a multiemployer plan (hereafter in this section referred to as the ''old plan'') as a result of a certified change of collective bargaining representative occurring after September 25, 1980, if participants of the old plan who are employed by the employer will, as a result of that change, participate in another multiemployer plan (hereafter in this section referred to as the ''new plan''), the old plan shall transfer assets and liabilities to the new plan in accordance with this section.

(b) Notification by employer of plan sponsor of old plan; notification by plan sponsor of old plan of employer and plan sponsor of new plan; appeal by new plan to prevent transfer; further proceedings

(1) The employer shall notify the plan sponsor of the old plan of a change in multiemployer plan participation described in subsection (a) of this section no later than 30 days after the employer determines that the change will occur.

(2) The plan sponsor of the old plan shall—

(A) notify the employer of—

(i) the amount of the employer's withdrawal liability determined under part 1 of this subtitle with respect to the withdrawal,

(ii) the old plan's intent to transfer to the new plan the nonforfeitable benefits of the employees who are no longer working in covered service under the old plan as a result of the change of bargaining representative, and

(iii) the amount of assets and liabilities which are to be transferred to the new plan, and

(B) notify the plan sponsor of the new plan of the benefits, assets, and liabilities which will be transferred to the new plan.

(3) Within 60 days after receipt of the notice described in paragraph (2)(B), the new plan may file an appeal with the corporation to prevent the transfer. The transfer shall not be made if the corporation determines that the new plan would suffer substantial financial harm as a result of the transfer. Upon notification described in paragraph (2), if—

(A) the employer fails to object to the transfer within 60 days after receipt of the notice described in paragraph (2)(A), or

(B) the new plan either—

(i) fails to file such an appeal, or

(ii) the corporation, pursuant to such an appeal, fails to find that the new plan would suffer substantial financial harm as a result of the transfer described in the notice under paragraph (2)(B) within 180 days after the date on which the appeal is filed,

then the plan sponsor of the old plan shall transfer the appropriate amount of assets and liabilities to the new plan.

(c) Reduction of amount of withdrawal liability of employer upon transfer of appropriate amount of assets and liabilities by plan sponsor of old plan to new plan

If the plan sponsor of the old plan transfers the appropriate amount of assets and liabilities under this section to the new plan, then the amount of the employer's withdrawal liability (as determined under section 1381(b) of this title without regard to such transfer and this section) with respect to the old plan shall be reduced by the amount by which—

(1) the value of the unfunded vested benefits allocable to the employer which were transferred by the plan sponsor of the old plan to the new plan, exceeds

(2) the value of the assets transferred.

(d) Escrow payments by employer upon complete or partial withdrawal and prior to transfer

In any case in which there is a complete or partial withdrawal described in subsection (a) of this section, if—

(1) the new plan files an appeal with the corporation under subsection (b)(3) of this section, and

(2) the employer is required by section 1399 of this title to begin making payments of withdrawal liability before the earlier of—

(A) the date on which the corporation finds that the new plan would not suffer substantial financial harm as a result of the transfer, or

(B) the last day of the 180-day period beginning on the date on which the new plan files its appeal,

then the employer shall make such payments into an escrow held by a bank or similar financial institution satisfactory to the old plan. If the transfer is made, the amounts paid into the escrow shall be returned to the employer. If the transfer is not made, the amounts paid into the escrow shall be paid to the old plan and credited against the employer's withdrawal liability.

(e) Prohibition on transfer of assets to new plan by plan sponsor of old plan; exemptions

(1) Notwithstanding subsection (b) of this section, the plan sponsor shall not transfer any assets to the new plan if—

(A) the old plan is in reorganization (within the meaning of section 1421(a) of this title), or

(B) the transfer of assets would cause the old plan to go into reorganization (within the meaning of section 1421(a) of this title).

(2) In any case in which a transfer of assets from the old plan to the new plan is prohibited by paragraph (1), the plan sponsor of the old plan shall transfer—

(A) all nonforfeitable benefits described in subsection (b)(2) of this section, if the value of such benefits does not exceed the withdrawal liability of the employer with respect to such withdrawal, or

(B) such nonforfeitable benefits having a value equal to the withdrawal liability of the employer, if the value of such benefits exceeds the withdrawal liability of the employer.

(f) Agreement between plan sponsors of old plan and new plan to transfer in compliance with other statutory provisions; reduction of withdrawal liability of employer from old plan; amount of withdrawal liability of employer to new plan

(1) Notwithstanding subsections (b) and (e) of this section, the plan sponsors of the old plan and the new plan may agree to a transfer of assets and liabilities that complies with sections 1411 and 1414 of this title, rather than this section, except that the employer's liability with respect to the withdrawal from the old plan shall be reduced under subsection (c) of this section as if assets and liabilities had been transferred in accordance with this section.

(2) If the employer withdraws from the new plan within 240 months after the effective date of a transfer of assets and liabilities described in this section, the amount of the employer's withdrawal liability to the new plan shall be the greater of—

(A) the employer's withdrawal liability determined under part 1 of this subtitle with respect to the new plan, or

(B) the amount by which the employer's withdrawal liability to the old plan was reduced under subsection (c) of this section, reduced by 5 percent for each 12-month period following the effective date of the transfer and ending before the date of the withdrawal from the new plan.

(g) Definitions

For purposes of this section—

(1) ''appropriate amount of assets'' means the amount by which the value of the nonforfeitable benefits to be transferred exceeds the amount of the employer's withdrawal liability to the old plan (determined under part 1 of this subtitle without regard to section 1391(e) of this title), and

(2) ''certified change of collective bargaining representative'' means a change of collective bargaining representative certified under the Labor-Management Relations Act, 1947 [29 U.S.C. 141 et seq.], or the Railway Labor Act [45 U.S.C. 151 et seq.].

(Pub. L. 93–406, title IV, § 4235, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1247; amended Pub. L. 98–369, div. A, title V, § 558(b)(1)(A), July 18, 1984, 98 Stat. 899.)

REFERENCES IN TEXT

The Labor-Management Relations Act, 1947, referred to in subsec. (g)(2), is act June 23, 1947, ch. 120, 61 Stat. 136, as amended, which is classified principally to chapter 7 (§ 141 et seq.) of this title. For complete classification of this Act to the Code, see section 141 of this title and Tables.

The Railway Labor Act, referred to in subsec. (g)(2), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 substituted ''September 25, 1980'' for ''April 28, 1980''.

EFFECTIVE DATE

Section effective Sept. 26, 1980, see section 1461(e)(4) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1461 of this title.

PART 3—REORGANIZATION; MINIMUM CONTRIBUTION REQUIREMENT FOR MULTIEMPLOYER PLANS

§ 1421. Reorganization status

(a) Reorganization index of plan for plan year greater than zero

A multiemployer plan is in reorganization for a plan year if the plan's reorganization index for that year is greater than zero.

(b) Determination of reorganization index of plan for plan year; applicable factors, definitions, etc.

(1) A plan's reorganization index for any plan year is the excess of—

(A) the vested benefits charge for such year, over

(B) the net charge to the funding standard account for such year.

(2) For purposes of this part, the net charge to the funding standard account for any plan year is the excess (if any) of—

(A) the charges to the funding standard account for such year under section 412(b)(2) of title 26, over

(B) the credits to the funding standard account under section 412(b)(3)(B) of title 26.

(3) For purposes of this part, the vested benefits charge for any plan year is the amount which would be necessary to amortize the plan's unfunded vested benefits as of the end of the base plan year in equal annual installments—

(A) over 10 years, to the extent such benefits are attributable to persons in pay status, and

(B) over 25 years, to the extent such benefits are attributable to other participants.

(4)(A) The vested benefits charge for a plan year shall be based on an actuarial valuation of the plan as of the end of the base plan year, adjusted to reflect—

(i) any—

(I) decrease of 5 percent or more in the value of plan assets, or increase of 5 percent or more in the number of persons in pay status, during the period beginning on the first day of the plan year following the base plan year and ending on the adjustment date, or

(II) at the election of the plan sponsor, actuarial valuation of the plan as of the adjustment date or any later date not later than the last day of the plan year for which the determination is being made,

(ii) any change in benefits under the plan which is not otherwise taken into account under this subparagraph and which is pursuant to any amendment—

(I) adopted before the end of the plan year for which the determination is being made, and

(II) effective after the end of the base plan year and on or before the end of the plan year referred to in subclause (I), and

(iii) any other event (including an event described in subparagraph (B)(i)(I)) which, as determined in accordance with regulations prescribed by the Secretary, would substantially increase the plan's vested benefit charge.

(B)(i) In determining the vested benefits charge for a plan year following a plan year in which the plan was not in reorganization, any change in benefits which—

(I) results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits as a result of changes in a collective bargaining agreement, or

(II) results from any other change in a collective bargaining agreement,

shall not be taken into account except to the extent provided in regulations prescribed by the Secretary of the Treasury.

(ii) Except as otherwise determined by the Secretary of the Treasury, in determining the vested benefits charge for any plan year following any plan year in which the plan was in reorganization, any change in benefits—

(I) described in clause (i)(I), or

(II) described in clause (i)(II) as determined under regulations prescribed by the Secretary of the Treasury,

shall, for purposes of subparagraph (A)(ii), be treated as a change in benefits pursuant to an amendment to a plan.

(5)(A) For purposes of this part, the base plan year for any plan year is—

(i) if there is a relevant collective bargaining agreement, the last plan year ending at least 6 months before the relevant effective date, or

(ii) if there is no relevant collective bargaining agreement, the last plan year ending at least 12 months before the beginning of the plan year.

(B) For purposes of this part, a relevant collective bargaining agreement is a collective bargaining agreement—

(i) which is in effect for at least 6 months during the plan year, and

(ii) which has not been in effect for more than 36 months as of the end of the plan year.

(C) For purposes of this part, the relevant effective date is the earliest of the effective dates for the relevant collective bargaining agreements.

(D) For purposes of this part, the adjustment date is the date which is—

(i) 90 days before the relevant effective date, or

(ii) if there is no relevant effective date, 90 days before the beginning of the plan year.

(6) For purposes of this part, the term ''person in pay status'' means—

(A) a participant or beneficiary on the last day of the base plan year who, at any time during such year, was paid an early, late, normal, or disability retirement benefit (or a death benefit related to a retirement benefit), and

(B) to the extent provided in regulations prescribed by the Secretary of the Treasury, any other person who is entitled to such a benefit under the plan.

(7) For purposes of paragraph (3)—

(A) in determining the plan's unfunded vested benefits, plan assets shall first be allocated to the vested benefits attributable to persons in pay status, and

(B) the vested benefits charge shall be determined without regard to reductions in accrued benefits under section 1425 of this title which are first effective in the plan year.

(8) For purposes of this part, any outstanding claim for withdrawal liability shall not be considered a plan asset, except as otherwise provided in regulations prescribed by the Secretary of the Treasury.

(9) For purposes of this part, the term ''unfunded vested benefits'' means with respect to a plan, an amount (determined in accordance with regulations prescribed by the Secretary of the Treasury) equal to—

(A) the value of nonforfeitable benefits under the plan, less

(B) the value of assets of the plan.

(c) Payment of benefits to participants

Except as provided in regulations prescribed by the corporation, while a plan is in reorganization a benefit with respect to a participant (other than a death benefit) which is attributable to employer contributions and which has a value of more than $1,750 may not be paid in a form other than an annuity which (by itself or in combination with social security, railroad retirement, or workers' compensation benefits) provides substantially level payments over the life of the participant.

(d) Terminated multiemployer plans

Any multiemployer plan which terminates under section 1341a(a)(2) of this title shall not be considered in reorganization after the last day of the plan year in which the plan is treated as having terminated.

(Pub. L. 93–406, title IV, § 4241, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1249; amended Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (b)(2)(A). Pub. L. 101–239 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE

Part, relating to multiemployer plan reorganization, effective, with respect to each plan, on the first day of the first plan year beginning on or after the earlier of the date on which the last collective-bargaining agreement providing for employer contributions under the plan, which was in effect on Sept. 26, 1980, expires, without regard to extensions agreed to after Sept. 26, 1980, or three years after Sept. 26, 1980, see section 1461(e)(3) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1202, 1301, 1412, 1415, 1423, 1426, 1461 of this title.

§ 1422. Notice of reorganization and funding requirements

(a)(1) If—

(A) a multiemployer plan is in reorganization for a plan year, and

(B) section 1423 of this title would require an increase in contributions for such plan year,

the plan sponsor shall notify the persons described in paragraph (2) that the plan is in reorganization and that, if contributions to the plan are not increased, accrued benefits under the plan may be reduced or an excise tax may be imposed (or both such reduction and imposition may occur).

(2) The persons described in this paragraph are—

(A) each employer who has an obligation to contribute under the plan (within the meaning of section 1381(h)(5) of this title), and

(B) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(3) The determination under paragraph (1)(B) shall be made without regard to the overburden credit provided by section 1424 of this title.

(b) The corporation may prescribe additional or alternative requirements for assuring, in the case of a plan with respect to which notice is required by subsection (a)(1) of this section, that the persons described in subsection (a)(2) of this section—

(1) receive appropriate notice that the plan is in reorganization,

(2) are adequately informed of the implications of reorganization status, and

(3) have reasonable access to information relevant to the plan's reorganization status.

(Pub. L. 93–406, title IV, § 4242, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1251.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1202, 1426, 1461 of this title.

§ 1423. Minimum contribution requirement

(a) Maintenance of funding standard account; amount of accumulated funding deficiency

(1) For any plan year for which a plan is in reorganization—

(A) the plan shall continue to maintain its funding standard account while it is in reorganization, and

(B) the plan's accumulated funding deficiency under section 1082(a) of this title for such plan year shall be equal to the excess (if any) of—

(i) the sum of the minimum contribution requirement for such plan year (taking into account any overburden credit under section 1424(a) of this title) plus the plan's accumulated funding deficiency for the preceding plan year (determined under this section if the plan was in reorganization during such year or under section 1082(a) of this title if the plan was not in reorganization), over

(ii) amounts considered contributed by employers to or under the plan for the plan year (increased by any amount waived under subsection (f) of this section for the plan year).

(2) For purposes of paragraph (1), withdrawal liability payments (whether or not received) which are due with respect to withdrawals before the end of the base plan year shall be considered amounts contributed by the employer to or under the plan if, as of the adjustment date, it was reasonable for the plan sponsor to anticipate that such payments would be made during the plan year.

(b) Determination of amount; applicable factors

(1) Except as otherwise provided in this section, for purposes of this part the minimum contribution requirement for a plan year in which a plan is in reorganization is an amount equal to the excess of—

(A) the sum of—

(i) the plan's vested benefits charge for the plan year, and

(ii) the increase in normal cost for the plan year determined under the entry age normal funding method which is attributable to plan amendments adopted while the plan was in reorganization, over

(B) the amount of the overburden credit (if any) determined under section 1424 of this title for the plan year.

(2) If the plan's current contribution base for the plan year is less than the plan's valuation contribution base for the plan year, the minimum contribution requirement for such plan year shall be equal to the product of the amount determined under paragraph (1) (after any adjustment required by this part other than this paragraph) and a fraction—

(A) the numerator of which is the plan's current contribution base for the plan year, and

(B) the denominator of which is the plan's valuation contribution base for the plan year.

(3)(A) If the vested benefits charge for a plan year of a plan in reorganization is less than the plan's cash-flow amount for the plan year, the plan's minimum contribution requirement for the plan year is the amount determined under paragraph (1) (determined before the application of paragraph (2)) after substituting the term ''cash-flow amount'' for the term ''vested benefits charge'' in paragraph (1)(A).

(B) For purposes of subparagraph (A), a plan's cash-flow amount for a plan year is an amount equal to—

(i) the amount of the benefits payable under the plan for the base plan year, plus the amount of the plan's administrative expenses for the base plan year, reduced by

(ii) the value of the available plan assets for the base plan year determined under regulations prescribed by the Secretary of the Treasury,

adjusted in a manner consistent with section 1421(b)(4) of this title.

(c) Current contribution base; valuation contribution base

(1) For purposes of this part, a plan's current contribution base for a plan year is the number of contribution base units with respect to which contributions are required to be made under the plan for that plan year, determined in accordance with regulations prescribed by the Secretary of the Treasury.

(2)(A) Except as provided in subparagraph (B), for purposes of this part a plan's valuation contribution base is the number of contribution base units for which contributions were received for the base plan year—

(i) adjusted to reflect declines in the contribution base which have occurred (or could reasonably be anticipated) as of the adjustment date for the plan year referred to in paragraph (1),

(ii) adjusted upward (in accordance with regulations prescribed by the Secretary of the Treasury) for any contribution base reduction in the base plan year caused by a strike or lockout or by unusual events, such as fire, earthquake, or severe weather conditions, and

(iii) adjusted (in accordance with regulations prescribed by the Secretary of the Treasury) for reductions in the contribution base resulting from transfers of liabilities.

(B) For any plan year—

(i) in which the plan is insolvent (within the meaning of section 1426(b)(1) of this title), and

(ii) beginning with the first plan year beginning after the expiration of all relevant collective bargaining agreements which were in effect in the plan year in which the plan became insolvent,

the plan's valuation contribution base is the greater of the number of contribution base units for which contributions were received for the first or second plan year preceding the first plan year in which the plan is insolvent, adjusted as provided in clause (ii) or (iii) of subparagraph (A).

(d) Maximum amount; amount of funding standard requirement; applicability to plan amendments increasing benefits

(1) Under regulations prescribed by the Secretary of the Treasury, the minimum contribution requirement applicable to any plan for any

plan year which is determined under subsection (b) of this section (without regard to subsection (b)(2) of this section) shall not exceed an amount which is equal to the sum of—

(A) the greater of—

(i) the funding standard requirement for such plan year, or

(ii) 107 percent of—

(I) if the plan was not in reorganization in the preceding plan year, the funding standard requirement for such preceding plan year, or

(II) if the plan was in reorganization in the preceding plan year, the sum of the amount determined under this subparagraph for the preceding plan year and the amount (if any) determined under subparagraph (B) for the preceding plan year, plus

(B) if for the plan year a change in benefits is first required to be considered in computing the charges under section 412(b)(2)(A) or (B) of title 26, the sum of—

(i) the increase in normal cost for a plan year determined under the entry age normal funding method due to increases in benefits described in section 1421(b)(4)(A)(ii) of this title (determined without regard to section 1421(b)(4)(B)(i) of this title), and

(ii) the amount necessary to amortize in equal annual installments the increase in the value of vested benefits under the plan due to increases in benefits described in clause (i) over—

(I) 10 years, to the extent such increase in value is attributable to persons in pay status, or

(II) 25 years, to the extent such increase in value is attributable to other participants.

(2) For purposes of paragraph (1), the funding standard requirement for any plan year is an amount equal to the net charge to the funding standard account for such plan year (as defined in section 1421(b)(2) of this title).

(3)(A) In the case of a plan described in section 1396(b) of this title, if a plan amendment which increases benefits is adopted after January 1, 1980—

(i) paragraph (1) shall apply only if the plan is a plan described in subparagraph (B), and

(ii) the amount under paragraph (1) shall be determined without regard to paragraph (1)(B).

(B) A plan is described in this subparagraph if—

(i) the rate of employer contributions under the plan for the first plan year beginning on or after the date on which an amendment increasing benefits is adopted, multiplied by the valuation contribution base for that plan year, equals or exceeds the sum of—

(I) the amount that would be necessary to amortize fully, in equal annual installments, by July 1, 1986, the unfunded vested benefits attributable to plan provisions in effect on July 1, 1977 (determined as of the last day of the base plan year); and

(II) the amount that would be necessary to amortize fully, in equal annual installments, over the period described in subparagraph (C), beginning with the first day of the first plan year beginning on or after the date on which the amendment is adopted, the unfunded vested benefits (determined as of the last day of the base plan year) attributable to each plan amendment after July 1, 1977; and

(ii) the rate of employer contributions for each subsequent plan year is not less than the lesser of—

(I) the rate which when multiplied by the valuation contribution base for that subsequent plan year produces the annual amount that would be necessary to complete the amortization schedule described in clause (i), or

(II) the rate for the plan year immediately preceding such subsequent plan year, plus 5 percent of such rate.

(C) The period determined under this subparagraph is the lesser of—

(i) 12 years, or

(ii) a period equal in length to the average of the remaining expected lives of all persons receiving benefits under the plan.

(4) Paragraph (1) shall not apply with respect to a plan, other than a plan described in paragraph (3), for the period of consecutive plan years in each of which the plan is in reorganization, beginning with a plan year in which occurs the earlier of the date of the adoption or the effective date of any amendment of the plan which increases benefits with respect to service performed before the plan year in which the adoption of the amendment occurred.

(e) Adjustment of vested benefits charge

In determining the minimum contribution requirement with respect to a plan for a plan year under subsection (b) of this section, the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under section 412(c)(8) of title 26.

(f) Waiver of accumulated funding deficiency

(1) The Secretary of the Treasury may waive any accumulated funding deficiency under this section in accordance with the provisions of section 1083(a) of this title.

(2) Any waiver under paragraph (1) shall not be treated as a waived funding deficiency (within the meaning of section 1083(c) of this title).

(g) Statutory methods applicable for determinations

For purposes of making any determination under this part, the requirements of section 1082(c)(3) of this title shall apply.

(Pub. L. 93–406, title IV, § 4243, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1252; amended Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsecs. (d)(1)(B), (e). 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1082, 1202, 1322a, 1396, 1422, 1424, 1425, 1426, 1461 of this title.

§ 1424. Overburden credit against minimum contribution requirement

(a) Applicability of overburden credit to determinations

For purposes of determining the minimum contribution requirement under section 1423 of this title (before the application of section 1423(b)(2) or (d) of this title) the plan sponsor of a plan which is overburdened for the plan year shall apply an overburden credit against the plan's minimum contribution requirement for the plan year (determined without regard to section 1423(b)(2) or (d) of this title and without regard to this section).

(b) Determination of overburden status of plan

A plan is overburdened for a plan year if—

(1) the average number of pay status participants under the plan in the base plan year exceeds the average of the number of active participants in the base plan year and the 2 plan years preceding the base plan year, and

(2) the rate of employer contributions under the plan equals or exceeds the greater of—

(A) such rate for the preceding plan year, or

(B) such rate for the plan year preceding the first year in which the plan is in reorganization.

(c) Amount of overburden credit

The amount of the overburden credit for a plan year is the product of—

(1) one-half of the average guaranteed benefit paid for the base plan year, and

(2) the overburden factor for the plan year.

The amount of the overburden credit for a plan year shall not exceed the amount of the minimum contribution requirement for such year (determined without regard to this section).

(d) Amount of overburden factor

For purposes of this section, the overburden factor of a plan for the plan year is an amount equal to—

(1) the average number of pay status participants for the base plan year, reduced by

(2) the average of the number of active participants for the base plan year and for each of the 2 plan years preceding the base plan year.

(e) Definitions; determinative factors

For purposes of this section—

(1) The term ''pay status participant'' means, with respect to a plan, a participant receiving retirement benefits under the plan.

(2) The number of active participants for a plan year shall be the sum of—

(A) the number of active employees who are participants in the plan and on whose behalf contributions are required to be made during the plan year;

(B) the number of active employees who are not participants in the plan but who are in an employment unit covered by a collective bargaining agreement which requires the employees' employer to contribute to the plan, unless service in such employment unit was never covered under the plan or a predecessor thereof, and

(C) the total number of active employees attributed to employers who made payments to the plan for the plan year of withdrawal liability pursuant to part 1 of this subtitle, determined by dividing—

(i) the total amount of such payments, by

(ii) the amount equal to the total contributions received by the plan during the plan year divided by the average number of active employees who were participants in the plan during the plan year.

The Secretary of the Treasury shall by regulation provide alternative methods of determining active participants where (by reason of irregular employment, contributions on a unit basis, or otherwise) this paragraph does not yield a representative basis for determining the credit.

(3) The term ''average number'' means, with respect to pay status participants for a plan year, a number equal to one-half the sum of—

(A) the number with respect to the plan as of the beginning of the plan year, and

(B) the number with respect to the plan as of the end of the plan year.

(4) The average guaranteed benefit paid is 12 times the average monthly pension payment guaranteed under section 1322a(c)(1) of this title determined under the provisions of the plan in effect at the beginning of the first plan year in which the plan is in reorganization and without regard to section 1322a(c)(2) of this title.

(5) The first year in which the plan is in reorganization is the first of a period of 1 or more consecutive plan years in which the plan has been in reorganization not taking into account any plan years the plan was in reorganization prior to any period of 3 or more consecutive plan years in which the plan was not in reorganization.

(f) Eligibility of plan for overburden credit for plan year

(1) Notwithstanding any other provision of this section, a plan is not eligible for an overburden credit for a plan year if the Secretary of the Treasury finds that the plan's current contribution base for the plan year was reduced, without a corresponding reduction in the plan's unfunded vested benefits attributable to pay status participants, as a result of a change in an agreement providing for employer contributions under the plan.

(2) For purposes of paragraph (1), a complete or partial withdrawal of an employer (within the meaning of part 1 of this subtitle) does not impair a plan's eligibility for an overburden credit, unless the Secretary of the Treasury finds that a contribution base reduction described in paragraph (1) resulted from a transfer of liabilities to another plan in connection with the withdrawal.

(g) Overburden credit where 2 or more multiemployer plans merge

Notwithstanding any other provision of this section, if 2 or more multiemployer plans merge, the amount of the overburden credit which may be applied under this section with respect to the plan resulting from the merger for any of the 3 plan years ending after the effective date of the merger shall not exceed the sum of the used overburden credit for each of the merging plans for its last plan year ending before the effective date of the merger. For purposes of the preceding sentence, the used overburden credit is that portion of the credit which does not exceed the excess of the minimum contribution requirement (determined without regard to any overburden requirement under this section) over the employer contributions required under the plan.

(Pub. L. 93–406, title IV, § 4244, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1255.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1202, 1422, 1423, 1461 of this title.

§ 1425. Adjustments in accrued benefits

(a) Amendment of multiemployer plan in reorganization to reduce or eliminate accrued benefits attributable to employer contributions ineligible for guarantee of corporation; adjustment of vested benefits charge to reflect plan amendment

(1) Notwithstanding sections 1053 and 1054 of this title, a multiemployer plan in reorganization may be amended in accordance with this section, to reduce or eliminate accrued benefits attributable to employer contributions which, under section 1322a(b) of this title, are not eligible for the corporation's guarantee. The preceding sentence shall only apply to accrued benefits under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980.

(2) In determining the minimum contribution requirement with respect to a plan for a plan year under section 1423(b) of this title, the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under this section or section 412(c)(8) of title 26, but only if the amendment is adopted and effective no later than 2½ months after the end of the plan year, or within such extended period as the Secretary of the Treasury may prescribe by regulation under section 412(c)(10) of title 26.

(b) Reduction of accrued benefits; notice by plan sponsors to plan participants and beneficiaries

(1) Accrued benefits may not be reduced under this section unless—

(A) notice has been given, at least 6 months before the first day of the plan year in which the amendment reducing benefits is adopted, to—

(i) plan participants and beneficiaries,

(ii) each employer who has an obligation to contribute (within the meaning of section 1392(a) of this title) under the plan, and

(iii) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer,

that the plan is in reorganization and that, if contributions under the plan are not increased, accrued benefits under the plan will be reduced or an excise tax will be imposed on employers;

(B) in accordance with regulations prescribed by the Secretary of the Treasury—

(i) any category of accrued benefits is not reduced with respect to inactive participants to a greater extent proportionally than such category of accrued benefits is reduced with respect to active participants,

(ii) benefits attributable to employer contributions other than accrued benefits and the rate of future benefit accruals are reduced at least to an extent equal to the reduction in accrued benefits of inactive participants, and

(iii) in any case in which the accrued benefit of a participant or beneficiary is reduced by changing the benefit form or the requirements which the participant or beneficiary must satisfy to be entitled to the benefit, such reduction is not applicable to—

(I) any participant or beneficiary in pay status on the effective date of the amendment, or the beneficiary of such a participant, or

(II) any participant who has attained normal retirement age, or who is within 5 years of attaining normal retirement age, on the effective date of the amendment, or the beneficiary of any such participant; and

(C) the rate of employer contributions for the plan year in which the amendment becomes effective and for all succeeding plan years in which the plan is in reorganization equals or exceeds the greater of—

(i) the rate of employer contributions, calculated without regard to the amendment, for the plan year in which the amendment becomes effective, or

(ii) the rate of employer contributions for the plan year preceding the plan year in which the amendment becomes effective.

(2) The plan sponsors shall include in any notice required to be sent to plan participants and beneficiaries under paragraph (1) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(c) Recoupment by plan of excess benefit payment

A plan may not recoup a benefit payment which is in excess of the amount payable under the plan because of an amendment retroactively reducing accrued benefits under this section.

(d) Amendment of plan to increase or restore accrued benefits previously reduced or rate of future benefit accruals; conditions, applicable factors, etc.

(1)(A) A plan which has been amended to reduce accrued benefits under this section may be amended to increase or restore accrued benefits,

or the rate of future benefit accruals, only if the plan is amended to restore levels of previously reduced accrued benefits of inactive participants and of participants who are within 5 years of attaining normal retirement age to at least the same extent as any such increase in accrued benefits or in the rate of future benefit accruals.

(B) For purposes of this subsection, in the case of a plan which has been amended under this section to reduce accrued benefits—

(i) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit increase to the extent that the benefit, or the accrual rate, is thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan before the effective date of the amendment reducing accrued benefits, and

(ii) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit restoration to the extent that the benefit, or the accrual rate, is not thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan immediately before the effective date of the amendment reducing accrued benefits.

(2) If a plan is amended to partially restore previously reduced accrued benefit levels, or the rate of future benefit accruals, the benefits of inactive participants shall be restored in at least the same proportions as other accrued benefits which are restored.

(3) No benefit increase under a plan may take effect in a plan year in which an amendment reducing accrued benefits under the plan, in accordance with this section, is adopted or first becomes effective.

(4) A plan is not required to make retroactive benefit payments with respect to that portion of an accrued benefit which was reduced and subsequently restored under this section.

(e) "Inactive participant" defined

For purposes of this section, ''inactive participant'' means a person not in covered service under the plan who is in pay status under the plan or who has a nonforfeitable benefit under the plan.

(f) Promulgation of rules; contents, etc.

The Secretary of the Treasury may prescribe rules under which, notwithstanding any other provision of this section, accrued benefit reductions or benefit increases for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors reflecting differences in negotiated levels of financial support for plan benefit obligations.

(Pub. L. 93–406, title IV, § 4244A, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1257; amended Pub. L. 101–239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

AMENDMENTS

1989—Subsec. (a)(2). 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1202, 1322a, 1421, 1441, 1461 of this title.

§ 1426. Insolvent plans

(a) Suspension of payments of benefits; conditions, amount, etc.

Notwithstanding sections 1053 and 1054 of this title, in any case in which benefit payments under an insolvent multiemployer plan exceed the resource benefit level, any such payments of benefits which are not basic benefits shall be suspended, in accordance with this section, to the extent necessary to reduce the sum of such payments and the payments of such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the corporation under section 1322a(g)(5) of this title.

(b) Determination of insolvency status for plan year; definitions

For purposes of this section, for a plan year—

(1) a multiemployer plan is insolvent if the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year, or if the plan is determined to be insolvent under subsection (d) of this section;

(2) ''resource benefit level'' means the level of monthly benefits determined under subsections (c)(1) and (3) and (d)(3) of this section to be the highest level which can be paid out of the plan's available resources;

(3) ''available resources'' means the plan's cash, marketable assets, contributions, withdrawal liability payments, and earnings, less reasonable administrative expenses and amounts owed for such plan year to the corporation under section 1431(b)(2) of this title; and

(4) ''insolvency year'' means a plan year in which a plan is insolvent.

(c) Determination by plan sponsor of plan in reorganization of resource benefit level of plan for each insolvency year; uniform application of suspension of benefits; adjustments of benefit payments

(1) The plan sponsor of a plan in reorganization shall determine in writing the plan's resource benefit level for each insolvency year, based on the plan sponsor's reasonable projection of the plan's available resources and the benefits payable under the plan.

(2) The suspension of benefit payments under this section shall, in accordance with regulations prescribed by the Secretary of the Treasury, apply in substantially uniform proportions to the benefits of all persons in pay status (within the meaning of section 1421(b)(6) of this title) under the plan, except that the Secretary of the Treasury may prescribe rules under which benefit suspensions for different participant groups may be varied equitably to reflect variations in

contribution rates and other relevant factors including differences in negotiated levels of financial support for plan benefit obligations.

(3) Notwithstanding paragraph (2), if a plan sponsor determines in writing a resource benefit level for a plan year which is below the level of basic benefits, the payment of all benefits other than basic benefits must be suspended for that plan year.

(4)(A) If, by the end of an insolvency year, the plan sponsor determines in writing that the plan's available resources in that insolvency year could have supported benefit payments above the resource benefit level for that insolvency year, the plan sponsor shall distribute the excess resources to the participants and beneficiaries who received benefit payments from the plan in that insolvency year, in accordance with regulations prescribed by the Secretary of the Treasury.

(B) For purposes of this paragraph, the term ''excess resources'' means available resources above the amount necessary to support the resource benefit level, but no greater than the amount necessary to pay benefits for the plan year at the benefit levels under the plan.

(5) If, by the end of an insolvency year, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level which were unpaid shall be distributed to the participants and beneficiaries, in accordance with regulations prescribed by the Secretary of the Treasury, to the extent possible taking into account the plan's total available resources in that insolvency year.

(6) Except as provided in paragraph (4) or (5), a plan is not required to make retroactive benefit payments with respect to that portion of a benefit which was suspended under this section.

(d) Applicability and determinations respecting plan assets; time for determinations of resource benefit level and level of basic benefits

(1) As of the end of the first plan year in which a plan is in reorganization, and at least every 3 plan years thereafter (unless the plan is no longer in reorganization), the plan sponsor shall compare the value of plan assets (determined in accordance with section 1423(b)(3)(B)(ii) of this title) for that plan year with the total amount of benefit payments made under the plan for that plan year. Unless the plan sponsor determines that the value of plan assets exceeds 3 times the total amount of benefit payments, the plan sponsor shall determine whether the plan will be insolvent in any of the next 3 plan years.

(2) If, at any time, the plan sponsor of a plan in reorganization reasonably determines, taking into account the plan's recent and anticipated financial experience, that the plan's available resources are not sufficient to pay benefits under the plan when due for the next plan year, the plan sponsor shall make such determination available to interested parties.

(3) The plan sponsor of a plan in reorganization shall determine in writing for each insolvency year the resource benefit level and the level of basic benefits no later than 3 months before the insolvency year.

(e) Notice, etc., requirements of plan sponsor of plan in reorganization regarding insolvency and resource benefit levels

(1) If the plan sponsor of a plan in reorganization determines under subsection (d)(1) or (2) of this section that the plan may become insolvent (within the meaning of subsection (b)(1) of this section), the plan sponsor shall—

(A) notify the Secretary of the Treasury, the corporation, the parties described in section 1422(a)(2) of this title, and the plan participants and beneficiaries of that determination, and

(B) inform the parties described in section 1422(a)(2) of this title and the plan participants and beneficiaries that if insolvency occurs certain benefit payments will be suspended, but that basic benefits will continue to be paid.

(2) No later than 2 months before the first day of each insolvency year, the plan sponsor of a plan in reorganization shall notify the Secretary of the Treasury, the corporation, and the parties described in paragraph (1)(B) of the resource benefit level determined in writing for that insolvency year.

(3) In any case in which the plan sponsor anticipates that the resource benefit level for an insolvency year may not exceed the level of basic benefits, the plan sponsor shall notify the corporation.

(4) Notice required by this subsection shall be given in accordance with regulations prescribed by the corporation, except that notice to the Secretary of the Treasury shall be given in accordance with regulations prescribed by the Secretary of the Treasury.

(5) The corporation may prescribe a time other than the time prescribed by this section for the making of a determination or the filing of a notice under this section.

(f) Financial assistance from corporation; conditions and criteria applicable

(1) If the plan sponsor of an insolvent plan, for which the resource benefit level is above the level of basic benefits, anticipates that, for any month in an insolvency year, the plan will not have funds sufficient to pay basic benefits, the plan sponsor may apply for financial assistance from the corporation under section 1431 of this title.

(2) A plan sponsor who has determined a resource benefit level for an insolvency year which is below the level of basic benefits shall apply for financial assistance from the corporation under section 1431 of this title.

(Pub. L. 93–406, title IV, § 4245, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1259.)

WITHDRAWAL LIABILITY OF EMPLOYER FROM PLAN TERMINATING WHILE PLAN INSOLVENT WITHIN THIS SECTION: DETERMINATIONS, FACTORS, ETC.

Section 108(c)(3) of Pub. L. 96–364 provided that:

''(A) For the purpose of determining the withdrawal liability of an employer under title IV of the Employee Retirement Income Security Act of 1974 [this subchapter] from a plan that terminates while the plan is insolvent (within the meaning of section 4245 of such Act [this section]), the plan's unfunded vested benefits shall be reduced by an amount equal to the sum of all

overburden credits that were applied in determining the plan's accumulated funding deficiency for all plan years preceding the first plan year in which the plan is insolvent, plus interest thereon.

''(B) The provisions of subparagraph (A) apply only if—

''(i) the plan would have been eligible for the overburden credit in the last plan year beginning before the date of the enactment of this Act [Sept. 26, 1980], if section 4243 of the Employee Retirement Income Security Act of 1974 [section 1423 of this title] had been in effect for that plan year, and

''(ii) the Pension Benefit Guaranty Corporation determines that the reduction of unfunded vested benefits under subparagraph (A) would not significantly increase the risk of loss to the corporation.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1202, 1322a, 1361, 1411, 1423, 1431, 1441, 1461 of this title.

PART 4—FINANCIAL ASSISTANCE

§ 1431. Assistance by corporation

(a) Authority; procedure applicable; amount

If, upon receipt of an application for financial assistance under section 1426(f) of this title or section 1441(d) of this title, the corporation verifies that the plan is or will be insolvent and unable to pay basic benefits when due, the corporation shall provide the plan financial assistance in an amount sufficient to enable the plan to pay basic benefits under the plan.

(b) Conditions; repayment terms

(1) Financial assistance shall be provided under such conditions as the corporation determines are equitable and are appropriate to prevent unreasonable loss to the corporation with respect to the plan.

(2) A plan which has received financial assistance shall repay the amount of such assistance to the corporation on reasonable terms consistent with regulations prescribed by the corporation.

(c) Assistance pending final determination of application

Pending determination of the amount described in subsection (a) of this section, the corporation may provide financial assistance in such amounts as it considers appropriate in order to avoid undue hardship to plan participants and beneficiaries.

(Pub. L. 93–406, title IV, § 4261, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1261.)

EFFECTIVE DATE

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1306, 1307, 1322a, 1426 of this title; title 26 section 418E.

PART 5—BENEFITS AFTER TERMINATION

§ 1441. Benefits under certain terminated plans

(a) Amendment of plan by plan sponsor to reduce benefits, and suspension of benefit payments

Notwithstanding sections 1053 and 1054 of this title, the plan sponsor of a terminated multiemployer plan to which section 1341a(d) of this title applies shall amend the plan to reduce benefits, and shall suspend benefit payments, as required by this section.

(b) Determinations respecting value of nonforfeitable benefits under terminated plan and value of assets of plan

(1) The value of nonforfeitable benefits under a terminated plan referred to in subsection (a) of this section, and the value of the plan's assets, shall be determined in writing, in accordance with regulations prescribed by the corporation, as of the end of the plan year during which section 1341a(d) of this title becomes applicable to the plan, and each plan year thereafter.

(2) For purposes of this section, plan assets include outstanding claims for withdrawal liability (within the meaning of section 1301(a)(12) of this title).

(c) Amendment of plan by plan sponsor to reduce benefits for conservation of assets; factors applicable

(1) If, according to the determination made under subsection (b) of this section, the value of nonforfeitable benefits exceeds the value of the plan's assets, the plan sponsor shall amend the plan to reduce benefits under the plan to the extent necessary to ensure that the plan's assets are sufficient, as determined and certified in accordance with regulations prescribed by the corporation, to discharge when due all of the plan's obligations with respect to nonforfeitable benefits.

(2) Any plan amendment required by this subsection shall, in accordance with regulations prescribed by the Secretary of the Treasury—

(A) reduce benefits only to the extent necessary to comply with paragraph (1);

(B) reduce accrued benefits only to the extent that those benefits are not eligible for the corporation's guarantee under section 1322a(b) of this title;

(C) comply with the rules for and limitations on benefit reductions under a plan in reorganization, as prescribed in section 1425 of this title, except to the extent that the corporation prescribes other rules and limitations in regulations under this section; and

(D) take effect no later than 6 months after the end of the plan year for which it is determined that the value of nonforfeitable benefits exceeds the value of the plan's assets.

(d) Suspension of benefit payments; determinative factors; powers and duties of plan sponsor; retroactive benefit payments

(1) In any case in which benefit payments under a plan which is insolvent under paragraph (2)(A) exceed the resource benefit level, any such payments which are not basic benefits shall be suspended, in accordance with this subsection, to the extent necessary to reduce the sum of such payments and such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the corporation in connection with a supplemental guarantee program established under section 1322a(g)(2) of this title.

(2) For purposes of this subsection, for a plan year—

(A) a plan is insolvent if—

(i) the plan has been amended to reduce benefits to the extent permitted by subsection (c) of this section, and

(ii) the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year; and

(B) ''resource benefit level'' and ''available resources'' have the meanings set forth in paragraphs (2) and (3), respectively, of section 1426(b) of this title.

(3) The plan sponsor of a plan which is insolvent (within the meaning of paragraph (2)(A)) shall have the powers and duties of the plan sponsor of a plan in reorganization which is insolvent (within the meaning of section 1426(b)(1) of this title), except that regulations governing the plan sponsor's exercise of those powers and duties under this section shall be prescribed by the corporation, and the corporation shall prescribe by regulation notice requirements which assure that plan participants and beneficiaries receive adequate notice of benefit suspensions.

(4) A plan is not required to make retroactive benefit payments with respect to that portion of a benefit which was suspended under this subsection, except that the provisions of section 1426(c)(4) and (5) of this title shall apply in the case of plans which are insolvent under paragraph (2)(A), in connection with the plan year during which such section 1341a(d) of this title first became applicable to the plan and every year thereafter, in the same manner and to the same extent as such provisions apply to insolvent plans in reorganization under section 1426 of this title, in connection with insolvency years under such section 1426 of this title.

(Pub. L. 93–406, title IV, § 4281, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1261.)

EFFECTIVE DATE

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1054, 1322a, 1341a, 1361, 1431 of this title; title 26 section 411.

PART 6—ENFORCEMENT

§ 1451. Civil actions

(a) Persons entitled to maintain actions

(1) A plan fiduciary, employer, plan participant, or beneficiary, who is adversely affected by the act or omission of any party under this subtitle with respect to a multiemployer plan, or an employee organization which represents such a plan participant or beneficiary for purposes of collective bargaining, may bring an action for appropriate legal or equitable relief, or both.

(2) Notwithstanding paragraph (1), this section does not authorize an action against the Secretary of the Treasury, the Secretary of Labor, or the corporation.

(b) Failure of employer to make withdrawal liability payment within prescribed time

In any action under this section to compel an employer to pay withdrawal liability, any failure of the employer to make any withdrawal liability payment within the time prescribed shall be treated in the same manner as a delinquent contribution (within the meaning of section 1145 of this title).

(c) Jurisdiction of Federal and State courts

The district courts of the United States shall have exclusive jurisdiction of an action under this section without regard to the amount in controversy, except that State courts of competent jurisdiction shall have concurrent jurisdiction over an action brought by a plan fiduciary to collect withdrawal liability.

(d) Venue and service of process

An action under this section may be brought in the district where the plan is administered or where a defendant resides or does business, and process may be served in any district where a defendant resides, does business, or may be found.

(e) Costs and expenses

In any action under this section, the court may award all or a portion of the costs and expenses incurred in connection with such action, including reasonable attorney's fees, to the prevailing party.

(f) Time limitations

An action under this section may not be brought after the later of—

(1) 6 years after the date on which the cause of action arose, or

(2) 3 years after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action; except that in the case of fraud or concealment, such action may be brought not later than 6 years after the date of discovery of the existence of such cause of action.

(g) Service of complaint on corporation; intervention by corporation

A copy of the complaint in any action under this section or section 1401 of this title shall be served upon the corporation by certified mail. The corporation may intervene in any such action.

(Pub. L. 93–406, title IV, § 4301, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1263.)

EFFECTIVE DATE

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1401 of this title; title 26 section 9721.

§ 1452. Penalty for failure to provide notice

Any person who fails, without reasonable cause, to provide a notice required under this subtitle or any implementing regulations shall be liable to the corporation in an amount up to $100 for each day for which such failure continues. The corporation may bring a civil action against any such person in the United States District Court for the District of Columbia or in

any district court of the United States within the jurisdiction of which the plan assets are located, the plan is administered, or a defendant resides or does business, and process may be served in any district where a defendant resides, does business, or may be found.

(Pub. L. 93–406, title IV, § 4302, as added Pub. L. 96–364, title I, § 104(2), Sept. 26, 1980, 94 Stat. 1263.)

§ 1453. Election of plan status

(a) Authority, time, and criteria

Within one year after September 26, 1980, a multiemployer plan may irrevocably elect, pursuant to procedures established by the corporation, that the plan shall not be treated as a multiemployer plan for any purpose under this chapter or the Internal Revenue Code of 1954, if for each of the last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980—

(1) the plan was not a multiemployer plan because the plan was not a plan described in section 1002(37)(A)(iii) of this title and section 414(f)(1)(C) of title 26 (as such provisions were in effect on the day before September 26, 1980); and

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

(b) Requirements

An election described in subsection (a) of this section shall be effective only if—

(1) the plan is amended to provide that it shall not be treated as a multiemployer plan for all purposes under this chapter and the Internal Revenue Code of 1954, and

(2) written notice of the amendment is provided to the corporation within 60 days after the amendment is adopted.

(c) Effective date

An election described in subsection (a) of this section shall be treated as being effective as of September 26, 1980.

(Pub. L. 93–406, title IV, § 4303, as added Pub. L. 96–364, title I, § 108(f), Sept. 26, 1980, 94 Stat. 1270.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Internal Revenue Code of 1954, referred to in subsecs. (a) and (b)(1), was redesignated the Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, and is classified to Title 26, Internal Revenue Code.

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1002 of this title; title 26 section 414.

SUBTITLE F—TRANSITION RULES AND EFFECTIVE DATES

AMENDMENTS

1980—Pub. L. 96–364, title I, § 104(1), Sept. 26, 1980, 94 Stat. 1217, substituted ''Subtitle F—Transition Rules and Effective Dates'' for ''Subtitle E—Effective Date; Special Rules''.

§ 1461. Effective date; special rules

(a) The provisions of this subchapter take effect on September 2, 1974.

(b) Notwithstanding the provisions of subsection (a) of this section, the corporation shall pay benefits guaranteed under this subchapter with respect to any plan—

(1) which is not a multiemployer plan,

(2) which terminates after June 30, 1974, and before September 2, 1974,

(3) to which section 1321 of this title would apply if that section were effective beginning on July 1, 1974, and

(4) with respect to which a notice is filed with the Secretary of Labor and received by him not later than 10 days after September 2, 1974, except that, for reasonable cause shown, such notice may be filed with the Secretary of Labor and received by him not later than October 31, 1974, stating that the plan is a plan described in paragraphs (1), (2), and (3).

The corporation shall not pay benefits guaranteed under this subchapter with respect to a plan described in the preceding sentence unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this subchapter or for the purpose of avoiding the liability which might be imposed under subtitle D of this subchapter if the plan terminated on or after September 2, 1974. The provisions of subtitle D of this subchapter do not apply in the case of such a plan which terminates before September 2, 1974. For purposes of determining whether a plan is a plan described in paragraph (2), the provisions of section 1348 of this title shall not apply, but the corporation shall make the determination on the basis of the date on which benefits ceased to accrue or on any other reasonable basis consistent with the purposes of this subsection.

(c)(1) Except as provided in paragraphs (2), (3), and (4), the corporation shall not pay benefits guaranteed under this subchapter with respect to a multiemployer plan which terminates before August 1, 1980. Whenever the corporation exercises the authority granted under paragraph (2) or (3), the corporation shall notify the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives, and the Committee on Labor and Human Resources and the Committee on Finance of the Senate.

(2) The corporation may, in its discretion, pay benefits guaranteed under this subchapter with respect to a multiemployer plan which terminates after September 2, 1974 and before August 1, 1980, if—

(A) the plan was maintained during the 60 months immediately preceding the date on which the plan terminates, and

(B) the corporation determines that the payment by the corporation of benefits guaranteed under this subchapter with respect to that plan will not jeopardize the payments the corporation anticipates it may be required to make in connection with benefits guaranteed under this subchapter with respect to multiemployer plans which terminate after July 31, 1980.

(3) Notwithstanding any provision of section 1321 or 1322 of this title which would prevent such payments, the corporation, in carrying out its authority under paragraph (2), may pay benefits guaranteed under this subchapter with respect to a multiemployer plan described in paragraph (2) in any case in which those benefits would otherwise not be payable if—

(A) the plan has been in effect for at least 5 years,

(B) the plan has been in substantial compliance with the funding requirements for a qualified plan with respect to the employees and former employees in those employment units on the basis of which the participating employers have contributed to the plan for the preceding 5 years, and

(C) the participating employers and employee organization or organizations had no reasonable recourse other than termination.

(4) If the corporation determines, under paragraph (2) or (3), that it will pay benefits guaranteed under this subchapter with respect to a multiemployer plan which terminates before August 1, 1980, the corporation—

(A) may establish requirements for the continuation of payments which commenced before January 2, 1974, with respect to retired participants under the plan,

(B) may not, notwithstanding any other provision of this subchapter, make payments with respect to any participant under such a plan who, on January 1, 1974, was receiving payment of retirement benefits, in excess of the amounts and rates payable with respect to such participant on that date,

(C) may not make any payments with respect to benefits guaranteed under this subchapter in connection with such a plan which are derived, directly or indirectly, from amounts borrowed under section 1305(c) of this title, and

(D) shall review from time to time payments made under the authority granted to it by paragraphs (2) and (3), and reduce or terminate such payments to the extent necessary to avoid jeopardizing the ability of the corporation to make payments of benefits guaranteed under this subchapter in connection with multiemployer plans which terminate after July 31, 1980, without increasing premium rates for such plans.

(d) Notwithstanding any other provision of this subchapter, guaranteed benefits payable by the corporation pursuant to its discretionary authority under this section shall continue to be paid at the level guaranteed under section 1322 of this title, without regard to any limitation on payment under subparagraph (C) or (D) of subsection (c)(4) of this section.

(e)(1) Except as provided in paragraphs (2), (3), and (4), the amendments to this chapter made by the Multiemployer Pension Plan Amendments Act of 1980 shall take effect on September 26, 1980.

(2)(A) Except as provided in this paragraph, part 1 of subtitle E of this subchapter, relating to withdrawal liability, takes effect on September 26, 1980.

(B) For purposes of determining withdrawal liability under part 1 of subtitle E of this subchapter, an employer who has withdrawn from a plan shall be considered to have withdrawn from a multiemployer plan if, at the time of the withdrawal, the plan was a multiemployer plan as defined in section 1301(a)(3) of this title as in effect at the time of the withdrawal.

(3) Sections 1421 through 1426 of this title, relating to multiemployer plan reorganization, shall take effect, with respect to each plan, on the first day of the first plan year beginning on or after the earlier of—

(A) the date on which the last collective bargaining agreement providing for employer contributions under the plan, which was in effect on September 26, 1980, expires, without regard to extensions agreed to on or after September 26, 1980, or

(B) 3 years after September 26, 1980.

(4) Section 1415 of this title shall take effect on September 26, 1980.

(f)(1) In the event that before September 26, 1980, the corporation has determined that—

(A) an employer has withdrawn from a multiemployer plan under section 1363 of this title, and

(B) the employer is liable to the corporation under such section,

the corporation shall retain the amount of liability paid to it or furnished in the form of a bond and shall pay such liability to the plan in the event the plan terminates in accordance with section 1341a(a)(2) of this title before the earlier of September 26, 1985, or the day after the 5-year period commencing on the date of such withdrawal.

(2) In any case in which the plan is not so terminated within the period described in paragraph (1), the liability of the employer is abated and any payment held in escrow shall be refunded without interest to the employer or the employer's bond shall be cancelled.

(g)(1) In any case in which an employer or employers withdrew from a multiemployer plan before the effective date of part 1 of subtitle E of this subchapter, the corporation may—

(A) apply section 1363(d) of this title, as in effect before the amendments made by the Multiemployer Pension Plan Amendments Act of 1980, to such plan,

(B) assess liability against the withdrawn employer with respect to the resulting terminated plan,

(C) guarantee benefits under the terminated plan under section 1322 of this title, as in effect before such amendments, and

(D) if necessary, enforce such action through suit brought under section 1303 of this title.

(2) The corporation shall use the revolving fund used by the corporation with respect to basic benefits guaranteed under section 1322a of this title in guaranteeing benefits under a terminated plan described in this subsection.

(h)(1) In the case of an employer who entered into a collective bargaining agreement—

(A) which was effective on January 12, 1979, and which remained in effect through May 15, 1982, and

(B) under which contributions to a multiemployer plan were to cease on January 12, 1982,

any withdrawal liability incurred by the employer pursuant to part 1 of subtitle E of this subchapter as a result of the complete or partial withdrawal of the employer from the multiemployer plan before January 16, 1982, shall be void.

(2) In any case in which—

(A) an employer engaged in the grocery wholesaling business—

(i) had ceased all covered operations under a multiemployer plan before June 30, 1981, and had relocated its operations to a new facility in another State, and

(ii) had notified a local union representative on May 14, 1980, that the employer had tentatively decided to discontinue operations and relocate to a new facility in another State, and

(B) all State and local approvals with respect to construction of and commencement of operations at the new facility had been obtained, a contract for construction had been entered into, and construction of the new facility had begun before September 26, 1980,

any withdrawal liability incurred by the employer pursuant to part 1 of subtitle E of this subchapter as a result of the complete or partial withdrawal of the employer from the multiemployer plan before June 30, 1981, shall be void.

(i) The preceding provisions of this section shall not apply with respect to amendments made to this subchapter in provisions enacted after October 22, 1986.

(Pub. L. 93–406, title IV, § 4402, formerly § 4082, Sept. 2, 1974, 88 Stat. 1034; S. Res. 4, Feb. 4, 1977; Pub. L. 95–214, § 1, Dec. 19, 1977, 91 Stat. 1501; S. Res. 30, Mar. 7, 1979; Pub. L. 96–24, June 19, 1979, 93 Stat. 70; Pub. L. 96–239, Apr. 30, 1980, 94 Stat. 341; Pub. L. 96–293, § 1, June 30, 1980, 94 Stat. 610; renumbered and amended Pub. L. 96–364, title I, § 108(a)–(c)(1), Sept. 26, 1980, 94 Stat. 1267; Pub. L. 98–369, div. A, title V, § 558(b)(1)(B), (C), July 18, 1984, 98 Stat. 899; Pub. L. 99–514, title XVIII, § 1852(i), Oct. 22, 1986, 100 Stat. 2869; Pub. L. 101–239, title VII, §§ 7862(a), 7894(h)(5)(A), Dec. 19, 1989, 103 Stat. 2431, 2451.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e)(1), was in the original ''this Act'', meaning Pub. L. 93–406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

The Multiemployer Pension Plan Amendments Act of 1980, referred to in subsecs. (e)(1) and (g)(1)(A), is Pub. L. 96–364, Sept. 26, 1980, 94 Stat. 1208. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 1001 of this title and Tables.

For the effective date of part 1 of subtitle E of this subchapter, referred to in subsec. (g)(1), see subsec. (e)(2) of this section.

CODIFICATION

Section was formerly classified to section 1381 of this title.

AMENDMENTS

1989—Subsec. (h)(1). Pub. L. 101–239, § 7862(a), substituted ''before January 16, 1982'' for ''before January 12, 1982'' in concluding provisions.

Subsec. (i). Pub. L. 101–239, § 7894(h)(5)(A), added subsec. (i).

1986—Subsec. (h). Pub. L. 99–514 added subsec. (h).

1984—Subsec. (e)(2)(A), (4). Pub. L. 98–369, § 558(b)(1)(B), substituted ''September 26, 1980'' for ''April 29, 1980''.

Subsec. (f)(1). Pub. L. 98–369, § 558(b)(1)(C), substituted ''September 26, 1985'' for ''April 29, 1985''.

1980—Subsec. (c)(1). Pub. L. 96–293, § 1(1), substituted ''August 1, 1980'' for ''July 1, 1980''.

Pub. L. 96–239, § 1(1), substituted ''July 1, 1980'' for ''May 1, 1980''.

Subsec. (c)(2). Pub. L. 96–293, § 1(1), (2), substituted ''August 1, 1980'' for ''July 1, 1980'' in provisions preceding subpar. (A) and ''July 31, 1980'' for ''June 30, 1980'' in subpar. (B).

Pub. L. 96–239, § 1(1), (2), substituted ''July 1, 1980'' for ''May 1, 1980'' in provisions preceding subpar. (A) and ''June 30, 1980'' for ''April 30, 1980'' in subpar. (B).

Subsec. (c)(4). Pub. L. 96–293, § 1(1), (2), substituted ''August 1, 1980'' for ''July 1, 1980'' in provisions preceding subpar. (A) and ''July 31, 1980'' for ''June 30, 1980'' in subpar. (D).

Pub. L. 96–239, § 1(1), (2), substituted ''July 1, 1980'' for ''May 1, 1980'' in provisions preceding subpar. (A) and ''June 30, 1980'' for ''April 30, 1980'' in subpar. (D).

Subsec. (d). Pub. L. 96–364, § 108(b), added subsec. (d). Former subsec. (d), which related to report to Congressional committees respecting anticipated financial condition of program for mandatory coverage of multiemployer plans, was struck out.

Subsec. (e). Pub. L. 96–364, § 108(c)(1), added subsec. (e). Former subsec. (e), which related to annual insurance premium payable to Corporation for coverage of guaranteed basic benefits, was struck out.

Subsecs. (f), (g). Pub. L. 96–364, § 108(c)(1), added subsecs. (f) and (g).

1979—Subsec. (c)(1). Pub. L. 96–24, § 1(1), substituted ''May 1, 1980'' for ''July 1, 1979''.

Subsec. (c)(2). Pub. L. 96–24, § 1(1), (2), substituted ''May 1, 1980'' for ''July 1, 1979'' in provisions preceding subpar. (A) and ''April 30, 1980'' for ''June 30, 1979'' in subpar. (B).

Subsec. (c)(4). Pub. L. 96–24, § 1(1), (2), substituted ''May 1, 1980'' for ''July 1, 1979'' in provisions preceding subpar. (A) and ''April 30, 1980'' for ''June 30, 1979'' in subpar. (D).

1977—Subsec. (c)(1). Pub. L. 95–214, § 1(a)(1), substituted ''July 1, 1979'' for ''January 1, 1978''.

Subsec. (c)(2). Pub. L. 95–214, § 1(a)(2), substituted ''July 1, 1979'' for ''January 1, 1978'' in provisions preceding subpar. (A).

Subsec. (c)(2)(B). Pub. L. 95–214, § 1(a)(3), substituted ''June 30, 1979'' for ''December 31, 1977''.

Subsec. (c)(4). Pub. L. 95–214, § 1(a)(4), substituted ''July 1, 1979'' for ''January 1, 1978'' in provisions preceding subpar. (A).

Subsec. (c)(4)(D). Pub. L. 95–214, § 1(a)(5), substituted ''June 30, 1979'' for ''December 31, 1977''.

Subsecs. (d), (e). Pub. L. 95–214, § 1(b), added subsecs. (d) and (e).

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Economic and Educational Opportunities of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Human Resources of Senate changed to Committee on Labor and Human Resources of Senate, effective Mar. 7, 1979, by Senate Resolution No. 30,

96th Congress. See, also, Rule XXV of Standing Rules of Senate adopted Nov. 14, 1979.

Committee on Labor and Public Welfare of Senate abolished and replaced by Committee on Human Resources of Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of Senate, as amended by Senate Resolution No. 4 (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7862(a) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7863 of Pub. L. 101–239, set out as a note under section 106 of Title 26, Internal Revenue Code.

Section 7894(h)(5)(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 the Reform Act [Pub. L. 99–514].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of Title 26, Internal Revenue Code.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

ACTIONS TAKEN BEFORE REGULATIONS ARE PRESCRIBED

Section 405 of Pub. L. 96–364 provided that:

''(a) Except as otherwise provided in the amendments made by this Act [see Short Title of 1980 Amendment note set out under section 1001 of this title] and in subsection (b), if the way in which any such amendment will apply to a particular circumstance is to be set forth in regulations, any reasonable action during the period before such regulations take effect shall be treated as complying with such regulations for such period.

''(b) Subsection (a) shall not apply to any action which violates any instruction issued, or temporary rule prescribed, by the agency having jurisdiction but only if such instruction or rule was published, or furnished to the party taking the action, before such action was taken.''

CHAPTER 19—JOB TRAINING PARTNERSHIP

Sec.
1501. Statement of purpose.
1502. Authorization of appropriations.
1503. Definitions.
1504. Enforcement of Military Selective Service Act.
1505. State job bank systems.
(a) Funding authorities; authorization of appropriations.
(b) Availability of funds; purposes of systems.
(c) Software capability and compatibility of systems; development of systems.
1506. Educational assistance and training.
(a) Use of fund.
(b) Allocation of funds.
(c) Disbursement to States.
(d) Limitation on Federal overhead.
(e) Annual report.
(f) ''State'' defined.

SUBCHAPTER I—JOB TRAINING AND EMPLOYMENT ASSISTANCE SYSTEM

PART A—SERVICE DELIVERY SYSTEM

1511. Establishment of service delivery areas.
(a) Proposals; proposed designations; requests.
(b) Final designation by Governor.
(c) Redesignations.
1512. Private industry councils.
(a) Establishment; membership.
(b) Chairman.
(c) Nomination and recommendation of individuals.
(d) Appointment of members.
(e) Number of members.
(f) Terms of office; removal for cause.
(g) Certification.
(h) Reconstitution of State job training coordinating councils.
1513. Functions of private industry councils.
(a) Policy guidance and oversight.
(b) Development of job training plan; selection of grant recipient and administering entity.
(c) Appropriate chief elected official or officials.
(d) Submission of job training plan to Governor.
(e) Budget; staff; incorporation; contributions and grant funds.
(f) ''Oversight'' defined.
1514. Job training plan.
(a) Two-year program plan requirement.
(b) Contents of plan.
(c) Modification of the plan.
1515. Review and approval of plan.
(a) Times for publication of plan and modifications.
(b) Governor's approval of plan: criteria, time, and petitions opposing.
(c) Redesignation of service delivery areas and private industry councils.
(d) Authority of Secretary in single plan States.
1516. Performance standards.
(a) Findings.
(b) Subchapter II performance standards.
(c) Subchapter III performance standards.
(d) State variation of performance standards.
(e) Additional State standards permitted.
(f) Subchapter IV standards.
(g) Adjustment for special populations.
(h) Modifications.
(i) Functions of NCEP.
(j) Failure to meet standards.
(k) Clarification of reference.
1517. Selection of service providers.
(a) Effectiveness in terms of plan primary consideration.
(b) No needless duplication of local facilities or services.
(c) Opportunity for local educational agencies.
(d) Skills training program to meet private industry council guidelines.
(e) Additional requirements for selection.
1518. Limitation on certain costs.
(a) Application of cost limitations.
(b) Cost categories and limitations.

Sec.
(c) Reference to limitations.
(d) Limitations inapplicable.
(e) No exemption from performance standards.
1519. Recapture and reallotment of unobligated funds.
(a) Within State reallocations.
(b) Reallotment among States.
(d) Calculation.

PART B—ADDITIONAL STATE RESPONSIBILITIES

1531. Governor's coordination and special services plan.
(a) Annual planning report; two-year coordination and special services plan financial assistance requirement.
(b) Plan coordination with State and local services and resources, JOBS program, and programs under subchapter II; State goals and criteria; projected use of resources; reports of modifications to Secretary.
(c) Governor's coordination and special services activities.
(d) Approval by Secretary.
1532. State job training coordinating council.
(a) Requirement; appointments; composition; meetings; support personnel; limitations; approval by Governor.
(b) Duties.
(c) Transferability of functions.
(d) Designation of State human resources investment council to carry out duties of State Council.
1533. State education coordination and grants.
(a) Allotment.
(b) Agreements required.
(c) Governor's plan requirements.
(d) Service requirements.
(e) Distribution of funds in absence of agreement.
(f) Reports and records.
1534. Identification of additional imposed requirements.
1535. State labor market information programs.
(a) Oversight unit requirement; design of information and distribution system; support for local programs.
(b) Goals of system; nonduplication; public domain.
(c) Reimbursement and limitation.
(d) State consolidation of Federal administrative management information reporting requirements.
1536. Authority of State legislature.
1537. Interstate agreements.

PART C—PROGRAM REQUIREMENTS FOR SERVICE DELIVERY SYSTEM

1551. General program requirements.
(a) Useful, needed, and equitable opportunity distribution.
(b) No duplication of services.
(c) Establishment relocation limitation; investigations; penalties for violations.
(d) Employment opportunity-directed training; competitive purchases of training packages; tuition charges; administrative costs limitation; placements.
(e) Area eligibility; limited exceptions; agreements.
(f) Council member conflict of interest.
(g) Payments to employers: proportion and characterization; limitations; contracts; failure to provide long-term employment.

Sec.
(h) No needless duplication of governmental facilities or services.
(i) Responsibility of administrative entity for oversight.
(j) Free training program placement requirement.
(k) Requirements for subsidized youth employment.
(*l*) Political activity exclusion.
(m) Program income.
(n) Notification of service delivery area activity.
(*o*) State and local education standards applicable.
(p) Public service employment exclusion.
(q) Investment activities exclusion.
(r) Federal requirements governing real property, equipment, and supplies.
(s) Transfer of unused Department of Defense property.
1552. Benefits.
(a) Payments; compensation; wages; application to territories.
(b) Allowances, earnings, and payments as income.
1553. Labor standards.
(a) Employment conditions; local standards; workers' compensation; workplace comparability; retirement plan exclusion.
(b) Nondisplacement of local workers; existing collective bargaining agreements; nonavailability for layoff replacement; noninfringement of promotion opportunity.
(c) Labor organizations.
(d) Applicability of Federal labor standards.
1554. Grievance procedure.
(a) Maintenance and timing.
(b) Requirement for recipient grievance procedure.
(c) Investigation by Secretary.
(d) Labor standards violations.
(e) Alternative procedure for labor standards grievances.
(f) Remedies for labor standards violations.
(g) Remedies under other laws for labor standards violations.
1555. Federal control of education prohibited.

PART D—FEDERAL AND FISCAL ADMINISTRATIVE PROVISIONS

1571. Program year.
(a) Basis for availability of appropriations.
(b) Expending of obligated funds.
1572. Prompt allocation of funds.
(a) Use of most recent data.
(b) Publication in Federal Register.
(c) Distribution after appropriation.
(d) Publication of allotment formula.
(e) Distribution to grant recipient.
(f) Advance payments to nonprofit organizations.
1573. Monitoring.
(a) Compliance with law and regulations.
(b) Investigations.
(c) Witnesses; books, papers, and documents.
1574. Fiscal controls; sanctions.
(a) Establishment of State controls; cost principles; procurement standards; monitoring; noncompliance; certification to Secretary; corrective action; report to Congress.
(b) Noncompliance; action by Governor; appeal to Secretary; action by Secretary.

Sec.
(c) Comptroller General's evaluation; report to Congress; Comptroller's access to records.
(d) Recipient's liability for noncomplying expenditures.
(e) Conditions for recipient's liability; conditions for recipient's liability for subgrantee noncompliance; Secretary's discretion.
(f) Emergency situations and immediate termination.
(g) Secretary's action against harassment of complainants.
(h) Remedies not exclusive.
1575. Reports, recordkeeping, and investigations.
(a) Sufficiency of records; frequency; standardized records.
(b) Investigations; audit notice.
(c) Reporting, recordkeeping, and monitoring duties of States, administrative entities, and recipients.
(d) Report information.
(e) Record retention.
(f) Substate grantee and service delivery area reports; statewide summary.
(g) Substate grantee and service delivery area record retention.
(h) Biennial study of programs under subchapter II; report to Congress.
1576. Administrative adjudication.
(a) Hearing after denial of assistance or sanction by Secretary.
(b) Time for filing exceptions; final action by Secretary.
(c) Time for Secretary's review.
(d) Judicial review.
1577. Nondiscrimination.
(a) Applicability of equal protection provisions; prohibition of construction of religious facility; nondiscrimination against funded activity participants; participant citizenship.
(b) Recipient noncompliance and Secretary's action.
(c) Civil action by Attorney General.
(d) Job Corps members ultimate beneficiaries.
(e) Annual report by head of Directorate for Civil Rights.
(f) Appropriations.
(g) Regulations.
1578. Judicial review.
(a) Review by Court of Appeals of Secretary's final order; review petition, final order record, expeditious review; scope of review.
(b) Jurisdiction of Court of Appeals; review by Supreme Court.
1579. Administrative provisions.
(a) Secretary's prescription of regulations; publication in Federal Register.
(b) Acceptance of gift.
(c) Secretary's discretion.
(d) Annual report to Congress.
(e) Annual report on impact of energy development and conservation on employment.
1580. Utilization of services and facilities.
1581. Obligational authority.
1582. Presidential awards for outstanding private sector involvement in job training programs.
1583. Construction.
(a) Eligibility.
(b) Use of funds.

PART E—MISCELLANEOUS PROVISIONS

1591. Repealed.
Sec.
1592. Statutory references to Comprehensive Employment and Training Act.

SUBCHAPTER II—TRAINING SERVICES FOR THE DISADVANTAGED

PART A—ADULT TRAINING PROGRAM

1601. Statement of purpose.
1602. Allotment and allocation.
(a) Allotment.
(b) Allocation to service delivery areas.
(c) State activities.
(d) Definitions and rule.
1603. Eligibility for services.
(a) In general.
(b) Hard-to-serve individuals.
(c) Special rule.
(d) Additional category.
1604. Program design.
(a) Essential elements.
(b) Authorized services.
(c) Design of services.
(d) Services for older individuals.
1605. Linkages.
(a) In general.
(b) Other appropriate linkages.
1606. Transfer of funds.

PART B—SUMMER YOUTH EMPLOYMENT AND TRAINING PROGRAM

1630. Purpose.
1631. Authorization of appropriations; allotment and allocation.
(a) Territorial and Native American allocation.
(b) Use of part C formula for allotment and allocation.
1632. Use of funds.
(a) In general.
(b) Basic and remedial education.
(c) Assessment and service strategy.
(d) Followup services.
(e) Educational linkages.
1633. Limitations.
(a) Use during summer months or equivalent vacation period.
(b) Eligibility.
(c) Concurrent enrollment.
(c) Prohibition on private actions.
1634. Applicable provisions.
(a) Comparable functions of agencies and officials.
(b) Program goals and objectives.
1635. Transfer of funds.

PART C—YOUTH TRAINING PROGRAM

1641. Statement of purpose.
1642. Allotment and allocation.
(a) Allotment.
(b) Allocation to service delivery areas.
(c) State activities.
(d) Definitions and rule.
1643. Eligibility for services.
(a) In-school youth.
(b) Hard-to-serve individuals who are in-school youth.
(c) Out-of-school youth.
(d) Hard-to-serve individuals who are out-of-school youth.
(e) Exceptions.
(f) Ratio of out-of-school to in-school youth.
(g) Schoolwide projects for low-income schools.
(h) Additional category.
1644. Program design.
(a) Year-round operation.
(b) Essential elements.
(c) Authorized services.

Sec.
(d) Additional requirements.
1645. Linkages.
(a) Educational linkages.
(b) Education and training program linkages.
(c) Other programs.
(d) Schoolwide projects for low-income schools.
1646. Transfer of funds.

SUBCHAPTER III—EMPLOYMENT AND TRAINING ASSISTANCE FOR DISLOCATED WORKERS

1651. Definitions.
(a) Dislocated workers.
(b) Additional definitions.
1652. Allotment.
(a) Allotment of funds.
(b) Allotment among States.
(c) Reservations for State activities and for substate grantees in need.
(d) Within State distribution.
(e) Reservation for territories.
1653. Recapture and reallotment of unexpended funds.
(a) General reallotment authority.
(b) Amount available for reallotment.
(c) Method of reallotment.
(d) State procedures with respect to reallotment.
(e) Definitions.

PART A—STATE DELIVERY OF SERVICES

1661. State plan.
(a) State plan required.
(b) Contents of plan.
(c) Review and approval of State plans.
(d) Modifications.
(e) Complaint, investigation, penalty.
(f) Special rule.
1661a. Substate grantees.
(a) Designation of substate areas.
(b) Designation of substate grantees.
(c) Eligibility.
(d) Functions of substate grantees.
(e) Applicability of general administrative provisions to substate grantees.
1661b. Substate plan.
(a) General rule.
(b) Contents of substate plan.
(c) Plan approval.
(d) By-pass authority.
1661c. Use of funds; services to be provided.
(a) In general.
(b) Rapid response assistance.
(c) Basic readjustment services.
(d) Retraining services.
(e) Needs-related payments.
(f) Coordination with unemployment compensation.
(g) Joint funding.
(h) Clarification of definition of eligible dislocated workers for certain services.
1661d. Limitations on uses of funds.
(a) Retraining services.
(b) Needs-related payments and supportive services limitation.
(c) Administrative cost limitation.
(d) Combination of funds.
(e) ''Allocated'' defined.
1661e. Retraining services availability.
(a) Alternative methods of providing retraining services.
(b) Certification of continuing eligibility.
1661f. Functions of State job training coordinating council.

PART B—FEDERAL RESPONSIBILITIES

1662. Federal administration.
(a) Standards.
(b) By-pass authority.
1662a. Federal delivery of dislocated worker services.
(a) General authority.
(b) Administrative provisions.
1662b. Allowable activities.
(a) Circumstances and activities for use of funds.
(b) Use of funds in emergencies.
(c) Staff training and technical assistance.
(d) Training of rapid response staffs.
1662c. Demonstration programs.
(a) Authorized programs.
(b) Evaluation and report.
1662d. Defense conversion adjustment program.
(a) In general.
(b) Application.
(c) Use of funds.
(d) Demonstration projects.
(e) Notice of termination for certain Defense employees.
(f) ''Defense articles and defense services'' defined.
1662d–1. Defense diversification program.
(a) In general.
(b) Individuals eligible for training, assistance, and services.
(c) Application requirements.
(d) Selection requirements.
(e) Retention of portion of grant amount.
(f) Use of funds.
(g) Limitation.
(h) Adjustment assistance requirements.
(i) Needs-related payments requirements.
(j) Department of Defense financial assistance requirement.
(k) Demonstration projects.
(*l*) Staff training and technical assistance.
(m) Administrative expenses.
(n) Coordination with technology reinvestment projects.
(*o*) Definitions.
1662e. Clean air employment transition assistance.
(a) Determination of eligibility.
(b) Grants authorized.
(c) Priority and approval.
(d) Use of funds.
(e) Adjustment assistance.
(f) Needs-related payments.
(g) Administrative expenses.
(h) Authorization of appropriations.
(i) Regulations.
(j) GAO assessment of effects of Clean Air Act compliance on employment.

SUBCHAPTER IV—FEDERALLY ADMINISTERED PROGRAMS

PART A—EMPLOYMENT AND TRAINING PROGRAMS FOR NATIVE AMERICANS AND MIGRANT AND SEASONAL FARMWORKERS

1671. Native American programs.
(a) Congressional findings.
(b) Congressional declaration of guidelines.
(c) Operation through Native American organizations where possible.
(d) Alternative operation through approved organizations.
(e) Monitoring of programs.
(f) Availability of funds for other job training activities.
(g) Continuation of Federal trust responsibilities.
(h) Consultation with Native Americans in prescription of regulations; performance goals.

Sec.
(i) Technical assistance to Native American organizations.
(j) Organizational unit responsible for administration.
(k) Native American Employment and Training Council.
(*l*) Competition for grants; waiver; 2-year grant period.
1672. Migrant and seasonal farmworker programs.
(a) Congressional findings.
(b) Monitoring of programs for migrant and seasonal employment.
(c) Operation through experienced organizations; use of procedures consistent with competitive procurement policies; competition for grants; waiver; goals of programs; recipient performance goals; section programs not exclusive of other kinds of aid.
(d) Consultation with State and local officials.
(e) Monitoring of programs for migrant and seasonal farmworker's employment.
1673. Grant procedures.

PART B—JOB CORPS

1691. Congressional declaration of purpose.
1692. Establishment of the Job Corps.
1693. Individuals eligible for the Job Corps.
1694. Screening and selection of applicants: general provisions.
(a) Prescription of standards and procedures; implementation through experienced organizations; consultation with concerned agencies and individuals; interview with applicant.
(b) Authorization of payment for active recruiting.
(c) Rural enrollees; residential facilities.
1695. Screening and selection: special limitations.
(a) Disciplinary standards for enrollees.
(b) Enrollees on probation, parole, or supervised release; contact with criminal justice system no bar.
1696. Enrollment and assignment.
(a) Maximum enrollment period.
(b) Military obligation unaffected.
(c) Proximity of center to enrollee's home.
(d) Concurrent or subsequent participation in Job Corps and training services programs for disadvantaged not prohibited.
1697. Job Corps centers.
(a) Operation through existing agencies and organizations; center functions; Civilian Conservation Centers; training centers; limit on nonresidential participants.
(b) Availability of center opportunities to participants in other programs.
(c) Limitation of use of Department of Labor appropriations; nongovernmental contracts.
1698. Program activities.
(a) Center programs: training; counseling; center maintenance.
(b) Use of existing educational agencies providing substantially equivalent training.
(c) High school equivalency certificates.
(d) Advanced career training: postsecondary institutions; company-sponsored training programs; availability of benefits; demonstration of reasonable program completion and placement.
(e) Child care.
(f) Alcohol and drug abuse counseling.
1699. Allowances and support.
(a) Subsistence; rates of allowances; incentive and disciplinary variations.
(b) rules governing leave.
(c) Termination readjustment allowance: minimum period; advances; misconduct penalty; payment in case of death.
(d) Remittance to dependents; supplement.
(e) Child care costs.
1700. Standards of conduct.
(a) Stringent enforcement; dismissal or transfer.
(b) Disciplinary measures by center directors; appeal to Secretary.
1701. Community participation.
1702. Counseling and placement.
(a) Regular counseling and testing.
(b) Counseling and testing prior to scheduled termination; placement assistance; use of public employment service system.
(c) Provision for further education, training, and counseling.
(d) Payment of readjustment allowance to former enrollees.
1703. Experimental and developmental projects and coordination with other programs.
(a) Authorization for efficiency studies; young adult pilot projects; violent or delinquent youth pilot projects; consultation with similarly concerned State and Federal agencies; funding from substantially similar projects; discretion to waive provisions; inclusion in annual report to Congress.
(b) Model community vocational education schools and skill centers.
(c) Dissemination of information gained from Job Corps experience; testing of efficacy of various activities and dissemination of results.
(d) Pilot projects to prepare youth for military service; cooperation with the Secretary of Defense; establishment of permanent programs; reimbursement of certain costs by Secretary of Defense in funds, materials, or services.
(e) Pilot projects using community-based organizations.
1703a. Job Corps centers for homeless families.
(a) Authorization.
(b) Project agreements.
(c) Eligibility for enrollment.
(d) Screening standards.
(e) Evaluation of centers.
(f) ''Family'' defined.
1704. Advisory boards and committees.
1705. Participation of the States.
(a) Consultation with State agencies on State law enforcement, discipline, development of meaningful work experience, and coordination with State programs.
(b) Authorization to participate in and subsidize related State programs.
(c) Notice to Governor of Job Corps center establishment; thirty days to disapprove.
(d) Concurrent criminal jurisdiction for Job Corps centers.
1706. Application of provisions of Federal law.
(a) Enrollees not deemed Federal employees; exceptions: Federal tax provisions; survivor and disability benefits; work injuries and terms of compensation; tort claims.

Sec.
(b) Adjustment and settlement of claims.
(c) Status of uniformed services personnel.
1707. Special provisions.
(a) Enrollment of women.
(b) Job Corps documents and data to be United States property.
(c) Taxation of Job Corps operations prohibited.
(d) Negotiated management fees for all Job Corps contractors.
1708. General provisions.
1709. Donations.

PART C—VETERANS' EMPLOYMENT PROGRAMS

1721. Programs authorized.
(a) Programs for disabled, Vietnam era, and recent veterans; operation through experienced agencies; enhancement of services; employment and training services; outreach and public information.
(b) Administration through Assistant Secretary for Veterans' Employment and Training; fiscal management; consultation with Secretary of Veterans Affairs and coordination with related programs.

PART D—NATIONAL ACTIVITIES

1731. National partnership and special training programs.
(a) Statement of purpose.
(b) Program authorized.
(c) Programs.
1732. Research, demonstration, and evaluation.
(a) Statement of purpose.
(b) Program established.
(c) Pilot and demonstration programs.
(d) Evaluation.
1733. Capacity building, information, dissemination, and replication activities.
(a) National strategy.
(b) Network.
(c) Replication.
(d) Management capability.
1734. Guidance on eligibility verification.
(a) Establishment.
(b) Guidance.
(c) Contents.
(d) Date.
1735. Uniform reporting requirements.
(a) Finding.
(b) Data elements.
(c) Report.
(d) Consultation.
1736. Repealed.
1737. Nontraditional employment demonstration program.
(a) Grants to develop programs.
(b) Criteria for award of grants.
(c) Use of funds.
(d) Retention of percentage of grant by State.
(e) Evaluation.

PART E—LABOR MARKET INFORMATION

1751. Labor market information; availability of funds.
(a) Publicly accessible labor market information system.
(b) Availability of funds for State labor market information.
(c) Funds available from other programs.
1752. Cooperative labor market information program.
(a) Maintenance of current multilevel employment data.
(b) Maintenance of job descriptions and requirements.
(c) Elimination of departmental data systems overlap; coordination with Federal reporting services; use of standard definitions.
(d) Annual measure of labor market related economic hardship; multilevel measure of cost of living; annual labor force and income report.
(e) Maintenance of permanent layoff and plant closing data.
(f) Data on displaced farmers and ranchers; scope of data; reporting requirements.
(g) Nationwide database on quarterly earnings, industry affiliation, and geographic location of employment of individuals.
1753. Special Federal responsibilities.
(a) Interdepartmental cooperation; review and coordination of national data systems; standardized national definitions; aid for State labor and occupational opportunity information systems.
(b) Integrated occupational opportunity information system; Armed Forces career opportunities.
(c) Sufficient funds for Federal level coordinating staff.
1754. National Occupational Information Coordinating Committee.
(a) Authorization limit; membership; support of State occupational information coordinating committees.
(b) Special Federal responsibilities.
(c) Funds available from other programs.
1755. Job bank program.

PART F—NATIONAL COMMISSION FOR EMPLOYMENT POLICY

1771. Statement of purpose.
1772. Establishment.
(a) Composition of membership.
(b) Term of office; unfinished terms; terms of initial members.
(c) Selection of Chairman; frequency of meetings; quorum and voting.
(d) Appointment of Director.
1773. Functions.
1774. Administrative provisions.
(a) Authority of Chairman: rules; staff and compensation; consultants; voluntary services; acceptance of gifts; contracts; studies and hearings; use of governmental facilities; advances and payments.
(b) Availability of Federal agencies and information.
1775. Reports.

PART G—TRAINING TO FULFILL AFFIRMATIVE ACTION OBLIGATIONS

1781. Affirmative action.
(a) Contractor's obligations; training program contents.
(b) Review of community-need directed programs; programs includable in performance accomplishments; determination of affirmative action compliance; notice of compliance; abbreviated affirmative action program; successful performance and presumption of good faith effort; limitation; ''successful performance or operation'' defined.

Sec.
(c) Limitations: compulsory program involvement; exclusive compliance criteria; obligations of nonparticipating contractors; interference with private industry councils; restriction of Secretary's authority; short form affirmative action plan.

PART H—YOUTH FAIR CHANCE PROGRAM

1782. Statement of purpose.
1782a. Program authorized.
(a) Establishment of program.
(b) Eligibility for grants.
(c) Renewability of grants.
(d) Factors for awards.
1782b. Application.
(a) Eligibility to apply.
(b) Contents of application.
(c) Submission of application.
1782c. Grant agreement.
(a) In general.
(b) Contents.
1782d. Job guarantees.
(a) Program authority.
(b) Guarantee agreements.
(c) Selection of grant recipients.
(d) Youth eligibility.
(e) Private funds.
1782e. Payments; Federal share.
(a) Payments required.
(b) Federal share.
(c) Other Federal sources.
(d) Non-Federal share.
1782f. Reporting.
1782g. Federal responsibilities.
(a) In general.
(b) Independent evaluation.
(c) Report.
(d) Reservation of funds.
1782h. Definitions.

PART I—MICROENTERPRISE GRANTS PROGRAM

1783. Microenterprise grants.
(a) Program authority.
(b) Use of funds.
(c) Application and selection.
(d) Timing.
(e) Matching requirement.
(f) Reports.
(g) Definitions.

PART J—DISASTER RELIEF EMPLOYMENT ASSISTANCE

1784. General authority.
(a) Qualification for funds.
(b) Substate allocation.
(c) Coordination.
1784a. Use of funds.
(a) Projects restricted to disaster areas.
(b) Eligible participants.
(c) Limitations on disaster relief employment.
(d) Regulations.
1784b. Definitions.

SUBCHAPTER V—JOBS FOR EMPLOYABLE DEPENDENT INDIVIDUALS INCENTIVE BONUS PROGRAM

1791. Statement of purpose.
1791a. Payments.
(a) In general.
(b) Ratable reductions.
(c) Ratable increases.
(d) Reprogramming.
1791b. Amount of incentive bonus.
1791c. Use of incentive bonus funds.
(a) In general.
(b) Incentive payments to service providers.
(c) Application of section relating to administrative adjudications.
1791d. Notice and application.
(a) Notice of intent to participate.
(b) Application.
(c) Notice of approval or denial.
1791e. Eligibility for incentive bonuses.
1791f. Information and data collection.
(a) Technical assistance.
(b) Joint regulations.
1791g. Evaluation and report.
(a) Evaluation.
(b) Report to Congress.
1791h. Implementing regulations.
1791i, 1791j. Omitted.

SUBCHAPTER VI—STATE HUMAN RESOURCE INVESTMENT COUNCIL

1792. Establishment and functions.
(a) In general.
(b) "Applicable Federal human resource program" defined.
1792a. Composition.
(a) In general.
(b) Additional members.
(c) Additional requirements.
1792b. Administration.
(a) Funding.
(b) Personnel.
(c) Certification.
(d) Equitable funding.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 49a, 49f, 49g, 795a, 2304 of this title; title 5 section 3502; title 7 section 2015; title 8 section 1255a; title 15 section 636; title 18 section 665; title 20 sections 1087vv, 1203a, 1206a, 1208aa, 1425, 2322, 2323, 2341a, 2343, 2392, 2396d, 2403, 2413, 2422, 6002, 6122, 6143, 6213, 6214, 6365, 6434, 6453, 6455, 7263; title 22 section 5855; title 26 sections 42, 6334; title 38 sections 4102A, 4213; title 42 sections 602, 607, 683, 685, 1437u, 1474, 3013, 3056, 3056a, 3056h, 4953, 4959, 6103, 6864, 6873, 7274h, 9806, 11302, 12637, 12655m, 12899c, 12899e, 13823; title 48 section 1911.

§ 1501. Statement of purpose

It is the purpose of this chapter to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the Nation.

(Pub. L. 97–300, § 2, Oct. 13, 1982, 96 Stat. 1324; Pub. L. 102–367, title I, § 101(b), Sept. 7, 1992, 106 Stat. 1022.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, known as the Job Training Partnership Act, which is classified generally to this chapter (§ 1501 et seq.). For complete classification of this Act to the Code, see Short Title note set out below and Tables.

AMENDMENTS

1992—Pub. L. 102–367 amended section generally. Prior to amendment, section read as follows: "It is the purpose of this chapter to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically

disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment.''

EFFECTIVE DATE OF 1992 AMENDMENT; TRANSITION PROVISIONS

Section 701 of Pub. L. 102–367 provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, this Act [See Short Title of 1992 Amendment note below] and the amendments made by this Act shall take effect on July 1, 1993.

''(b) PERFORMANCE STANDARDS.—The Secretary of Labor shall issue revised performance standards under the amendments made by section 115 [amending sections 1516, 1661, and 1662a of this title] as soon as the Secretary determines sufficient data are available, but not later than July 1, 1994, except that with respect to the factor of retention in unsubsidized employment specified in section 106(b)(3)(B) of the Job Training Partnership Act [section 1516(b)(3)(B) of this title] (as amended by section 115), the requirement that such retention be for not less than 6 months shall take effect not later than July 1, 1995.

''(c) INTERIM TRAINING SERVICES FORMULA.—

''(1) LEVEL OF FUNDING.—If the amount appropriated to carry out parts A and C of title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq., 1641 et seq.] for fiscal year 1993 is less than the sum of—

''(A) $25,000,000; and

''(B) the amount appropriated to carry out part A of title II of such Act, as in effect on the day before the date of enactment of this Act [Sept. 7, 1992], for fiscal year 1992,

the amendment made by section 202 of this Act [enacting section 1602 of this title] shall not take effect on July 1, 1993 [Amendment by section 202 did not take effect July 1, 1993, because the appropriations referred to above for fiscal year 1993 were less than the sum referred to above.], and section 202 of the Job Training Partnership Act [section 1602 of this title] shall be amended to read as follows: [For text, see section 1602 of this title.]

''(2) EFFECTIVE DATE.—Any amendment made by paragraph (1) shall take effect on July 1, 1993.

''(d) PERMANENT TRAINING SERVICES FORMULA.—

''(1) LEVEL OF FUNDING.—If section 202 of the Job Training Partnership Act [section 1602 of this title] is amended in accordance with subsection (c) and the amount appropriated to carry out parts A and C of title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq., 1641 et seq.] for a fiscal year is not less than the sum of—

''(A) $25,000,000; and

''(B) the amount appropriated to carry out part A of title II of such Act, as in effect on the day before the date of enactment of this Act [Sept. 7, 1992], for fiscal year 1992,

the amendment made by section 202 of this Act [enacting section 1602 of this title] shall take effect. [Amendment by section 202 did not take effect because the appropriations referred to above for fiscal year 1995 were less than the sum referred to above.]

''(2) EFFECTIVE DATE.—Any amendment made by paragraph (1) shall take effect on October 1 of the fiscal year described in paragraph (1).

''(e) SUMMER YOUTH PROGRAM TRANSFERS.—

''(1) IN GENERAL.—Section 205 [enacting section 1635 of this title] and the amendment made by such section 205 shall take effect on the date of enactment of this Act [Sept. 7, 1992].

''(2) TRANSITION.—A service delivery area may transfer up to 10 percent of the amounts allocated for such area for the summer of 1992 under part B of title II of the Job Training Partnership Act [29 U.S.C. 1630 et seq.] for program year 1992 to provide services to youth pursuant to the program under part A of such title [29 U.S.C. 1601 et seq.], to provide services to youth under such part A, if such transfer is approved by the Governor.

''(f) INTERIM TRAINING SERVICES FORMULA.—

''(1) LEVEL OF FUNDING.—If the amount appropriated to carry out parts A and C of title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq., 1641 et seq.] for fiscal year 1993 is less than the sum of—

''(A) $25,000,000; and

''(B) the amount appropriated to carry out part A of title II of such Act, as in effect on the day before the date of enactment of this Act [Sept. 7, 1992], for fiscal year 1992,

the amendment made by section 207 of this Act [enacting section 1642 of this title] shall not take effect on July 1, 1993 [Amendment by section 207 did not take effect July 1, 1993, because the appropriations referred to above for fiscal year 1993 were less than the sum referred to above.] and title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq.] shall be amended by inserting after section 261 of such Act [section 1641 of this title] the following: [For text, see section 1642 of this title.]

''(2) EFFECTIVE DATE.—Any amendment made by paragraph (1) shall take effect on July 1, 1993.

''(g) PERMANENT TRAINING SERVICES FORMULA.—

''(1) LEVEL OF FUNDING.—If title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq.] is amended in accordance with subsection (f) and the amount appropriated to carry out parts A and C of title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq., 1641 et seq.] for a fiscal year is not less than the sum of—

''(A) $25,000,000; and

''(B) the amount appropriated to carry out part A of title II of such Act, as in effect on the day before the date of enactment of this Act [Sept. 7, 1992], for fiscal year 1992,

the amendment made by section 207 of this Act [enacting section 1642 of this title] shall take effect. [Amendment by section 207 did not take effect because the appropriations referred to above for fiscal year 1994 were less than the sum referred to above.]

''(2) EFFECTIVE DATE.—Any amendment made by paragraph (1) shall take effect on October 1 of the fiscal year described in paragraph (1).

''(h) EVALUATION.—The Secretary of Labor shall evaluate the impact of programs under title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq.] on participant employment, earnings and welfare dependency in multiple sites, using the random assignment of individuals to groups receiving services under programs authorized under the Job Training Reform Amendments of 1992 [Pub. L. 102–367, see Short Title of 1992 Amendment note below] to groups not receiving such services.

''(i) RULES AND PROCEDURES.—

''(1) IN GENERAL.—The Secretary of Labor may establish such rules and procedures as may be necessary to provide for an orderly implementation of the amendments made by this Act [see Short Title of 1992 Amendment note below].

''(2) REVIEW.—The Secretary of Labor, the Governors, and the service delivery areas shall conduct a comprehensive review of the current policies, practices, procedures, and delivery systems relating to programs authorized under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] for the purpose of ensuring the effective implementation of the amendments made by this Act. Such review shall include consideration of the appropriateness of current service delivery area designations, the representativeness of current State and local councils, the adequacy of current administrative systems, the effectiveness of current outreach, service delivery, and coordination activities, and other relevant matters.

''(j) IMPLEMENTING REGULATIONS.—The Secretary of Labor shall issue final regulations relating to the implementation of the amendments made by this Act not later than December 18, 1992.''

SHORT TITLE OF 1992 AMENDMENT

Section 1 of Pub. L. 102–367 provided that: ''This Act [enacting sections 1519, 1601 to 1606, 1630 to 1635, 1641 to

1646, 1673, 1734, 1735, 1782 to 1784b, and 1792 to 1792b of this title, amending this section and sections 1502, 1503, 1505, 1511, 1512, 1514 to 1518, 1531 to 1535, 1551 to 1554, 1571, 1572, 1574 to 1577, 1580, 1583, 1652, 1661, 1661c, 1661d, 1662a, 1662c, 1662e, 1671, 1672, 1693, 1696 to 1698, 1703, 1703a, 1706, 1707, 1731 to 1733, 1737, 1752 to 1754, 1772, 1773, 1781, and 1791 to 1791h of this title, section 2014 of Title 7, Agriculture, and sections 1205a and 2322 of Title 20, Education, repealing sections 1591, 1601 to 1605, 1630 to 1634, and 1734 to 1736 of this title, omitting sections 1791i and 1791j of this title, and enacting provisions set out as notes under this section and sections 1602 and 1642 of this title] may be cited as the 'Job Training Reform Amendments of 1992'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–235, § 1, Dec. 12, 1991, 105 Stat. 1806, provided that: ''This Act [enacting section 1737 of this title, amending sections 1503, 1514, 1531 to 1533, and 1604 of this title, and enacting provisions set out as notes under this section and sections 1514 and 1737 of this title] may be cited as the 'Nontraditional Employment for Women Act'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–628, title VII, § 711, Nov. 7, 1988, 102 Stat. 3248, provided that: ''This subtitle [subtitle B (§§ 711–714) of title VII of Pub. L. 100–628, enacting sections 1583 and 1791 to 1791j of this title, amending sections 49, 49a, 49b, 49d, 49e to 49j, 49*l*, 49*l*–1, 1502, 1504, 1505, 1514, 1516, 1531, and 1602 of this title and section 602 of Title 42, The Public Health and Welfare, and amending provisions set out as a note under section 49 of this title] may be cited as the 'Jobs for Employable Dependent Individuals Act'.''

Pub. L. 100–418, title VI, § 6301, Aug. 23, 1988, 102 Stat. 1524, provided that ''This title'', meaning subtitle D (§§ 6301–6307) of title VI of Pub. L. 100–418, which enacted sections 565 and 1505 of this title, amended subchapter III of this chapter and sections 1502, 1516, 1532, and 1752 of this title, and enacted provisions set out as notes under section 1651 of this title, could be cited as the ''Economic Dislocation and Worker Adjustment Assistance Act'', prior to repeal by Pub. L. 103–382, title III, § 391(i), Oct. 20, 1994, 108 Stat. 4023.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–496, § 1, Oct. 16, 1986, 100 Stat. 1261, provided that: ''This Act [enacting sections 1582, 1630, and 1736 of this title and amending sections 1503, 1511, 1516, 1518, 1531, 1533, 1534, 1602, 1603, 1631 to 1634, 1651, 1652, 1707, and 1733 of this title] may be cited as the 'Job Training Partnership Act Amendments of 1986'.''

SHORT TITLE

Section 1 of Pub. L. 97–300 provided that: ''This Act [enacting this chapter and sections 49e, 49f, 49*l*, and 49*l*–1 of this title, amending sections 49, 49a, 49b, 49d, 49g, 49h, 49i, and 49j of this title, section 665 of Title 18, Crimes and Criminal Procedure, and sections 602, 632, and 633 of Title 42, The Public Health and Welfare, repealing chapter 17 (§ 801 et seq.) of this title, and enacting provisions set out as notes under sections 49 and 801 of this title] may be cited as the 'Job Training Partnership Act'.''

DECLARATION OF POLICY

Section 101(a) of Pub. L. 102–367 provided that: ''In recognition of the training needs of low-income adults and youth, the Congress declares it to be the policy of the United States to—

''(1) provide financial assistance to States and local service delivery areas to meet the training needs of such low-income adults and youth, and to assist such individuals in obtaining unsubsidized employment;

''(2) increase the funds available for programs under title II of the Job Training Partnership Act (29 U.S.C. 1601 et seq.) by not less than 10 percent of the baseline each fiscal year to provide for growth in the percentage of eligible adults and youth served above the 5 percent of the eligible population that is currently served; and

''(3) encourage the provision of longer, more comprehensive, education, training, and employment services to the eligible population, which also requires increased funding in order to maintain current service levels.''

CONSTRUCTION OF 1991 AMENDMENT

Pub. L. 102–235, § 11, Dec. 12, 1991, 105 Stat. 1811, provided that:

''(a) For purposes of this legislation, nothing in this Act [see Short Title of 1991 Amendment note above] shall be construed to mean that Congress is taking a position on the issue of comparable worth.

''(b) Nothing in this Act shall be construed to require, sanction or authorize discrimination in violation of title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.] or any other Federal law prohibiting discrimination on the basis of race, color, religion, sex, national origin, handicap, or age. No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in any program under this Act because of race, color, religion, sex, national origin, age, handicap, political affiliation or belief. Failure to meet the goals in the Act shall not itself constitute a violation of title VII of the Civil Rights Act of 1964 or any other Federal law prohibiting discrimination on the basis of race, color, religion, sex, national origin, handicap, or age.''

CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE FOR 1991 AMENDMENTS

Pub. L. 102–235, § 2, Dec. 12, 1991, 105 Stat. 1806, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) over 7,000,000 families in the United States live in poverty, and over half of those families are single parent households headed by women;

''(2) women stand to improve their economic security and independence through the training and other services offered under the Job Training Partnership Act [29 U.S.C. 1501 et seq.];

''(3) women participating under the Job Training Partnership Act tend to be enrolled in programs for traditionally female occupations;

''(4) many of the Job Training Partnership Act programs that have low female enrollment levels are in fields of work that are nontraditional for women;

''(5) employment in traditionally male occupations leads to higher wages, improved job security, and better long-range opportunities than employment in traditionally female-dominated fields;

''(6) the long-term economic security of women is served by increasing nontraditional employment opportunities for women; and

''(7) older women reentering the work force may have special needs in obtaining training and placement in occupations providing economic security.

''(b) STATEMENT OF PURPOSE.—The purposes of this Act [see Short Title of 1991 Amendment note above] are—

''(1) to encourage efforts by the Federal, State, and local levels of government aimed at providing a wider range of opportunities for women under the Job Training Partnership Act [29 U.S.C. 1501 et seq.];

''(2) to provide incentives to establish programs that will train, place, and retain women in nontraditional fields; and

''(3) to facilitate coordination between the Job Training Partnership Act and the Carl D. Perkins Vocational and Applied Technology Education Act [20 U.S.C. 2301 et seq.] to maximize the effectiveness of resources available for training and placing women in nontraditional employment.''

§ 1502. Authorization of appropriations

(a)(1) There are authorized to be appropriated to carry out parts A and C of subchapter II of

this chapter such sums as may be necessary for fiscal year 1993 and for each succeeding fiscal year. Of the sums appropriated to carry out parts A and C of subchapter II of this chapter for each such fiscal year, an amount not less than 40 percent of such sums shall be made available to carry out part A of such subchapter and an amount not less than 40 percent of such sums shall be made available to carry out part C of such subchapter.

(2) There are authorized to be appropriated to carry out part B of subchapter II of this chapter such sums as may be necessary for fiscal year 1993 and for each succeeding fiscal year.

(b) There are authorized to be appropriated to carry out subchapter III of this chapter (other than section 1662e thereof)—

(1) $980,000,000 for fiscal year 1989; and

(2) such sums as may be necessary for each succeeding fiscal year.

(c)(1) There are authorized to be appropriated to carry out parts A, C, D, E, F, and G of subchapter IV of this chapter for fiscal year 1993 and each succeeding fiscal year an amount equal to not more than 7 percent of the total amount appropriated to carry out this chapter for each such fiscal year.

(2) From the amount appropriated under paragraph (1) for any fiscal year, the Secretary—

(A) shall first reserve—

(i) an amount of not less than 3.3 percent of the amount available for parts A and C of subchapter II of this chapter for such fiscal year to carry out section 1671 of this title; and

(ii) an amount of not less than 3.2 percent of the amount available for parts A and C of subchapter II of this chapter for such fiscal year to carry out section 1672 of this title; and

(B) after making such reservations, shall reserve—

(i) an amount equal to 7 percent of the amount appropriated under paragraph (1) to carry out part C of subchapter IV of this chapter;

(ii) $15,000,000 to carry out section 1733 of this title, of which—

(I) not less than 20 percent shall be used to carry out section 1733(b) of this title;

(II) not less than 20 percent shall be used to carry out section 1733(c) of this title; and

(III) $1,000,000 shall be used to carry out section 1733(d) of this title;

(iii) $6,000,000 to carry out subsections (e) and (f) of section 1752 of this title; and

(iv) $2,000,000 to carry out part F of subchapter IV of this chapter.

(3) There are authorized to be appropriated to carry out part H of subchapter IV of this chapter $100,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994 through 1997.

(4) There are authorized to be appropriated to carry out part I of subchapter IV of this chapter $5,000,000 for each of the fiscal years 1993 through 1997.

(5) There are authorized to be appropriated to carry out part J of subchapter IV of this chapter,[1] $15,000,000 for fiscal year 1993 and such sums as may be necessary for each succeeding fiscal year.

(d) There are authorized to be appropriated $618,000,000 for fiscal year 1983, and such sums as may be necessary for each succeeding fiscal year, to carry out part B of subchapter IV of this chapter.

(e) There are authorized to be appropriated for each of fiscal years 1990 through 1996 such sums as may be necessary to carry out subchapter V of this chapter.

(f) The authorizations of appropriations contained in this section are subject to the program year provisions of section 1571 of this title.

(Pub. L. 97–300, § 3, Oct. 13, 1982, 96 Stat. 1324; Pub. L. 100–418, title VI, § 6303, Aug. 23, 1988, 102 Stat. 1538; Pub. L. 100–628, title VII, § 714(d), Nov. 7, 1988, 102 Stat. 3256; Pub. L. 101–549, title XI, § 1101(b)(2), Nov. 15, 1990, 104 Stat. 2712; Pub. L. 102–367, title I, § 102(a), Sept. 7, 1992, 106 Stat. 1023.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367, § 102(a)(1), added subsec. (a) and struck out former subsec. (a) which read as follows:

''(1) There are authorized to be appropriated to carry out part A of subchapter II of this chapter and subchapter IV of this chapter (other than part B of such subchapter) such sums as may be necessary for fiscal year 1983 and for each succeeding fiscal year.

''(2) From the amount appropriated pursuant to paragraph (1) for any fiscal year, an amount equal to not more than 7 percent of the total amount appropriated pursuant to this section shall be available to carry out parts A, C, D, E, F, and G of subchapter IV of this chapter.

''(3) Of the amount so reserved under paragraph (2)—

''(A) 5 percent shall be available for part C of subchapter IV of this chapter, and

''(B) $2,000,000 shall be available for part F of subchapter IV of this chapter.''

Subsec. (b). Pub. L. 102–367, § 102(a)(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''There are authorized to be appropriated to carry out part B of subchapter II of this chapter such sums as may be necessary for fiscal year 1983 and for each succeeding fiscal year.''

Subsec. (c). Pub. L. 102–367, § 102(a)(3), added subsec. (c). Former subsec. (c) redesignated (b).

Subsec. (e). Pub. L. 102–367, § 102(a)(4), substituted ''(e) There'' for ''(e)(1) Subject to paragraph (2), there'', substituted ''1996'' for ''1994'', and struck out pars. (2) and (3) which read as follows:

''(2) No funds appropriated pursuant to this chapter may be used to carry out such subchapter for any fiscal year unless funds appropriated to carry out part A of subchapter II of this chapter exceed any change in the consumer price index from the amounts appropriated for the previous fiscal year to carry out such part.

''(3) From amounts authorized to be appropriated for subchapter V of this chapter pursuant to paragraph (1), not more than $5,000,000 may be used for purposes of section 1791i of this title.''

1990—Subsec. (c). Pub. L. 101–549, § 1101(b)(2), inserted ''(other than section 1662e thereof)'' after ''subchapter III of this chapter''.

1988—Subsec. (c). Pub. L. 100–418 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''There are authorized to be appropriated to carry out subchapter III of this chapter such sums as may be necessary for fiscal year 1983 and for each succeeding fiscal year.''

[1] So in original. The comma probably should not appear.

Subsecs. (e), (f). Pub. L. 100–628 added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1631, 1642, 1652, 1662e, 1733 of this title.

§ 1503. Definitions

For the purposes of this chapter, the following definitions apply:

(1) The term ''academic credit'' means credit for education, training, or work experience applicable toward a secondary school diploma, a postsecondary degree, or an accredited certificate of completion, consistent with applicable State law and regulation and the requirements of an accredited educational agency or institution in a State.

(2) The term ''administrative entity'' means the entity designated to administer a job training plan under section 1513(b)(1)(B) of this title.

(3) The term ''area of substantial unemployment'' means any area of sufficient size and scope to sustain programs under parts A and C of subchapter II of this chapter and which has an average rate of unemployment of at least 6.5 percent for the most recent twelve months as determined by the Secretary. Determinations of areas of substantial unemployment shall be made once each fiscal year.

(4) The term ''chief elected official'' includes—

(A) in the case of a State, the Governor;

(B) in the District of Columbia, the mayor; and

(C) in the case of a service delivery area designated under section 1511(a)(4)(A)(iii) of this title, the governing body.

(5) The term ''community-based organizations'' means private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, 70,001, Jobs for Youth, the Association of Farmworker Opportunity Programs, the Center for Employment Training, literacy organizations, agencies or organizations serving older individuals, organizations that provide service opportunities, youth corps programs, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10)[1] of the Rehabilitation Act of 1973 [29 U.S.C. 706(10)]), agencies serving youth, agencies serving individuals with disabilities, including disabled veterans, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations), and organizations serving nonreservation Indians, as well as tribal governments and Native Alaskan groups.

(6) Except as otherwise provided therein, the term ''council'' means the private industry council established under section 1512 of this title.

(7) The term ''economic development agencies'' includes local planning and zoning commissions or boards, community development agencies, and other local agencies and institutions responsible for regulating, promoting, or assisting in local economic development.

(8) The term ''economically disadvantaged'' means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program; (B) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42,[2] or (ii) 70 percent of the lower living standard income level; (C) is receiving (or has been determined within the 6-month period prior to the application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; (D) qualifies as a homeless individual under subsections (a) and (c) of section 103 of the Stewart B. McKinney Homeless Assistance Act [42 U.S.C. 11302(a), (c)]; (E) is a foster child on behalf of whom State or local government payments are made; or (F) in cases permitted by regulations of the Secretary, is an individual with a disability whose own income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements.

(9) The term ''Governor'' means the chief executive of any State.

(10)(A) The term ''individual with a disability'' means any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment.

(B) The term ''individuals with disabilities'' means more than one individual with a disability.

(11) The term ''Hawaiian native'' means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

(12) The term ''institution of higher education'' means any institution of higher education as that term is defined in section 1201(a) of the Higher Education Act of 1965 [20 U.S.C. 1141(a)].

(13) The term ''labor market area'' means an economically integrated geographic area with-

[1] See References in Text note below.

[2] So in original. Probably should be ''42),''.

in which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such areas shall be identified in accordance with criteria used by the Bureau of Labor Statistics of the Department of Labor in defining such areas or similar criteria established by a Governor.

(14) The term ''local educational agency'' means such an agency as defined in section 521(22) of the Carl D. Perkins Vocational[3] Education Act [20 U.S.C. 2471(22)].

(15) The term ''low-income level'' means $7,000 with respect to income in 1969, and for any later year means that amount which bears the same relationship to $7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest $1,000.

(16) The term ''lower living standard income level'' means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary based on the most recent ''lower living family budget'' issued by the Secretary.

(17) The term ''offender'' means any adult or juvenile who is or has been subject to any stage of the criminal justice process for whom services under this chapter may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

(18) The term ''postsecondary institution'' means an institution of higher education as that term is defined in section 481(a)(1) of the Higher Education Act of 1965 [20 U.S.C. 1088(a)(1)].

(19) The term ''private sector'' means, for purposes of the State job training councils and private industry councils, persons who are owners, chief executives or chief operating officers of private for-profit employers and major nongovernmental employers, such as health and educational institutions or other executives of such employers who have substantial management or policy responsibility.

(20) The term ''public assistance'' means Federal, State, or local government cash payments for which eligibility is determined by a needs or income test.

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

(22) The term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

(23) The term ''State educational agency'' means such an agency as defined in section 14101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 8801].

(24) The term ''supportive services'' means services which are necessary to enable an individual eligible for training under this chapter, but who cannot afford to pay for such services, to participate in a training program funded under this chapter. Such supportive services may include transportation, health care, financial assistance (except as a post-termination service), drug and alcohol abuse counseling and referral, individual and family counseling, special services, and materials for individuals with disabilities, job coaches, child care and dependent care, meals, temporary shelter, financial counseling, and other reasonable expenses required for participation in the training program and may be provided in-kind or through cash assistance.

(25) The term ''unemployed individuals'' means individuals who are without jobs and who want and are available for work. The determination of whether individuals are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining individuals as unemployed.

(26) The term ''unit of general local government'' means any general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers.

(27)(A) The term ''veteran'' means an individual who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(B) The term ''disabled veteran'' means (i) a veteran who is entitled to compensation under laws administered by the Secretary of Veterans Affairs, or (ii) an individual who was discharged or released from active duty because of service-connected disability.

(C) The term ''recently separated veteran'' means any veteran who applies for participation under any subchapter of this chapter within 48 months of the discharge or release from active military, naval, or air service.

(D) The term ''Vietnam era veteran'' means a veteran any part of whose active military service occurred between August 5, 1964, and May 7, 1975.

(28) The term ''vocational education'' has the meaning provided in section 521(41) of the Carl D. Perkins Vocational[4] Education Act [20 U.S.C. 2471(41)].

(29) The term ''displaced homemaker'' means an individual who has been providing unpaid services to family members in the home and who—

(A) has been dependent either—

(i) on public assistance and whose youngest child is within 2 years of losing eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

(ii) on the income of another family member but is no longer supported by that income; and

(B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(30) The term ''nontraditional employment'' as applied to women refers to occupations or

[3] So in original. Probably should be ''Vocational and Applied Technology''.

[4] So in original. Probably should be ''Vocational and Applied Technology''.

fields of work where women comprise less than 25 percent of the individuals employed in such occupation or field of work.

(31) The term ''basic skills deficient'' means, with respect to an individual, that the individual has English reading or computing skills at or below the 8th grade level on a generally accepted standardized test or a comparable score on a criterion-referenced test.

(32) The term ''case management'' means the provision of a client-centered approach in the delivery of services, designed to—

(A) prepare and coordinate comprehensive employment plans, such as service strategies, for participants to ensure access to the necessary training and supportive services, using, where feasible, computer-based technologies; and

(B) provide job and career counseling during program participation and after job placement.

(33) The term ''citizenship skills'' means skills and qualities, such as teamwork, problem-solving ability, self-esteem, initiative, leadership, commitment to life-long learning, and an ethic of civic responsibility, that are characteristic of productive workers and good citizens.

(34) The term ''family'' means two or more persons related by blood, marriage, or decree of court, who are living in a single residence, and are included in one or more of the following categories:

(A) A husband, wife, and dependent children.

(B) A parent or guardian and dependent children.

(C) A husband and wife.

(35) The term ''hard-to-serve individual'' means an individual who is included in one or more of the categories described in section 1603(b) of this title or subsection (b) or (d) of section 1643 of this title.

(36) The term ''JOBS'' means the Job Opportunities and Basic Skills Training Program authorized under part F of title IV of the Social Security Act (42 U.S.C. 681 et seq.).

(37) The term ''participant'' means an individual who has been determined to be eligible to participate in and who is receiving services (except post-termination services authorized under sections 1604(c)(4) and 1644(d)(5) of this title and followup services authorized under section 1632(d) of this title) under a program authorized by this chapter. Participation shall be deemed to commence on the first day, following determination of eligibility, on which the participant began receiving subsidized employment, training, or other services provided under this chapter.

(38) The term ''school dropout'' means an individual who is no longer attending any school and who has not received a secondary school diploma or a certificate from a program of equivalency for such a diploma.

(39) The term ''termination'' means the separation of a participant who is no longer receiving services (except post-termination services authorized under sections 1604(c)(4) and 1644(d)(5) of this title and followup services authorized under section 1632(d) of this title) under a program authorized by this chapter.

(40) The term ''youth corps program'' means a program, such as a conservation corps or youth service program, that offers productive work with visible community benefits in a natural resource or human service setting and that gives participants a mix of work experience, basic and life skills, education, training, and supportive services.

(Pub. L. 97–300, § 4, Oct. 13, 1982, 96 Stat. 1325; Pub. L. 98–524, § 4(a)(1), Oct. 19, 1984, 98 Stat. 2487; Pub. L. 99–159, title VII, § 713(b)(1), Nov. 22, 1985, 99 Stat. 907; Pub. L. 99–496, §§ 14(b)(1), 15(a), Oct. 16, 1986, 100 Stat. 1265; Pub. L. 100–77, title VII, § 740(a), July 22, 1987, 101 Stat. 531; Pub. L. 102–54, § 13(k)(2)(A), June 13, 1991, 105 Stat. 276; Pub. L. 102–235, § 3, Dec. 12, 1991, 105 Stat. 1807; Pub. L. 102–367, title I, § 103(a), (b)(1), title VII, § 702(a)(1)–(3), Sept. 7, 1992, 106 Stat. 1024, 1026, 1111, 1112; Pub. L. 103–382, title III, § 391(n)(1), Oct. 20, 1994, 108 Stat. 4023.)

REFERENCES IN TEXT

Section 7 of the Rehabilitation Act of 1973, referred to in par. (5), was subsequently amended, and section 7(10) no longer defines the term ''rehabilitation facility''. However, such term is defined elsewhere in that section.

The Food Stamp Act of 1977, referred to in par. (8)(C), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Social Security Act, referred to in pars. (29)(A)(i) and (36), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A and F of title IV of the Act are classified generally to parts A (§ 601 et seq.) and F (§ 681 et seq.), respectively, of subchapter IV 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

1994—Par. (23). Pub. L. 103–382 substituted ''section 14101'' for ''section 1471(23)''.

1992—Par. (3). Pub. L. 102–367, § 103(a)(1), substituted ''programs under parts A and C'' for ''a program under part A''.

Par. (5). Pub. L. 102–367, § 103(a)(2), (b)(1)(A), inserted ''the Association of Farmworker Opportunity Programs, the Center for Employment Training, literacy organizations, agencies or organizations serving older individuals, organizations that provide service opportunities, youth corps programs,'' after ''Jobs for Youth,'', substituted ''individuals with disabilities'' for ''the handicapped'', and struck out ''(including the National Urban Indian Council)'' after ''nonreservation Indians''.

Par. (8)(B)(i). Pub. L. 102–367, § 103(a)(3)(A), substituted ''the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42'' for ''the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget''.

Par. (8)(C). Pub. L. 102–367, § 103(a)(3)(B), inserted ''(or has been determined within the 6-month period prior to the application for the program involved to be eligible to receive)'' after ''is receiving''.

Par. (8)(D). Pub. L. 102–367, § 103(a)(3)(C), inserted ''subsections (a) and (c) of'' after ''homeless individual under''.

Par. (8)(F). Pub. L. 102–367, § 103(a)(3)(D), (b)(1)(B), amended subpar. (F) identically, substituting ''individual with a disability'' for ''adult handicapped individual''.

Par. (10). Pub. L. 102–367, § 103(a)(4), designated existing provisions as subpar. (A), substituted ''individual with a disability'' for ''handicapped individual'', and added subpar. (B).

Par. (14). Pub. L. 102–367, § 702(a)(1), substituted ''section 521(22)'' for ''section 521(19)''.

Par. (22). Pub. L. 102–367, § 103(a)(5), substituted ''the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau'' for ''and the Trust Territory of the Pacific Islands''.

Par. (23). Pub. L. 102–367, § 702(a)(2), substituted ''section 1471(23) of the Elementary and Secondary Education Act of 1965'' for ''section 1201(h) of the Higher Education Act of 1965''.

Par. (24). Pub. L. 102–367, § 103(a)(6), inserted ''financial assistance (except as a post-termination service), drug and alcohol abuse counseling and referral, individual and family counseling,'' after ''health care,'', substituted ''materials for individuals with disabilities, job coaches'' for ''materials for the handicapped'', and inserted ''and dependent care'' after ''child care''.

Par. (27)(C). Pub. L. 102–367, § 701(a)(3), realigned margins.

Par. (28). Pub. L. 102–367, § 103(b)(1)(C), substituted ''section 521(41)'' for ''section 521(31)''.

Par. (29). Pub. L. 102–367, § 103(a)(7), amended par. (29) generally. Prior to amendment, par. (29) read as follows: ''The term 'displaced homemaker' means an individual who—

''(A) was a full-time homemaker for a substantial number of years; and

''(B) derived the substantial share of his or her support from—

''(i) a spouse and no longer receives such support due to the death, divorce, permanent disability of, or permanent separation from the spouse; or

''(ii) public assistance on account of dependents in the home and no longer receives such support.''

Pars. (31) to (40). Pub. L. 102–367, § 103(a)(8), added pars. (31) to (40).

1991—Par. (27)(B). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

Par. (30). Pub. L. 102–235 added par. (30).

1987—Par. (8). Pub. L. 100–77 added cl. (D) and redesignated former cls. (D) and (E) as (E) and (F), respectively.

1986—Par. (5). Pub. L. 99–496, § 15(a)(1), inserted '', including disabled veterans'' after ''handicapped''.

Par. (27)(C), (D). Pub. L. 99–496, § 15(a)(2), added subpars. (C) and (D).

Par. (29). Pub. L. 99–496, § 14(b)(1), added par. (29).

1985—Par. (14). Pub. L. 99–159 made a clarifying amendment to Pub. L. 98–524, § 4(a)(1)(A). See 1984 Amendment note below.

1984—Par. (14). Pub. L. 98–524, § 4(a)(1)(A), as amended by Pub. L. 99–159, substituted ''section 521(19) of the Carl. D. Perkins Vocational Education Act'' for ''section 195(10) of the Vocational Education Act of 1963''.

Par. (23). Pub. L. 98–524, § 4(a)(1)(B), substituted ''section 1201(h) of the Higher Education Act of 1965'' for ''section 195(11) of the Vocational Education Act of 1963''.

Par. (28). Pub. L. 98–524, § 4(a)(1)(C), substituted ''section 521(31) of the Carl. D. Perkins Vocational Education Act'' for ''section 195(1) of the Vocational Education Act of 1963''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–159 effective July 1, 1985, see section 714(a) of Pub. L. 99–159, set out as a note under section 2311 of Title 20, Education.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98–524, set out as an Effective Date note under section 2301 of Title 20, Education.

CONSTRUCTION OF 1991 AMENDMENT

Amendment by Pub. L. 102–235 not to be construed to require, sanction, or authorize discrimination on the basis of race, color, religion, sex, national origin, handicap, or age, see section 11 of Pub. L. 102–235, set out as a note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1513, 1604, 1651, 2302, 2508 of this title; title 20 sections 2471, 5938, 6103; title 42 sections 685, 12773.

§ 1504. Enforcement of Military Selective Service Act

The Secretary shall insure that each individual participating in any program established under this chapter, or receiving any assistance or benefit under this chapter, has not violated section 3 of the Military Selective Service Act (50 U.S.C. App. 453) by not presenting and submitting to registration as required pursuant to such section. The Director of the Selective Service System shall cooperate with the Secretary in carrying out this section.

(Pub. L. 97–300, title VI, § 604, formerly title V, § 504, Oct. 13, 1982, 96 Stat. 1399; renumbered title VI, § 604, Pub. L. 100–628, title VII, § 712(a)(1), (2), Nov. 7, 1988, 102 Stat. 3248.)

§ 1505. State job bank systems

(a) Funding authorities; authorization of appropriations

(1) The Secretary shall carry out the purposes of this section with sums appropriated pursuant to paragraph (2) for any fiscal year.

(2) There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 1989 and such sums as may be necessary for each succeeding fiscal year.

(b) Availability of funds; purposes of systems

The Secretary shall make such sums available through the United States Employment Service for the development and implementation of job bank systems in each State. Such systems shall be designed to use computerized electronic data processing and telecommunications systems for such purposes as—

(1) identifying job openings and referring jobseekers to job openings, with continual updating of such information;

(2) providing information on occupational supply and demand; and

(3) utilization of such systems by career information delivery systems (including career counseling programs in schools).

(c) Software capability and compatibility of systems; development of systems

Wherever possible, computerized data systems developed with assistance under this section shall be capable of utilizing software compatible with other systems (including management information systems and unemployment insurance and other income maintenance programs) used in the administration of employment and training programs. In developing such systems, spe-

cial consideration shall be given to the advice and recommendations of the State occupational information coordinating committees (established under section 2422(b) of title 20), and other users of such systems for the various purposes described in subsection (b) of this section.

(Pub. L. 97–300, title VI, § 605, formerly title V, § 505, as added Pub. L. 100–418, title VI, § 6307(a), Aug. 23, 1988, 102 Stat. 1541; renumbered title VI, § 505, Pub. L. 100–628, title VII, § 712(a)(1), Nov. 7, 1988, 102 Stat. 3248; renumbered § 605, Pub. L. 102–367, title VII, § 702(a)(20), Sept. 7, 1992, 106 Stat. 1113.)

§ 1506. Educational assistance and training

(a) Use of fund

The Secretary of Labor shall provide for grants to States to provide educational assistance and training for United States workers. The Secretary shall consult with the Secretary of Education in making grants under this section.

(b) Allocation of funds

Within the purposes described in subsection (a) of this section, funds in the account used under this section shall be allocated among the States based on a formula, established jointly by the Secretaries of Labor and Education, that takes into consideration—

(1) the location of foreign workers admitted into the United States,

(2) the location of individuals in the United States requiring and desiring the educational assistance and training for which the funds can be applied, and

(3) the location of unemployed and underemployed United States workers.

(c) Disbursement to States

(1) Within the purposes and allocations established under this section, disbursements shall be made to the States, in accordance with grant applications submitted to and approved jointly by the Secretaries of Labor and Education, to be applied in a manner consistent with the guidelines established by such Secretaries in consultation with the States. In applying such grants, the States shall consider providing funding to joint labor-management trust funds and other such non-profit organizations which have demonstrated capability and experience in directly training and educating workers.

(2) Not more than 5 percent of the funds disbursed to any State under this section may be used for administrative expenses.

(d) Limitation on Federal overhead

The Secretaries shall provide that not more than 2 percent of the amount of funds disbursed to States under this section may be used by the Federal Government in the administration of this section.

(e) Annual report

The Secretary of Labor shall report annually to the Congress on the grants to States provided under this section.

(f) "State" defined

In this section, the term ''State'' has the meaning given such term in section 1101(a)(36) of title 8.

(Pub. L. 101–649, title VIII, § 801, Nov. 29, 1990, 104 Stat. 5087.)

CODIFICATION

Section was enacted as part of the Immigration Act of 1990, and not as part of the Job Training Partnership Act which comprises this chapter.

SUBCHAPTER I—JOB TRAINING AND EMPLOYMENT ASSISTANCE SYSTEM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1634 of this title.

PART A—SERVICE DELIVERY SYSTEM

§ 1511. Establishment of service delivery areas

(a) Proposals; proposed designations; requests

(1) The Governor shall, after receiving the proposal of the State job training coordinating council, publish a proposed designation of service delivery areas for the State each of which—

(A) is comprised of the State or one or more units of general local government;

(B) will promote effective delivery of job training services; and

(C)(i) is consistent with labor market areas or standard metropolitan statistical areas, but this clause shall not be construed to require designation of an entire labor market area; or

(ii) is consistent with areas in which related services are provided under other State or Federal programs.

(2) The Council shall include in its proposal a written explanation of the reasons for designating each service delivery area.

(3) Units of general local government (and combinations thereof), business organizations, and other affected persons or organizations shall be given an opportunity to comment on the proposed designation of service delivery areas and to request revisions thereof.

(4)(A) The Governor shall approve any request to be a service delivery area from—

(i) any unit of general local government with a population of 200,000 or more;

(ii) any consortium of contiguous units of general local government with an aggregate population of 200,000 or more which serves a substantial part of one or more labor market areas; and

(iii) any concentrated employment program grantee for a rural area which served as a prime sponsor under the Comprehensive Employment and Training Act.

(B) The Governor may approve a request to be a service delivery area from any unit of general local government or consortium of contiguous units of general local government, without regard to population, which serves a substantial portion of a labor market area.

(C) If the Governor denies a request submitted under subparagraph (A) and the entity making such request alleges that the decision of the Governor is contrary to the provisions of this section, such entity may appeal the decision to the Secretary, who shall make a final decision within 30 days after such appeal is received.

(b) Final designation by Governor

The Governor shall make a final designation of service delivery areas within the State. Be-

fore making a final designation of service delivery areas for the State, the Governor shall review the comments submitted under subsection (a)(3) of this section and requests submitted under subsection (a)(4) of this section.

(c) Redesignations

(1) In accordance with subsection (a) of this section, the Governor may redesignate service delivery areas no more frequently than every two years, except as provided for in sections 1516(j)(4)(B) and 1574(b)(1)(B) of this title. Such redesignations shall be made not later than 4 months before the beginning of a program year.

(2) Subject to paragraph (1), the Governor shall make such a redesignation if a petition to do so is filed by an entity specified in subsection (a)(4)(A) of this section.

(3) The provisions of this subsection are subject to section 1515(c) of this title.

(Pub. L. 97–300, title I, § 101, Oct. 13, 1982, 96 Stat. 1327; Pub. L. 99–496, § 2, Oct. 16, 1986, 100 Stat. 1261; Pub. L. 102–367, title I, § 111, Sept. 7, 1992, 106 Stat. 1026.)

REFERENCES IN TEXT

The Comprehensive Employment and Training Act, referred to in subsec. (a)(4)(A)(iii), is Pub. L. 93–203, Dec. 28, 1973, 87 Stat. 839, as amended, which was classified generally to chapter 17 (§ 801 et seq.) of this title, and was repealed by section 184(a)(1) of the Job Training Partnership Act, Pub. L. 97–300, title I, Oct. 13, 1982, 96 Stat. 1357, which is classified principally to this chapter. Provisions of the Comprehensive Employment and Training Act relating to prime sponsors were classified to section 811 of this title prior to its repeal.

AMENDMENTS

1992—Subsec. (c)(1). Pub. L. 102–367 inserted ‘‘, except as provided for in sections 1516(j)(4)(B) and 1574(b)(1)(B) of this title’’ before period at end of first sentence.

1986—Subsec. (a)(4)(A)(ii). Pub. L. 99–496 substituted ‘‘one or more labor market areas’’ for ‘‘a labor market area’’.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1512, 1513, 1515, 1518, 1578, 1602, 1642, 1661a of this title.

§ 1512. Private industry councils

(a) Establishment; membership

There shall be a private industry council for every service delivery area established under section 1511 of this title, to be selected in accordance with this subsection. Each council shall consist of—

(1) representatives of the private sector, who shall constitute a majority of the membership of the council and who shall be owners of business concerns, chief executives or chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility;

(2) representatives of organized labor and community-based organizations, who shall constitute not less than 15 percent of the membership of the council; and

(3) representatives of each of the following:

(A) Educational agencies (which agencies shall be representative of all educational agencies in the service delivery area).

(B) Vocational rehabilitation agencies.

(C) Public assistance agencies.

(D) Economic development agencies.

(E) The public employment service.

(b) Chairman

The Chairman of the council shall be selected from among members of the council who are representatives of the private sector.

(c) Nomination and recommendation of individuals

(1)(A) Private sector representatives on the council shall be selected from among individuals nominated by general purpose business organizations after consulting with, and receiving recommendations from, other business organizations in the service delivery area. The number of such nominations shall be at least 150 percent of the number of individuals to be appointed under subsection (a)(1) of this section. Such nominations, and the individuals selected from such nominations, shall reasonably represent the industrial and demographic composition of the business community. Whenever possible, at least one-half of such business and industry representatives shall be representatives of small business, including minority business.

(B) For the purpose of this paragraph, the term—

(i) ‘‘general purpose business organizations’’ means organizations which admit to membership any for-profit business operating within the service delivery area; and

(ii) ‘‘small business’’ means private for-profit enterprises employing 500 or fewer employees.

(2) The education representatives on the council shall be selected from among individuals nominated by regional or local educational agencies, vocational education institutions, institutions of higher education (including entities offering adult education) or general organizations of such institutions, within the service delivery area.

(3) The labor representatives on the council shall be selected from individuals recommended by recognized State and local labor federations. If the State or local labor federation fails to nominate a sufficient number of individuals to meet the labor representation requirements of subsection (a)(2) of this section, individual workers may be included on the council to complete the labor representation.

(4) The remaining members of the council shall be selected from individuals recommended by interested organizations.

(d) Appointment of members

(1) In any case in which there is only one unit of general local government with experience in administering job training programs within the service delivery area, the chief elected official of that unit shall appoint members to the council from the individuals nominated or recommended under subsection (c) of this section.

(2) In any case in which there are two or more such units of general local government in the

service delivery area, the chief elected officials of such units shall appoint members to the council from the individuals so nominated or recommended in accordance with an agreement entered into by such units of general local government. In the absence of such an agreement, the appointments shall be made by the Governor from the individuals so nominated or recommended.

(e) Number of members

The initial number of members of the council shall be determined—

(1) by the chief elected official in the case described in subsection (d)(1) of this section,

(2) by the chief elected officials in accordance with the agreement in the case described in subsection (d)(2) of this section, or

(3) by the Governor in the absence of such agreement.

Thereafter, the number of members of the council shall be determined by the council.

(f) Terms of office; removal for cause

Members shall be appointed for fixed and staggered terms and may serve until their successors are appointed. Any vacancy in the membership of the council shall be filled in the same manner as the original appointment. Any member of the council may be removed for cause in accordance with procedures established by the council.

(g) Certification

The Governor shall certify a private industry council if the Governor determines that its composition and appointments are consistent with the provisions of this subsection. Such certification shall be made or denied within 30 days after the date on which a list of members and necessary supporting documentation are submitted to the Governor. When the Governor certifies the council, it shall be convened within 30 days by the official or officials who made the appointments to such council under subsection (d) of this section.

(h) Reconstitution of State job training coordinating councils

In any case in which the service delivery area is a State, the State job training coordinating council or a portion of such council may be reconstituted to meet the requirements of this section.

(Pub. L. 97–300, title I, § 102, Oct. 13, 1982, 96 Stat. 1328; Pub. L. 102–367, title I, § 112, Sept. 7, 1992, 106 Stat. 1026.)

AMENDMENTS

1992—Subsec. (a)(2), (3). Pub. L. 102–367, § 112(a)(1), added pars. (2) and (3) and struck out former par. (2) which read as follows: ''representatives of educational agencies (representative of all educational agencies in the service delivery area), organized labor, rehabilitation agencies, community-based organizations, economic development agencies, and the public employment service.''

Subsec. (c)(2). Pub. L. 102–367, § 112(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Education representatives on the council shall be selected from among individuals nominated by local educational agencies, vocational education institutions, institutions of higher education, or general organizations of such agencies or institutions, and by private and proprietary schools or general organizations of such schools, within the service delivery area.''

Subsec. (c)(3). Pub. L. 102–367, § 112(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The remaining members of the council shall be selected from individuals recommended by interested organizations. Labor representatives shall be recommended by recognized State and local labor organizations or appropriate building trades councils.''

Subsec. (c)(4). Pub. L. 102–367, § 112(a)(4), added par. (4).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1515, 1574, 1661, 1781, 1792a of this title; title 19 section 2296; title 20 sections 1201a, 2321, 2325, 2343, 6103; title 42 sections 685, 11481.

§ 1513. Functions of private industry councils

(a) Policy guidance and oversight

It shall be the responsibility of the private industry council to provide policy guidance for, and exercise oversight with respect to, activities under the job training plan for its service delivery area in partnership with the unit or units of general local government within its service delivery area.

(b) Development of job training plan; selection of grant recipient and administering entity

(1) The council, in accordance with an agreement or agreements with the appropriate chief elected official or officials specified in subsection (c) of this section, shall—

(A) determine procedures for the development of the job training plan, which may provide for the preparation of all or any part of the plan (i) by the council, (ii) by any unit of general local government in the service delivery area, or by an agency thereof, or (iii) by such other methods or institutions as may be provided in such agreement; and

(B) select as a grant recipient and[1] entity to administer the job training plan (which may be separate entities), (i) the council, (ii) a unit of general local government in its service delivery area, or an agency thereof, (iii) a nonprofit private organization or corporation, or (iv) any other agreed upon entity or entities.

(2) The council is authorized to provide oversight of the programs conducted under the job training plan in accordance with procedures established by the council. In order to carry out this paragraph, the council shall have access to such information concerning the operations of such programs as is necessary.

(c) Appropriate chief elected official or officials

For purposes of subsection (b) of this section, the appropriate chief elected official or officials means—

(1) the chief elected official of the sole unit of general local government in the service delivery area,

[1] So in original. Probably should be ''an''.

(2) the individual or individuals selected by the chief elected officials of all units of general local government in such area as their authorized representative, or

(3) in the case of a service delivery area designated under section 1511(a)(4)(A)(iii) of this title, the representative of the chief elected official for such area (as defined in section 1503(4)(C) of this title).

(d) Submission of job training plan to Governor

No job training plan prepared under section 1514 of this title may be submitted to the Governor unless (1) the plan has been approved by the council and by the appropriate chief elected official or officials specified in subsection (c) of this section, and (2) the plan is submitted jointly by the council and such official or officials.

(e) Budget; staff; incorporation; contributions and grant funds

In order to carry out its functions under this chapter, the council—

(1) shall, in accordance with the job training plan, prepare and approve a budget for itself, and

(2) may hire staff, incorporate, and solicit and accept contributions and grant funds (from other public and private sources).

(f) "Oversight" defined

As used in this section, the term ''oversight'' means reviewing, monitoring, and evaluating.

(Pub. L. 97–300, title I, § 103, Oct. 13, 1982, 96 Stat. 1330; Pub. L. 97–404, § 1(a), Dec. 31, 1982, 96 Stat. 2026.)

AMENDMENTS

1982—Subsec. (c)(3). Pub. L. 97–404 substituted reference to section 1511(a)(4)(A)(iii) of this title for reference to section 1514(a)(4)(A)(iii) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1514, 1515 of this title; title 42 sections 12899f, 12899h.

§ 1514. Job training plan

(a) Two-year program plan requirement

No funds appropriated under subchapter II of this chapter for any fiscal year may be provided to any service delivery area under this chapter except pursuant to a job training plan for two program years which is prepared in accordance with section 1513 of this title and which meets the requirements of this section.

(b) Contents of plan

Each job training plan for the programs conducted under subchapter II of this chapter shall contain—

(1) an identification of the entity that will administer the program and be the grant recipient of funds from the State;

(2) if there is more than one service delivery area in a single labor market area, provisions for coordinating particular aspects of the service delivery area program with other programs and service providers in the labor market area, including provisions for—

(A) assessing needs and problems in the labor market that form the basis for program planning;

(B) ensuring access by program participants in each service delivery area to skills training and employment opportunities throughout the entire labor market;

(C) coordinating or jointly implementing job development, placement, and other employer outreach activities; and

(D) entering into agreements and contracts, established pursuant to section 1551(e)(2) of this title, between service delivery areas to pay or share the cost of services;

(3) a description of methods of complying with the coordination criteria contained in the Governor's coordination and special services plan;

(4) a description of linkages established with appropriate agencies, pursuant to sections 1605 and 1645 of this title, designed to enhance the provision of services and avoid duplication, including—

(A) agreements with appropriate educational agencies;

(B) arrangements with other education, training, and employment programs authorized by Federal law;

(C) if appropriate, joint programs in which activities supported with assistance under this chapter are coordinated with activities (such as service opportunities and youth corps programs) supported with assistance made available under the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.); and

(D) efforts to ensure the effective delivery of services to participants in coordination with local welfare agencies and other local agencies, community-based organizations, volunteer groups, business and labor organizations, and other training, education, employment, and social service programs;

(5) goals and objectives for the programs, including—

(A) a description of the manner in which the program will contribute to the economic self-sufficiency of participants, and the productivity of the local area and the Nation; and

(B) performance standards established in accordance with standards prescribed under section 1516 of this title;

(6) procedures for identifying and selecting participants, including—

(A) goals for the training and placement of hard-to-serve individuals, and a description of efforts to be undertaken to accomplish such goals;

(B) outreach efforts to recruit and expand awareness of training and placement opportunities for such individuals; and

(C) types of services to be provided to address the special needs of such individuals;

(7)(A) goals for—

(i) the training of women in nontraditional employment; and

(ii) the training-related placement of women in nontraditional employment and apprenticeships; and

(B) a description of efforts to be undertaken to accomplish the goals described in subpara-

graph (A), including efforts to increase awareness of such training and placement opportunities;

(8) adult and youth program budgets for 2 program years and any proposed expenditures for the succeeding 2 program years;

(9) a description of—

(A) the assessment process that will identify participant skill levels;

(B) the process for providing information and referrals for applicants and participants relating to appropriate programs and service providers;

(C) the services to be provided, including the means for involving labor organizations and community-based organizations in the provision of services, the estimated duration of service, and the estimated training cost per participant;

(D) the competency levels to be achieved by participants as a result of program participation; and

(E) the procedures for evaluating the progress of participants in achieving competencies;

(10) a description of the procedures and methods of carrying out subchapter V of this chapter, where applicable, relating to incentive bonus payments for the placement of individuals eligible under such subchapter;

(11) procedures, consistent with sections 1517 and 1574 of this title, for selecting service providers, which procedures shall take into account—

(A) past performance of the providers regarding—

(i) job training, basic skills training, or related activities;

(ii) fiscal accountability; and

(iii) ability to meet performance standards; and

(B) the ability of the providers to provide services that can lead to achievement of competency standards for participants with identified deficiencies;

(12) fiscal control (including procurement, monitoring, and management information system requirements), accounting, audit, and debt collection procedures, consistent with section 1574 of this title, to assure the proper disbursal of, and accounting for, funds received under subchapter II of this chapter; and

(13) procedures for the preparation and submission of an annual report to the Governor, which report shall include—

(A) a description of activities conducted during the program year;

(B) characteristics of participants;

(C) information on the extent to which applicable performance standards were met;

(D) information on the extent to which the service delivery area has met the goals of the area for the training and training-related placement of women in nontraditional employment and apprenticeships; and

(E) a statistical breakdown of women trained and placed in nontraditional occupations, including information regarding—

(i) the type of training received, by occupation;

(ii) whether the participant was placed in a job or apprenticeship, and, if so, the occupation and wage at placement;

(iii) the age of the participant;

(iv) the race of the participant; and

(v) retention of the participant in nontraditional employment.

(c) Modification of the plan

If changes in labor market conditions, funding, or other factors require substantial deviation from an approved job training plan, the private industry council and the appropriate chief elected official or officials (as described in section 1513(c) of this title) shall submit a modification of such plan (including modification of the budget under subsection (b)(6) of this section), which shall be subject to review in accordance with section 1515 of this title.

(Pub. L. 97–300, title I, § 104, Oct. 13, 1982, 96 Stat. 1331; Pub. L. 100–628, title VII, § 714(a), Nov. 7, 1988, 102 Stat. 3255; Pub. L. 102–235, § 4, Dec. 12, 1991, 105 Stat. 1807; Pub. L. 102–367, title I, § 113, Sept. 7, 1992, 106 Stat. 1027.)

REFERENCES IN TEXT

The National and Community Service Act of 1990, referred to in subsec. (b)(4)(C), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, which is classified principally to chapter 129 (§ 12501 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367, § 113(a), inserted ''under subchapter II of this chapter'' after ''appropriated''.

Subsec. (b). Pub. L. 102–367, § 113(b), amended subsec. (b) generally, substituting pars. (1) to (13) for former pars. (1) to (12) which also related to contents of job training plans.

1991—Subsec. (b)(5) to (11). Pub. L. 102–235, § 4(1), (2), added par. (5) and redesignated former pars. (5) to (10) as (6) to (11), respectively. Former par. (11) redesignated (12).

Subsec. (b)(12). Pub. L. 102–235, § 4(1), (3), redesignated par. (11) as (12) and added subpars. (D) and (E).

1988—Subsec. (b)(7) to (11). Pub. L. 100–628 redesignated pars. (7) to (10) as (8) to (11), respectively, and added a new par. (7). The portion of Pub. L. 100–628 directing redesignation of par. (11) as (12) could not be executed because subsec. (b) did not contain a par. (11).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 12 of Pub. L. 102–235 provided that: ''This Act [enacting section 1737 of this title, amending this section and sections 1503, 1531 to 1533, and 1604 of this title, and enacting provisions set out as notes under sections 1501 and 1737 of this title] and the amendments made by this Act shall take effect upon the date of enactment of this Act [Dec. 12, 1991], except that the requirements imposed by sections 4, 5, and 6 of this Act [amending this section and sections 1531 and 1532 of this title] shall apply to the plan or report filed or reviewed for program years beginning on or after July 1, 1992.''

CONSTRUCTION OF 1991 AMENDMENT

Amendment by Pub. L. 102–235 not to be construed to require, sanction, or authorize discrimination on the

basis of race, color, religion, sex, national origin, handicap, or age, see section 11 of Pub. L. 102–235, set out as a note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1513, 1515, 1531, 1532, 1551, 1604, 1632 of this title; title 20 section 2323.

§ 1515. Review and approval of plan

(a) Times for publication of plan and modifications

(1) Not less than 120 days before the beginning of the first of the two program years covered by the job training plan—

(A) the proposed plan or summary thereof shall be published; and

(B) such plan shall be made available for review and comment to—

(i) each house of the State legislature for appropriate referral;

(ii) appropriate community-based organizations and local educational and other public agencies in the service delivery area; and

(iii) labor organizations in the area which represent employees having the skills in which training is proposed; and

(C) such plan shall be reasonably available to the general public through such means as public hearings and local news facilities.

(2) The final plan, or a summary thereof, shall be published not later than 80 days before the first of the two program years and shall be submitted to the Governor in accordance with section 1513(d)(2) of this title. Any modification shall be published not later than 80 days before it is effective and shall be submitted to the Governor in accordance with such section.

(b) Governor's approval of plan: criteria, time, and petitions opposing

(1) The Governor shall approve the job training plan or modification thereof unless he finds that—

(A) corrective measures for deficiencies found in audits or in meeting performance standards from previous years have not been taken or are not acceptably underway;

(B) the entity proposed to administer the program does not have the capacity to administer the funds;

(C) there are inadequate safeguards for the protection of funds received;

(D) the plan (or modification) does not comply with a particular provision or provisions of this chapter or of regulations of the Secretary under this chapter; or

(E) the plan (or modification) does not comply with the criteria under sections 1531(b), 1605, and 1645 of this title for coordinating activities under this chapter with related program activities.

(2) The Governor shall approve or disapprove a job training plan (or modification) within 30 days after the date that the plan (or modification) is submitted, except that if a petition is filed under paragraph (3) such period shall be extended to 45 days. Any disapproval by the Governor may be appealed to the Secretary, who shall make a final decision of whether the Governor's disapproval complies with paragraph (1) of this subsection within 45 days after receipt of the appeal.

(3)(A) Interested parties may petition the Governor within 15 days of the date of submission for disapproval of the plan or modification thereof if—

(i) the party can demonstrate that it represents a substantial client interest,

(ii) the party took appropriate steps to present its views and seek resolution of disputed issues prior to submission of the plan to the Governor, and

(iii) the request for disapproval is based on a violation of statutory requirements.

(B) If the Governor approves the plan (or modification), the Governor shall notify the petitioner in writing of such decision and the reasons therefor.

(c) Redesignation of service delivery areas and private industry councils

(1) If a private industry council and the appropriate chief elected official or officials fail to reach the agreement required under section 1513(b) or (d) of this title and, as a consequence, funds for a service delivery area may not be made available under section 1514 of this title, then the Governor shall redesignate, without regard to sections[1] 1511(a)(4) and (c)(1) of this title, the service delivery areas in the State to merge the affected area into one or more other service delivery areas, in order to promote the reaching of agreement.

(2) In any State in which service delivery areas are redesignated under paragraph (1), private industry councils shall, to the extent necessary for the redesignation, be reconstituted and job training plans modified as required to comply with sections 1512 and 1513 of this title. Services under an approved plan shall not be suspended while the council is reconstituted and the plan is modified.

(d) Authority of Secretary in single plan States

In any case in which the service delivery area is a State, the plan (or modification) shall be submitted to the Secretary for approval. For the purpose of this subsection, the Secretary shall have the same authority as the Governor has under this section.

(Pub. L. 97–300, title I, § 105, Oct. 13, 1982, 96 Stat. 1332; Pub. L. 102–367, title I, § 114, Sept. 7, 1992, 106 Stat. 1030.)

AMENDMENTS

1992—Subsec. (a)(1)(B)(ii). Pub. L. 102–367, § 114(1), inserted ''community-based organizations and'' after ''appropriate''.

Subsec. (b)(1)(E). Pub. L. 102–367, § 114(2), substituted ''sections 1531(b), 1605, and 1645 of this title'' for ''section 1531(b) of this title''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1511, 1514, 1578, 1661, 1661b of this title.

[1] So in original. Probably should be ''section''.

§ 1516. Performance standards

(a) Findings

The Congress recognizes that job training is an investment in human capital and not an expense. In order to determine whether that investment has been productive, the Congress finds that—

(1) it is essential that criteria for measuring the return on this investment be developed; and

(2) the basic return on the investment is to be measured by long-term economic self-sufficiency, increased employment and earnings, reductions in welfare dependency, and increased educational attainment and occupational skills.

(b) Subchapter II performance standards

(1) General objective

In prescribing performance standards for programs under parts A and C of subchapter II of this chapter, the Secretary shall ensure that States and service delivery areas will make efforts to increase services and positive outcomes for hard-to-serve individuals.

(2) Achievement of basic measures

In order to determine whether the basic measures described in subsection (a) of this section are achieved for programs under parts A and C of subchapter II of this chapter, the Secretary, in consultation with the Secretary of Education and the Secretary of Health and Human Services, shall prescribe performance standards.

(3) Factors for adult standards

The Secretary shall base the performance standards for adult programs under part A of subchapter II of this chapter on appropriate factors, which may include—

(A) placement in unsubsidized employment;

(B) retention for not less than 6 months in unsubsidized employment;

(C) an increase in earnings, including hourly wages;

(D) a reduction in welfare dependency; and

(E) acquisition of skills, including basic skills, required to promote continued employability in the local labor market (including attainment of the competency levels described in paragraph (5)), or acquisition of a high school diploma or the equivalent of the diploma, if the acquisition of such skills or diploma is in addition to obtaining one or more of the outcomes described in subparagraphs (A) through (D).

(4) Factors for youth standards

(A) In general

The Secretary shall base the performance standards for youth programs under part C of subchapter II of this chapter on appropriate factors described in paragraph (3), and on factors including—

(i) attainment of employment competencies (including attainment of the competency levels described in paragraph (5));

(ii) dropout prevention and recovery;

(iii) secondary and postsecondary school completion or the equivalent of such completion; and

(iv) enrollment in other training programs, apprenticeships, or postsecondary education, or enlistment in the Armed Forces.

(B) Variations

The Secretary may prescribe variations in the standards described in subparagraph (A) to reflect the differences between in-school and out-of-school programs.

(5) Competency levels

The private industry councils, in consultation with appropriate educational agencies, and, where appropriate, the private sector, labor organizations, and community-based organizations, shall establish youth and adult competency levels, based on such factors as entry level skills and other hiring requirements.

(6) Requirements

The performance standards described in paragraphs (3) and (4) shall include provisions governing—

(A) the base period prior to program participation that will be used for measurement of the factors in such paragraphs, as appropriate;

(B) a representative period after termination from the program that is a reasonable indicator of postprogram employment, earnings, and cash welfare payment reductions; and

(C) cost-effective methods for obtaining such data as are necessary to carry out this section and section 1732(d) of this title which, notwithstanding any other provision of law, may include access to earnings records, State employment security records, records collected under the Federal Insurance Contributions Act (chapter 21 of the Internal Revenue Code of 1986) [26 U.S.C. 3101 et seq.], State aid to families with dependent children records, statistical sampling techniques, and similar records or measures, with appropriate safeguards to protect the confidentiality of the information obtained.

(7) Incentive grants

From funds available under section 1602(c)(1)(B) of this title, and under section 1642(c)(1)(B) of this title, for providing incentive grants under this paragraph, each Governor shall award incentive grants for programs under parts A and C of subchapter II of this chapter, other than programs under section 1604(d) of this title, to service delivery areas that—

(A) exceed the performance standards established by the Secretary under this subsection (except for the standards established under paragraph (8)) with respect to services to all participants;

(B) exceed the performance standards established by the Secretary under this subsection (except for the standards established under paragraph (8)) with respect to services to populations of hard-to-serve individuals;

(C) serve more than the minimum percentage of out-of-school youth required by section 1643(f) of this title;

(D) place participants in employment that—

(i) provides post-program earnings exceeding the applicable performance criteria; and

(ii) includes employer-assisted employment benefits, including health benefits, consistent with the requirements of section 1553(a)(4) of this title relating to subsidized employment; and

(E) exceed the performance standards established by the Governor under subsection (e) of this section for programs under subchapter II of this chapter, except that not more than 25 percent of the incentive grants shall be awarded on performance standards established under subsection (e) of this section.

(8) Program expenditures

The Secretary shall prescribe performance standards relating gross program expenditures to various performance measures under this subsection, excluding any cost per participant measure. The Governors shall not take performance standards prescribed under this paragraph into consideration in awarding incentive grants under paragraph (7).

(c) Subchapter III performance standards

(1) In general

The Secretary shall prescribe performance standards for programs under subchapter III of this chapter based on placement and retention in unsubsidized employment.

(2) Needs-related payments

In prescribing performance standards under paragraph (1), the Secretary shall make appropriate allowance for the difference in cost resulting from serving workers receiving needs-related payments under section 1661c(e) of this title.

(d) State variation of performance standards

(1) Authority of Governor

Each Governor shall prescribe, and report in the Governor's coordination and special services plan, within parameters established by the Secretary, variations in the standards issued under subsections (b) and (c) of this section based upon—

(A) specific economic, geographic, and demographic factors in the State and in service delivery areas and substate areas within the State;

(B) the characteristics of the population to be served;

(C) the demonstrated difficulties in serving the population; and

(D) the type of services to be provided.

(2) Responsibilities of Secretary

The Secretary shall—

(A) provide information and technical assistance on performance standards adjustments;

(B) collect data that identifies hard-to-serve individuals;

(C) provide guidance on setting performance standards at the service provider level that encourages increased service to such individuals; and

(D) review performance standards to ensure that such standards provide maximum incentive in serving such individuals.

(e) Additional State standards permitted

The Governor may prescribe performance standards for programs under subchapter II of this chapter and subchapter III of this chapter in addition to those standards established by the Secretary under subsections (b) and (c) of this section. Such additional standards may include criteria relating to establishment of effective linkages with other programs to avoid duplication and enhance the delivery of services, the provision of high quality services, and successful service to hard-to-serve individuals. The additional performance standards established for subchapter II of this chapter shall be reported in the Governor's coordination and special services plan.

(f) Subchapter IV standards

The Secretary shall prescribe performance standards for programs under parts A and B of subchapter IV of this chapter.

(g) Adjustment for special populations

The Secretary shall prescribe a system for variations in performance standards for special populations to be served, including Native Americans, migrant and seasonal farmworkers, disabled and Vietnam era veterans, including veterans who served in the Indochina Theater between August 5, 1964 and May 7, 1975, older individuals, including those served under section 1604(d) of this title, and offenders, taking into account their special circumstances.

(h) Modifications

(1) In general

The Secretary may modify the performance standards under this section not more often than once every 2 program years. Such modifications shall not be retroactive.

(2) Job Corps

Notwithstanding paragraph (1), the Secretary may modify standards relating to programs under part B of subchapter IV of this chapter each program year.

(i) Functions of NCEP

The National Commission for Employment Policy shall—

(1) advise the Secretary in the development of performance standards under this section for measuring results of participation in job training and in the development of parameters for variations of such standards referred to in subsection (d) of this section;

(2) evaluate the usefulness of such standards as measures of desired performance; and

(3) evaluate the impact of such standards (intended or otherwise) on the choice of who is served, what services are provided, and the cost of such services in service delivery areas.

(j) Failure to meet standards

(1) Uniform criteria

The Secretary shall establish uniform criteria for determining whether—

(A) a service delivery area fails to meet performance standards under this section; and

(B) the circumstances under which remedial action authorized under this subsection shall be taken.

(2) Technical assistance

Each Governor shall provide technical assistance to service delivery areas failing to meet performance standards under the uniform criteria established under paragraph (1)(A).

(3) Process for correction

Not later than 90 days after the end of each program year, each Governor shall report to the Secretary the final performance standards and performance for each service delivery area within the State, along with the plans of the Governor for providing the technical assistance required under paragraph (2).

(4) Reorganization plan

(A) Plan required for continued failure

If a service delivery area continues to fail to meet such performance standards for 2 consecutive program years, the Governor shall notify the Secretary and the service delivery area of the continued failure, and shall develop and impose a reorganization plan.

(B) Elements

Such plan may restructure the private industry council, prohibit the use of designated service providers, merge the service delivery area into one or more other existing service delivery areas, or make other changes as the Governor determines to be necessary to improve performance, including the selection of an alternative administrative entity to administer the program for the service delivery area.

(C) Alternative administrative entity selection

The alternative administrative entity described in subparagraph (B) may be a newly formed private industry council or any agency jointly selected by the Governor and the chief elected official of the largest unit of general local government in the service delivery area or substate area.

(5) Secretarial action

(A) Plan

If the Governor has not imposed a reorganization plan as required by paragraph (4) within 90 days of the end of the second program year in which a service delivery area has failed to meet its performance standards, the Secretary shall develop and impose such a plan.

(B) Recapture or withholding

The Secretary shall recapture or withhold an amount not to exceed one-fifth of the State administration set-aside allocated under section 1602(c)(1)(A) of this title and under section 1642(c)(1)(A) of this title, for the purposes of providing technical assistance under a reorganization plan imposed pursuant to subparagraph (A).

(6) Appeal by service delivery area

(A) Timing

A service delivery area that is the subject of a reorganization plan under paragraph (4) may, within 30 days after receiving notice thereof, appeal to the Secretary to rescind or revise such plan.

(B) Recapture or withholding

(i) Determination

If the Secretary determines, upon appeal under subparagraph (A), that the Governor has not provided appropriate technical assistance as required under paragraph (2), the Secretary shall recapture or withhold an amount not to exceed one-fifth of the State administration set-aside allotted under section 1602(c)(1)(A) of this title and under section 1642(c)(1)(A) of this title. The Secretary shall use funds recaptured or withheld under this subparagraph to provide appropriate technical assistance.

(ii) Basis

If the Secretary approved the technical assistance plan provided by the Governor under paragraph (2), a determination under this subparagraph shall only be based on failure to effectively implement such plan and shall not be based on the plan itself.

(7) Appeal by Governor

A Governor of a State that is subject to recapture or withholding under paragraph (5) or (6)(B) may, within 30 days of receiving notice thereof, appeal such withholding to the Secretary.

(k) Clarification or[1] reference

For the purposes of this section, the term ''employment'' means employment for 20 or more hours per week.

(Pub. L. 97–300, title I, § 106, Oct. 13, 1982, 96 Stat. 1333; Pub. L. 97–404, § 1(b), Dec. 31, 1982, 96 Stat. 2026; Pub. L. 99–496, § 15(b), Oct. 16, 1986, 100 Stat. 1266; Pub. L. 100–418, title VI, § 6304(a), Aug. 23, 1988, 102 Stat. 1538; Pub. L. 100–628, title VII, §§ 713(b), 714(b), Nov. 7, 1988, 102 Stat. 3255, 3256; Pub. L. 102–367, title I, § 115(a), Sept. 7, 1992, 106 Stat. 1030.)

REFERENCES IN TEXT

The Federal Insurance Contributions Act, referred to in subsec. (b)(6)(C), is act Aug. 16, 1954, ch. 736, §§ 3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§ 3101 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3128 of Title 26 and Tables.

AMENDMENTS

1992—Pub. L. 102–367 amended section generally, substituting subsecs. (a) to (k) for former subsecs. (a) to (h) which also related to performance standards for programs under this chapter.

1988—Subsec. (b)(5). Pub. L. 100–628, § 714(b), added par. (5).

Subsec. (e). Pub. L. 100–628, § 713(b), designated existing provision as par. (1) and added par. (2).

Pub. L. 100–418, § 6304(a)(1), inserted reference to subsec. (g) of this section and directed the insertion of

[1] So in original. Probably should be ''of''.

''and in substate areas'' after ''State'', which was executed by making the insertion after ''State'' the first place it appeared to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 100–418, § 6304(a)(2), designated existing provisions as par. (1) and added par. (2).

1986—Subsec. (d)(3). Pub. L. 99–496 inserted reference to disabled and Vietnam era veterans, including veterans who served in the Indochina Theater between Aug. 5, 1964, and May 7, 1975.

1982—Subsec. (d)(3). Pub. L. 97–404 substituted ''offenders'' for ''ex-offenders''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, with Secretary of Labor required to issue revised performance standards under the amendments made by section 115 of Pub. L. 102–367 (amending this section and sections 1661 and 1662a of this title), as soon as Secretary determines sufficient data are available, but not later than July 1, 1994, except that with respect to the factor of retention in unsubsidized employment specified in subsec. (b)(3)(B) of this section, the requirement that such retention be for not less than 6 months is effective not later than July 1, 1995, see section 701(a) and (b) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 100–418 effective for program years beginning on or after July 1, 1989, except as otherwise provided, see section 6305 of Pub. L. 100–418, formerly set out as an Effective Date; Transition Provisions note under section 1651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1511, 1514, 1518, 1602, 1604, 1633, 1642, 1661, 1662a, 1671, 1672 of this title; title 8 section 1522; title 20 section 2325.

§ 1517. Selection of service providers

(a) Effectiveness in terms of plan primary consideration

The primary consideration in selecting agencies or organizations to deliver services within a service delivery area shall be the effectiveness of the agency or organization in delivering comparable or related services based on demonstrated performance,[1] (in accordance with guidelines established by the Secretary), in terms of the likelihood of meeting performance goals, cost, quality of training, and characteristics of participants. In addition, consideration shall be given to demonstrated performance in making available appropriate supportive services, including child care. In complying with this subsection, proper consideration shall be given to community-based organizations as service providers.

(b) No needless duplication of local facilities or services

Funds provided under this chapter shall not be used to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State, or local sources, unless it is demonstrated that alternative services or facilities would be more effective or more likely to achieve the service delivery area's performance goals.

(c) Opportunity for local educational agencies

Appropriate education agencies in the service delivery area shall be provided the opportunity to provide educational services, unless the administrative entity demonstrates that alternative agencies or organizations would be more effective or would have greater potential to enhance the participants' continued occupational and career growth.

(d) Skills training program to meet private industry council guidelines

The administrative entity shall not fund any occupational skills training program unless the level of skills provided in the program are in accordance with guidelines established by the private industry council.

(e) Additional requirements for selection

The selection of service providers shall be made on a competitive basis to the extent practicable, and shall include—

(1) a determination of the ability of the service provider to meet program design specifications established by the administrative entity that take into account the purposes of the[2] chapter and the goals established in the Governor's coordination and special services plan; and

(2) documentation of compliance with procurement standards established by the Governor under section 1574 of this title, including the reasons for selection.

(Pub. L. 97–300, title I, § 107, Oct. 13, 1982, 96 Stat. 1335; Pub. L. 102–367, title I, § 116, Sept. 7, 1992, 106 Stat. 1034.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367, § 116(a), inserted '', (in accordance with guidelines established by the Secretary)'' after ''demonstrated performance'' and inserted after first sentence ''In addition, consideration shall be given to demonstrated performance in making available appropriate supportive services, including child care.''

Subsec. (e). Pub. L. 102–367, § 116(b), added subsec. (e).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1514, 1531, 1661b of this title.

§ 1518. Limitation on certain costs

(a) Application of cost limitations

Except as provided in subparagraph (A) or (B) of section 1551(d)(3) of this title, funds expended under this chapter shall be charged to the appropriate cost categories.

(b) Cost categories and limitations

(1) The cost limitations contained in this subsection shall apply separately to the funds allocated for programs under part A of subchapter II of this chapter, and to the funds allocated for programs under part C of such subchapter.

[1] So in original. The comma probably should not appear.

[2] So in original. Probably should be ''this''.

(2) Funds expended under parts A and C of subchapter II of this chapter shall be charged to one of the following categories:

(A) Administration.

(B) Training-related and supportive services.

(C) Direct training services.

(3) The Secretary shall, consistent with sections 1604(b) and 1644(c) of this title, define by regulation the cost categories specified in paragraph (2).

(4) Of the funds allocated to a service delivery area for any program year under parts[1] A or C of subchapter II of this chapter—

(A) not more than 20 percent shall be expended for administration; and

(B) not less than 50 percent shall be expended for direct training services.

(5) Each service delivery area shall ensure that for all services provided to participants through contracts, grants, or other agreements with a service provider, such contract, grant, or agreement shall include appropriate amounts necessary for administration and supportive services.

(6) For purposes of paragraph (4), the term ''allocated'' means allocated for a program year, as adjusted for reallocations and reallotments under section 1519 of this title and for transfers of funds under sections 1606, 1635, and 1646 of this title.

(c) Reference to limitations

Funds available under subchapter III of this chapter shall be expended in accordance with the limitations specified in section 1661d of this title.

(d) Limitations inapplicable

The provisions of this section do not apply to any service delivery area designated pursuant to section 1511(a)(4)(A)(iii) of this title.

(e) No exemption from performance standards

This section shall not be construed to exempt programs under an approved plan from the performance standards established under section 1516 of this title.

(Pub. L. 97–300, title I, § 108, Oct. 13, 1982, 96 Stat. 1336; Pub. L. 97–404, § 1(c), Dec. 31, 1982, 96 Stat. 2026; Pub. L. 99–496, § 15(c), Oct. 16, 1986, 100 Stat. 1266; Pub. L. 102–367, title I, § 117, Sept. 7, 1992, 106 Stat. 1035.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367, § 117(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Not more than 15 percent of the funds available to a service delivery area for any fiscal year for programs under part A of subchapter II of this chapter may be expended for the cost of administration. For purposes of this paragraph, costs of program support (such as counseling) which are directly related to the provision of education or training and such additional costs as may be attributable to the development of training described in section 1604(28) of this title shall not be counted as part of the cost of administration.''

Subsec. (b). Pub. L. 102–367, § 117(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) to (3) relating to joint limitations on administrative and work experience expenditures.

Subsec. (c). Pub. L. 102–367, § 117(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) consisted of pars. (1) to (5) relating to exceptions to expenditure limitations, private industry council requests for special circumstances, and authority of a Governor to review a plan.

1986—Subsec. (c)(2)(B)(ii). Pub. L. 99–496 inserted '', including disabled veterans'' after ''handicapped individuals''.

1982—Subsec. (b)(2)(A)(iv). Pub. L. 97–404 substituted ''payments'' for ''projects''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1551, 1604 of this title.

§ 1519. Recapture and reallotment of unobligated funds

(a) Within State reallocations

(1) In general

For program years beginning on or after July 1, 1993, the Governor shall, in accordance with the requirements of this subsection, reallocate to eligible service delivery areas within the State funds appropriated for such program year that are available for reallocation.

(2) Amount

The amount available for reallocation is equal to the amount by which the unobligated balance of the service delivery area allocation under part A or C of subchapter II of this chapter for all service delivery areas within the State at the end of the program year prior to the program year for which the determination under this subsection is made exceeds 15 percent of such allocation for the prior program year.

(3) Reallocation

The Governor shall reallocate the amounts available pursuant to paragraph (2) to eligible service delivery areas within the State that have the highest rates of unemployment for an extended period of time and to those with the highest poverty rates.

(4) Eligibility

For purposes of this subsection, an eligible service delivery area means a service delivery area that has obligated at least 85 percent of its allocation under part A or C of subchapter II of this chapter, respectively, for the program year prior to the program year for which the determination under this subsection is made.

(b) Reallotment among States

(1) In general

For program years beginning on or after July 1, 1993, the Secretary shall, in accordance with the requirements of this subsection, reallot to eligible States funds appropriated for such program year that are available for reallotment.

(2) Amount

The amount available for reallotment is equal to the amount by which the unobligated

[1] So in original. Probably should be ''part''.

balance of the State allotment under part A or C of subchapter II of this chapter, respectively, for all States at the end of the program year prior to the program year for which the determination under this subsection is made exceeds 15 percent of such allotment for that prior program year.

(3) Reallotment

The Secretary shall reallot the amounts available pursuant to paragraph (2) to each eligible State an amount based on the relative amount allotted to such eligible State under part A or C of subchapter II of this chapter, respectively, for the program year the determination under this subsection is made compared to the total amount allotted to all eligible States under part A or C of subchapter II of this chapter, respectively, for such program year.

(4) Eligibility

For purposes of this subsection, an eligible State means a State that has obligated at least 85 percent of its allocation under part A or C of subchapter II of this chapter, respectively, for the program year prior to the program year for which the determination under this subsection is made.

(5) Procedures

The Governor of each State shall prescribe uniform procedures for the obligation of funds by service delivery areas within the State in order to avoid the requirement that funds be made available for reallotment under this subsection. The Governor shall further prescribe equitable procedures for making funds available from the State and service delivery areas in the event that a State is required to make funds available for reallotment under this subsection.

(d)[1] Calculation

Funds obligated to carry out programs under section 1604(d) of this title shall not be counted in determining the amount available for reallocation under subsection (a)(2) of this section or the amount available for reallotment under subsection (b)(2).

(Pub. L. 97–300, title I, § 109, as added Pub. L. 102–367, title I, § 118, Sept. 7, 1992, 106 Stat. 1036.)

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1518, 1604 of this title.

PART B—ADDITIONAL STATE RESPONSIBILITIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1551 of this title.

[1] So in original. Probably should be ''(c)''.

§ 1531. Governor's coordination and special services plan

(a) Annual planning report; two-year coordination and special services plan financial assistance requirement

(1) The Governor shall annually prepare a statement of goals and objectives for job training and placement programs within the State to assist in the preparation of the plans required under section 1514 of this title and section 8 of the Act of June 6, 1933 (known as the Wagner-Peyser Act) [29 U.S.C. 49g].

(2) Any State seeking financial assistance under this chapter shall submit a Governor's coordination and special services plan for two program years to the Secretary describing the use of all resources provided to the State and its service delivery areas under this chapter and evaluating the experience over the preceding two years.

(b) Plan coordination with State and local services and resources, JOBS program, and programs under subchapter II; State goals and criteria; projected use of resources; reports of modifications to Secretary

(1) The plan shall establish criteria for coordinating activities under this chapter (including subchapter III of this chapter) with programs and services provided by State and local education and training agencies (including vocational education agencies), public assistance agencies, the employment service, rehabilitation agencies, programs for the homeless, postsecondary institutions, economic development agencies, and such other agencies as the Governor determines to have a direct interest in employment and training and human resource utilization within the State. Such criteria shall not affect local discretion concerning the selection of eligible participants or service providers in accordance with the provisions of sections[1] 1517[2] 1603, or 1643 of this title.

(2) The plan shall describe the measures taken by the State to ensure coordination and avoid duplication between the State agencies administering the JOBS program and programs under subchapter II of this chapter in the planning and delivery of services. The plan shall describe the procedures developed by the State to ensure that the State JOBS plan is consistent with the coordination criteria specified in this plan and identify the procedures developed to provide for the review of the JOBS plan by the State Job Training Coordinating Council.

(3) The plan shall describe the projected use of resources, including oversight of program performance, program administration, and program financial management, capacity building, priorities and criteria for State incentive grants, and performance goals for State-supported programs. The description of capacity building shall include the Governor's plans for technical assistance to service delivery areas and service providers, interstate technical assistance and training arrangements, other coordinated technical assistance arrangements undertaken pur-

[1] So in original. Probably should be ''section''.

[2] So in original. Probably should be followed by a comma.

suant to the direction of the Secretary, and, where applicable, research and demonstration projects.

(4) The plan shall include goals for—

(A) the training of women in nontraditional employment through funds available under this chapter, the Carl D. Perkins Vocational and Applied Technology Education Act [20 U.S.C. 2301 et seq.], and other sources of Federal and State support;

(B) the training-related placement of women in nontraditional employment and apprenticeships;

(C) a description of efforts to be undertaken to accomplish such goals, including efforts to increase awareness of such training and placement opportunities; and

(D) a description of efforts to coordinate activities provided pursuant to this chapter and the Carl D. Perkins Vocational and Applied Technology Education Act to train and place women in nontraditional employment.

(5) The State plan shall include a description of the manner in which the State will encourage the successful carrying out of—

(A) training activities for eligible individuals whose placement is the basis for the payment to the State of the incentive bonus authorized by subchapter V of this chapter; and

(B) the training services, outreach activities, and preemployment supportive services furnished to such individuals.

(6) The Governor shall report to the Secretary the adjustments made in the performance standards and the factors that are used in making the adjustments.

(7) If major changes occur in labor market conditions, funding, or other factors during the two-year period covered by the plan, the State shall submit a modification to the Secretary describing these changes.

(c) Governor's coordination and special services activities

Governor's coordination and special services activities may include—

(1) making available to service delivery areas, with or without reimbursement and upon request, appropriate information and technical assistance to assist in developing and implementing plans and programs;

(2) carrying out special model training and employment programs and related services (including programs receiving financial assistance from private sources);

(3) providing programs and related services for offenders, homeless individuals and other individuals whom the Governor determines require special assistance;

(4) providing financial assistance for special programs and services designed to meet the needs of rural areas outside major labor market areas;

(5) providing training opportunities in the conservation and efficient use of energy, and the development of solar energy sources as defined in section 3 of the Solar Energy Research, Development and Demonstration Act of 1974 [42 U.S.C. 5552];

(6) industry-wide training;

(7) coordination of activities relating to part A of subchapter II of this chapter with activities under subchapter III of this chapter;

(8) developing and providing to service delivery areas information on a State and local area basis regarding economic, industrial, and labor market conditions;

(9) providing programs and related services to encourage the recruitment of women for training, placement, and retention in nontraditional employment;

(10) providing preservice and inservice training for planning, management, and delivery staffs of administrative entities and private industry councils, as well as contractors for State supported programs;

(11) providing statewide programs which provide for joint funding of activities under this chapter with services and activities under other Federal, State, or local employment-related programs, including programs of the Department of Veterans Affairs; and

(12) making available to service delivery areas appropriate information and technical assistance to assist in developing and implementing joint programs, including youth corps programs, in which activities supported under this chapter are coordinated with activities supported under the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.).

(d) Approval by Secretary

A Governor's coordination and special services plan shall be approved by the Secretary unless the Secretary determines that the plan does not comply with specific provisions of this chapter.

(Pub. L. 97–300, title I, § 121, Oct. 13, 1982, 96 Stat. 1337; Pub. L. 99–496, § 15(d), Oct. 16, 1986, 100 Stat. 1266; Pub. L. 99–570, title XI, § 11004(a), Oct. 27, 1986, 100 Stat. 3207–168; Pub. L. 100–628, title VII, § 714(c), Nov. 7, 1988, 102 Stat. 3256; Pub. L. 102–54, § 13(k)(2)(B), June 13, 1991, 105 Stat. 277; Pub. L. 102–235, § 5, Dec. 12, 1991, 105 Stat. 1807; Pub. L. 102–367, title I, § 121, title VII, § 702(a)(4), Sept. 7, 1992, 106 Stat. 1037, 1112.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational and Applied Technology Education Act, referred to in subsec. (b)(4)(A), (D), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The National and Community Service Act of 1990, referred to in subsec. (c)(12), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, which is classified principally to chapter 129 (§ 12501 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–367, § 702(a)(4), substituted ''1603, or 1643'' for ''and 1603''.

Subsec. (b)(2). Pub. L. 102–367, § 121(a)(1), added par. (2) and struck out former par. (2) which read as follows: ''The plan shall describe the projected use of resources, including oversight and support activities, priorities and criteria for State incentive grants, and performance goals for State supported programs.''

Subsec. (b)(3) to (7). Pub. L. 102–367, § 121(a)(2), (3), added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (c)(7). Pub. L. 102–367, § 121(b)(1), inserted ''coordination of activities relating to part A of subchapter II of this chapter with'' before ''activities''.

Subsec. (c)(12). Pub. L. 102–367, § 121(b)(2)–(4), added par. (12).

1991—Subsec. (b)(3) to (6). Pub. L. 102–235, § 5(a), added par. (3) and redesignated former pars. (3) to (5) as (4) to (6), respectively.

Subsec. (c)(9) to (11). Pub. L. 102–235, § 5(b), added par. (9) and redesignated former pars. (9) and (10) as (10) and (11), respectively.

Pub. L. 102–54 substituted ''programs of the Department of Veterans Affairs'' for ''Veterans' Administration programs'' in par. (10).

1988—Subsec. (b)(3) to (5). Pub. L. 100–628 added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

1986—Subsec. (b)(1). Pub. L. 99–570, § 11004(a)(1), inserted '', programs for the homeless''.

Subsec. (c)(3). Pub. L. 99–570, § 11004(a)(2), inserted '', homeless individuals''.

Subsec. (c)(10). Pub. L. 99–496 inserted '', including Veterans' Administration programs''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–235 effective Dec. 12, 1991, except that requirements imposed by amendment applicable to plan or report filed or reviewed for program years beginning on or after July 1, 1992, see section 12 of Pub. L. 102–235, set out as a note under section 1514 of this title.

CONSTRUCTION OF 1991 AMENDMENT

Amendment by Pub. L. 102–235 not to be construed to require, sanction, or authorize discrimination on the basis of race, color, religion, sex, national origin, handicap, or age, see section 11 of Pub. L. 102–235, set out as a note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1515, 1602, 1603, 1642, 1643, 1733 of this title; title 42 section 683.

§ 1532. State job training coordinating council

(a) Requirement; appointments; composition; meetings; support personnel; limitations; approval by Governor

(1) Except as provided in subsection (d) of this section, any State which desires to receive financial assistance under this chapter shall establish a State job training coordinating council (hereinafter in this section referred to as the ''State council''). Funding for the council shall be provided pursuant to sections 1602(c)(1)(A) and 1642(c)(1)(A) of this title.

(2) The State council shall be appointed by the Governor, who shall designate one nongovernmental member thereof to be chairperson. In making appointments to the State council, the Governor shall ensure that the membership of the State council reasonably represents the population of the State.

(3) The State job training coordinating council shall be composed as follows:

(A) Thirty percent of the membership of the State council shall be representatives of business and industry (including agriculture, where appropriate), including individuals who are representatives of business and industry on private industry councils within the State.

(B) Thirty percent of the membership of the State council shall be—

(i) representatives of the State legislature, and State agencies and organizations, such as the State educational agency, the State vocational education board, the State advisory council on vocational education, the State board of education (when not otherwise represented), State public assistance agencies, the State employment security agency, the State rehabilitation agency, the State occupational information coordinating committee, State postsecondary institutions, the State economic development agency, State veterans' affairs agencies or equivalent, and such other agencies as the Governor determines to have a direct interest in employment and training and human resource utilization within the State; and

(ii) representatives of the units or consortia of general local government in the State who shall be nominated by the chief elected officials of the units or consortia of units of general local government, and the representatives of local educational agencies who shall be nominated by local educational agencies.

(C) Thirty percent of the membership of the State council shall be representatives of organized labor and representatives of community-based organizations in the State.

(D) Ten percent of the membership of the State council shall be appointed from the general public by the Governor of the State.

(4) The State council shall meet at such times and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

(5) The State council is authorized to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this chapter.

(6) In order to assure objective management and oversight, the State council shall not operate programs or provide services directly to eligible participants, but shall exist solely to plan, coordinate, and monitor the provision of such programs and services.

(7) The plans and decisions of the State council shall be subject to approval by the Governor.

(b) Duties

The State council shall—

(1) recommend a Governor's coordination and special services plan;

(2) recommend to the Governor substate service delivery areas, plan resource allocations not subject to section 1602(b) or 1642(b) of this title, provide management guidance and review for all programs in the State, develop appropriate linkages with other programs, coordinate activities with private industry councils, and develop the Governor's coordination and special services plan and recommend variations in performance standards;

(3) advise the Governor and local entities on job training plans and certify the consistency of such plans with criteria under the Governor's coordination and special services plan

for coordination of activities under this chapter with other Federal, State, and local employment-related programs, including programs operated in designated enterprise zones;

(4) review the operation of programs conducted in each service delivery area, and the availability, responsiveness, and adequacy of State services, and make recommendations to the Governor, appropriate chief elected officials, and private industry councils, service providers, the State legislature, and the general public with respect to ways to improve the effectiveness of such programs or services;

(5) review the reports made pursuant to subparagraphs (D) and (E) of section 1514(b)(12)[1] of this title and make recommendations for technical assistance and corrective action, based on the results of such reports;

(6) prepare a summary of the reports made pursuant to subparagraphs (D) and (E) of section 1514(b)(12)[1] of this title detailing promising service delivery approaches developed in each service delivery area for the training and placement of women in nontraditional occupations, and disseminate annually such summary to service delivery areas, service providers throughout the State, and the Secretary;

(7) review the activities of the Governor to train, place, and retain women in nontraditional employment, including activities under section 1533 of this title, prepare a summary of activities and an analysis of results, and disseminate annually such summary to service delivery areas, service providers throughout the State, and the Secretary;

(8) consult with the sex equity coordinator established under section 111(b) of the Carl D. Perkins Vocational and Applied Technology Education Act [20 U.S.C. 2321(b)], obtain from the sex equity coordinator a summary of activities and an analysis of results in training women in nontraditional employment under the Carl D. Perkins Vocational and Applied Technology Education Act [20 U.S.C. 2301 et seq.], and disseminate annually such summary to service delivery areas, service providers throughout the State, and the Secretary;

(9) review and comment on the State plan developed for the State employment service agency;

(10) make an annual report to the Governor which shall be a public document, and issue such other studies, reports, or documents as it deems advisable to assist service delivery areas in carrying out the purposes of this chapter;

(11)(A) identify, in coordination with the appropriate State agencies, the employment and training and vocational education needs throughout the State, and assess the extent to which employment and training, vocational education, rehabilitation services, public assistance, economic development, and other Federal, State, and local programs and services represent a consistent, integrated, and coordinated approach to meeting such needs; and

(B) comment at least once annually on the the[2] measures taken pursuant to section 113(b)(14) of the Carl D. Perkins Vocational[3] Education Act [20 U.S.C. 2323(b)(14)]; and

(12) review plans of all State agencies providing employment, training, and related services, and provide comments and recommendations to the Governor, the State legislature, the State agencies, and the appropriate Federal agencies on the relevancy and effectiveness of employment and training and related service delivery systems in the State.

(c) Transferability of functions

In addition to the functions described in subsection (b) of this section, the Governor may, to the extent permitted by applicable law, transfer functions which are related to functions under this chapter to the council established under this section from any State coordinating committee for the work incentive program under title IV of the Social Security Act [42 U.S.C. 601 et seq.] or any advisory council established under the Wagner-Peyser Act [29 U.S.C. 49 et seq.].

(d) Designation of State human resources investment council to carry out duties of State Council

(1) In lieu of establishing the State council required under subsection (a) of this section, each State may satisfy the requirements of this section by designating the State human resource investment council established in accordance with subchapter VI of this chapter (in this subsection referred to as the ''State Council'') to carry out the duties described in subsection (b) of this section.

(2) Funding provided to carry out this section may be allotted to the State Council to carry out such functions and the other functions of the State Council if the Governor and the head of the State agency responsible for administration of programs under this chapter agree to such an allotment.

(Pub. L. 97–300, title I, § 122, Oct. 13, 1982, 96 Stat. 1339; Pub. L. 97–404, § 1(d), Dec. 31, 1982, 96 Stat. 2026; Pub. L. 98–524, § 4(a)(2), Oct. 19, 1984, 98 Stat. 2487; Pub. L. 100–418, title VI, § 6304(b), Aug. 23, 1988, 102 Stat. 1538; Pub. L. 102–235, § 6, Dec. 12, 1991, 105 Stat. 1808; Pub. L. 102–367, title VI, § 601(b)(3), title VII, § 702(a)(5), Sept. 7, 1992, 106 Stat. 1103, 1112.)

REFERENCES IN TEXT

Section 1514(b) of this title, referred to in subsec. (b)(5), (6), was amended generally by Pub. L. 102–367, title I, § 113(b), Sept. 7, 1992, 106 Stat. 1027, which restated in section 1514(b)(13)(D) and (E) the provisions formerly contained in section 1514(b)(12)(D) and (E). Section 1514(b)(12) no longer contains a subpar. (D) or (E).

The Carl D. Perkins Vocational and Applied Technology Education Act, referred to in subsec. (b)(8), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Social Security Act, referred to in subsec. (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title IV of such Act is classified generally to subchapter IV

[1] See References in Text note below.

[2] So in original.

[3] So in original. Probably should be ''Vocational and Applied Technology''.

(§ 601 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Wagner-Peyser Act, referred to in subsec. (c), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified generally to chapter 4B (§ 49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–367, § 702(a)(5)(A), substituted ''sections 1602(c)(1)(A) and 1642(c)(1)(A)'' for ''section 1602(b)(4)''.

Pub. L. 102–367, § 601(b)(3)(A), substituted ''Except as provided in subsection (d) of this section, any'' for ''Any''.

Subsec. (b)(2). Pub. L. 102–367, § 702(a)(5)(B), substituted ''section 1602(b) or 1642(b)'' for ''section 1602(a)''.

Subsec. (b)(11)(B). Pub. L. 102–367, § 702(a)(5)(C), substituted ''section 113(b)(14)'' for ''section 113(b)(9)''.

Subsec. (d). Pub. L. 102–367, § 601(b)(3)(B), added subsec. (d).

1991—Subsec. (b)(5) to (12). Pub. L. 102–235 added pars. (5) to (8) and redesignated former pars. (5) to (8) as (9) to (12), respectively.

1988—Subsec. (a)(3). Pub. L. 100–418 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The State council shall be composed as follows:

''(A) One-third of the membership of the State council shall be representatives of business and industry (including agriculture, where appropriate) in the State, including individuals who are representatives of business and industry on private industry councils in the State.

''(B) Not less than 20 percent of the membership of the State council shall be representatives of the State legislature and State agencies and organizations, such as the State educational agency, the State vocational education board, the State advisory council on vocational education, the State board of education (when not otherwise represented), State public assistance agencies, the State employment security agency, the State rehabilitation agency, the State occupational information coordinating committee, State postsecondary institutions, the State economic development agency, State veterans' affairs agencies or equivalent, and such other agencies as the Governor determines to have a direct interest in employment and training and human resource utilization within the State.

''(C) Not less than 20 percent of the membership of the State council shall be representatives of the units or consortia of units of general local government in such State (including those which are administrative entities or grantees under this chapter) which shall be nominated by the chief elected officials of the units or consortia of units of general local government; and

''(D) Not less than 20 percent of the membership of the State council shall be representatives of the eligible population and of the general public, representatives of organized labor, representatives of community-based organizations, and representatives of local educational agencies (nominated by local educational agencies).''

1984—Subsec. (a)(8). Pub. L. 98–524, § 4(a)(2)(A), struck out par. (8) which defined State council.

Subsec. (b)(7)(B). Pub. L. 98–524, § 4(a)(2)(B), substituted ''the measures taken pursuant to section 113(b)(9) of the Carl D. Perkins Vocational Education Act'' for ''reports required pursuant to section 105(d)(3) of the Vocational Education Act of 1963''.

1982—Subsec. (a)(3)(C). Pub. L. 97–404 substituted ''elected officials'' for ''executive officers''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–235 effective Dec. 12, 1991, except that requirements imposed by amendment applicable to plan or report filed or reviewed for program years beginning on or after July 1, 1992, see section 12 of Pub. L. 102–235, set out as a note under section 1514 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 100–418 effective for program years beginning on or after July 1, 1989, except as otherwise provided, see section 6305 of Pub. L. 100–418, formerly set out as an Effective Date; Transition Provisions note under section 1651 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98–524, set out as an Effective Date note under section 2301 of Title 20, Education.

CONSTRUCTION OF 1991 AMENDMENT

Amendment by Pub. L. 102–235 not to be construed to require, sanction, or authorize discrimination on the basis of race, color, religion, sex, national origin, handicap, or age, see section 11 of Pub. L. 102–235, set out as a note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 49j, 1602, 1642, 1733 of this title; title 20 section 2322.

§ 1533. State education coordination and grants

(a) Allotment

(1) In general

The Secretary shall allot to the Governor for allocation to any State education agency the sums made available to carry out this section under sections 1602(c)(1)(C) and 1642(c)(1)(C) of this title to pay for the Federal share of carrying out the projects described in paragraph (2). In allocating such funds to the State education agency, the Governor shall not establish requirements governing the geographic distribution of funds under this section.

(2) Projects

Funds allocated under paragraph (1) may be used to pay for the Federal share of carrying out projects (in accordance with agreements under subsection (b) of this section) that—

(A) provide school-to-work transition services of demonstrated effectiveness that increase the rate of graduation from high school, or completion of the recognized equivalent thereof, including services that increase the rate at which school dropouts return to regular or alternative schooling and obtain a high school degree or its equivalent, and, which may include, services to support multiyear dropout prevention programs of demonstrated effectiveness;

(B) provide literacy and lifelong learning opportunities and services of demonstrated effectiveness that—

(i) enhance the knowledge and skills of educationally and economically disadvantaged individuals; and

(ii) result in increasing the employment and earnings of such individuals;

(C) provide statewide coordinated approaches, including model programs, to train, place, and retain women in nontraditional employment; and

(D)(i) facilitate coordination of education and training services for eligible participants in projects described in subparagraphs (A), (B), and (C); or

(ii)(I) support activities pertaining to a State human resources investment council that meets the requirements of subchapter VI of this chapter and includes each of the programs described in clauses (i) through (vii) of section 1792(b)(2)(A) of this title; or

(II) support activities pertaining to a State council, which carries out functions similar to the functions of the State human resource investment council described in subchapter VI of this chapter, if such State council was established prior to July 1, 1992.

(3) Federal share

The Federal share of the cost of carrying out the projects described in paragraph (2) shall be 50 percent.

(b) Agreements required

(1) Parties to agreements

The projects described in subsection (a)(2) of this section shall be conducted within a State in accordance with agreements that—

(A) reflect the goals and services described in paragraphs (1), (2), and (3) of subsection (c) of this section; and

(B) are developed between the State education agency, administrative entities in service delivery areas in the State, and other entities, such as other State agencies, local educational agencies, and alternative service providers (such as community-based and other nonprofit or for-profit organizations).

(2) Contents of agreements

(A) Contribution

The agreements described in paragraph (1) shall provide for the contribution by the State, from funds other than the funds made available under this chapter, of a total amount equal to the funds allotted under this section.

(B) Direct cost of services

Such amount may include the direct cost of employment or training services—

(i) provided by State or local programs or agencies; or

(ii) provided by other Federal programs or agencies in accordance with applicable Federal law.

(c) Governor's plan requirements

The State education agency shall submit for inclusion in the Governor's coordination and special services plan a description developed jointly by the State education agency and the Governor of—

(1) the goals to be achieved and services to be provided by the school-to-work transition programs specified in subsection (a)(2)(A) of this section that will receive the assistance, which description shall, at a minimum, include information regarding—

(A) the activities and services that will result in increasing the number of youth staying in or returning to school and graduating from high school or the equivalent;

(B) the work-based curriculum that will link classroom learning to work site experience and address the practical and theoretical aspects of work;

(C) the opportunities that will be made available to participants to obtain career-path employment and postsecondary education;

(D) the integration to be achieved, in appropriate circumstances, in the delivery of services between State and local educational agencies and alternative service providers, such as community-based and nonprofit organizations; and

(E) the linkages that will be established, where feasible, to avoid duplication and enhance the delivery of services, with programs under—

(i) subchapter II of this chapter and part B of subchapter IV of this chapter;

(ii) the Elementary and Secondary Education Act [20 U.S.C. 6301 et seq.];

(iii) the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.);

(iv) the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

(v) the Adult Education Act (20 U.S.C. 1201 et seq.);

(vi) the JOBS program;

(vii) the Stewart B. McKinney Homeless Assistance Act (Public Law 100–77; 101 Stat. 482) [42 U.S.C. 11301 et seq.]; and

(viii) the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.);

(2) the goals to be achieved and services to be provided by literacy and lifelong learning programs specified in subsection (a)(2)(B) of this section that will receive the assistance, which description shall, at a minimum, include information regarding—

(A) the activities and services that will increase the knowledge and skills of educationally and economically disadvantaged individuals, and result in increased employment and earnings for such individuals;

(B) the integration to be achieved between projects assisted under this section and the 4-year State plan (and related needs assessment carried out for the plan) developed in accordance with section 342 of the Adult Education Act (20 U.S.C. 1206a);

(C) the variety of settings, including workplace settings, in which literacy training and learning opportunities will be provided; and

(D) the linkages that will be established, where feasible, to avoid duplication and enhance the delivery of services, with programs under—

(i) subchapters II and III of this chapter;

(ii) the Adult Education Act [20 U.S.C. 1201 et seq.];

(iii) the Carl D. Perkins Vocational and Applied Technology Education Act [20 U.S.C. 2301 et seq.];

(iv) the Stewart B. McKinney Homeless Assistance Act [42 U.S.C. 11301 et seq.];

(v) the JOBS program;

(vi) the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(vii) the National Literacy Act of 1991 (Public Law 102–73);

(viii) the Emergency Immigrant Education Act of 1984[1] (20 U.S.C. 3121 et seq.); and

(ix) the National and Community Service Act of 1990 [42 U.S.C. 12501 et seq.];

(3) the goals to be achieved and services to be provided by the nontraditional employment for women programs specified in subsection (a)(2)(C) of this section that will receive the assistance; and

(4) the proportion of funds received under this section that will be used to achieve the goals, and provide the services, described in paragraphs (1), (2), and (3).

(d) Service requirements

(1) Permitted services

Services funded under this section to carry out the projects described in subsection (a)(2) of this section may include education and training, vocational education services, and related services, provided to participants under subchapter II of this chapter. In addition, services funded under this section may include services for offenders, veterans, and other individuals who the Governor determines require special assistance.

(2) Limitations on expenditures

(A) Coordination of services

Not more than 20 percent of the funds allocated under this section may be expended to pay for the Federal share of projects described in subsection (a)(2)(D) of this section at the State and local levels.

(B) School-to-work services; literacy and lifelong learning services

Not less than 80 percent of the funds allocated under this section shall be expended to pay for the Federal share of projects conducted in accordance with subparagraphs (A), (B), and (C) of subsection (a)(2) of this section.

(C) Economically disadvantaged individuals

Not less than 75 percent of the funds allocated for projects under subparagraphs (A), (B), and (C) of subsection (a)(2) of this section shall be expended for projects for economically disadvantaged individuals who experience barriers to employment. Priority for funds not expended for the economically disadvantaged shall be given to subchapter III participants and persons with barriers to employment.

(e) Distribution of funds in absence of agreement

If no agreement is reached in accordance with subsection (b) of this section on the use of funds under this section, the funds shall be available to the Governor to achieve the goals and provide the services described in paragraph (1), (2), or (3) of subsection (c) of this section.

(f) Reports and records

(1) Reports by Governors

The Governor shall prepare reports on the projects funded under this section, including such information as the Secretary may require to determine the extent to which the projects supported under this section result in achieving the goals specified in paragraphs (1), (2), and (3) of subsection (c) of this section. The Governor shall submit the reports to the Secretary at such intervals as shall be determined by the Secretary.

(2) Records and reports of recipients

Each direct or indirect recipient of funds under this section shall keep records that are sufficient to permit the preparation of reports. Each recipient shall submit such reports to the Secretary, at such intervals as shall be determined by the Secretary.

(Pub. L. 97–300, title I, §123, Oct. 13, 1982, 96 Stat. 1341; Pub. L. 99–496, §§3, 15(e), Oct. 16, 1986, 100 Stat. 1261, 1266; Pub. L. 101–392, §5(a)(1), Sept. 25, 1990, 104 Stat. 758; Pub. L. 102–235, §7, Dec. 12, 1991, 105 Stat. 1808; Pub. L. 102–367, title I, §122, Sept. 7, 1992, 106 Stat. 1038.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act, referred to in subsec. (c)(1)(E)(ii), probably means the Elementary and Secondary Education Act of 1965, Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3519, which is classified generally to chapter 70 (§6301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Carl D. Perkins Vocational and Applied Technology Education Act, referred to in subsec. (c)(1)(E)(iii), (2)(D)(iii), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, which is classified generally to chapter 44 (§2301 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (c)(1)(E)(iv), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Adult Education Act, referred to in subsec. (c)(1)(E)(v), (2)(D)(ii), is title III of Pub. L. 89–750, Nov. 3, 1966, 80 Stat. 1216, as amended, which is classified generally to chapter 30 (§1201 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 20 and Tables.

The Stewart B. McKinney Homeless Assistance Act, referred to in subsec. (c)(1)(E)(vii), (2)(D)(iv), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§11301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

The National and Community Service Act of 1990, referred to in subsec. (c)(1)(E)(viii), (2)(D)(ix), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, which is classified principally to chapter 129 (§12501 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (c)(2)(D)(vi), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355,

[1] See References in Text note below.

as amended, which is classified generally to chapter 16 (§ 701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

The National Literacy Act of 1991, referred to in subsec. (c)(2)(D)(vii), is Pub. L. 102–73, July 25, 1991, 105 Stat. 333, as amended. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1201 of Title 20, Education, and Tables.

The Emergency Immigrant Education Act of 1984, referred to in subsec. (c)(2)(D)(viii), is part D of title IV of Pub. L. 89–10, as added by Pub. L. 100–297, title I, § 1001, Apr. 28, 1988, 102 Stat. 242, which was classified generally to part D (§ 3121 et seq.) of subchapter IV of chapter 47 of Title 20, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. For provisions relating to emergency immigrant education, see section 7541 et seq. of Title 20.

AMENDMENTS

1992—Pub. L. 102–367 amended section generally. Prior to amendment, section related to State education coordination and grants, and provided for allotments for financial assistance to State education agencies for services through cooperative agreements in subsec. (a), provided for matching contributions for cooperative agreements in subsec. (b), required certain proportions for use of funds in subsec. (c), provided alternatives for State governors where no cooperative agreements on use of funds was reached in subsec. (d), and authorized joint funding in subsec. (e).

1991—Subsec. (a)(4). Pub. L. 102–235, § 7(a), added par. (4).

Subsec. (c)(2)(B), (3). Pub. L. 102–235, § 7(b), substituted ''(1), (3), and (4)'' for ''(1) and (3)''.

1990—Subsec. (e). Pub. L. 101–392 added subsec. (e).

1986—Subsec. (a)(3). Pub. L. 99–496, § 3(1), added par. (3).

Subsec. (c)(1). Pub. L. 99–496, § 15(e), inserted reference to veterans.

Subsec. (c)(2)(B). Pub. L. 99–496, § 3(2)(A), amended first sentence generally, substituting references to clauses (1) and (3) for references to clause (1).

Subsec. (c)(3). Pub. L. 99–496, § 3(2)(B), substituted ''clauses (1) and (3)'' for ''clause (1)''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–392 effective July 1, 1991, see section 702(a) of Pub. L. 101–392, set out as a note under section 2301 of Title 20, Education.

CONSTRUCTION OF 1991 AMENDMENT

Amendment by Pub. L. 102–235 not to be construed to require, sanction, or authorize discrimination on the basis of race, color, religion, sex, national origin, handicap, or age, see section 11 of Pub. L. 102–235, set out as a note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 49f, 1532, 1602, 1642, 1792b of this title; title 20 section 2468.

§ 1534. Identification of additional imposed requirements

If a State or service delivery area imposes a requirement, including a rule, regulation, policy, or performance standard, relating to the administration and operation of programs funded by this chapter (including requirements based on State or service delivery area interpretation of any Federal law, regulation, or guideline) the State or area shall identify the requirement as a State- or service delivery area-imposed requirement.

(Pub. L. 97–300, title I, § 124, Oct. 13, 1982, 96 Stat. 1341; Pub. L. 99–496, § 15(f), Oct. 16, 1986, 100 Stat. 1266; Pub. L. 102–367, title I, § 123, Sept. 7, 1992, 106 Stat. 1041.)

AMENDMENTS

1992—Pub. L. 102–367 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to training programs for older individuals.

1986—Subsec. (b). Pub. L. 99–496 inserted '', including veterans organizations'' after ''organizations''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1602 of this title; title 42 section 3056.

§ 1535. State labor market information programs

(a) Oversight unit requirement; design of information and distribution system; support for local programs

In order to be eligible for Federal financial assistance for State labor market information programs under this chapter from funds made available under section 1751(b) of this title, the Governor shall designate the State occupational information coordinating committee or other organizational unit to be responsible for oversight and management of a statewide comprehensive labor market and occupational supply and demand information system, which shall—

(1) design a comprehensive cost-efficient labor market and occupational supply and demand information system which—

(A) is responsive to the economic demand and education and training supply support needs of the State and areas within the State, and

(B) meets the Federal standards under chapter 35 of title 44 and other appropriate Federal standards established by the Bureau of Labor Statistics;

(2) standardize available Federal and State multi-agency administrative records and direct survey data sources to produce an employment and economic analysis with a published set of projections for the State and designated areas within the State which, at the minimum, includes—

(A) identification of geographic and occupational areas of potential growth or decline; and

(B) an assessment of the potential impact of such growth or decline on individuals, industries, and communities, including occupational supply and demand characteristics data;

(3) assure, to the extent feasible, that—

(A) automated technology will be used by the State;

(B) administrative records have been designed to reduce paperwork; and

(C) multiple survey burdens on the employers of the State have been reduced;

(4) publish and disseminate labor market and occupational supply and demand information and individualized career information to State agencies, area public agencies, libraries, and private not-for-profit users, and individuals who are in the process of making career decision choices;

(5) conduct research and demonstration projects designed to improve any aspect of the statewide information system; and

(6) provide training and technical assistance to support comprehensive career guidance and participant activities for local programs assisted under this chapter.

(b) Goals of system; nonduplication; public domain

(1) The analysis required under clause (2) of subsection (a) of this section shall be used to contribute in carrying out the provisions of this chapter, the Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.], and the Act of June 6, 1933, known as the Wagner-Peyser Act [29 U.S.C. 49 et seq.].

(2) The assurance required by clause (3) of subsection (a) of this section shall also include that the State will, to the maximum extent possible, assure consolidation of available administrative data and surveys to reduce duplication of recordkeeping of State and local agencies, including secondary and postsecondary educational institutions.

(3) If any Federal funds are used to carry out clause (5) of subsection (a) of this section, access to and information on the results will remain in the public domain.

(c) Reimbursement and limitation

The Secretary through the National Occupational Information Coordinating Committee shall reimburse the States the costs of carrying out the provisions of this section but the aggregate reimbursements in any fiscal year shall not exceed the amount available under part E of subchapter IV of this chapter for this section.

(d) State consolidation of Federal administrative management information reporting requirements

No provision of this part or any other provision of Federal law shall be construed to prohibit any State from combining or consolidating Federal administrative management information reporting requirements relating to employment, productivity, or training, if notice is transmitted by the Governor to the head of each appropriate Federal and State agency responsible for the laws governing the Federal reporting requirements. The notice shall specify the intent to combine or consolidate such requirements. The head of each appropriate Federal agency shall approve the combination or consolidation unless, within sixty days after receiving the notice, the Federal agency can demonstrate that the combination or consolidation will not meet the essential purposes of the affected Federal law.

(Pub. L. 97–300, title I, § 125, Oct. 13, 1982, 96 Stat. 1342; Pub. L. 97–404, § 1(e), Dec. 31, 1982, 96 Stat. 2026; Pub. L. 98–524, § 4(a)(3), Oct. 19, 1984, 98 Stat. 2487; Pub. L. 102–367, title I, § 124, title VII, § 702(a)(6), Sept. 7, 1992, 106 Stat. 1041, 1112.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (b)(1), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, known as the Carl D. Perkins Vocational and Applied Technology Education Act, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Wagner-Peyser Act, referred to in subsec. (b)(1), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified generally to chapter 4B (§ 49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367, § 702(a)(6), struck out ''section 1602(b)(4) of this title and'' before ''section 1751(b) of this title''.

Subsec. (a)(6). Pub. L. 102–367, § 124, added par. (6).

1984—Subsec. (b)(1). Pub. L. 98–524 substituted ''the Carl D. Perkins Vocational Education Act'' for ''the Vocational Education Act of 1963''.

1982—Subsec. (c). Pub. L. 97–404 substituted ''section'' for ''subsection'' after ''of this chapter for this''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98–524, set out as an Effective Date note under section 2301 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1751, 1753, 1754 of this title.

§ 1536. Authority of State legislature

Nothing in this chapter shall be interpreted to preclude the enactment of State legislation providing for the implementation, consistent with the provisions of this chapter, of the programs assisted under this chapter.

(Pub. L. 97–300, title I, § 126, Oct. 13, 1982, 96 Stat. 1343.)

§ 1537. Interstate agreements

In the event that compliance with provisions of this chapter would be enhanced by cooperative agreements between States, the consent of Congress is hereby given to such States to enter into such compacts and agreements to facilitate such compliance, subject to the approval of the Secretary.

(Pub. L. 97–300, title I, § 127, Oct. 13, 1982, 96 Stat. 1343.)

PART C—PROGRAM REQUIREMENTS FOR SERVICE DELIVERY SYSTEM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1661a of this title.

§ 1551. General program requirements

Except as otherwise provided, the following conditions are applicable to all programs under this chapter:

(a) Useful, needed, and equitable opportunity distribution

Each job training plan shall provide employment and training opportunities to those who can benefit from, and who are most in need of, such opportunities and shall make efforts to provide equitable services among substantial segments of the eligible population.

(b) No duplication of services

Funds provided under this chapter shall only be used for activities which are in addition to those which would otherwise be available in the area in the absence of such funds.

(c) Establishment relocation limitation; investigations; penalties for violations

(1) No funds provided under this chapter shall be used or proposed for use to encourage or induce the relocation, of an establishment or part thereof, that results in a loss of employment for any employee of such establishment at the original location.

(2) No funds provided under this chapter shall be used for customized or skill training, on-the-job training, or company specific assessments of job applicants or employees, for any establishment or part thereof, that has relocated, until 120 days after the date on which such establishment commences operations at the new location, if the relocation of such establishment or part thereof, results in a loss of employment for any employee of such establishment at the original location.

(3) If a violation of paragraph (1) or (2) is alleged, the Secretary shall conduct an investigation to determine whether a violation has occurred.

(4) If the Secretary determines that a violation of paragraph (1) or (2) has occurred, the Secretary shall require the State, service delivery area, or substate grantee that has violated paragraph (1) or (2) to—

(A) repay to the United States an amount equal to the amount expended in violation of paragraph (1) or (2), in accordance with subsection (d) or (e) of section 1574 of this title; and

(B) pay an additional amount equal to the amount required to be repaid under subparagraph (A), unless the State, service delivery area, or substate grantee demonstrates to the Secretary that it neither knew nor reasonably could have known (after an inquiry undertaken with due diligence) that it provided funds in violation of paragraph (1) or (2).

(5) Amounts received under paragraph (4)(B) shall be deposited in a special account in the Treasury for use by the Secretary for carrying out subchapter III of this chapter.

(d) Employment opportunity-directed training; competitive purchases of training packages; tuition charges; administrative costs limitation; placements

(1) Training provided with funds made available under this chapter shall be only for occupations for which there is a demand in the area served or in another area to which the participant is willing to relocate, and consideration in the selection of training programs may be given to training in occupations determined to be in sectors of the economy which have a high potential for sustained demand or growth.

(2) Efforts shall be made to develop programs which contribute to occupational development, upward mobility, development of new careers, and overcoming sex-stereotyping in occupations traditional for the other sex.

(3)(A) Commercially available training packages, including advanced learning technology, may be purchased for off-the-shelf prices and without requiring a breakdown of the cost components of the package if such packages are purchased competitively and include performance criteria.

(B) Tuition charges for training or education provided by an institution of higher education (as defined in section 1141(a) of title 20) or a proprietary institution of higher education (as defined in section 1088(b) of title 20), that are not more than the charges for such training or education made available to the general public, do not require a breakdown of cost components.

(C) With respect to funds provided from the allocation to a service delivery area for any program year that are expended by any community-based organization or nonprofit organization for the cost of administration under part A or C of subchapter II of this chapter, the service delivery area shall not be subject to the limitation contained in section 1518(b)(4)(A) of this title if—

(i) such funds are expended pursuant to an agreement under which not less than 90 percent of the funds provided to the community-based organization or nonprofit organization are to be expended for the costs of direct training and training-related and supportive services;

(ii) the expenditures of such funds are charged by the service delivery area to the appropriate cost category;

(iii) the expenditure of such funds does not result in the service delivery area exceeding the limitation contained in section 1518(b)(4)(A) of this title by more than 25 percent of such limitation; and

(iv) the service delivery area is in compliance with the limitation contained in section 1518(b)(4)(B) of this title for such program year, except that such limitation shall be reduced by a percentage equal to one-half of the percentage by which the expenditures of the service delivery area under this subparagraph exceed the limitation under section 1518(b)(4)(A) of this title.

(4) Placements made in unsubsidized employment shall be, to the extent practicable, in occupational areas related to the training provided to the participant.

(e) Area eligibility; limited exceptions; agreements

(1) Only eligible individuals residing in the service delivery area may be served by employment and training activities funded under subchapter II of this chapter, except that the job

training plan may provide for limited exceptions to this requirement, including exceptions necessary to permit services to homeless individuals who cannot prove residence within the service delivery area.

(2) Any service delivery area may enter into an agreement or contract with another service delivery area (including a service delivery area that is a city or county within the same labor market) to pay or share the cost of educating, training, or placing individuals participating in programs assisted under this chapter, including the provision of supportive services. Such agreement or contract shall be approved by each private industry council providing guidance to the service delivery area and shall be described in the job training plan under section 1514 of this title.

(f) Council member conflict of interest

No member of any council under this chapter shall cast a vote on the provision of services by that member (or any organization which that member directly represents) or vote on any matter which would provide direct financial benefit to that member.

(g) Payments to employers: proportion and characterization; limitations; contracts; failure to provide long-term employment

(1) Payments to employers for on-the-job training shall not, during the period of such training, average more than 50 percent of the wages paid by the employer to such participants, and payments in such amount shall be deemed to be in compensation for the extraordinary costs associated with training participants under this chapter and in compensation for the costs associated with the lower productivity of such participants.

(2) On-the-job training authorized under the[1] chapter for a participant shall be limited in duration to a period not in excess of that generally required for acquisition of skills needed for the position within a particular occupation, but in no event shall exceed 6 months, unless the total number of hours of such training is less than 500 hours. In determining the period generally required for acquisition of the skills, consideration shall be given to recognized reference material (such as the Dictionary of Occupational Titles), the content of the training of the participant, the prior work experience of the participant, and the service strategy of the participant.

(3)(A) Each on-the-job training contract shall—

(i) specify the types and duration of on-the-job training and the other services to be provided in sufficient detail to allow for a fair analysis of the reasonableness of proposed costs; and

(ii) comply with the applicable requirements of section 1574 of this title.

(B) Each on-the-job training contract that is not directly contracted by a service delivery area with an employer (but instead is contracted through an intermediary brokering contractor) shall, in addition to meeting the requirements of subparagraph (A), specify the outreach, recruitment, participant training, counseling, placement, monitoring, followup, and other services to be provided directly by the brokering contractor within its own organization, the services to be provided by the employers conducting the on-the-job training, and the services to be provided, with or without cost, by other agencies and subcontractors.

(C) If a brokering contractor enters into a contract with a subcontractor to provide training or other services, the brokering contractor shall ensure, through on-site monitoring, compliance with subcontract terms prior to making payment to the subcontractor.

(4) In accordance with regulations issued by the Secretary, on-the-job training contracts under this chapter shall not be entered into with employers who have received payments under previous contracts and have exhibited a pattern of failing to provide on-the-job training participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

(h) No needless duplication of governmental facilities or services

Funds provided under this chapter shall not be used to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State, or local sources, unless the plan establishes that alternative services or facilities would be more effective or more likely to achieve performance goals.

(i) Responsibility of administrative entity for oversight

Each administrative entity shall be responsible for the allocation of funds and the eligibility of those enrolled in its programs and shall have responsibility to take action against its subcontractors, subgrantees, and other recipients to eliminate abuses in the programs they are carrying out, and to prevent any misuse of funds by such subcontractors, subgrantees, and other recipients. Administrative entities may delegate the responsibility for determination of eligibility under reasonable safeguards, including provisions for reimbursement of cost incurred because of erroneous determinations made with insufficient care, if such an arrangement is included in an approved job training plan.

(j) Free training program placement requirement

No person or organization may charge an individual a fee for the placement or referral of such individual in or to a training program under this chapter.

(k) Requirements for subsidized youth employment

No funds may be provided under this chapter for any subsidized employment with any private for-profit employer unless the individual employed is a youth aged 16 to 21, inclusive, who is economically disadvantaged and the employment is provided in accordance with subpara-

[1] So in original. Probably should be ''this''.

graphs (F) and (H) of section 1644(c)(1) of this title.

(*l*) Political activity exclusion

The Secretary shall not provide financial assistance for any program under this chapter which involves political activities.

(m) Program income

(1) Income under any program administered by a public or private nonprofit entity may be retained by such entity only if used to continue to carry out the program.

(2) Income subject to the requirements of paragraph (1) shall include—

(A) receipts from goods or services (including conferences) provided as a result of activities funded under the[2] chapter;

(B) funds provided to a service provider under the[2] chapter that are in excess of the costs associated with the services provided; and

(C) interest income earned on funds received under this chapter.

(3) For the purposes of this subsection, each entity receiving financial assistance under this chapter shall maintain records sufficient to determine the amount of income received and the purposes for which such income is expended.

(n) Notification of service delivery area activity

The Secretary shall notify the Governor and the appropriate private industry councils and chief elected officials of, and consult with the Governor and such councils and officials concerning, any activity to be funded by the Secretary under this chapter within the State or service delivery area; and the Governor shall notify the appropriate private industry councils and chief elected officials of, and consult with such concerning, any activity to be funded by the Governor under this chapter within the service delivery area.

(*o*) State and local education standards applicable

(1) All education programs for youth supported with funds provided under subchapter II of this chapter shall be consistent with applicable State and local educational standards.

(2) Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in programs conducted under subchapter II of this chapter shall be consistent with the requirements of applicable State and local law and regulation.

(p) Public service employment exclusion

No funds available under part B of this subchapter or part A or C of subchapter II of this chapter may be used for public service employment.

(q) Investment activities exclusion

No funds available under this chapter shall be used for employment generating activities, economic development activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, and similar activities. No funds under subchapter II or III of this chapter shall be used for foreign travel.

(r) Federal requirements governing real property, equipment, and supplies

The Federal requirements governing the title, use, and disposition of real property, equipment, and supplies purchased with funds provided under this chapter shall be the Federal requirements generally applicable to Federal grants to States and local governments.

(s) Transfer of unused Department of Defense property

(1) Notwithstanding title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.) and any other provision of law, the Secretary and the Secretary of Education shall receive priority by the Secretary of Defense for the direct transfer, on a nonreimbursable basis, of the property described in paragraph (2) for use in carrying out programs under this chapter or under any other Act.

(2) The property described in this paragraph is both real and personal property under the control of the Department of Defense that is not used by such Department, including property that the Secretary of Defense determines is in excess of current and projected requirements of such Department.

(Pub. L. 97–300, title I, § 141, Oct. 13, 1982, 96 Stat. 1343; Pub. L. 97–404, § 1(f), Dec. 31, 1982, 96 Stat. 2026; Pub. L. 100–77, title VII, § 740(b), July 22, 1987, 101 Stat. 531; Pub. L. 102–367, title I, § 131, Sept. 7, 1992, 106 Stat. 1042; Pub. L. 102–484, div. D, title XLIV, § 4467(f), Oct. 23, 1992, 106 Stat. 2751; Pub. L. 103–160, div. A, title XIII, § 1336, Nov. 30, 1993, 107 Stat. 1805.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (s), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title II of that Act, is classified principally to subchapter II (§ 481 et seq.) of chapter 10 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

AMENDMENTS

1993—Subsec. (s). Pub. L. 103–160 amended subsec. (s) generally. Prior to amendment, subsec. (s) read as follows: ''Notwithstanding any other provision of law, a job training program under this chapter or an education program shall receive priority consideration for the transfer of Federal property and equipment that the Secretary of Defense determines are in excess of current and projected requirements of the Department of Defense. Such property and equipment shall be transferred at no cost to such program.''

1992—Subsec. (c). Pub. L. 102–367, § 131(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''No funds may be used to assist in relocating establishments, or parts thereof, from one area to another unless the Secretary determines that such relocation will not result in an increase in unemployment in the area of original location or in any other area.''

Subsec. (d)(3). Pub. L. 102–367, § 131(b), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (d)(4). Pub. L. 102–367, § 131(c), added par. (4).

Subsec. (e). Pub. L. 102–367, § 131(d), designated existing provisions as par. (1) and added par. (2).

[2] So in original. Probably should be ''this''.

Subsec. (g). Pub. L. 102–367, § 131(e), designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (k). Pub. L. 102–367, § 131(f), substituted ''subparagraphs (F) and (H) of section 1644(c)(1)'' for ''section 1605(d)(3)(B)''.

Subsec. (m). Pub. L. 102–367, § 131(g), amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows: ''Pursuant to regulations of the Secretary, income generated under any program may be retained by the recipient to continue to carry out the program, notwithstanding the expiration of financial assistance for that program.''

Subsec. (p). Pub. L. 102–367, § 131(h), substituted ''part A or C of subchapter II'' for ''part A of subchapter II''.

Subsecs. (q), (r). Pub. L. 102–367, § 131(i), as amended by Pub. L. 102–484, § 4467(f)(2), added subsecs. (q) and (r).

Subsec. (s). Pub. L. 102–484, § 4467(f)(1), added subsec. (s).

1987—Subsec. (e). Pub. L. 100–77 inserted before period at end '', including exceptions necessary to permit services to homeless individuals who cannot prove residence within the service delivery area''.

1982—Subsec. (c). Pub. L. 97–404, § 1(f)(1), inserted ''the Secretary determines that'' after ''unless''.

Subsec. (g). Pub. L. 97–404, § 1(f)(2), struck out ''which'' after ''on-the-job training'' and substituted reference to this chapter for reference to this subchapter.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

JOB TRAINING REGULATIONS

Section 7 of Pub. L. 98–524, Oct. 19, 1984, 98 Stat. 2491, provided that: ''Notwithstanding section 629.38(e)(2)(iii) of title 20 of the Code of Federal Regulations, relating to allowable training costs under the Job Training Partnership Act [this chapter], payment for training packages purchased competitively pursuant to section 141(d)(3) of such Act [29 U.S.C. 1536(d)(3)] in the case of youth shall include payment for the full unit price if the training results in either placement in unsubsidized employment or the attainment of an outcome specified in section 106(b)(2) of such Act [29 U.S.C. 1516(b)(2)].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1514, 1518, 1576, 1604, 1644, 1733, 1783 of this title.

§ 1552. Benefits

(a) Payments; compensation; wages; application to territories

Except as otherwise provided in this chapter, the following provisions shall apply to all activities financed under this chapter:

(1) A trainee shall receive no payments for training activities in which the trainee fails to participate without good cause.

(2) Individuals in on-the-job training shall be compensated by the employer at the same rates, including periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 [29 U.S.C. 206(a)(1)] or the applicable State or local minimum wage law.

(3) Individuals employed in activities authorized under this chapter shall be paid wages which shall not be less than the highest of (A) the minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938 [29 U.S.C. 206(a)(1)], (B) the minimum wage under the applicable State or local minimum wage law, or (C) the prevailing rates of pay for individuals employed in similar occupations by the same employer.

(4) References in paragraphs (2) and (3) to section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1))—

(A) shall be deemed to be references to section 6(c) of that Act [29 U.S.C. 206(c)] for individuals in the Commonwealth of Puerto Rico;

(B) shall be deemed to be references to section 6(a)(3) of that Act [29 U.S.C. 206(a)(3)] for individuals in American Samoa; and

(C) shall not be applicable for individuals in other territorial jurisdictions in which section 6 of the Fair Labor Standards Act of 1938 [29 U.S.C. 206] does not apply.

(b) Allowances, earnings, and payments as income

Allowances, earnings and payments to individuals participating in programs under this chapter shall not be considered as income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than as provided under the Social Security Act [42 U.S.C. 301 et seq.].

(Pub. L. 97–300, title I, § 142, Oct. 13, 1982, 96 Stat. 1345; Pub. L. 97–404, § 1(g), Dec. 31, 1982, 96 Stat. 2026; Pub. L. 102–367, title I, § 132, Sept. 7, 1992, 106 Stat. 1045.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) 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

1992—Subsec. (a)(4). Pub. L. 102–367, § 132(1), added par. (4).

Subsec. (b). Pub. L. 102–367, § 132(2), substituted ''other than as provided'' for ''other than programs''.

1982—Subsec. (b). Pub. L. 97–404 inserted ''furnished under any Federal or federally assisted program based on need'' after ''aid''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2014; title 42 sections 12637, 12899e.

§ 1553. Labor standards

(a) Employment conditions; local standards; workers' compensation; workplace comparability; retirement plan exclusion

(1) Conditions of employment and training shall be appropriate and reasonable in light of such factors as the type of work, geographical region, and proficiency of the participant.

(2) Health and safety standards established under State and Federal law, otherwise applica-

ble to working conditions of employees, shall be equally applicable to working conditions of participants. With respect to any participant in a program conducted under this chapter who is engaged in activities which are not covered by health and safety standards under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], the Secretary shall prescribe, by regulation, such standards as may be necessary to protect the health and safety of such participants.

(3) To the extent that a State workers' compensation law is applicable, workers' compensation benefits in accordance with such law shall be available with respect to injuries suffered by participants. To the extent that such law is not applicable, each recipient of funds under this chapter shall secure insurance coverage for injuries suffered by such participants, in accordance with regulations prescribed by the Secretary.

(4) All individuals employed in subsidized jobs shall be provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

(5) No funds available under this chapter may be used for contributions on behalf of any participant to retirement systems or plans.

(b) Nondisplacement of local workers; existing collective bargaining agreements; nonavailability for layoff replacement; noninfringement of promotion opportunity

(1) No currently employed worker shall be displaced by any participant (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits).

(2) No program under this chapter shall impair—

(A) existing contracts for services; or

(B) existing collective bargaining agreements, unless the employer and the labor organization concur in writing with respect to any elements of the proposed activities which affect such agreement, or either such party fails to respond to written notification requesting its concurrence within 30 days of receipt thereof.

(3) No participant shall be employed or job opening filled (A) when any other individual is on layoff from the same or any substantially equivalent job, or (B) when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under this chapter.

(4) No jobs shall be created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals.

(c) Labor organizations

(1) Each recipient of funds under this chapter shall provide to the Secretary assurances that none of such funds will be used to assist, promote, or deter union organizing.

(2) Where a labor organization represents a substantial number of employees who are engaged in similar work or training in the same area as that proposed to be funded under this chapter, an opportunity shall be provided for such organization to submit comments with respect to such proposal.

(d) Applicability of Federal labor standards

All laborers and mechanics employed by contractors or subcontractors in any construction, alteration, or repair, including painting and decorating, of projects, buildings, and works which are federally assisted under this chapter, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a–5), popularly known as the Davis-Bacon Act. The Secretary shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40. The provisions of this subsection shall not apply to a bona fide trainee in a training program under this chapter. The provisions of section 1577(a)(4) of this title shall apply to such trainees.

(Pub. L. 97–300, title I, § 143, Oct. 13, 1982, 96 Stat. 1345; Pub. L. 97–404, § 1(h), Dec. 31, 1982, 96 Stat. 2026; Pub. L. 102–367, title I, § 133, Sept. 7, 1992, 106 Stat. 1045.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (a)(2), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 651 of this title and Tables.

Act of March 3, 1931, known as the Davis-Bacon Act, referred to in subsec. (d), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a–5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (d), is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102–367 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''No program shall impair existing contracts for services or collective bargaining agreements, except that no program under this chapter which would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned.''

1982—Subsec. (d). Pub. L. 97–404 substituted ''1931'' for ''1921''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516, 1554 of this title; title 42 section 12899e.

§ 1554. Grievance procedure

(a) Maintenance and timing

Each administrative entity, contractor, and grantee under this chapter shall establish and

maintain a grievance procedure for grievances or complaints about its programs and activities from participants, subgrantees, subcontractors, and other interested persons. Hearings on any grievance shall be conducted within 30 days of filing of a grievance and decisions shall be made not later than 60 days after the filing of a grievance. Except for complaints alleging fraud or criminal activity, complaints shall be made within one year of the alleged occurrence.

(b) Requirement for recipient grievance procedure

Each recipient of financial assistance under this chapter which is an employer of participants under this chapter shall continue to operate or establish and maintain a grievance procedure relating to the terms and conditions of employment.

(c) Investigation by Secretary

Upon exhaustion of a recipient's grievance procedure without decision, or where the Secretary has reason to believe that the recipient is failing to comply with the requirements of this chapter or the terms of the job training plan, the Secretary shall investigate the allegation or belief and determine within 120 days after receiving the complaint whether such allegation or complaint is true.

(d) Labor standards violations

(1) If a person alleges a violation of section 1553 of this title and such person exhausts the recipient's grievance procedure or the 60-day time period described in subsection (a) of this section has elapsed without a decision, either party to such procedure may submit the grievance to the Secretary. The Secretary shall investigate the allegations contained in the grievance and make a determination as to whether a violation of section 1553 of this title has occurred.

(2) If the results of the investigation conducted pursuant to paragraph (1) indicate that a modification or reversal of the decision issued pursuant to the recipient's grievance procedure is warranted, or the 60-day time period described in subsection (a) of this section has elapsed without a decision, the Secretary may modify or reverse the decision, or issue a decision if no decision has been issued, as the case may be, after an opportunity for a hearing in accordance with the procedures under section 1576 of this title.

(3) If the Secretary determines that the decision issued pursuant to the recipient's grievance procedure is appropriate, the determination shall become the final decision of the Secretary.

(e) Alternative procedure for labor standards grievances

(1) A person alleging a violation of section 1553 of this title may, as an alternative to the procedures described in this section, submit the grievance involving such violation to a binding grievance procedure if a collective bargaining agreement covering the parties to the grievance so provides.

(2) The remedies available under paragraph (1) shall be limited to the remedies available under subsection (f)(1)(C) of this section and subsection (f)(2) of this section.

(f) Remedies for labor standards violations

(1) Except as provided in paragraph (2), remedies available to grievants under this section for violations of section 1553 of this title shall be limited to—

(A) suspension or termination of payments under this chapter;

(B) prohibition of placement of a participant, for an appropriate period of time, in a program under this chapter with an employer that has violated section 1553 of this title, as determined under subsection (d) or (e) of this section; and

(C) appropriate equitable relief (other than back pay).

(2) In addition to the remedies available under paragraph (1), remedies available under this section for violations of subsection (a)(4) of this section, paragraphs (1) and (3) of subsection (b) of this section, and subsection (d) of section 1553 of this title may include—

(A) reinstatement of the grievant to the position held by such grievant prior to displacement;

(B) payment of lost wages and benefits; and

(C) reestablishment of other relevant terms, conditions, and privileges of employment.

(g) Remedies under other laws for labor standards violations

Nothing in subsection (f) of this section shall be construed to prohibit a grievant from pursuing a remedy authorized under another Federal, State, or local law for a violation of section 1553 of this title.

(Pub. L. 97–300, title I, § 144, Oct. 13, 1982, 96 Stat. 1346; Pub. L. 102–367, title I, § 134(a), Sept. 7, 1992, 106 Stat. 1045.)

AMENDMENTS

1992—Subsecs. (d) to (g). Pub. L. 102–367 added subsecs. (d) to (g).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1576 of this title.

§ 1555. Federal control of education prohibited

No provision of this chapter shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system.

(Pub. L. 97–300, title I, § 145, Oct. 13, 1982, 96 Stat. 1347.)

CROSS REFERENCES

Programs administered by Secretary of Education, prohibition of Federal control of education, see section 1232a of Title 20, Education.

PART D—FEDERAL AND FISCAL ADMINISTRATIVE PROVISIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1661a of this title.

§ 1571. Program year

(a) Basis for availability of appropriations

Beginning with fiscal year 1985 and thereafter, appropriations for any fiscal year for programs and activities under this chapter shall be available for obligation only on the basis of a program year. The program year shall begin on July 1 in the fiscal year for which the appropriation is made.

(b) Expending of obligated funds

(1) Funds obligated for any program year may be expended by each recipient during that program year and the two succeeding program years and no amount shall be deobligated on account of a rate of expenditure which is consistent with the job training plan.

(2) Notwithstanding paragraph (1), funds obligated for any program year for programs authorized by section 1732 of this title shall remain available until expended.

(Pub. L. 97–300, title I, § 161, Oct. 13, 1982, 96 Stat. 1347; Pub. L. 100–495, § 1, Oct. 17, 1988, 102 Stat. 2454; Pub. L. 102–367, title VII, § 702(a)(7), (8), Sept. 7, 1992, 106 Stat. 1112.)

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102–367, § 702(a)(7), substituted ''section 1732'' for ''sections 1732 through 1735''.

Subsec. (c). Pub. L. 102–367, § 702(a)(8), struck out subsec. (c) which read as follows:

''(1) Appropriations for fiscal year 1984 shall be available both to fund activities for the period between October 1, 1983, and July 1, 1984, and for the program year beginning July 1, 1984.

''(2) There are authorized to be appropriated such additional sums as may be necessary to carry out the provisions of this subsection for the transition to program year funding.''

1988—Subsec. (b). Pub. L. 100–495 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2 of Pub. L. 100–495 provided that: ''The amendments made by this Act [amending this section] shall apply with respect to funds available for expenditure on or after June 30, 1988.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1502, 1572 of this title.

§ 1572. Prompt allocation of funds

(a) Use of most recent data

All allotments and allocations under this chapter shall be based on the latest available data and estimates satisfactory to the Secretary. All data relating to economically disadvantaged and low-income persons shall be based on 1980 Census or later data.

(b) Publication in Federal Register

Whenever the Secretary allots and allocates funds required to be allotted or allocated by formula under this chapter, the Secretary shall publish in a timely fashion in the Federal Register the proposed amount to be distributed to each recipient.

(c) Distribution after appropriation

All funds required to be distributed by formula under this chapter shall be allotted within 45 days after enactment of the appropriations, except that, if such funds are appropriated in advance as authorized by section 1571 of this title, such funds shall be allotted not later than the March 31 preceding the program year for which such funds are to be available for obligation.

(d) Publication of allotment formula

Whenever the Secretary utilizes a formula to allot or allocate funds made available for distribution at the Secretary's discretion under this chapter, the Secretary shall, not later than 30 days prior to such allotment or allocation, publish such formula in the Federal Register for comments along with the rationale for the formula and the proposed amounts to be distributed to each State and area. After consideration of any comments received, the Secretary shall publish final allotments and allocations in the Federal Register.

(e) Distribution to grant recipient

Funds shall be made available to the grant recipient for the service delivery area not later than 30 days after the date they are made available to the Governor or 7 days after the date the plan is approved, whichever is later.

(f) Advance payments to nonprofit organizations

When contracting with nonprofit organizations of demonstrated effectiveness, the Secretary, States, substate areas, and service delivery areas may make advance payments, provided that such payments are based on the financial need of such organization and are not in excess of 20 percent of the total contract amount.

(Pub. L. 97–300, title I, § 162, Oct. 13, 1982, 96 Stat. 1347; Pub. L. 102–367, title I, § 141, Sept. 7, 1992, 106 Stat. 1046.)

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–367 added subsec. (f).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1642 of this title.

§ 1573. Monitoring

(a) Compliance with law and regulations

The Secretary is authorized to monitor all recipients of financial assistance under this chapter to determine whether they are complying with the provisions of this chapter and the regulations issued under this chapter.

(b) Investigations

The Secretary may investigate any matter the Secretary deems necessary to determine compliance with this chapter and regulations issued under this chapter. The investigations authorized by this subsection may include examining records (including making certified copies thereof), questioning employees, and entering any premises or onto any site in which any part of a program of a recipient is conducted or in which any of the records of the recipient are kept.

(c) Witnesses; books, papers, and documents

For the purpose of any investigation or hearing under this chapter, the provisions of section 9 of the Federal Trade Commission Act (15 U.S.C. 49) (relating to the attendance of witnesses and the production of books, papers, and documents) are made applicable to the Secretary.

(Pub. L. 97–300, title I, § 163, Oct. 13, 1982, 96 Stat. 1348.)

§ 1574. Fiscal controls; sanctions

(a) Establishment of State controls; cost principles; procurement standards; monitoring; noncompliance; certification to Secretary; corrective action; report to Congress

(1) Each State shall establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, Federal funds paid to the recipient under subchapters II and III of this chapter. Such procedures shall ensure that all financial transactions are conducted and records maintained in accordance with generally accepted accounting principles applicable in each State.

(2) The Secretary shall prescribe regulations establishing uniform cost principles substantially equivalent to such principles generally applicable to recipients of Federal grants funds. At a minimum, such standards shall provide that, to be allowable, costs must—

(A) be necessary and reasonable for proper and efficient administration of the program under this chapter;

(B) be allocable to the program under this chapter; and

(C) not be a general expense required to carry out the overall responsibilities of State, local, or federally recognized Indian tribal governments except as specifically provided by this chapter.

(3) The Governor, in accordance with minimum requirements established by the Secretary in regulations, shall prescribe and implement procurement standards to ensure fiscal accountability and prevent fraud and abuse in programs administered under this chapter. The Secretary, in establishing such minimum requirements, shall consult with the Inspector General of the Department of Labor and take into consideration relevant aspects of the circulars issued by the Director of the Office of Management and Budget. Such minimum requirements shall include provisions to ensure that for States, substate areas, and service delivery areas—

(A) procurements shall be conducted in a manner providing full and open competition;

(B) the use of sole source procurements shall be minimized to the extent practicable, but in every case shall be justified;

(C) procurements shall include an appropriate analysis of the reasonableness of costs and prices;

(D) procurements shall not provide excess program income (for nonprofit and governmental entities) or excess profit (for private for-profit entities), and that appropriate factors shall be utilized in determining whether such income or profit is excessive, such as—

(i) the complexity of the work to be performed;

(ii) the risk borne by the contractor; and

(iii) market conditions in the surrounding geographical area;

(E) procurements shall clearly specify deliverables and the basis for payment;

(F) written procedures shall be established for procurement transactions;

(G) no grantee, contractor, subgrantee, or subcontractor shall engage in any conflict of interest, actual or apparent, in the selection, award, or administration of a contract or grant under this chapter;

(H) all grantees and subgrantees shall conduct oversight to ensure compliance with procurement standards; and

(I) procurement transactions between units of State or local governments, and any other entities organized principally as the administrative entity for service delivery areas, shall be conducted on a cost reimbursable basis.

(4) The Governor shall annually conduct onsite monitoring of each service delivery area and substate area within the State to ensure compliance with the procurement standards established pursuant to paragraph (3).

(5) If the Governor determines that a service delivery area or substate area is not in compliance with the procurement standards established pursuant to paragraph (3), the Governor shall—

(A) require corrective action to secure prompt compliance; and

(B) impose the sanctions provided under subsection (b) of this section in the event of failure to take the required corrective action.

(6) The Governor shall biennially certify to the Secretary that—

(A) the State has implemented the procurement standards established under paragraph (3);

(B) the State has monitored substate areas and service delivery areas to ensure compliance with the procurement standards as required under paragraph (4); and

(C) the State has taken appropriate action to secure compliance pursuant to paragraph (5).

(7) If the Secretary determines that the Governor has not fulfilled the requirements of this subsection, the Secretary shall—

(A) require corrective action to secure prompt compliance; and

(B) impose the sanctions provided under subsection (f) of this section in the event of failure of the Governor to take the required corrective action.

(8) The Secretary, in consultation with the Inspector General, shall review the implementation of this subsection and submit a report to the appropriate committees of the Congress, not later than October 1, 1995, evaluating the effectiveness of this subsection in ensuring fiscal accountability and containing such recommendations as the Secretary determines to be appropriate.

(b) Noncompliance; action by Governor; appeal to Secretary; action by Secretary

(1) If, as a result of financial and compliance audits or otherwise, the Governor determines that there is a substantial violation of a specific provision of this chapter or the regulations under this chapter, and corrective action has not been taken, the Governor shall—

(A) issue a notice of intent to revoke approval of all or part of the plan affected; or

(B) impose a reorganization plan, which may include—

(i) restructuring the private industry council involved;

(ii) prohibiting the use of designated service providers;

(iii) selecting an alternative entity to administer the program for the service delivery area involved;

(iv) merging the service delivery area into 1 or more other existing service delivery areas; or

(v) other such changes as the Secretary or Governor determines necessary to secure compliance.

(2)(A) The actions taken by the Governor pursuant to paragraph (1)(A) may be appealed to the Secretary under the same terms and conditions as the disapproval of the plan and shall not become effective until—

(i) the time for appeal has expired; or

(ii) the Secretary has issued a decision.

(B) The actions taken by the Governor pursuant to paragraph (1)(B) may be appealed to the Secretary, who shall make a final decision not later than 60 days of the receipt of the appeal.

(3) If the Governor fails to promptly take the actions required under paragraph (1), the Secretary shall take such actions.

(c) Comptroller General's evaluation; report to Congress; Comptroller's access to records

(1) The Comptroller General of the United States shall, on a selective basis, evaluate the expenditures by the recipients of grants under this chapter in order to assure that expenditures are consistent with the provisions of this chapter and to determine the effectiveness of each recipient in accomplishing the purposes of this chapter. The Comptroller General shall conduct the evaluations whenever he determines it necessary and he shall periodically report to the Congress on the findings of such evaluations.

(2) Nothing in this chapter shall be deemed to relieve the Inspector General of the Department of Labor of his responsibilities under the Inspector General Act.

(3) For the purpose of evaluating and reviewing programs established or provided for by this chapter, the Comptroller General shall have access to and the right to copy any books, accounts, records, correspondence, or other documents pertinent to such programs that are in the possession, custody, or control of the State, a private industry council established under section 1512 of this title, any recipient of funds under this chapter, or any subgrantee or contractor of such recipients.

(d) Recipient's liability for noncomplying expenditures

Every recipient shall repay to the United States amounts found not to have been expended in accordance with this chapter. The Secretary may offset such amounts against any other amount to which the recipient is or may be entitled under this chapter unless he determines that such recipient should be held liable pursuant to subsection (e) of this section. No such action shall be taken except after notice and opportunity for a hearing have been given to the recipient.

(e) Conditions for recipient's liability; conditions for recipient's liability for subgrantee noncompliance; Secretary's discretion

(1) Each recipient shall be liable to repay such amounts, from funds other than funds received under this chapter, upon a determination that the misexpenditure of funds was due to willful disregard of the requirements of this chapter, gross negligence, or failure to observe accepted standards of administration. No such finding shall be made except after notice and opportunity for a fair hearing.

(2) In determining whether to impose any sanction authorized by this section against a recipient for violations by a subgrantee of such recipient under this chapter or the regulations under this chapter, the Secretary shall first determine whether such recipient has adequately demonstrated that it has—

(A) established and adhered to an appropriate system for the award and monitoring of contracts with subgrantees which contains acceptable standards for ensuring accountability;

(B) entered into a written contract with such subgrantee which established clear goals and obligations in unambiguous terms;

(C) acted with due diligence to monitor the implementation of the subgrantee contract, including the carrying out of the appropriate monitoring activities (including audits) at reasonable intervals; and

(D) taken prompt and appropriate corrective action upon becoming aware of any evidence of a violation of this chapter or the regulations under this chapter by such subgrantee.

(3) If the Secretary determines that the recipient has demonstrated substantial compliance with the requirements of paragraph (2), the Secretary may waive the imposition of sanctions authorized by this section upon such recipient. The Secretary is authorized to impose any sanction consistent with the provisions of this chapter and any applicable Federal or State law directly against any subgrantee for violation of this chapter or the regulations under this chapter.

(f) Emergency situations and immediate termination

In emergency situations, if the Secretary determines it is necessary to protect the integrity of the funds or ensure the proper operation of the program, the Secretary may immediately terminate or suspend financial assistance, in whole or in part, if the recipient is given prompt notice and the opportunity for a subsequent hearing within 30 days after such termination or suspension. The Secretary shall not delegate any of the functions or authority specified in this subsection, other than to an officer whose appointment was required to be made by and with the advice and consent of the Senate.

(g) Secretary's action against harassment of complainants

If the Secretary determines that any recipient under this chapter has discharged or in any other manner discriminated against a participant or against any individual in connection with the administration of the program involved, or against any individual because such individual has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or investigation under or related to this chapter, or otherwise unlawfully denied to any individual a benefit to which that individual is entitled under the provisions of this chapter or the Secretary's regulations, the Secretary shall, within thirty days, take such action or order such corrective measures, as necessary, with respect to the recipient or the aggrieved individual, or both.

(h) Remedies not exclusive

The remedies under this section shall not be construed to be exclusive remedies.

(Pub. L. 97–300, title I, § 164, Oct. 13, 1982, 96 Stat. 1348; Pub. L. 102–367, title I, § 142, Sept. 7, 1992, 106 Stat. 1046.)

REFERENCES IN TEXT

The Inspector General Act, referred to in subsec. (c)(2), probably means the Inspector General Act of 1978, Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367, § 142(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) consisted of pars. (1) to (3) relating to State fiscal controls and fund accounting procedures, biennial audits, and Federal audit standards.

Subsec. (b). Pub. L. 102–367, § 142(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) Whenever, as a result of financial and compliance audits or otherwise, the Governor determines that there is a substantial violation of a specific provision of this chapter or the regulations, and corrective action has not been taken, the Governor may issue a notice of intent to revoke approval of all or part of the plan affected. Such notice may be appealed to the Secretary under the same terms and conditions as the disapproval of the plan and shall not become effective until (A) the time for appeal has expired or (B) the Secretary has issued a decision.

''(2) The Governor shall withdraw the notice if the appropriate corrective action has been taken.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1511, 1514, 1517, 1551, 1578 of this title.

§ 1575. Reports, recordkeeping, and investigations

(a) Sufficiency of records; frequency; standardized records

(1) Recipients shall keep records that are sufficient to permit the preparation of reports required by this chapter and to permit the tracing of funds to a level of expenditure adequate to insure that the funds have not been spent unlawfully.

(2) Every recipient shall maintain such records and submit such reports, in such form and containing such information, as the Secretary requires regarding the performance of its programs. Such records and reports shall be submitted to the Secretary but shall not be required to be submitted more than once each quarter unless specifically requested by the Congress or a committee thereof.

(3) In order to allow for the preparation of national estimates necessary to meet the requirements of subsection (c) of this section, recipients shall maintain standardized records for all individual participants and provide to the Secretary a sufficient number of such records to provide for an adequate analysis.

(4)(A) Except as provided in subparagraph (B), records maintained by recipients pursuant to this subsection shall be made available to the public upon request.

(B) Subparagraph (A) shall not apply to—

(i) information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(ii) trade secrets, or commercial or financial information, obtained from a person and privileged or confidential.

(C) Recipients may charge fees sufficient to recover costs applicable to the processing of requests for records under subparagraph (A).

(b) Investigations; audit notice

(1)(A) In order to evaluate compliance with the provisions of this chapter, the Secretary shall conduct, in several States, in each fiscal year investigations of the use of funds received by recipients under this chapter.

(B) In order to insure compliance with the provisions of this chapter, the Comptroller General of the United States may conduct investigations of the use of funds received under this chapter by any recipient.

(2) In conducting any investigation under this chapter, the Secretary or the Comptroller General of the United States may not request the compilation of any new information not readily available to such recipient.

(3)(A) In carrying out any audit under this chapter (other than any initial audit survey or any audit investigating possible criminal or fraudulent conduct), either directly or through

grant or contract, the Secretary, the Inspector General, or the Comptroller General shall furnish to the State, administrative entity, recipient, or other entity to be audited, advance notification of the overall objectives and purposes of the audit, and any extensive recordkeeping or data requirements to be met, not fewer than 14 days (or as soon as practicable), prior to the commencement of the audit.

(B) If the scope, objectives, or purposes of the audit change substantially during the course of the audit, the entity being audited shall be notified of the change as soon as practicable.

(C) The reports on the results of such audits shall cite the law, regulation, policy, or other criteria applicable to any finding.

(D) Nothing contained in this chapter shall be construed so as to be inconsistent with the Inspector General Act of 1978 (5 U.S.C. App.) or government auditing standards issued by the Comptroller General.

(c) Reporting, recordkeeping, and monitoring duties of States, administrative entities, and recipients

Each State, each administrative entity, and each recipient (other than a subrecipient, grantee or contractor of a recipient) receiving funds under this chapter shall—

(1) make readily accessible reports concerning its operations and expenditures as shall be prescribed by the Secretary;

(2) prescribe and maintain comparable management information systems, in accordance with guidelines that shall be prescribed by the Secretary, designed to facilitate the uniform compilation, cross tabulation, and analysis of programmatic, participant, and financial data, on statewide and service delivery area bases, necessary for reporting, monitoring, and evaluating purposes, including data necessary to comply with section 1577 of this title; and

(3) monitor the performance of service providers in complying with the terms of grants, contracts, or other agreements made pursuant to this chapter.

(d) Report information

(1) The reports required in subsection (c) of this section shall include information pertaining to—

(A) the relevant demographic characteristics (including race, ethnicity, sex, and age) and other related information regarding participants;

(B) the activities in which participants are enrolled, and the length of time that participants are engaged in such activities;

(C) program outcomes, including occupations, for participants;

(D) specified program costs; and

(E) information necessary to prepare reports to comply with section 1577 of this title.

(2) The Secretary shall ensure that all elements of the information required for the reports described in paragraph (1) are defined and reported uniformly.

(e) Record retention

The Governor shall ensure that requirements are established for retention of all records pertinent to all grants awarded, and contracts and agreements entered into, under this chapter, including financial, statistical, property and participant records and supporting documentation. For funds allotted to a State for any program year, records shall be retained for 2 years following the date on which the annual expenditure report containing the final expenditures charged to such program year's allotment is submitted to the Secretary. Records for nonexpendable property shall be retained for a period of 3 years after final disposition of the property.

(f) Substate grantee and service delivery area reports; statewide summary

(1) Each substate grantee and service delivery area shall submit quarterly financial reports to the Governor with respect to programs under this chapter. Such reports shall include information identifying all program costs by cost category in accordance with generally accepted accounting principles and by year of the appropriation.

(2) Each State shall submit a summary of the reports submitted pursuant to paragraph (1) to the Secretary on a quarterly basis.

(g) Substate grantee and service delivery area record retention

Each State, substate grantee, and service delivery area shall maintain records with respect to programs under this chapter that identify—

(1) any program income or profits earned, including such income or profits earned by subrecipients; and

(2) any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations.

(h) Biennial study of programs under subchapter II; report to Congress

(1) The Secretary shall conduct a biennial study on the provision of supportive services under programs conducted pursuant to subchapter II of this chapter. Such study shall identify—

(A) the amount and proportion of funds expended for supportive services under subchapter II of this chapter;

(B) the types of supportive services provided;

(C) the relative share of funds expended for each type of supportive service;

(D) the characteristics of the participants receiving supportive services; and

(E) such other factors as the Secretary determines to be appropriate.

(2) The Secretary shall submit a report to the Congress containing the results of each study conducted pursuant to paragraph (1).

(Pub. L. 97–300, title I, § 165, Oct. 13, 1982, 96 Stat. 1350; Pub. L. 102–367, title I, § 143, Sept. 7, 1992, 106 Stat. 1048.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (b)(3)(D), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1992—Subsec. (a)(3), (4). Pub. L. 102–367, § 143(a), added pars. (3) and (4).

Subsec. (b)(3). Pub. L. 102–367, § 143(b), added par. (3).

Subsec. (c). Pub. L. 102–367, § 143(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Each State, each administrative entity designated under this subchapter, and each recipient (other than a subrecipient, grantee or contractor of a recipient) receiving funds under this chapter shall—

''(1) make such reports concerning its operations and expenditures as shall be prescribed by the Secretary, and

''(2) prescribe and maintain a management information system, in accordance with guidelines prescribed by the Secretary, designed to facilitate the uniform compilation and analysis of programmatic and financial data, on statewide and service delivery area bases, necessary for reporting, monitoring, and evaluating purposes.''

Subsecs. (d) to (h). Pub. L. 102–367, § 143(d), added subsecs. (d) to (h).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1576. Administrative adjudication

(a) Hearing after denial of assistance or sanction by Secretary

Whenever any applicant for financial assistance under this chapter is dissatisfied because the Secretary has made a determination not to award financial assistance in whole or in part to such applicant, the applicant may request a hearing before an administrative law judge of the Department of Labor. A similar hearing may also be requested by any recipient upon whom a corrective action or a sanction has been imposed by the Secretary. Except to the extent provided for in section 1551(c) of this title, subsections (d) and (e) of section 1554 of this title, or section 1577 of this title, all other disputes arising under this chapter shall be adjudicated under grievance procedures established by the recipient or under applicable law other than this chapter.

(b) Time for filing exceptions; final action by Secretary

The decision of the administrative law judge shall constitute final action by the Secretary unless, within 20 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part thereof has filed exceptions with the Secretary specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged shall be deemed to have been waived. Thereafter the decision of the administrative law judge shall become the final decision of the Secretary unless the Secretary, within 30 days of such filing, has notified the parties that the case has been accepted for review.

(c) Time for Secretary's review

Any case accepted for review by the Secretary shall be decided within one hundred and eighty days of such acceptance. If not so decided, the decision of the administrative law judge shall become the final decision of the Secretary.

(d) Judicial review

The provisions of section 1578 of this title shall apply to any final action of the Secretary under this section.

(Pub. L. 97–300, title I, § 166, Oct. 13, 1982, 96 Stat. 1351; Pub. L. 102–367, title I, § 134(b), Sept. 7, 1992, 106 Stat. 1046.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367 inserted ''section 1551(c) of this title, subsections (d) and (e) of section 1554 of this title, or'' after ''Except to the extent provided for in''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1554, 1578, 1791c of this title; title 20 section 6104.

§ 1577. Nondiscrimination

(a) Applicability of equal protection provisions; prohibition of construction of religious facility; nondiscrimination against funded activity participants; participant citizenship

(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded or otherwise financially assisted in whole or in part under this chapter are considered to be programs and activities receiving Federal financial assistance.

(2) No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any such program because of race, color, religion, sex, national origin, age, disability, or political affiliation or belief.

(3) Participants shall not be employed on the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship.

(4) With respect to terms and conditions affecting, or rights provided to, individuals who are participants in activities supported by funds provided under this chapter, such individuals shall not be discriminated against solely because of their status as such participants.

(5) Participation in programs and activities financially assisted in whole or in part under this chapter shall be open to citizens and nationals of the United States, lawfully admitted permanent resident aliens, lawfully admitted refugees and parolees, and other individuals authorized by the Attorney General to work in the United States.

(b) Recipient noncompliance and Secretary's action

Whenever the Secretary finds that a State or other recipient has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with paragraph (2), (3), (4), or (5) of

subsection (a) of this section, or with an applicable regulation prescribed to carry out such paragraphs, the Secretary shall notify such State or recipient and shall request it to comply. If within a reasonable period of time, not to exceed sixty days, the State or recipient fails or refuses to comply, the Secretary may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 504 of the Rehabilitation Act [29 U.S.C. 794], as may be applicable; or

(3) take such other action as may be provided by law.

(c) Civil action by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whenever the Attorney General has reason to believe that a State or other recipient is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of paragraph (2), (3), (4), or (5) of subsection (a) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(d) Job Corps members ultimate beneficiaries

For purposes of this section, Job Corps members shall be considered as the ultimate beneficiaries of Federal financial assistance.

(e) Annual report by head of Directorate for Civil Rights

(1) The head of the office of the Department of Labor referred to as the ''Directorate for Civil Rights'' shall annually prepare a report on the administration and enforcement of this section.

(2) The report required by paragraph (1) shall include—

(A) an identification of the service delivery areas and States that have been determined, during the preceding program year, not to be in compliance with this section;

(B) for each such identification, the date on which the inquiry was begun and whether the inquiry was initiated on the basis of a complaint or at the initiative of the Department;

(C) an identification of the service delivery areas and States awaiting findings by the Directorate;

(D) the number of service delivery areas and States that, during the preceding year, were determined not to be in compliance with this section, and the number for which insufficient data prevented the making of such a determination, identifying the type of data which is missing or inadequate;

(E) a statistical summary, broken down by race, sex, national origin, disability, or age, of the number of inquiries undertaken and their outcomes;

(F) an identification of any service delivery area or State that has been determined, during the preceding year, to have failed to conduct objective assessments as required by sections 1604 and 1644 of this title on a nondiscriminatory basis;

(G) the amount expended by the Directorate for the administration and enforcement of this section, and the number and percentage of full-time employees, and the full-time equivalent of the part-time employees, engaged in such administration and enforcement;

(H) the number of onsite visits conducted each year, and whether the visits were initiated by the Department or by complaint;

(I) the number of cases referred to the Attorney General, and for such cases—

(i) the civil actions taken by the Attorney General thereon; and

(ii) the use, by the Secretary, of the authority of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(J) a description of any other actions taken by the Secretary under or related to the administration and enforcement of this section.

(3) The report required by this subsection shall be submitted to the Congress as part of the Secretary's annual report under section 1579(d) of this title.

(f) Appropriations

In addition to any other sums authorized to be appropriated under Federal law, there are authorized to be appropriated for the operations and expenses of the Directorate such sums as may be necessary for the purpose of increasing the number of full-time equivalent personnel available to the Directorate in order to comply with the requirements of this section.

(g) Regulations

The Secretary shall issue final regulations implementing this section not later than 90 days after September 7, 1992.

(Pub. L. 97–300, title I, § 167, Oct. 13, 1982, 96 Stat. 1352; Pub. L. 102–367, title I, §§ 103(b)(2), 144, Sept. 7, 1992, 106 Stat. 1026, 1051.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1), (b)(2), and (e)(2)(I)(ii), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of Title 42 and Tables.

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1001 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1), (b)(2), and (e)(2)(I)(ii), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–367, § 103(b)(2), substituted ''disability'' for ''handicap''.

Subsecs. (e) to (g). Pub. L. 102–367, § 144, added subsecs. (e) to (g).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1553, 1575, 1576 of this title; title 42 section 12899e.

§ 1578. Judicial review

(a) Review by Court of Appeals of Secretary's final order; review petition, final order record, expeditious review; scope of review

(1) With respect to any final order by the Secretary under section 1576 of this title whereby the Secretary determines to award, to not award, or to only conditionally award, financial assistance, with respect to any final order of the Secretary under section 1576 of this title with respect to a corrective action or sanction imposed under section 1574 of this title, and with respect to a denial of an appeal under section 1511(4)(C) of this title or 1515(b)(2) of this title, any party to a proceeding which resulted in such final order may obtain review of such final order in the United States Court of Appeals having jurisdiction over the applicant or recipient of funds, by filing a review petition within 30 days of such final order.

(2) The clerk of the court shall transmit a copy of the review petition to the Secretary who shall file the record upon which the final order was entered as provided in section 2112 of title 28. Review petitions unless ordered by the court, shall not stay the Secretary's order. Petitions under this chapter shall be heard expeditiously, if possible within ten days of the filing of a reply brief.

(3) No objection to the order of the Secretary shall be considered by the court unless the objection shall have been specifically and timely urged before the Secretary. Review shall be limited to questions of law and the Secretary's findings of fact shall be conclusive if supported by substantial evidence.

(b) Jurisdiction of Court of Appeals; review by Supreme Court

The court shall have jurisdiction to make and enter a decree affirming, modifying, or setting aside the order of the Secretary in whole or in part. The court's judgment shall be final, subject to certiorari review by the Supreme Court of the United States as provided in section 1254(1) of title 28.

(Pub. L. 97–300, title I, § 168, Oct. 13, 1982, 96 Stat. 1353.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1576 of this title.

§ 1579. Administrative provisions

(a) Secretary's prescription of regulations; publication in Federal Register

The Secretary may, in accordance with chapter 5 of title 5, prescribe such rules and regulations (including performance standards) as the Secretary deems necessary. Such rules and regulations may include adjustments authorized by section 6504 of title 31. All such rules and regulations shall be published in the Federal Register at least thirty days prior to their effective date. Copies of all such rules and regulations shall be transmitted to the appropriate committees of the Congress at the same time and shall contain, with respect to each material provision of such rules and regulations, citations to the particular substantive section of law which is the basis therefor.

(b) Acceptance of gift

The Secretary is authorized, in carrying out this chapter, to accept, purchase, or lease in the name of the department, and employ or dispose of in furtherance of the purposes of this chapter, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise, and to accept voluntary and uncompensated services notwithstanding the provisions of section 1342 of title 31.

(c) Secretary's discretion

The Secretary may make such grants, contracts, or agreements, establish such procedures and make such payments, in installments and in advance or by way of reimbursement, or otherwise allocate or expend funds under this chapter as necessary to carry out this chapter, including (without regard to the provisions of section 4774(d)[1] of title 10) expenditures for construction, repairs, and capital improvements, and including necessary adjustments in payments on account of overpayments or underpayments.

(d) Annual report to Congress

The Secretary shall prepare and submit to the Congress an annual report for employment and training programs. The Secretary shall include in such report—

(1) a summary of the achievements, failures, and problems of the programs authorized in this chapter in meeting the objective of this chapter;

(2) a summary of major findings from research, evaluation, pilot projects, and experiments conducted in the previous fiscal year;

(3) recommendations for program modifications based upon analysis of such findings; and

(4) such other recommendations for legislative or administrative action as the Secretary deems appropriate.

(e) Annual report on impact of energy development and conservation on employment

The Secretary shall develop methods to ascertain, and shall ascertain annually, energy development and conservation employment impact data by type and scale of energy technologies used. The Secretary shall present the best available data to the Secretary of Energy, the Secretary of Housing and Urban Development, and the Director of the Office of Management and Budget as part of the budgetary process and to the appropriate Committees of Congress annually.

(Pub. L. 97–300, title I, § 169, Oct. 13, 1982, 96 Stat. 1353.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 4774(d) of title 10, referred to in subsec. (c), was redesignated as entire section 4774 by Pub. L. 93–166, title V, § 509(c), Nov. 29, 1973, 87 Stat. 677, and subsequently was repealed by Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173.

CODIFICATION

In subsecs. (a) and (b), ''section 6504 of title 31'' substituted for ''section 204 of the Intergovernmental Cooperation Act of 1968 [42 U.S.C. 4214]'' and ''section 1342 of title 31'' substituted for ''section 3679(b) of the Revised Statutes of the United States [31 U.S.C. 665(b)]'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1577, 1580 of this title.

§ 1580. Utilization of services and facilities

The Secretary is authorized, in carrying out this chapter, under the same conditions applicable under section 1579(c) of this title or to the extent permitted by law other than this chapter, to accept and use the services and facilities of departments, agencies, and establishments of the United States. The Secretary is also authorized to accept and use the services and facilities of the agencies of any State or political subdivision of a State, with its consent.

(Pub. L. 97–300, title I, § 170, Oct. 13, 1982, 96 Stat. 1354; Pub. L. 102–367, title I, § 145, Sept. 7, 1992, 106 Stat. 1052.)

AMENDMENTS

1992—Pub. L. 102–367 substituted ''under the same conditions applicable under section 1579(c) of this title or to the extent'' for ''and to the extent''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1581. Obligational authority

Notwithstanding any other provision of this chapter, no authority to enter into contracts or financial assistance agreements under this chapter shall be effective except to such extent or in such amount as are provided in advance in appropriation Acts.

(Pub. L. 97–300, title I, § 171, Oct. 13, 1982, 96 Stat. 1354.)

§ 1582. Presidential awards for outstanding private sector involvement in job training programs

(a)(1)(A) The President is authorized to make Presidential awards for outstanding achievement by the private sector in the job training partnership program authorized by this chapter. The President is authorized to make such awards to individuals who, and organizations which, have demonstrated outstanding achievement in planning and administering job training partnership programs or in contributing to the success of the job training partnership program.

(B) In making the awards pursuant to subparagraph (A) of this paragraph, the President shall consider the effectiveness of the program for which the award is made.

(2) The President is authorized to make Presidential awards for model programs in the job training partnership program authorized by this chapter which demonstrate effectiveness in addressing the job training needs of groups of individuals with multiple barriers to employment.

(b)(1) Each year the President is authorized to make such awards under subsection (a) of this section as the President determines will carry out the objectives of this chapter.

(2) The President shall establish such selection procedures, after consultation with the Secretary and the Governors of the States, as may be necessary.

(Pub. L. 97–300, title I, § 172, as added Pub. L. 99–496, § 4, Oct. 16, 1986, 100 Stat. 1261.)

CODIFICATION

Another section 172 of Pub. L. 97–300 was redesignated section 173 and is classified to section 1583 of this title.

§ 1583. Construction

(a) Eligibility

Nothing in this chapter shall be construed to limit the right of persons to remain eligible for assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], relating to Medicaid pursuant to section 1619(b) of such Act [42 U.S.C. 1382h(b)].

(b) Use of funds

Nothing in this chapter shall be construed to authorize the use of funds under this chapter for the ongoing support services provided to individuals with disabilities placed in supported employment, as such term is defined in section 706(18) of this title.

(Pub. L. 97–300, title I, § 173, formerly § 172, as added Pub. L. 100–628, title VII, § 714(e)(1), Nov. 7, 1988, 102 Stat. 3256; renumbered § 173 and amended Pub. L. 102–367, title I, § 103(b)(3), title VII, § 702(a)(9), Sept. 7, 1992, 106 Stat. 1026, 1112.)

REFERENCES IN TEXT

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

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–367, § 103(b)(3), substituted ''individuals with disabilities'' for ''handicapped individuals''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

PART E—MISCELLANEOUS PROVISIONS

§ 1591. Repealed. Pub. L. 102–367, title VII, § 702(a)(10), Sept. 7, 1992, 106 Stat. 1112

Section, Pub. L. 97–300, title I, § 181, Oct. 13, 1982, 96 Stat. 1354; Pub. L. 97–404, § 1(i), Dec. 31, 1982, 96 Stat. 2026, related to transition between the Comprehensive Employment Training Act and this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1592. Statutory references to Comprehensive Employment and Training Act

Effective on October 13, 1982, all references in any other statute other than this chapter, and other than in section 665 of title 18, to the Comprehensive Employment and Training Act [29 U.S.C. 801 et seq.] shall be deemed to refer to the Job Training Partnership Act [29 U.S.C. 1501 et seq.].

(Pub. L. 97–300, title I, § 183, Oct. 13, 1982, 96 Stat. 1357.)

REFERENCES IN TEXT

The Comprehensive Employment and Training Act, referred to in text, is Pub. L. 93–203, Dec. 28, 1973, 87 Stat. 839, as amended, which was classified generally to chapter 17 (§ 801 et seq.) of this title, and was repealed by section 184(a)(1), of the Job Training Partnership Act, Pub. L. 97–300, title I, Oct. 13, 1982, 96 Stat. 1357.

The Job Training Partnership Act, referred to in text, is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended. See note above.

SUBCHAPTER II—TRAINING SERVICES FOR THE DISADVANTAGED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 49f, 1514, 1516, 1531, 1533, 1551, 1574, 1575, 1694, 1696, 1735 of this title; title 20 section 2468; title 31 section 6703; title 42 section 11421.

PART A—ADULT TRAINING PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1502, 1503, 1516, 1518, 1519, 1531, 1551, 1634, 1642, 1644, 1645, 1646, 1652, 1734, 1791a, 1791g of this title.

§ 1601. Statement of purpose

It is the purpose of this part to establish programs to prepare adults for participation in the labor force by increasing their occupational and educational skills, resulting in improved long-term employability, increased employment and earnings, and reduced welfare dependency.

(Pub. L. 97–300, title II, § 201, as added Pub. L. 102–367, title II, § 201, Sept. 7, 1992, 106 Stat. 1052.)

PRIOR PROVISIONS

A prior section 1601, Pub. L. 97–300, title II, § 201, Oct. 13, 1982, 96 Stat. 1358, related to allotment of funds under adult and youth programs, prior to repeal by Pub. L. 102–367, title II, § 201, title VII, § 701(a), Sept. 7, 1992, 106 Stat. 1052, 1103, effective July 1, 1993.

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1642 of this title.

§ 1602. Allotment and allocation

(a) Allotment

(1) Territories

Not more than $5,000,000 of the amount appropriated pursuant to section 1502(a)(1) of this title for each fiscal year and available for this part shall be allotted among Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

(2) States

Subject to the provisions of paragraph (3), of the remainder of the amount available for this part for each fiscal year—

(A) 33⅓ percent shall be allotted on the basis of the relative number of unemployed individuals residing in areas of substantial unemployment in each State as compared to the total number of such unemployed individuals in all such areas of substantial unemployment in all the States;

(B) 33⅓ percent shall be allotted on the basis of the relative excess number of unemployed individuals who reside in each State as compared to the total excess number of unemployed individuals in all the States; and

(C) 33⅓ percent shall be allotted on the basis of the relative number of economically disadvantaged adults within each State compared to the total number of economically disadvantaged adults in all States, except that, for the allotment for any State in which there is any service delivery area described in section 1511(a)(4)(A)(iii) of this title, the allotment shall be based on the higher of the number of adults in families with an income below the low-income level in such area or the number of economically disadvantaged adults in such area.

(3) Limitations

(A) State minimum

No State shall receive less than one-quarter of 1 percent of the amounts available for allotment to the States under this subsection from the remainder described in paragraph (2) for each fiscal year.

(B) Minimum percentage

No State shall be allotted less than 90 percent of its allotment percentage for the fiscal year preceding the fiscal year for which the determination is made.

(C) Allotment percentage

(i) In general

Except as provided in clause (ii), for purposes of subparagraph (B), the allotment percentage of a State for a fiscal year shall be the percentage of funds allotted to the State under this subsection.

(ii) Fiscal year 1992

For purposes of subparagraph (B), the allocation percentage of a State for fiscal year 1992 shall be the percentage of funds allotted to the State under section 1601 of this title, as in effect on the day before September 7, 1992.

(b) Allocation to service delivery areas

(1) Formula

The Governor shall, in accordance with section 1572 of this title, allocate 77 percent of the allotment of the State under subsection (a) of this section for each fiscal year among service delivery areas within the State, and shall ensure that, subject to the provisions of paragraph (3), of the amount allocated under this subsection—

(A) 33⅓ percent shall be allocated on the basis of the relative number of unemployed individuals residing in areas of substantial unemployment in each service delivery area as compared to the total number of such unemployed individuals in all such areas of substantial unemployment in the State;

(B) 33⅓ percent shall be allocated on the basis of the relative excess number of unemployed individuals who reside in each service delivery area as compared to the total excess number of unemployed individuals in all service delivery areas in the State; and

(C) 33⅓ percent shall be allocated on the basis of the relative number of economically disadvantaged adults within each service delivery area compared to the total number of economically disadvantaged adults in the State, except that the allocation for any service delivery area described in section 1511(a)(4)(A)(iii) of this title shall be based on the higher of the number of adults in families with an income below the low-income level in such area or the number of economically disadvantaged adults in such area.

(2) Limitations

(A) Minimum percentage

No service delivery area within any State shall be allocated an amount equal to less than 90 percent of the average of its allocation percentage for the 2 preceding fiscal years preceding the fiscal year for which the determination is made. If the amounts appropriated pursuant to section 1502(a)(1) of this title for a fiscal year and available to carry out this part are not sufficient to provide an amount equal to at least 90 percent of such allocation percentage to each such area, the amounts allocated to each area shall be ratably reduced.

(B) Allocation percentage

(i) In general

Except as provided in clause (ii), for purposes of subparagraph (A), the allocation percentage of a service delivery area for a fiscal year shall be the percentage of funds allocated to the service delivery area under this subsection.

(ii) Fiscal year 1992

For purposes of subparagraph (A), the allocation percentage of a service delivery area for fiscal year 1992 shall be the percentage of funds allocated to the service delivery area under this part.

(c) State activities

(1) Division

Of the remaining 23 percent of the allotment of the State under subsection (a) of this section for each fiscal year—

(A) 5 percent of such allotment of the State for each fiscal year shall be available to the Governor of the State to be used for overall administration, management, and auditing activities relating to programs under this subchapter and for activities described in sections 1531 and 1532 of this title;

(B) 5 percent of such allotment of each State for each fiscal year shall be available to provide incentive grants authorized under section 1516(b)(7) of this title, in accordance with paragraph (2);

(C) 8 percent of the allotment of each State for each fiscal year shall be available to carry out section 1533 of this title; and

(D) 5 percent of such allotment of each State for each fiscal year shall be available to carry out section 1604(d) of this title.

(2) Other uses

(A) Capacity building and technical assistance

The Governor may use up to 33 percent of the amount allotted under paragraph (1)(B) for providing capacity building and technical assistance to service delivery areas and service providers. Such use of funds may include the development and training of service delivery area and service provider staff and the development of exemplary program activities.

(B) Nonduplication and coordination

Funds used under subparagraph (A)—

(i) may not be used to duplicate the activities of the Capacity Building and Information and Dissemination Network established under section 1733(b) of this title; and

(ii) shall, to the extent practicable, be used to coordinate the activities under subparagraph (A) with the activities of the Network under section 1733(b) of this title.

(d) Definitions and rule

As used in this section:

(1) Definitions

(A) Economically disadvantaged adult

The term ''economically disadvantaged adult'' means an individual who is age 22 through 72 and who has, or is a member of a family that has, received a total family income (exclusive of unemployment compensation, child support payments, and welfare payments) that, in relation to family size, was not in excess of the higher of—

(i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42;[1] or

(ii) 70 percent of the lower living standard income level.

[1] So in original. A closing parenthesis probably should precede the semicolon.

(B) Excess number

The term ''excess number'' means—

(i) with respect to the excess number of unemployed individuals within a State—

(I) the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in the State; or

(II) the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in areas of substantial unemployment in such State; and

(ii) with respect to the excess number of unemployed individuals within a service delivery area—

(I) the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in the service delivery area; or

(II) the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in areas of substantial unemployment in such service delivery area.

(C) State

The term ''State'' means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) Special rule

For the purposes of this section, the Secretary shall, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of economically disadvantaged adults.

(Pub. L. 97–300, title II, § 202, as added Pub. L. 102–367, title VII, § 701(c)(1), Sept. 7, 1992, 106 Stat. 1104.)

ENACTMENT OF ALTERNATIVE TEXT

Pub. L. 102–367, title II, § 202, title VII, § 701(d), Sept. 7, 1992, 106 Stat. 1052, 1107, provided that, subject to the condition specified in section 701(d) of Pub. L. 102–367, set out below, this subchapter (as amended by section 201 of Pub. L. 102–367) is amended by adding at the end the following:

§ 1602. Allotment and allocation

(a) Allotment

(1) Territories

Of the amount appropriated under section 1502(a)(1) of this title for each fiscal year and available to carry out this part, not more than one-quarter of 1 percent shall be allotted among Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

(2) State reservation

After determining the amounts to be allotted under paragraph (1), the Secretary shall allot 77 percent of the remainder to the States for allocation to service delivery areas within each State. Each State shall allocate to each service delivery area within the State the amount determined by the Secretary for such service delivery area pursuant to the formula contained in subsection (b) of this section. The remaining 23 percent shall be allotted in accordance with subsection (c) of this section.

(b) Allocation to service delivery areas

(1) Formula

Subject to the provisions of paragraph (2), of the amounts allocated to service delivery areas for this part for each fiscal year—

(A) 33⅓ percent shall be allocated on the basis of the relative number of unemployed individuals residing in areas of substantial unemployment within each service delivery area as compared to the total number of such unemployed individuals in all such areas of substantial unemployment in all service delivery areas in all States;

(B) 33⅓ percent shall be allocated on the basis of the relative excess number of unemployed individuals within each service delivery area as compared to the total excess number of unemployed individuals in all service delivery areas in all States; and

(C) 33⅓ percent shall be allocated on the basis of the relative number of economically disadvantaged adults within each service delivery area as compared to the total number of economically disadvantaged adults in all service delivery areas in all States, except that for any service delivery area described in section 1511(a)(4)(A)(iii) of this title, the allocation shall be based on the higher of the number of adults in families with an income below the low-income level in such area or the number of economically disadvantaged adults in such area.

(2) Limitations

(A) Minimum percentage

No service delivery area shall be allocated less than 90 percent of its allocation percentage for the fiscal year preceding the fiscal year for which the determination is made.

(B) Maximum percentage

No service delivery area shall be allocated more than 130 percent of its allocation percentage for the fiscal year preceding the fiscal year for which the determination is made.

(C) State minimum

Notwithstanding subparagraphs (A) and (B), the total allocation for all service delivery areas within any one State shall not be less than one-quarter of 1 percent of the total allocated to all service delivery areas in all States.

(D) Allocation percentage

(i) In general

Except as provided in clause (ii), for purposes of subparagraphs (A) and (B), the allocation percentage of a service delivery area for a fiscal year shall be the percentage of funds allocated to the service delivery area under this subsection.

(ii) Fiscal year 1992

For purposes of subparagraphs (A) and (B), the allocation percentage of a service delivery area for fiscal year 1992 shall be the percent-

age of funds allocated to the service delivery area under this part.

(c) State activities

(1) Division

Of the remaining 23 percent of funds available for allotment to States under this part for each fiscal year—

(A) 5 percent of the funds available for such allotment under this part shall be allotted to the States in accordance with paragraph (2), for overall administration, management, and auditing activities relating to programs under this subchapter and for activities described in sections 1531 and 1532 of this title;

(B) 5 percent of the funds available for such allotment under this part shall be allotted to the States in accordance with paragraph (2), to provide incentive grants authorized under section 1516(b)(7) of this title, in accordance with paragraph (3);

(C) 8 percent of the funds available for such allotment under this part shall be allotted to the States in accordance with paragraph (2) to carry out section 1533 of this title; and

(D) 5 percent of the funds available for such allotment under this part shall be allotted to carry out section 1604(d) of this title.

(2) Formula for allotment

The allotments to each State described in paragraph (1) shall be based on the relative amount of funds allocated to all service delivery areas within such State under subsection (b) of this section as compared to the amount of funds allocated to all service delivery areas in all States under subsection (b) of this section.

(3) Other uses

(A) Capacity building and technical assistance

The Governor may use up to 33 percent of the amount allotted under paragraph (1)(B) for providing capacity building and technical assistance to service delivery areas and service providers. Such use of funds may include the development and training of service delivery area and service provider staff and the development of exemplary program activities.

(B) Nonduplication and coordination

Funds used under subparagraph (A)—

(i) may not be used to duplicate the activities of the Capacity Building and Information and Dissemination Network established under section 1733(b) of this title; and

(ii) shall, to the extent practicable, be used to coordinate the activities under subparagraph (A) with the activities of the Network under section 1733(b) of this title.

(d) Definitions and rule

(1) Definitions

As used in this section:

(A) Economically disadvantaged adult

The term ''economically disadvantaged adult'' means an individual who is age 22 through 72 and who has, or is a member of a family that has, received a total family income that, in relation to family size, was not in excess of the higher of—

(i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42;[2] *or*

(ii) 70 percent of the lower living standard income level.

(B) Excess number

The term ''excess number'' means, with respect to the excess number of unemployed individuals within a service delivery area, the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in the service delivery area, or the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in areas of substantial unemployment in such service delivery area.

(C) State

The term ''State'' means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) Special rule

For the purposes of this section, the Secretary shall, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of economically disadvantaged adults.

CODIFICATION

This section is based on the text of section 202 of Pub. L. 97–300 (the Job Training Partnership Act), as set forth in section 701(c)(1) of Pub. L. 102–367. Section 701(c)(1), which directed the general amendment of section 202 of Pub. L. 97–300, was executed by adding this section. See section 701 of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

PRIOR PROVISIONS

A prior section 1602, Pub. L. 97–300, title II, § 202, Oct. 13, 1982, 96 Stat. 1359; Pub. L. 99–496, §§ 5(a), 6, Oct. 16, 1986, 100 Stat. 1262; Pub. L. 100–628, title VII, § 713(a), Nov. 7, 1988, 102 Stat. 3255, related to allocation within States of funds under this subchapter, prior to repeal by Pub. L. 102–367, title II, § 201, title VII, § 701(a), Sept. 7, 1992, 106 Stat. 1052, 1103, effective July 1, 1993.

EFFECTIVE DATE; TRANSITION PROVISIONS

Section 701(c) and (d) of Pub. L. 102–367 provided that: ''(c) INTERIM TRAINING SERVICES FORMULA.—

''(1) LEVEL OF FUNDING.—If the amount appropriated to carry out parts A and C of title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq., 1641 et seq.] for fiscal year 1993 is less than the sum of—

''(A) $25,000,000; and

''(B) the amount appropriated to carry out part A of title II of such Act, as in effect on the day before the date of enactment of this Act [Sept. 7, 1992], for fiscal year 1992,

the amendment made by section 202 of this Act [enacting this section] shall not take effect on July 1, 1993 [Amendment by section 202 did not take effect July 1, 1993, because the appropriations for fiscal year 1993 were less than the sum referred to above.], and section 202 of the Job Training Partnership Act [this section] shall be amended to read as follows: [See text of section above.]

''(2) EFFECTIVE DATE.—Any amendment made by paragraph (1) shall take effect on July 1, 1993.

[2] So in original. A closing parenthesis probably should precede the semicolon.

''(d) PERMANENT TRAINING SERVICES FORMULA.—

''(1) LEVEL OF FUNDING.—If section 202 of the Job Training Partnership Act [this section] is amended in accordance with subsection (c) and the amount appropriated to carry out parts A and C of title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq., 1641 et seq.] for a fiscal year is not less than the sum of—

''(A) $25,000,000; and

''(B) the amount appropriated to carry out part A of title II of such Act, as in effect on the day before the date of enactment of this Act [Sept. 7, 1992], for fiscal year 1992,

the amendment made by section 202 of this Act [enacting this section] shall take effect. [Amendment by section 202 did not take effect because the appropriations referred to above for fiscal year 1995 were less than the sum referred to above.]

''(2) EFFECTIVE DATE.—Any amendment made by paragraph (1) shall take effect on October 1 of the fiscal year described in paragraph (1).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516, 1532, 1533, 1606, 1642, 1733, 1791a of this title; title 20 section 6215.

§ 1603. Eligibility for services

(a) In general

Except as provided in subsection (c) of this section, an individual shall be eligible to participate in the program under this part only if such individual is—

(1) 22 years of age or older; and

(2) economically disadvantaged.

(b) Hard-to-serve individuals

Not less than 65 percent of the participants in the program under this part, other than participants served under section 1604(d) of this title, in each service delivery area shall be individuals who are included in 1 or more of the following categories:

(1) Individuals who are basic skills deficient.

(2) Individuals who are school dropouts.

(3) Individuals who are recipients of cash welfare payments, including recipients under the JOBS program.

(4) Individuals who are offenders.

(5) Individuals with disabilities.

(6) Individuals who are homeless.

(7) Individuals who are in a category established under subsection (d) of this section.

(c) Special rule

Not more than 10 percent of participants in a program assisted under this part, other than participants served under section 1604(d) of this title, in each service delivery area may be individuals who are not economically disadvantaged if such individuals are age 22 or older and within 1 or more categories of individuals who face serious barriers to employment. Such categories may include the categories described in subsection (b) of this section, or categories such as displaced homemakers, veterans, alcoholics, or addicts.

(d) Additional category

A service delivery area conducting a program assisted under this part may add one category of individuals who face serious barriers to employment to the categories of eligible individuals described in subsection (b) of this section if—

(1) the service delivery area submits a request to the Governor identifying the additional category of individuals and justifying the inclusion of such category;

(2) the additional category of individuals is not solely comprised of—

(A) individuals with a poor work history; or

(B) individuals who are unemployed; and

(3) the Governor approves the request submitted under paragraph (1) and transmits a description of the approved request to the Secretary, as part of the Governor's coordination and special services plan under section 1531 of this title.

(Pub. L. 97–300, title II, § 203, as added Pub. L. 102–367, title II, § 203, Sept. 7, 1992, 106 Stat. 1055.)

PRIOR PROVISIONS

A prior section 1603, Pub. L. 97–300, title II, § 203, Oct. 13, 1982, 96 Stat. 1360; Pub. L. 97–404, § 2, Dec. 31, 1982, 96 Stat. 2026; Pub. L. 99–496, § 7, Oct. 16, 1986, 100 Stat. 1263; Pub. L. 99–570, title XI, § 11004(b), Oct. 27, 1986, 100 Stat. 3207–169, related to eligibility for training services for the disadvantaged, prior to repeal by Pub. L. 102–367, title II, § 201, title VII, § 701(a), Sept. 7, 1992, 106 Stat. 1052, 1103, effective July 1, 1993.

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367 set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1531, 1604, 1734, 1781 of this title; title 42 section 3056h.

§ 1604. Program design

(a) Essential elements

(1) In general

The programs under this part shall include—

(A) an objective assessment of the skill levels and service needs of each participant, which shall include a review of basic skills, occupational skills, prior work experience, employability, interests, aptitudes (including interests and aptitudes for nontraditional jobs), and supportive service needs, except that a new assessment of a participant is not required if the program determines it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program (such as the JOBS program);

(B) development of service strategies that shall identify the employment goal (including, in appropriate circumstances, nontraditional employment), appropriate achievement objectives, and appropriate services for participants taking into account the assessments conducted pursuant to subparagraph (A), except that a new service strategy for a participant is not required if the program determines it is appropriate to use a recent service strategy developed for the participant under another education or training program (such as the JOBS program);

(C) a review of the progress of each participant in meeting the objectives of the service strategy; and

(D) each of the following services, which shall be provided either directly or through

arrangement with other programs to a participant where the assessment and the service strategy indicate such services are appropriate:

(i) Basic skills training.

(ii) Occupational skills training.

(iii) Supportive services.

(2) Additional requirements

(A) Information and referrals

Each service delivery area shall ensure that each participant or applicant who meets the minimum income eligibility criteria shall be provided—

(i) information on the full array of applicable or appropriate services that are available through the service delivery area or other service providers, including those receiving funds under this chapter; and

(ii) referral to appropriate training and educational programs that have the capacity to serve the participant or applicant either on a sequential or concurrent basis.

(B) Applicants not meeting enrollment requirements

(i) Service providers

Each service provider shall ensure that an eligible applicant who does not meet the enrollment requirements of its particular program or who cannot be served shall be referred to the service delivery area for further assessment, as necessary, and referral to appropriate programs in accordance with subparagraph (A) to meet the basic skills and training needs of the applicant.

(ii) Service delivery area

The service delivery area shall ensure that appropriate referrals are made pursuant to clause (i), and shall maintain appropriate records of such referrals and the basis for such referrals.

(b) Authorized services

Subject to the limitations contained in subsection (c) of this section, services that may be made available to each participant under this part may include—

(1) direct training services, including—

(A) basic skills training, including remedial education, literacy training, and English-as-a-second-language instruction;

(B) institutional skills training;

(C) on-the-job training;

(D) assessment of the skill levels and service needs of participants;

(E) counseling, such as job counseling and career counseling;

(F) case management services;

(G) education-to-work transition activities;

(H) programs that combine workplace training with related instruction;

(I) work experience;

(J) programs of advanced career training that provide a formal combination of on-the-job and institutional training and internship assignments that prepare individuals for career employment;

(K) training programs operated by the private sector, including programs operated by labor organizations or by consortia of private sector employers utilizing private sector facilities, equipment, and personnel to train workers in occupations for which demand exceeds supply;

(L) skill upgrading and retraining;

(M) bilingual training;

(N) entrepreneurial training;

(O) vocational exploration;

(P) training programs to develop work habits to help individuals obtain and retain employment;

(Q) attainment of certificates of high school equivalency;

(R) preapprenticeship programs;

(S) on-site, industry-specific training programs supportive of industrial and economic development;

(T) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training; and

(U) use of advanced learning technology for education, job preparation, and skills training; and

(2) training-related and supportive services, including—

(A) job search assistance;

(B) outreach to make individuals aware of, and encourage the use of, employment and training services, including efforts to expand awareness of training and placement opportunities for limited-English proficient individuals and individuals with disabilities;

(C) outreach, to develop awareness of, and encourage participation in, education, training services, and work experience programs to assist women in obtaining nontraditional employment, and to facilitate the retention of women in nontraditional employment, including services at the site of training or employment;

(D) specialized surveys not available through other labor market information sources;

(E) dissemination of information on program activities to employers;

(F) development of job openings;

(G) programs coordinated with other Federal employment-related activities;

(H) supportive services, as defined in section 1503(24) of this title, necessary to enable individuals to participate in the program;

(I) needs-based payments and financial assistance;

(J) followup services with participants placed in unsubsidized employment; and

(K) services to obtain job placements for individual participants.

(c) Design of services

(1) Workplace context and integration

Basic skills training provided under this part shall, in appropriate circumstances, have a workplace context and be integrated with occupational skills training.

(2) Basic education or occupational skills

(A) Additional services

Except as provided in subparagraph (B), work experience, job search assistance, job

search skills training, and job club activities provided under this part shall be accompanied by additional services designed to increase the basic education or occupational skills of a participant.

(B) Lack of appropriateness and availability

Each program assisted under this part may only provide job search assistance, job search skills training, and job club activities to a participant without the additional services described in subparagraph (A) if—

(i) the assessment and service strategy of a participant indicate that the additional services are not appropriate; and

(ii) the activities are not available to the participant through the employment service or other public agencies.

(3) Needs-based payments

Needs-based payments and financial assistance provided under this part shall be limited to payments necessary for participation in the program assisted under this part in accordance with a locally developed formula or procedure.

(4) Counseling and supportive services

Counseling and supportive services provided under this part may be provided to a participant for a period up to 1 year after the date on which the participant completes the program.

(5) Prohibition on private actions

Nothing in this section shall be construed to establish a right for a participant to bring an action to obtain services described in the assessment or service strategy developed under subsection (a)(1) of this section.

(6) Volunteers

The service delivery area shall make opportunities available for individuals who have successfully participated in programs under this part to volunteer assistance to participants in the form of mentoring, tutoring, and other activities.

(d) Services for older individuals

(1) In general

The Governor is authorized to provide for job training programs that are developed in conjunction with service delivery areas within the State and that are consistent with the plan for the service delivery area prepared and submitted in accordance with section 1514 of this title, and designed to ensure the training and placement of older individuals in employment opportunities with private business concerns. The Governor shall ensure that the program under this subsection provides services throughout the State to older individuals on an equitable basis, taking into account the relative share of the population of older individuals described in paragraph (6)(A) within the State, residing in each service delivery area.

(2) Agreements

(A) In general

In carrying out this subsection, the Governor shall, after consultation with appropriate private industry councils and chief elected officials, enter into agreements with public agencies, nonprofit private organizations (including veterans organizations), private industry councils, service delivery areas, and private business concerns.

(B) Priority

In entering into the agreements described in subparagraph (A), the Governor shall give priority to national, State, and local agencies and organizations that have a record of demonstrated effectiveness in providing training and employment services to such older individuals.

(3) Considerations

The Governor shall give consideration to assisting programs involving training for jobs in growth industries and jobs reflecting the use of new technological skills.

(4) Coordination

In providing the services required by this subsection, the Governor shall make efforts to coordinate the delivery of such services with the delivery of services under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.).

(5) Eligibility

(A) Economically disadvantaged

Except as provided in subparagraph (B), an individual shall be eligible to participate in a job training program under this subsection only if the individual is economically disadvantaged and is an older individual.

(B) Special rule

(i) Individuals facing serious barriers to employment

An individual who is not economically disadvantaged as described in subparagraph (A) shall be eligible to participate in a job training program under this subsection if the individual faces serious barriers to employment, is an older individual, and meets income eligibility requirements under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.) subject to clause (ii).

(ii) Limitation

Not more than 10 percent of all participants in a program assisted under this subsection shall be individuals who are not economically disadvantaged.

(6) Applicable requirements

(A) In general

Except as provided in subparagraph (B), the requirements of this chapter applicable to programs conducted under this subsection shall be the same requirements applicable to the other programs conducted under this part.

(B) Exceptions

(i) Provisions not applicable

The provisions of section 1514 of this title, subsections (b)(7) and (j) of section 1516 of this title, section 1519 of this title, section 1603 of this title, and subsection

(a)(2) of this section shall not be applicable to programs conducted under this subsection.

(ii) Governor

With respect to the application of sections 1516(b), 1518(b), 1551(d)(3)(C), and 1605 of this title to programs conducted under this subsection, the term ''service delivery area'', as used in such provisions, means the Governor.

(7) "Older individual" defined

As used in this subsection, the term ''older individual'' means an individual age 55 or older.

(Pub. L. 97–300, title II, § 204, as added Pub. L. 102–367, title II, § 203, Sept. 7, 1992, 106 Stat. 1055.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsec. (d)(4), (5)(B)(i), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Title V of the Act, known as the ''Older Americans Community Services Employment Act'', is classified generally to subchapter IX (§ 3056 et seq.) of chapter 35 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1604, Pub. L. 97–300, title II, § 204, Oct. 13, 1982, 96 Stat. 1361; Pub. L. 101–392, § 5(a)(2), Sept. 25, 1990, 104 Stat. 758; Pub. L. 102–235, § 8, Dec. 12, 1991, 105 Stat. 1809, related to use of funds for training services for the disadvantaged, prior to repeal by Pub. L. 102–367, title II, § 201, title VII, § 701(a), Sept. 7, 1992, 106 Stat. 1052, 1103, effective July 1, 1993.

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367 set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1516, 1518, 1519, 1577, 1602, 1603, 1644, 1791c of this title; title 7 section 2014; title 42 section 3056h.

§ 1605. Linkages

(a) In general

In conducting the program assisted under this part, service delivery areas shall establish appropriate linkages with other Federal programs. Such programs shall include, where feasible, programs assisted under—

(1) the Adult Education Act (20 U.S.C. 1201 et seq.);

(2) the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.);

(3) the Wagner-Peyser Act (29 U.S.C. 49 et seq.);

(4) part F of title IV of the Social Security Act (42 U.S.C. 681 et seq.);

(5) the employment program established under section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4));

(6) the National Apprenticeship Act (29 U.S.C. 50 et seq.);

(7) the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(8) title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.);

(9) chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.);

(10) the Stewart B. McKinney Homeless Assistance Act (Public Law 100–77; 101 Stat. 482) [42 U.S.C. 11301 et seq.];

(11) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

(12) the National Literacy Act of 1991 (Public Law 102–73);

(13) the Head Start Act (42 U.S.C. 9831 et seq.) (for purposes of child care services); and

(14) any other provisions of this chapter.

(b) Other appropriate linkages

In addition to the linkages required under subsection (a) of this section, each service delivery area receiving financial assistance under this part shall establish other appropriate linkages to enhance the provision of services under this part. Such linkages may be established with local educational agencies, local service agencies, public housing agencies, community-based organizations, business and labor organizations, volunteer groups working with disadvantaged adults, and other training, education, employment, economic development, and social service programs.

(Pub. L. 97–300, title II, § 205, as added Pub. L. 102–367, title II, § 203, Sept. 7, 1992, 106 Stat. 1060.)

REFERENCES IN TEXT

The Adult Education Act, referred to in subsec. (a)(1), is title III of Pub. L. 89–750, Nov. 3, 1966, 80 Stat. 1216, as amended, which is classified generally to chapter 30 (§ 1201 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 20 and Tables.

The Carl D. Perkins Vocational and Applied Technology Education Act, referred to in subsec. (a)(2), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Wagner-Peyser Act, referred to in subsec. (a)(3), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified generally to chapter 4B (§ 49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

The Social Security Act, referred to in subsec. (a)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part F of title IV of the Act is classified generally to part F (§ 681 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The National Apprenticeship Act, referred to in subsec. (a)(6), is act Aug. 16, 1937, ch. 663, 50 Stat. 664, as amended, which is classified generally to chapter 4C (§ 50 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 50 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (a)(7), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 357, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

The Older Americans Act of 1965, referred to in subsec. (a)(8), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Title V of the Act, known as the ''Older Americans Community Services Employment Act'', is classified generally to subchapter IX (§ 3056 et seq.) of

chapter 35 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

The Trade Act of 1974, referred to in subsec. (a)(9), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 2 of title II of the Act is classified generally to part 2 (§ 2271 et seq.) of subchapter II of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

The Stewart B. McKinney Homeless Assistance Act, referred to in subsec. (a)(10), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§ 11301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

The United States Housing Act of 1937, referred to in subsec. (a)(11), is act Sept. 1, 1937, ch. 896, as restated generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

The National Literacy Act of 1991, referred to in subsec. (a)(12), is Pub. L. 102–73, July 25, 1991, 105 Stat. 333, as amended. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1201 of Title 20, Education, and Tables.

The Head Start Act, referred to in subsec. (a)(13), is subchapter B (§§ 635 to 657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1605, Pub. L. 97–300, title II, § 205, Oct. 13, 1982, 96 Stat. 1362, related to exemplary youth programs, prior to repeal by Pub. L. 102–367, title II, § 201, title VII, § 701(a), Sept. 7, 1992, 106 Stat. 1052, 1103, effective July 1, 1993.

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367 set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1514, 1515, 1604 of this title.

§ 1606. Transfer of funds

A service delivery area may transfer up to 10 percent of the amounts allocated to the service delivery area under section 1602(b) of this title to the program under part C of this subchapter if such transfer is—

(1) described in the job training plan; and

(2) approved by the Governor.

(Pub. L. 97–300, title II, § 206, as added Pub. L. 102–367, title II, § 203, Sept. 7, 1992, 106 Stat. 1061.)

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367 set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1518 of this title.

PART B—SUMMER YOUTH EMPLOYMENT AND TRAINING PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1502, 1734 of this title.

§ 1630. Purpose

It is the purpose of programs assisted under this part—

(1) to enhance the basic educational skills of youth;

(2) to encourage school completion or enrollment in supplementary or alternative school programs;

(3) to provide eligible youth with exposure to the world of work; and

(4) to enhance the citizenship skills of youth.

(Pub. L. 97–300, title II, § 251, as added Pub. L. 102–367, title II, § 204, Sept. 7, 1992, 106 Stat. 1061.)

PRIOR PROVISIONS

A prior section 1630, Pub. L. 97–300, title II, § 251, as added Pub. L. 99–496, § 8(a)(2), Oct. 16, 1986, 100 Stat. 1263, stated purpose of summer youth employment and training programs, prior to repeal by Pub. L. 102–367, title II, § 201, title VII, § 701(a), Sept. 7, 1992, 106 Stat. 1052, 1103, effective July 1, 1993.

A prior section 251 of Pub. L. 97–300 was renumbered section 252 and classified to section 1631 of this title, prior to repeal by Pub. L. 102–367, title II, § 201, Sept. 7, 1992, 106 Stat. 1052.

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367 set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1631. Authorization of appropriations; allotment and allocation

(a) Territorial and Native American allocation

From the funds appropriated under section 1502(a)(2) of this title, the Secretary shall first allocate to Guam, the Virgin Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, the Commonwealth of the Northern Mariana Islands, and entities eligible under section 1671 of this title the same percentage of funds as were available to such areas and entities for the summer youth program in the fiscal year preceding the fiscal year for which the determination is made.

(b) Use of part C formula for allotment and allocation

The remainder of funds appropriated under section 1502(a)(2) of this title shall, for each fiscal year, be allotted among States and allocated among service delivery areas in accordance with section 1642 of this title, except that no portion of such funds shall be reserved to carry out subsection (a)(1) or (c) of such section.

(Pub. L. 97–300, title II, § 252, as added Pub. L. 102–367, title II, § 204, Sept. 7, 1992, 106 Stat. 1061.)

PRIOR PROVISIONS

A prior section 1631, Pub. L. 97–300, title II, § 252, formerly § 251, Oct. 13, 1982, 96 Stat. 1364; renumbered § 252

and amended Pub. L. 99–496, §§ 5(b), 8(a)(1), Oct. 16, 1986, 100 Stat. 1262, 1263, related to allotment of funding for summer youth employment and training programs, prior to repeal by Pub. L. 102–367, title II, § 201, title VII, § 701(a), Sept. 7, 1992, 106 Stat. 1052, 1103, effective July 1, 1993.

A prior section 252 of Pub. L. 97–300 was renumbered section 253 and classified to section 1632 of this title, prior to repeal by Pub. L. 102–367, title II, § 201, Sept. 7, 1992, 106 Stat. 1052.

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367 set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1632. Use of funds

(a) In general

Funds available under this part may be used for—

(1) basic and remedial education, academic enrichment[1] institutional and on-the-job training, work experience programs, youth corps programs, employment counseling, occupational training, preparation for work, outreach and enrollment activities, employability assessment, job referral and placement, job search assistance and job club activities, activities under programs described in section 1645(b) of this title, and any other employment or job training activity designed to give employment to eligible individuals or prepare the individuals for, and place the individuals in, employment;

(2) supportive services necessary to enable such individuals to participate in the program; and

(3) administrative costs, not to exceed 15 percent of the funds available under this part.

(b) Basic and remedial education

(1) In general

A service delivery area shall expend funds (available under this chapter or otherwise available to the service delivery area) for basic and remedial education and training as described in the job training plan under section 1514 of this title.

(2) Education or training

The education and training authorized by paragraph (1) may be provided by—

(A) the year-round program under part C of this subchapter;

(B) the Job Corps;

(C) the JOBS program;

(D) youth corps programs;

(E) alternative or secondary schools; or

(F) other education and training programs.

(c) Assessment and service strategy

(1) Assessment

(A) In general

Except as provided in subparagraph (B), the programs under this part shall include an objective assessment of the basic skills and supportive services needs of each participant, which may include a review of occupational skills, prior work experience, employability, interests, and aptitudes.

(B) Recent assessment

A new assessment, or a factor of such assessment, of a participant is not required if the program determines it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program (such as the JOBS program or a regular high school academic program).

(2) Service strategy

(A) In general

Except as provided in subparagraph (B), the programs under this part shall include a service strategy for participants, which may identify achievement objectives, appropriate employment goals, and appropriate services for participants, taking into account the assessments conducted under paragraph (1).

(B) Recent service strategy

A new service strategy for a participant is not required if the program determines it is appropriate to use a recent service strategy developed for the participant under another education or training program (such as the JOBS program or a regular high school academic program).

(3) Basic education and preemployment training

The programs under this part shall provide, either directly or through arrangements with other programs, each of the following services to a participant where the assessment and the service strategy indicate such services are appropriate:

(A) Basic and Remedial Education.

(B) Preemployment and Work Maturity Skills Training.

(4) Integration of work and learning

(A) Work experience

Work experience provided under this part, to the extent feasible, shall include contextual learning opportunities which integrate the development of general competencies with the development of academic skills.

(B) Classroom training

Classroom training provided under this part shall, to the extent feasible, include opportunities to apply knowledge and skills relating to academic subjects to the world of work.

(d) Followup services

Service delivery areas shall make followup services available for participants if the service strategy indicates such services are appropriate.

(e) Educational linkages

In conducting the program assisted under this part, service delivery areas shall establish linkages with the appropriate educational agencies responsible for service to participants. Such linkages shall include arrangements to ensure that there is a regular exchange of information relating to the progress, problems and needs of participants, including the results of assessments of the skill levels of participants.

(Pub. L. 97–300, title II, § 253, as added Pub. L. 102–367, title II, § 204, Sept. 7, 1992, 106 Stat. 1061;

[1] So in original. Probably should be followed by a comma.

amended Pub. L. 103–227, title X, § 1016(a)(1)–(2)(B), Mar. 31, 1994, 108 Stat. 267.)

PRIOR PROVISIONS

A prior section 1632, Pub. L. 97–300, title II, § 253, formerly § 252, Oct. 13, 1982, 96 Stat. 1364; renumbered § 253 and amended Pub. L. 99–496, § 8(a)(1), (b), Oct. 16, 1986, 100 Stat. 1263, related to use of funds for summer youth employment and training programs, prior to repeal by Pub. L. 102–367, title II, § 201, title VII, § 701(a), Sept. 7, 1992, 106 Stat. 1052, 1103, effective July 1, 1993.

A prior section 253 of Pub. L. 97–300 was renumbered section 254 and classified to section 1633 of this title, prior to repeal by Pub. L. 102–367, title II, § 201, Sept. 7, 1992, 106 Stat. 1052.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–227, § 1016(a)(1), inserted ''academic enrichment'' after ''remedial education,''.

Subsec. (c)(3), (4). Pub. L. 103–227, § 1016(a)(2)(A), added pars. (3) and (4).

Subsec. (e). Pub. L. 103–227, § 1016(a)(2)(B), added subsec. (e).

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367 set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1633 of this title.

§ 1633. Limitations

(a) Use during summer months or equivalent vacation period

(1) Summer months

Except as provided in paragraph (2), programs under this part shall be conducted during the summer months.

(2) Vacation period

A service delivery area may, within the jurisdiction of any local educational agency that operates schools on a year-round, full-time basis, offer the programs under this part to participants during a vacation period treated as the equivalent of a summer vacation.

(b) Eligibility

An individual shall be eligible to participate in the program assisted under this part if such individual—

(1) is age 14 through 21; and

(2)(A) is economically disadvantaged; or

(B) has been determined to meet the eligibility requirements for free meals under the National School Lunch Act (42 U.S.C. 1751 et seq.) during the most recent school year.

(c) Concurrent enrollment

(1) In general

An eligible individual participating in a program assisted under this part may concurrently be enrolled in programs under part C of this subchapter. Appropriate adjustment to the youth performance standards (regarding attainment of competencies) under paragraphs (4)(A)(i) and (5) of section 1516(b) of this title shall be made to reflect the limited period of participation.

(2) Concurrent enrollment and transfers

Youth being served under this part or part C youth programs are not required to be terminated from participation in one program in order to enroll in the other. The Secretary shall provide guidance to service delivery areas on simplified procedures for concurrent enrollment and transfers for youth from one program to the other.

(c)[1] Prohibition on private actions

Nothing in this part shall be construed to establish a right for a participant to bring an action to obtain services described in the assessment or service strategy developed under section 1632(c) of this title.

(Pub. L. 97–300, title II, § 254, as added Pub. L. 102–367, title II, § 204, Sept. 7, 1992, 106 Stat. 1062; amended Pub. L. 103–227, title X, § 1016(a)(2)(C), Mar. 31, 1994, 108 Stat. 268.)

REFERENCES IN TEXT

The National School Lunch Act, referred to in subsec. (b)(2)(B), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1633, Pub. L. 97–300, title II, § 254, formerly § 253, Oct. 13, 1982, 96 Stat. 1364; renumbered § 254 and amended Pub. L. 99–496, §§ 8(a)(1), 9, Oct. 16, 1986, 100 Stat. 1263, 1264, related to limitations on summer youth employment and training programs, prior to repeal by Pub. L. 102–367, title II, § 201, title VII, § 701(a), Sept. 7, 1992, 106 Stat. 1052, 1103, effective July 1, 1993.

A prior section 254 of Pub. L. 97–300 was renumbered section 255 and classified to section 1634 of this title, prior to repeal by Pub. L. 102–367, title II, § 201, Sept. 7, 1992, 106 Stat. 1052.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–227 added subsec. (c) relating to prohibition on private actions.

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1634. Applicable provisions

(a) Comparable functions of agencies and officials

Private industry councils established under subchapter I of this chapter, chief elected officials, State job training coordinating councils, and Governors shall have the same authority, duties, and responsibilities with respect to planning and administration of funds available under this part as the private industry councils, chief elected officials, State job training coordinating councils, and Governors have with respect to funds available under parts A and C of this subchapter.

(b) Program goals and objectives

Each service delivery area shall establish written program goals and objectives that shall be

[1] So in original. Probably should be ''(d)''.

used for evaluating the effectiveness of programs conducted under this part. Such goals and objectives may include—

(1) improvement in school retention and completion;

(2) improvement in academic performance, including mathematics and reading comprehension;

(3) improvement in employability skills; and

(4) demonstrated coordination with other community service organizations such as local educational agencies, law enforcement agencies, and drug and alcohol abuse prevention and treatment programs.

(Pub. L. 97–300, title II, § 255, as added Pub. L. 102–367, title II, § 204, Sept. 7, 1992, 106 Stat. 1063.)

PRIOR PROVISIONS

A prior section 1634, Pub. L. 97–300, title II, § 255, formerly § 254, Oct. 13, 1982, 96 Stat. 1364; renumbered § 255 and amended Pub. L. 99–496, § 8(a)(1), (c), Oct. 16, 1986, 100 Stat. 1263, related to private industry councils and service delivery areas, prior to repeal by Pub. L. 102–367, title II, § 201, title VII, § 701(a), Sept. 7, 1992, 106 Stat. 1052, 1103, effective July 1, 1993.

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1635. Transfer of funds

A service delivery area may transfer up to 20 percent of the funds provided under this part to the program under part C of this subchapter if such transfer is approved by the Governor.

(Pub. L. 97–300, title II, § 256, as added Pub. L. 102–367, title II, § 205, Sept. 7, 1992, 106 Stat. 1063; amended Pub. L. 103–227, title X, § 1016(b), Mar. 31, 1994, 108 Stat. 268.)

AMENDMENTS

1994—Pub. L. 103–227 substituted ''20 percent'' for ''10 percent''.

EFFECTIVE DATE

Section effective September 7, 1992, see section 701(e)(1) of Pub. L. 102–367, set out in an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

TRANSFERS OF ALLOCATIONS FOR SUMMER OF 1992

For provisions authorizing a service delivery area to transfer up to 10 percent of amounts allocated for such area for summer of 1992 under this part for program year 1992 to provide services to youth pursuant to program under part A of this subchapter, to provide services to youth under such part A, see section 701(e)(2) of Pub. L. 102–367, set out in an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1518 of this title.

PART C—YOUTH TRAINING PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1502, 1503, 1516, 1518, 1519, 1551, 1606, 1631, 1632, 1633, 1634, 1635, 1734 of this title.

§ 1641. Statement of purpose

It is the purpose of the programs assisted under this part to improve the long-term employability of youth, enhance the educational, occupational, and citizenship skills of youth, encourage school completion or enrollment in alternative school programs, increase the employment and earnings of youth, reduce welfare dependency, and assist youth in addressing problems that impair the ability of youth to make successful transitions from school to work, apprenticeship, the military, or postsecondary education and training.

(Pub. L. 97–300, title II, § 261, as added Pub. L. 102–367, title II, § 206, Sept. 7, 1992, 106 Stat. 1063.)

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1642. Allotment and allocation

(a) Allotment

(1) Territories

Not more than $5,000,000 of the amount appropriated pursuant to section 1502(a)(1) of this title for each fiscal year and available for this part shall be allotted among Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

(2) States

Subject to the provisions of paragraph (3), of the remainder of the amount available for this part for each fiscal year—

(A) 33⅓ percent shall be allotted on the basis of the relative number of unemployed individuals residing in areas of substantial unemployment in each State as compared to the total number of such unemployed individuals in all such areas of substantial unemployment in all the States;

(B) 33⅓ percent shall be allotted on the basis of the relative excess number of unemployed individuals who reside in each State as compared to the total excess number of unemployed individuals in all the States; and

(C) 33⅓ percent shall be allotted on the basis of the relative number of economically disadvantaged youth within each State compared to the total number of economically disadvantaged youth in all States, except that, for the allotment for any State in which there is any service delivery area described in section 1511(a)(4)(A)(iii) of this title, the allotment shall be based on the higher of the number of youth in families with an income below the low-income level in such area or the number of economically disadvantaged youth in such area.

(3) Limitations

(A) State minimum

No State shall receive less than one-quarter of 1 percent of the amounts available for allotment to the States under this subsection from the remainder described in paragraph (2) for each fiscal year.

(B) Minimum percentage

No State shall be allotted less than 90 percent of its allotment percentage for the fis-

cal year preceding the fiscal year for which the determination is made.

(C) Allotment percentage

(i) In general

Except as provided in clause (ii), for purposes of subparagraph (B), the allotment percentage of a State for a fiscal year shall be the percentage of funds allotted to the State under this subsection.

(ii) Fiscal year 1992

For purposes of subparagraph (B), the allocation percentage of a State for fiscal year 1992 shall be the percentage of funds allotted to the State under section 1601 of this title, as in effect on the day before September 7, 1992.

(b) Allocation to service delivery areas

(1) Formula

The Governor shall, in accordance with section 1572 of this title, allocate 82 percent of the allotment of the State under subsection (a) of this section for each fiscal year among service delivery areas within the State, and shall ensure that, subject to the provisions of paragraph (3), of the amount allocated under this subsection—

(A) 33⅓ percent shall be allocated on the basis of the relative number of unemployed individuals residing in areas of substantial unemployment in each service delivery area as compared to the total number of such unemployed individuals in all such areas of substantial unemployment in the State;

(B) 33⅓ percent shall be allocated on the basis of the relative excess number of unemployed individuals who reside in each service delivery area as compared to the total excess number of unemployed individuals in all service delivery areas in the State; and

(C) 33⅓ percent shall be allocated on the basis of the relative number of economically disadvantaged youth within each service delivery area compared to the total number of economically disadvantaged youth in the State, except that the allocation for any service delivery area described in section 1511(a)(4)(A)(iii) of this title shall be based on the higher of the number of youth in families with an income below the low-income level in such area or the number of economically disadvantaged youth in such area.

(2) Limitations

(A) Minimum percentage

No service delivery area within any State shall be allocated an amount equal to less than 90 percent of the average of its allocation percentage for the 2 preceding fiscal years preceding the fiscal year for which the determination is made. If the amounts appropriated pursuant to section 1502(a)(1) of this title for a fiscal year and available to carry out this part are not sufficient to provide an amount equal to at least 90 percent of such allocation percentage to each such area, the amounts allocated to each area shall be ratably reduced.

(B) Allocation percentage

(i) In general

Except as provided in clause (ii), for purposes of subparagraph (A), the allocation percentage of a service delivery area for a fiscal year shall be the percentage of funds allocated to the service delivery area under this subsection.

(ii) Fiscal year 1992

For purposes of subparagraph (A), the allocation percentage of a service delivery area for fiscal year 1992 shall be the percentage of funds allocated to the service delivery area under part A of this subchapter.

(c) State activities

(1) Division

Of the remaining 18 percent of the allotment of the State under subsection (a) of this section for each fiscal year—

(A) 5 percent of such allotment of the State for each fiscal year shall be available to the Governor of the State to be used for overall administration, management, and auditing activities relating to programs under this subchapter and for activities described in sections 1531 and 1532 of this title;

(B) 5 percent of such allotment of each State for each fiscal year shall be available to provide incentive grants authorized under section 1516(b)(7) of this title, in accordance with paragraph (2); and

(C) 8 percent of the allotment of each State for each fiscal year shall be available to carry out section 1533 of this title.

(2) Other uses

(A) Capacity building and technical assistance

The Governor may use up to 33 percent of the amount allotted under paragraph (1)(B) for providing capacity building and technical assistance to service delivery areas and service providers. Such use of funds may include the development and training of service delivery area and service provider staff and the development of exemplary program activities.

(B) Nonduplication and coordination

Funds used under subparagraph (A)—

(i) may not be used to duplicate the activities of the Capacity Building and Information and Dissemination Network established under section 1733(b) of this title; and

(ii) shall, to the extent practicable, be used to coordinate the activities under subparagraph (A) with the activities of the Network under section 1733(b) of this title.

(d) Definitions and rule

As used in this section:

(1) Definitions

(A) Economically disadvantaged youth

The term ''economically disadvantaged youth'' means an individual who is age 16 through 21 and who has, or is a member of a

family that has, received a total family income (exclusive of unemployment compensation, child support payments, and welfare payments) that, in relation to family size, was not in excess of the higher of—

(i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42;[1] or

(ii) 70 percent of the lower living standard income level.

(B) Excess number

The term ''excess number'' means—

(i) with respect to the excess number of unemployed individuals within a State—

(I) the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in the State; or

(II) the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in areas of substantial unemployment in such State; and

(ii) with respect to the excess number of unemployed individuals within a service delivery area—

(I) the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in the service delivery area; or

(II) the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in areas of substantial unemployment in such service delivery area.

(C) State

The term ''State'' means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) Special rule

For the purposes of this section, the Secretary shall, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of economically disadvantaged youth.

(Pub. L. 97–300, title II, § 262, as added Pub. L. 102–367, title VII, § 701(f)(1), Sept. 7, 1992, 106 Stat. 1107.)

ENACTMENT OF ALTERNATIVE TEXT

Pub. L. 102–367, title II, § 207, title VII, § 701(g), Sept. 7, 1992, 106 Stat. 1064, 1111, provided that, subject to the condition specified in section 701(g) of Pub. L. 102–367, set out below, this subchapter (as amended by section 201 to 206 of Pub. L. 102–367) is amended by adding at the end the following:

§ 1642. Allotment and allocation

(a) Allotment

(1) Territories

Of the amount appropriated under section 1502(a)(1) of this title for each fiscal year and available to carry out this part, not more than one-quarter of 1 percent shall be allotted among Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

(2) State reservation

After determining the amounts to be allotted under paragraph (1), the Secretary shall allot 82 percent of the remainder to the States for allocation to service delivery areas within each State. Each State shall allocate to each service delivery area within the State the amount determined by the Secretary for such service delivery area pursuant to the formula contained in subsection (b) of this section. The remaining 18 percent shall be allotted in accordance with subsection (c) of this section.

(b) Allocation to service delivery areas

(1) Formula

Subject to the provisions of paragraph (2), of the amounts allocated to service delivery areas for this part for each fiscal year—

(A) 33⅓ percent shall be allocated on the basis of the relative number of unemployed individuals residing in areas of substantial unemployment within each service delivery area as compared to the total number of such unemployed individuals in all such areas of substantial unemployment in all service delivery areas in all States;

(B) 33⅓ percent shall be allocated on the basis of the relative excess number of unemployed individuals within each service delivery area as compared to the total excess number of unemployed individuals in all service delivery areas in all States; and

(C) 33⅓ percent shall be allocated on the basis of the relative number of economically disadvantaged youth within each service delivery area as compared to the total number of economically disadvantaged youth in all service delivery areas in all States except that, for any service delivery area described in section 1511(a)(4)(A)(iii) of this title, the allocation shall be based on the higher of the number of youth in families with an income below the low-income level in such area or the number of economically disadvantaged youth in such area.

(2) Limitations

(A) Minimum percentage

No service delivery area shall be allocated less than 90 percent of its allocation percentage for the fiscal year preceding the fiscal year for which the determination is made.

(B) Maximum percentage

No service delivery area shall be allocated more than 130 percent of its allocation percentage for the fiscal year preceding the fiscal year for which the determination is made.

(C) State minimum

Notwithstanding subparagraphs (A) and (B), the total allocation for all service delivery areas within any one State shall not be less than one-quarter of 1 percent of the total allocated to all service delivery areas in all States.

[1] So in original. A closing parenthesis probably should precede the semicolon.

(D) Allocation percentage

(i) In general

Except as provided in clause (ii), for purposes of subparagraphs (A) and (B), the allocation percentage of a service delivery area for a fiscal year shall be the percentage of funds allocated to the service delivery area under this subsection.

(ii) Fiscal year 1992

For purposes of subparagraphs (A) and (B), the allocation percentage of a service delivery area for fiscal year 1992 shall be the percentage of funds allocated to the service delivery area under part A of this subchapter.

(c) State activities

(1) Division

Of the remaining 18 percent of funds available for allotment to States under this part for each fiscal year—

(A) 5 percent of the funds available for such allotment under this part shall be allotted to the States in accordance with paragraph (2), for overall administration, management, and auditing activities relating to programs under this subchapter and for activities described in sections 1531 and 1532 of this title;

(B) 5 percent of the funds available for such allotment under this part shall be allotted to the States in accordance with paragraph (2), to provide incentive grants authorized under section 1516(b)(7) of this title, in accordance with paragraph (3); and

(C) 8 percent of the funds available for such allotment under this part shall be allotted to the States in accordance with paragraph (2) to carry out section 1533 of this title.

(2) Formula for allocation

The allotments to each State described in paragraph (1) shall be based on the relative amount of funds allocated to all service delivery areas within such State under subsection (b) of this section as compared to the amount of funds allocated to all service delivery areas in all States under subsection (b) of this section.

(3) Other uses

(A) Capacity building and technical assistance

The Governor may use up to 33 percent of the amount allotted under paragraph (1)(B) for providing capacity building and technical assistance to service delivery areas and service providers. Such use of funds may include the development and training of service delivery area and service provider staff and the development of exemplary program activities.

(B) Nonduplication and coordination

Funds used under subparagraph (A)—

(i) may not be used to duplicate the activities of the Capacity Building and Information and Dissemination Network established under section 1733(b) of this title; and

(ii) shall, to the extent practicable, be used to coordinate the activities under subparagraph (A) with the activities of the Network under section 1733(b) of this title.

(d) Definitions and rule

(1) Definitions

As used in this section:

(A) Economically disadvantaged youth

The term ''economically disadvantaged youth'' means an individual who is age 16 through 21 and who has, or is a member of a family that has, received a total family income that, in relation to family size, was not in excess of the higher of—

(i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of title 42;[2] *or*

(ii) 70 percent of the lower living standard income level.

(B) Excess number

The terms ''excess number'' and ''State'' shall have the meanings given the terms in subparagraphs (B) and (C), respectively, of section 1602(d)(1) of this title.

(2) Special rule

For the purposes of this section, the Secretary shall, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of economically disadvantaged youth.

CODIFICATION

This section is based on the text of section 262 of Pub. L. 97–300 (the Job Training Partnership Act), as set forth in section 701(f)(1) of Pub. L. 102–367. See section 701 of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE; TRANSITION PROVISIONS

Section 701(f) and (g) of Pub. L. 102–367 provided that:

''(f) INTERIM TRAINING SERVICES FORMULA.—

''(1) LEVEL OF FUNDING.—If the amount appropriated to carry out parts A and C of title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq., 1641 et seq.] for fiscal year 1993 is less than the sum of—

''(A) $25,000,000; and

''(B) the amount appropriated to carry out part A of title II of such Act, as in effect on the day before the date of enactment of this Act [Sept. 7, 1992], for fiscal year 1992,

the amendment made by section 207 of this Act [enacting this section] shall not take effect on July 1, 1993 [Amendment by section 207 did not take effect July 1, 1993, because the appropriations for fiscal year 1993 were less than the sum referred to above.], and title II of the Job Training Partnership Act [this subchapter] shall be amended by inserting after section 261 of such Act [29 U.S.C. 1641] the following: [See text of section above.]

''(2) EFFECTIVE DATE.—Any amendment made by paragraph (1) shall take effect on July 1, 1993.

''(g) PERMANENT TRAINING SERVICES FORMULA.—

''(1) LEVEL OF FUNDING.—If title II of the Job Training Partnership Act [this subchapter] is amended in accordance with subsection (f) and the amount appropriated to carry out parts A and C of title II of the Job Training Partnership Act [29 U.S.C. 1601 et seq., 1641 et seq.] for a fiscal year is not less than the sum of—

''(A) $25,000,000; and

''(B) the amount appropriated to carry out part A of title II of such Act, as in effect on the day before

[2] So in original. A closing parenthesis probably should precede the semicolon.

the date of enactment of this Act [Sept. 7, 1992], for fiscal year 1992,

the amendment made by section 207 of this Act [enacting this section] shall take effect. [Amendment by section 207 did not take effect because the appropriations referred to above for fiscal year 1995 were less than the sum referred to above.]

''(2) EFFECTIVE DATE.—Any amendment made by paragraph (1) shall take effect on October 1 of the fiscal year described in paragraph (1).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516, 1532, 1533, 1631, 1646 of this title; title 20 section 6215.

§ 1643. Eligibility for services

(a) In-school youth

Except as provided in subsections (e) and (g) of this section, an individual who is in school shall be eligible to participate in the program under this part if such individual—

(1)(A) is age 16 through 21; or

(B) if provided in the job training plan, is age 14 through 21; and

(2)(A) is economically disadvantaged;

(B) is participating in a compensatory education program under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.]; or

(C) has been determined to meet the eligibility requirements for free meals under the National School Lunch Act (42 U.S.C. 1751 et seq.) during the most recent school year.

(b) Hard-to-serve individuals who are in-school youth

Not less than 65 percent of the in-school individuals who participate in a program under this part shall be individuals who are included in one or more of the following categories:

(1) Individuals who are basic skills deficient.

(2) Individuals with educational attainment that is 1 or more grade levels below the grade level appropriate to the age of the individuals.

(3) Individuals who are pregnant or parenting.

(4) Individuals with disabilities, including a learning disability.

(5) Individuals who are homeless or runaway youth.

(6) Individuals who are offenders.

(7) Individuals within a category established under subsection (h) of this section.

(c) Out-of-school youth

Except as provided in subsection (e) of this section, an individual who is out of school shall be eligible to participate in the program under this part if such individual is—

(1) age 16 through 21; and

(2) economically disadvantaged.

(d) Hard-to-serve individuals who are out-of-school youth

Not less than 65 percent of the out-of-school individuals who participate in a program under this part shall be individuals who are included in 1 or more of the following categories:

(1) Individuals who are basic skills deficient.

(2) Individuals who are school dropouts (subject to the conditions described in section 1644(d)(2) of this title).

(3) Individuals who are pregnant or parenting.

(4) Individuals with disabilities, including a learning disability.

(5) Individuals who are homeless or runaway youth.

(6) Individuals who are offenders.

(7) Individuals in a category established under subsection (h) of this section.

(e) Exceptions

Not more than 10 percent of participants in a program assisted under this part in each service delivery area may be individuals who do not meet the requirements of subsection (a)(2) or (c)(2) of this section, if such individuals are within one or more categories of individuals who face serious barriers to employment. Such categories may include the categories described in subsections (b) and (d) of this section, or categories such as individuals with limited-English language proficiency, alcoholics, or drug addicts.

(f) Ratio of out-of-school to in-school youth

(1) In general

Except as provided in paragraph (2), not less than 50 percent of the participants in the program under this part in each service delivery area shall be out-of-school individuals who meet the requirements of subsection (c), (d), or (e) of this section.

(2) Counting of in-school individuals

In-school individuals served as a part of a schoolwide project under subsection (g) of this section shall not be counted as a part of the ratio of in-school individuals to out-of-school individuals.

(g) Schoolwide projects for low-income schools

(1) In general

In addition to the individuals described in subsection (e) of this section, an individual who does not meet the requirements of subsection (a)(2) of this section may participate in the programs assisted under this part if such individual is enrolled in a public school—

(A) that is located in a poverty area;

(B) that is served by a local educational agency that is eligible for assistance under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.];

(C) in which not less than 70 percent of the students enrolled are included in the categories described in subsection (b) of this section; and

(D) that conducts a program under a cooperative arrangement that meets the requirements of section 1645(d) of this title.

(2) "Poverty area" defined

For the purposes of paragraph (1), the term ''poverty area'' means an urban census tract or a nonmetropolitan county with a poverty rate of 30 percent or more, as determined by the Bureau of the Census.

(h) Additional category

A service delivery area conducting a program assisted under this part may add one category of youth who face serious barriers to employment to the categories of eligible individuals specified in subsection (b) of this section and one cat-

egory to the categories of eligible individuals described in subsection (d) of this section if—

(1) the service delivery area submits a request to the Governor identifying the additional category of individuals and justifying the inclusion of such category;

(2) the additional category of individuals is not solely comprised of—

(A) individuals with a poor work history; or

(B) individuals who are unemployed; and

(3) the Governor approves the request submitted under paragraph (1) and transmits a description of the approved request to the Secretary, as part of the Governor's coordination and special services plan under section 1531 of this title.

(Pub. L. 97–300, title II, § 263, as added Pub. L. 102–367, title II, § 208, Sept. 7, 1992, 106 Stat. 1066; amended Pub. L. 103–382, title III, § 391(n)(2), (3), Oct. 20, 1994, 108 Stat. 4024.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (a)(2)(B) and (g)(1)(B), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The National School Lunch Act, referred to in subsec. (a)(2)(C), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of Title 42 and Tables.

AMENDMENTS

1994—Subsecs. (a)(2)(B), (g)(1)(B). Pub. L. 103–382 substituted ''title I'' for ''chapter I of title I''.

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1516, 1531, 1645, 1734, 1781 of this title; title 20 section 6214.

§ 1644. Program design

(a) Year-round operation

The programs under this part shall be conducted on a year-round basis. Services shall be made available on a multiyear basis as appropriate.

(b) Essential elements

(1) In general

The programs under this part shall include—

(A) an objective assessment of the skill levels and service needs of each participant, which assessment shall include a review of basic skills, occupational skills, prior work experience, employability, interests, aptitudes (including interests and aptitudes for nontraditional jobs), and supportive service needs, except that a new assessment of a participant is not required if the program determines it is appropriate to use a recent assessment of the participant conducted under another education or training program (such as the JOBS program);

(B) development of service strategies that shall identify the employment goal (including, in appropriate circumstances, nontraditional employment), appropriate achievement objectives, and appropriate services for participants taking into account the assessments conducted pursuant to subparagraph (A), except that a new service strategy for a participant is not required if the program determines it is appropriate to use a recent service strategy developed for the participant under another education or training program (such as the JOBS program);

(C) a review of the progress of each participant in meeting the objectives of the service strategy; and

(D) each of the following services, which shall be provided either directly or through arrangement with other programs to a participant where the assessment and the service strategy indicate such services are appropriate:

(i) Basic skills training.

(ii) Occupational skills training.

(iii) Preemployment and work maturity skills training.

(iv) Work experience combined with skills training.

(v) Supportive services.

(2) Additional requirements

(A) Information and referrals

Each service delivery area shall ensure that each participant or applicant who meets the minimum income eligibility criteria shall be provided—

(i) information on the full array of applicable or appropriate services that are available through the service delivery area or other service providers, including those receiving funds under this chapter; and

(ii) referral to appropriate training and educational programs that have the capacity to serve the participant or applicant either on a sequential or concurrent basis.

(B) Applicants not meeting enrollment requirements

(i) Service providers

Each service provider shall ensure that an eligible applicant who does not meet the enrollment requirements of its particular program or who cannot be served shall be referred to the service delivery area for further assessment, as necessary, and referral to appropriate programs in accordance with subparagraph (A) to meet the basic skills and training needs of the applicant.

(ii) Service delivery area

The service delivery area shall ensure that appropriate referrals are made pursuant to clause (i), and shall maintain appropriate records of such referrals and the basis for such referrals.

(c) Authorized services

Subject to the limitations contained in subsection (d) of this section, services which may be made available to youth with funds provided under this part may include—

(1) direct training services, including—

(A) the services described in section 1604(b)(1) of this title;

(B) tutoring and study skills training;

(C) alternative high school services within programs that meet the requirements of section 1551(*o*)(1) of this title;

(D) instruction leading to high school completion or the equivalent;

(E) mentoring;

(F) limited internships in the private sector;

(G) training or education that is combined with community and youth service opportunities in public agencies, nonprofit agencies, and other appropriate agencies, institutions, and organizations, including youth corps programs;

(H) entry employment experience programs;

(I) school-to-work transition services;

(J) school-to-postsecondary education transition services;

(K) school-to-apprenticeship transition services; and

(L) preemployment and work maturity skills training; and

(2) training-related and supportive services, including—

(A) the services described in section 1604(b)(2) of this title;

(B) drug and alcohol abuse counseling and referral;

(C) services encouraging parental, spousal, and other significant adult involvement in the program of the participant; and

(D) cash incentives and bonuses based on attendance and performance in a program.

(d) Additional requirements

(1) Strategies and services

In developing service strategies and designing services for the program under this part, the service delivery area and private industry council shall take into consideration exemplary program strategies and practices, including the strategies and practices of model programs selected for replication under section 1733(c) of this title.

(2) School dropouts

(A) Participation requirements

In order to participate in a program assisted under this part, except for interim periods, an individual who is under the age of 18 and a school dropout shall enroll in and attend a school, course, or program described in clause (ii) or (iii) of subparagraph (B).

(B) Service delivery requirements

(i) In general

Each service delivery area shall make available, in accordance with this subparagraph, to each participant in the program who is under the age of 18 and is a school dropout, at least 2 options for school attendance. Such options shall be provided concurrently or sequentially with other services provided under this part to each such participant as a part of the training of such participant.

(ii) School attendance

Each service delivery area shall provide, as one of the options for school attendance, an option for each such participant to enroll in and attend a high school equivalency program.

(iii) Additional option

Each service delivery area shall provide, as a second option for school attendance for each such participant—

(I) an option to reenroll in and attend school;

(II) an option to enroll in and attend an alternative high school; or

(III) an option to enroll in and attend an alternative course of study approved by the local educational agency.

(3) Skills training

(A) Preemployment and work maturity skills training

Preemployment and work maturity skills training authorized by this part shall be accompanied by either work experience or other additional services designed to increase the basic education or occupational skills of a participant. The additional services may be provided, concurrently or sequentially, under other education and training programs, including the Job Corps and the JOBS program.

(B) Additional services

Work experience, job search assistance, job search skills training, and job club activities provided under this part shall be accompanied by additional services designed to increase the basic education or occupational skills of a participant. The additional services may be provided, concurrently or sequentially, under other education and training programs, including the Job Corps and the JOBS program.

(C) On-the-job training

(i) Positions

On-the-job training authorized under this part shall only be available in positions that—

(I) pay the participant a wage that equals or exceeds the average wage at placement in the service delivery area for participants under part A of this subchapter; and

(II) have career advancement potential.

(ii) Formal program of structured job training

On-the-job training authorized under this part shall include a formal program of structured job training that will provide participants with an orderly sequence of

instruction in work maturity skills, general employment competencies, and occupationally specific skills.

(iii) Participation requirement

In order to participate in on-the-job training authorized under this part, except for interim periods, an individual who has not attained a high school diploma or its equivalent shall concurrently enroll in and attend a school, course, or program described in clause (ii) or (iii) of paragraph (2)(B).

(4) Needs-based payments

Needs-based payments and financial assistance provided under this part shall be limited to payments necessary for participation in the program assisted under this part in accordance with a locally developed formula or procedure.

(5) Counseling and supportive services

Counseling and supportive services provided under this part may be provided to a participant for a period of up to 1 year after the date on which the participant completes the program.

(6) Prohibition on private actions

Nothing in this section shall be construed to establish a right for a participant to bring an action to obtain services described in the assessment or service strategy developed under subsection (b)(1) of this section.

(7) Volunteers

The service delivery area shall make opportunities available for successful individuals who have previously participated in programs under this part to volunteer assistance to participants in the form of mentoring, tutoring, and other activities.

(Pub. L. 97–300, title II, § 264, as added Pub. L. 102–367, title II, § 208, Sept. 7, 1992, 106 Stat. 1068.)

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1518, 1551, 1577, 1643, 1791c of this title; title 7 section 2014.

§ 1645. Linkages

(a) Educational linkages

In conducting the program assisted under this part, service delivery areas shall establish linkages with the appropriate educational agencies responsible for service to participants. Such linkages shall include—

(1) formal agreements with local educational agencies that will identify—

(A) the procedures for referring and serving in-school youth;

(B) the methods of assessment of in-school youth; and

(C) procedures for notifying the program when a youth drops out of the school system;

(2) arrangements to ensure that the program under this part supplements existing programs provided by local educational agencies to in-school youth;

(3) arrangements to ensure that the program under this part utilizes, to the extent possible, existing services provided by local educational agencies to out-of-school youth; and

(4) arrangements to ensure that for in-school participants there is a regular exchange of information between the program and the educational agency relating to participant progress, problems, and needs, including, in appropriate circumstances, interim assessment results.

(b) Education and training program linkages

In conducting the program assisted under this part, service delivery areas shall establish appropriate linkages with other education and training programs authorized under Federal law. Such programs shall include, where feasible, programs assisted under—

(1) part B of subchapter IV of this chapter (the Job Corps);

(2) parts A through C of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.];

(3) the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.);

(4) the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

(5) the Wagner-Peyser Act (29 U.S.C. 49 et seq.);

(6) part F of title IV of the Social Security Act (JOBS) (42 U.S.C. 681 et seq.);

(7) the Food Stamp Act[1] (7 U.S.C. 2011 et seq.);

(8) the National Apprenticeship Act (29 U.S.C. 50 et seq.);

(9) the Stewart B. McKinney Homeless Assistance Act (Public Law 100–77; 101 Stat. 482) [42 U.S.C. 11301 et seq.]; and

(10) any other provisions of this chapter.

(c) Other programs

In addition to the linkages required under subsections (a) and (b) of this section, service delivery areas receiving financial assistance under this part shall establish other appropriate linkages to enhance the provision of services under this part. Such linkages may be established with State and local service agencies, public housing agencies, community-based organizations, business and labor organizations, volunteer groups working with at-risk youth, parents and family members, juvenile justice systems, and other training, education, employment and social service programs, including programs conducted under part A of this subchapter.

(d) Schoolwide projects for low-income schools

In conducting a program serving individuals specified in section 1643(g) of this title, the service delivery area shall establish a cooperative arrangement with the appropriate local educational agency that shall, in addition to the other requirements of this section, include—

(1) a description of the ways in which the program will supplement the educational program of the school;

[1] So in original. Probably should be ''Act of 1977''.

(2) identification of measurable goals to be achieved by the program and provision for assessing the extent to which such goals are met;

(3) a description of the ways in which the program will use resources provided under this part and resources provided under other education programs to achieve the goals identified in paragraph (2);

(4) a description of the number of individuals to be served; and

(5) assurances that the resources provided under this part shall be used to supplement and not supplant existing sources of funds.

(Pub. L. 97–300, title II, § 265, as added Pub. L. 102–367, title II, § 208, Sept. 7, 1992, 106 Stat. 1071; amended Pub. L. 103–382, title III, § 391(n)(4), Oct. 20, 1994, 108 Stat. 4024.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (b)(2), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. Parts A through C of title I of the Act are classified generally to parts A through C (§ 6311 et seq.), respectively, of subchapter I of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Carl D. Perkins Vocational and Applied Technology Education Act, referred to in subsec. (b)(3), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (b)(4), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Wagner-Peyser Act, referred to in subsec. (b)(5), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified generally to chapter 4B (§ 49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

The Social Security Act, referred to in subsec. (b)(6), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part F of title IV of the Act is classified generally to part F (§ 681 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Food Stamp Act of 1977, referred to in subsec. (b)(7), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The National Apprenticeship Act, referred to in subsec. (b)(8), is act Aug. 16, 1937, ch. 663, 50 Stat. 664, as amended, which is classified generally to chapter 4C (§ 50 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 50 of this title and Tables.

The Stewart B. McKinney Homeless Assistance Act, referred to in subsec. (b)(9), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (§ 11301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–382 substituted ''parts A through C'' for ''parts A through D of chapter 1''.

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1514, 1515, 1632, 1643 of this title.

§ 1646. Transfer of funds

A service delivery area may transfer up to 10 percent of the amounts allocated to the service delivery area under section 1642(b) of this title to the program under part A of this subchapter if such transfer is—

(1) described in the job training plan; and

(2) approved by the Governor.

(Pub. L. 97–300, title II, § 266, as added Pub. L. 102–367, title II, § 208, Sept. 7, 1992, 106 Stat. 1073.)

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1518 of this title.

SUBCHAPTER III—EMPLOYMENT AND TRAINING ASSISTANCE FOR DISLOCATED WORKERS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 49f, 1502, 1516, 1518, 1531, 1533, 1551, 1574, 1735, 1784a, 2102 of this title; title 19 section 2311; title 20 sections 2420a, 2468.

§ 1651. Definitions

(a) Dislocated workers

(1) For purposes of this subchapter, the term ''eligible dislocated workers'' means individuals who—

(A) have been terminated or laid off or who have received a notice of termination or layoff from employment, are eligible for or have exhausted their entitlement to unemployment compensation, and are unlikely to return to their previous industry or occupation;

(B) have been terminated or have received a notice of termination of employment, as a result of any permanent closure of or any substantial layoff at a plant, facility, or enterprise;

(C) are long-term unemployed and have limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individuals reside, including older individuals who may have substantial barriers to employment by reason of age; or

(D) were self-employed (including farmers and ranchers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters, subject to regulations prescribed by the Secretary.

(2) For purposes of this subchapter, the term ''additional dislocated worker'' means a displaced homemaker as that term is defined in section 1503(29) of this title.

(3) The Secretary shall establish categories of self-employed individuals and of economic conditions and natural disasters to which paragraph (1)(D) applies.

(b) Additional definitions

For the purposes of this subchapter—

(1) The term ''labor-management committees'' means committees voluntarily established to respond to actual or prospective worker dislocation, which ordinarily include (but are not limited to) the following—

(A) shared and equal participation by workers and management;

(B) shared financial participation between the company and the State, using funds provided under this subchapter, in paying for the operating expenses of the committee;

(C) a chairperson, to oversee and guide the activities of the committee, (i) who shall be jointly selected by the labor and management members of the committee, (ii) who is not employed by or under contract with labor or management at the site, and (iii) who shall provide advice and leadership to the committee and prepare a report on its activities;

(D) the ability to respond flexibly to the needs of affected workers by devising and implementing a strategy for assessing the employment and training needs of each dislocated worker and for obtaining the services and assistance necessary to meet those needs;

(E) a formal agreement, terminable at will by the workers or the company management, and terminable for cause by the Governor; and

(F) local job identification activities by the chairman and members of the committee on behalf of the affected workers.

(2) The term ''local elected official'' means the chief elected executive officer of a unit of general local government in a substate area.

(3) The term ''service provider'' means a public agency, private nonprofit organization, or private-for-profit entity that delivers educational, training, or employment services.

(4) The term ''substate area'' means that geographic area in a State established pursuant to section 1661a(a) of this title.

(5) The term ''substate grantee'' means that agency or organization selected to administer programs pursuant to section 1661a(b) of this title.

(6) The term ''State'' means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 97–300, title III, § 301, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1524.)

PRIOR PROVISIONS

A prior section 1651, Pub. L. 97–300, title III, § 301, Oct. 13, 1982, 96 Stat. 1364; Pub. L. 99–496, § 10, Oct. 16, 1986, 100 Stat. 1264, related to allocation of funds, prior to the general revision of this subchapter by Pub. L. 100–418.

EFFECTIVE DATE; TRANSITION PROVISIONS

Section 6305 of Pub. L. 100–418 provided (a) that the amendments made by sections 6302 and 6304 of Pub. L. 100–418, amending this subchapter and sections 1516 and 1532 of this title, were to be effective for program years beginning on or after July 1, 1989, (b) that the Secretary of Labor and Governors were, during the program year beginning July 1, 1988, to continue to administer this subchapter in the same manner as such subchapter was administered during prior program years, except to the extent necessary to provide for an orderly transition to and implementation of the amendments made by subtitle D (§§ 6301–6307) of title VI of Pub. L. 100–418, enacting sections 565 and 1505 of this title, amending this subchapter and sections 1502, 1516, 1532, and 1752 of this title, and enacting provisions formerly set out below, that the Secretary and Governors could, for such purposes, use funds appropriated for fiscal year 1989 or any preceding fiscal year to carry out appropriate transition and implementation activities, (c) that a State job training coordinating council was to comply with the changes in membership required by the amendment made by section 6304(b) of Pub. L. 100–418, amending section 1532 of this title, not later than Jan. 1, 1989, (d) that the designation of substate areas and substate grantees required by the amendment to this subchapter was to be completed not later than Mar. 1, 1989, (e) that provisions of section 1653 of this title were to apply to the program year beginning July 1, 1988, except that, for such program year subsection (b)(1) of such section was to be applied by substituting ''30 percent'' for ''20 percent'', and subsection (e) of such section was to be applied by substituting ''70 percent'' for ''80 percent'', and (f) that the Secretary of Labor was to prescribe such regulations as may be required to implement the amendments made by subtitle D not later than Nov. 1, 1988, prior to repeal by Pub. L. 103–382, title III, § 391(i), Oct. 20, 1994, 108 Stat. 4023.

ADDITIONAL STUDIES

Section 6306(c) of Pub. L. 100–418 directed National Commission for Employment Policy to conduct research related to the provisions of title VI, probably meaning subtitle D (§§ 6301–6307) of title VI of Pub. L. 100–418, and submit a report on that research to Congress not later than 18 months after Aug. 23, 1988, prior to repeal by Pub. L. 103–382, title III, § 391(i), Oct. 20, 1994, 108 Stat. 4023.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1661, 1661e, 1662d, 1662d–1, 1662e of this title.

§ 1652. Allotment

(a) Allotment of funds

From the funds appropriated pursuant to section 1502(b) of this title for any fiscal year, the Secretary shall—

(1) allot 80 percent of such funds in accordance with the provisions of subsection (b) of this section; and

(2) reserve 20 percent for use under part B of this subchapter, subject to the reservation required by subsection (e) of this section.

(b) Allotment among States

(1) Subject to the provisions of paragraph (2), the Secretary shall allot the amount available in each fiscal year under subsection (a)(1) of this section on the basis of the following factors:

(A) One-third of such amount shall be allotted among the States on the basis of the relative number of unemployed individuals who reside in each State as compared to the total number of unemployed individuals in all the States.

(B) One-third of such amount shall be allotted among the States on the basis of the relative excess number of unemployed individ-

uals who reside in each State as compared to the total excess number of unemployed individuals in all the States. For purposes of this paragraph, the term ''excess number'' means the number which represents unemployed individuals in excess of 4.5 percent of the civilian labor force in the State.

(C) One-third of such amount shall be allotted among the States on the basis of the relative number of individuals who have been unemployed for 15 weeks or more and who reside in each State as compared to the total number of such individuals in all the States.

(2) As soon as satisfactory data are available under section 1752(e) of this title, the Secretary shall allot amounts appropriated to carry out part A of this subchapter for any fiscal year to each State so that—

(A) 25 percent of such amount shall be allotted on the basis of each of the factors described in subparagraphs (A), (B), and (C) of paragraph (1), respectively, for a total of 75 percent of the amount allotted; and

(B) 25 percent of such amount shall be allotted among the States on the basis of the relative number of dislocated workers in such State in the most recent period for which satisfactory data are available under section 1752(e) of this title and, when available, under section 1752(f) of this title.

(c) Reservations for State activities and for substate grantees in need

(1) The Governor may reserve not more than 40 percent of the amount allotted to the State under subsection (a)(1) of this section for—

(A) State administration, technical assistance, and coordination of the programs authorized under this subchapter;

(B) statewide, regional, or industrywide projects;

(C) rapid response activities as described in section 1661c(b) of this title;

(D) establishment of coordination between the unemployment compensation system and the worker adjustment program system; and

(E) discretionary allocation for basic readjustment and retraining services to provide additional assistance to areas that experience substantial increases in the number of dislocated workers, to be expended in accordance with the substate plan or modification thereof.

(2) In addition, the Governor may reserve not more than 10 percent of the amount allotted to the State under subsection (a)(1) of this section for allocation among substate grantees. The amount so reserved shall be allocated on the basis of need and distributed to such grantees not later than 9 months after the beginning of the program year for which the allotment was made.

(d) Within State distribution

The Governor shall allocate the remainder of the amount allotted to the State under this part to substate areas for services authorized in this part, based on an allocation formula prescribed by the Governor. Such formula may be amended by the Governor not more than once for each program year. Such formula shall utilize the most appropriate information available to the Governor to distribute amounts to address the State's worker readjustment assistance needs. Such information shall include (but is not limited to)—

(1) insured unemployment data;

(2) unemployment concentrations;

(3) plant closing and mass layoff data;

(4) declining industries data;

(5) farmer-rancher economic hardship data; and

(6) long-term unemployment data.

(e) Reservation for territories

Not more than 0.3 percent of the amounts appropriated pursuant to section 1502(b) of this title and available under subsection (a)(2) of this section for any fiscal year shall be allocated among the Commonwealth of the Northern Mariana Islands and the other territories and possessions of the United States.

(Pub. L. 97–300, title III, § 302, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1525; amended Pub. L. 102–367, title I, § 102(b), title VII, § 702(a)(11), Sept. 7, 1992, 106 Stat. 1024, 1112.)

PRIOR PROVISIONS

A prior section 1652, Pub. L. 97–300, title III, § 302, Oct. 13, 1982, 96 Stat. 1365; Pub. L. 99–496, § 11, Oct. 16, 1986, 100 Stat. 1264, related to identification of dislocated workers, prior to the general revision of this subchapter by Pub. L. 100–418.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367, § 102(b), substituted ''1502(b)'' for ''1502(c)'' in introductory provisions.

Subsec. (b)(2). Pub. L. 102–367, § 702(a)(11), substituted ''part A of this subchapter'' for ''part B of this subchapter and this part''.

Subsec. (e). Pub. L. 102–367, § 102(b), substituted ''1502(b)'' for ''1502(c)''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1653, 1661, 1661c, 1661f, 1662a, 1662b, 1662c of this title.

§ 1653. Recapture and reallotment of unexpended funds

(a) General reallotment authority

For program years beginning July 1, 1989, and thereafter, the Secretary shall, in accordance with the requirements of this section, reallot to eligible States the funds allotted to States from funds appropriated for such program year that are available for reallotment.

(b) Amount available for reallotment

The amount available for reallotment is equal to—

(1) the amount by which the unexpended balance of the State allotment at the end of the program year prior to the program year for which the determination under this section is made exceeds 20 percent of such allotment for that prior program year; plus

(2) the unexpended balance of the State allotment from any program year prior to the program year in which there is such excess.

(c) Method of reallotment

(1) The Secretary shall determine the amount that would be allotted to each eligible State by using the factors described in section 1652(b) of this title to allocate among eligible States the amount available pursuant to subsection (b) of this section.

(2) The Secretary shall allot to each eligible high unemployment State the amount determined for that State under the procedure in paragraph (1) of this subsection.

(3) The Secretary shall, by using the factors described in section 1652(b) of this title, allot to eligible States the amount available that remains after the allotment required by paragraph (2) of this subsection.

(d) State procedures with respect to reallotment

The Governor of each State shall prescribe uniform procedures for the expenditure of funds by substate grantees in order to avoid the requirement that funds be made available for reallotment under subsection (b) of this section. The Governor shall further prescribe equitable procedures for making funds available from the State and substate grantees in the event that a State is required to make funds available for reallotment under such subsection.

(e) Definitions

(1) For the purpose of this section, an eligible State means a State which has expended at least 80 percent of its allotment for the program year prior to the program year for which the determination under this section is made.

(2) For the purpose of this section, an eligible high unemployment State means a State—

(A) which meets the requirement in subsection (c)(1) of this section, and

(B) which is among the States which has an unemployment rate greater than the national average unemployment for the most recent 12 months for which satisfactory data are available.

(3) For purposes of this section, funds awarded from discretionary funds of the Secretary shall not be included in calculating any of the reallotments described in this section.

(Pub. L. 97–300, title III, § 303, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1527.)

PRIOR PROVISIONS

Prior sections 1653 to 1658 were omitted in the general revision of this subchapter by Pub. L. 100–418.

Section 1653, Pub. L. 97–300, title III, § 303, Oct. 13, 1982, 96 Stat. 1366, authorized activities under provisions of former subchapter. For applicability to program year beginning July 1, 1988, see section 6305(e) of Pub. L. 100–418, set out as an Effective Date; Transition Provisions note under section 1651 of this title.

Section 1654, Pub. L. 97–300, title III, § 304, Oct. 13, 1982, 96 Stat. 1366, related to matching requirements for funds.

Section 1655, Pub. L. 97–300, title III, § 305, Oct. 13, 1982, 96 Stat. 1367, related to program review.

Section 1656, Pub. L. 97–300, title III, § 306, Oct. 13, 1982, 96 Stat. 1367, related to consultation with labor organizations.

Section 1657, Pub. L. 97–300, title III, § 307, Oct. 13, 1982, 96 Stat. 1367, related to limitations on availability of funds.

Section 1658, Pub. L. 97–300, title III, § 308, Oct. 13, 1982, 96 Stat. 1367; Pub. L. 97–404, § 3, Dec. 31, 1982, 96 Stat. 2026, related to State plans and coordination with other programs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1661d, 1661f of this title; title 19 section 2296.

PART A—STATE DELIVERY OF SERVICES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1662b of this title.

§ 1661. State plan

(a) State plan required

In order to receive an allotment of funds under section 1652(b) of this title, the Governor of a State shall submit to the Secretary, on a biennial basis, a State plan describing in detail the programs and activities that will be assisted with funds provided under this subchapter. The State plan shall be submitted on or before the first day of May immediately preceding the program year for which funds are first to be made available under this subchapter. Such plan shall include incentives to provide training of greater duration for those who require it, consistent with section 1516(c) of this title.

(b) Contents of plan

Each State plan shall contain provisions demonstrating to the satisfaction of the Secretary that the State will comply with the requirements of this subchapter and that—

(1) services under this subchapter—

(A) will, except as provided in paragraph (4), only be provided to eligible dislocated workers;

(B) will not be denied to an eligible dislocated worker displaced by a permanent closure or substantial layoff within the State, regardless of the State of residence of such worker; and

(C) may be provided to other eligible dislocated workers regardless of the State of residence of such worker;

(2) the State will designate or create an identifiable State dislocated worker unit or office with the capability to respond rapidly, on site, to permanent closures and substantial layoffs throughout the State in order to assess the need for, and initially to provide for, appropriate basic readjustment services;

(3) the State unit will—

(A) make appropriate retraining and basic readjustment services available to eligible dislocated workers through the use of rapid response teams, substate grantees, and other appropriate organizations;

(B) work with employers and labor organizations in promoting labor-management cooperation to achieve the goals of this subchapter;

(C) operate a monitoring, reporting, and management system which provides an adequate information base for effective program management, review, and evaluation; and

(D) provide technical assistance and advice to substate grantees, including immediate notification to substate grantees of current or projected permanent closures or substantial layoffs in the substate area of such

grantee to continue and expand the services initiated by the rapid response teams;

(4) the State will provide to additional dislocated workers (as defined in section 1651(a)(2) of this title) the services available under this subchapter to eligible dislocated workers only if the Governor of such State determines that such services may be provided to additional dislocated workers without adversely affecting the delivery of such services to eligible dislocated workers;

(5) the State unit will exchange information and coordinate programs with—

(A) the appropriate economic development agency, for the purpose of developing strategies to avert plant closings or mass layoffs and to accelerate the reemployment of affected individuals;

(B) State education, training, and social services programs; and

(C) all other programs available to assist dislocated workers (including the Job Service and the unemployment insurance system);

(6) the State unit will disseminate throughout the State information on the availability of services and activities under this subchapter;

(7) any program conducted with funds made available under this subchapter which will provide services to a substantial number of members of a labor organization will be established only after full consultation with such labor organization;

(8) the State will not prescribe any standard for the operation of programs under this part that is inconsistent with section 1516(c) of this title;

(9) the State job training coordinating council has reviewed and commented in writing on the plan;

(10) the delivery of services with funds made available under this subchapter will be integrated or coordinated with services or payments made available under chapter 2 of title II of the Trade Act of 1974 [19 U.S.C. 2271 et seq.] and provided by any State or local agencies designated under section 239 of the Trade Act of 1974 [19 U.S.C. 2311];

(11) the State unit will provide the Secretary with a cost breakdown of all funds made available under this subchapter used by such unit for administrative expenditures; and

(12) the State will not transfer the responsibility for the rapid response assistance functions of the State unit under section 1661c(b) of this title to another entity, but the State may contract with another entity to perform rapid response assistance services.

(c) Review and approval of State plans

The Secretary shall review any plan submitted under subsection (a) of this section, and any comments thereon submitted by the State job training coordinating council pursuant to subsection (b)(9) of this section, and shall notify a State as to any deficiencies in such plan within 30 days after submission. Unless a State has been so notified, the Secretary shall approve the plan within 45 days after submission. The Secretary shall not finally disapprove the plan of any State except after notice and opportunity for a hearing.

(d) Modifications

Any plan submitted under subsection (a) of this section may be modified to describe changes in or additions to the programs and activities set forth in the plan, except that no such modification shall be effective unless reviewed and approved in accordance with subsection (c) of this section.

(e) Complaint, investigation, penalty

(1) Whenever the Secretary receives a complaint or a report from an aggrieved party or a public official that a State is not complying with the provisions of the State plan required by this section, the Secretary shall investigate such report or complaint.

(2)(A) Whenever the Secretary determines that there has been such a failure to comply and that other remedies under this chapter are not available or are not adequate to achieve compliance, the Secretary may withhold an amount not to exceed 10 percent of the allotment of the State for the fiscal year in which the determination is made for each such violation.

(B) No determination may be made under this paragraph until the State affected is afforded adequate notice and opportunity for a hearing.

(f) Special rule

The provisions of sections 1512(h) and 1515(d) of this title, relating to cases in which a service delivery area is a State, shall apply to this subchapter.

(Pub. L. 97–300, title III, § 311, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1527; amended Pub. L. 102–367, title I, § 115(b), title VII, § 702(a)(12), Sept. 7, 1992, 106 Stat. 1034, 1112; Pub. L. 102–484, div. D, title XLIV, § 4467(a), Oct. 23, 1992, 106 Stat. 2750.)

REFERENCES IN TEXT

The Trade Act of 1974, referred to in subsec. (b)(10), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 2 of title II of the Trade Act of 1974 is classified generally to part 2 (§ 2271 et seq.) of subchapter II of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367, § 115(b), substituted ''1516(c)'' for ''1516(g)''.

Subsec. (b)(3)(D). Pub. L. 102–484, § 4467(a)(1), inserted before semicolon at end '', including immediate notification to substate grantees of current or projected permanent closures or substantial layoffs in the substate area of such grantee to continue and expand the services initiated by the rapid response teams''.

Subsec. (b)(8). Pub. L. 102–367, § 115(b), substituted ''1516(c)'' for ''1516(g)''.

Subsec. (b)(11), (12). Pub. L. 102–484, § 4467(a)(2)–(4), added pars. (11) and (12).

Subsec. (f). Pub. L. 102–367, § 702(a)(12), substituted ''sections'' for ''section''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, with provisions relating to issuance of revised performance standards under amendments by section 115 of Pub. L. 102–367, see section 701(a) and (b) of Pub. L.

102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1661a, 1661b, 1661c, 1661f, 1662, 1662d–1 of this title; title 5 section 3502.

§ 1661a. Substate grantees

(a) Designation of substate areas

(1) The Governor of each State shall, after receiving any recommendations from the State job training coordinating council, designate substate areas for the State.

(2) Each service delivery area within a State shall be included within a substate area and no service delivery area shall be divided among two or more substate areas.

(3) In making designations of substate areas, the Governor shall consider—

(A) the availability of services throughout the State;

(B) the capability to coordinate the delivery of services with other human services and economic development programs; and

(C) the geographic boundaries of labor market areas within the State.

(4) Subject to paragraphs (2) and (3), the Governor—

(A) shall designate as a substate area any single service delivery area that has a population of 200,000 or more;

(B) shall designate as a substate area any two or more contiguous service delivery areas—

(i) that in the aggregate have a population of 200,000 or more; and

(ii) that request such designation; and

(C) shall designate as a substate area any concentrated employment program grantee for a rural area described in section 1511(a)(4)(A)(iii) of this title.

(5) The Governor may deny a request for designation under paragraph (4)(B) if the Governor determines that such designation would not be consistent with the effective delivery of services to eligible dislocated workers in various labor market areas (including urban and rural areas) within the State, or would not otherwise be appropriate to carry out the purposes of this subchapter.

(6) The designations made under this section may not be revised more than once each two years, in accordance with the requirements of this section.

(b) Designation of substate grantees

A substate grantee shall be designated, on a biennial basis, for each substate area. Such substate grantee shall be designated in accordance with an agreement among the Governor, the local elected official or officials of such area, and the private industry council or councils of such area. Whenever a substate area is represented by more than one such official or council, the respective officials and councils shall each designate representatives, in accordance with procedures established by the Governor (after consultation with the State job training coordinating council), to negotiate such agreement. In the event agreement cannot be reached on the selection of a substate grantee, the Governor shall select the substate grantee.

(c) Eligibility

Entities eligible for designation as substate grantees include—

(1) private industry councils in the substate area;

(2) service delivery area grant recipients or administrative entities;

(3) private nonprofit organizations;

(4) units of general local government in the substate area, or agencies thereof;

(5) local offices of State agencies; and

(6) other public agencies, such as community colleges and area vocational schools.

(d) Functions of substate grantees

The substate grantee shall be responsible for providing, within such substate area, services described in section 1661c(c), (d), and (e) of this title pursuant to an agreement with the Governor and in accordance with the State plan under section 1661 of this title and the substate plan under section 1661b of this title. The substate grantee may provide such services directly or through contract, grant, or agreement with service providers.

(e) Applicability of general administrative provisions to substate grantees

The requirements of parts C and D of subchapter I of this chapter that apply to an administrative entity or a recipient of financial assistance under this chapter shall also apply to substate grantees under this subchapter.

(Pub. L. 97–300, title III, § 312, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1529.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1651, 1661b, 1661f, 1662e of this title.

§ 1661b. Substate plan

(a) General rule

No amounts appropriated for any fiscal year may be provided to a substate grantee unless the Governor (after considering the recommendations of the State job training coordinating council) has approved a substate plan, or modification thereof, submitted by the substate grantee describing the manner in which activities will be conducted within the substate area. Prior to the submission to the Governor, the plan shall be submitted for review and comment to the other parties to the agreement described in section 1661a(b) of this title.

(b) Contents of substate plan

The substate plan shall contain a statement of—

(1) the means for delivering services described in section 1661c of this title to eligible dislocated workers;

(2) the means to be used to identify, select, and verify the eligibility of program participants;

(3) the means for implementing the requirements of section 1661c(f) of this title;

(4) the means for involving labor organizations in the development and implementation of services;

(5) the performance goals to be achieved consistent with the performance goals contained in the State plan pursuant to section 1661(b)(8) of this title;

(6) procedures, consistent with section 1517 of this title, for selecting service providers which take into account past performance in job training or related activities, fiscal accountability, and ability to meet performance standards;

(7) a description of the methods by which the substate grantee will respond expeditiously to worker dislocation where the rapid response assistance required by section 1661c(b) of this title is inappropriate, including worker dislocation in sparsely populated areas, which methods may include (but are not limited to)—

(A) development and delivery of widespread outreach mechanisms;

(B) provision of financial evaluation and counseling (where appropriate) to assist in determining eligibility for services and the type of services needed;

(C) initial assessment and referral for further basic adjustment and training services; and

(D) establishment of regional centers for the purpose of providing such outreach, assessment, and early readjustment assistance;

(8) a description of the methods by which the other parties to the agreement described in section 1661a(b) of this title may be involved in activities of the substate grantee;

(9) a description of training services to be provided, including—

(A) procedures to assess participants' current education skill levels and occupational abilities;

(B) procedures to assess participants' needs, including educational, training, employment, and social services;

(C) methods for allocating resources to provide the services recommended by rapid response teams for eligible dislocated workers within the substate area; and

(D) a description of services and activities to be provided in the substate area;

(10) the means whereby coordination with other appropriate programs, services, and systems will be effected, particularly where such coordination is intended to provide access to the services of such other systems for program participants at no cost to the worker readjustment program; and

(11) a detailed budget, as required by the State.

(c) Plan approval

The Governor shall approve or disapprove the plan of a substate grantee in the manner required by section 1515(b)(1), (2), and (3) of this title. If a substate grantee fails to submit a plan, or submits a plan that is not approved by the Governor in accordance with such section, the Governor may direct the expenditure of funds allocated to the substate area until such time as a plan is submitted and approved or a new substate grantee is designated under section 1661a of this title.

(d) By-pass authority

If a substate grantee fails to expend funds allocated to it in accordance with its plan, the Governor may, subject to appropriate notice and opportunity for comment in the manner required by section 1515(b)(1), (2), and (3) of this title, direct the expenditure of funds in accordance with the substate plan until—

(1) the substate grantee corrects the failure,

(2) the substate grantee submits an acceptable modification to its plan pursuant to subsection (a) of this section, or

(3) a new substate grantee is designated under section 1661a of this title.

(Pub. L. 97–300, title III, § 313, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1531.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1661a, 1661c, 1661f of this title.

§ 1661c. Use of funds; services to be provided

(a) In general

Funds allotted under section 1652 of this title may be used—

(1) to provide rapid response assistance in accordance with subsection (b) of this section;

(2) to deliver, coordinate, and integrate basic readjustment services and support services in accordance with subsection (c) of this section;

(3) to provide retraining services in accordance with subsection (d) of this section;

(4) to provide needs-related payments in accordance with subsection (e) of this section; and

(5) to provide for coordination with the unemployment compensation system in accordance with subsection (f) of this section.

(b) Rapid response assistance

(1) The dislocated worker unit required by section 1661(b)(2) of this title shall include specialists who may use funds available under this subchapter—

(A) to establish on-site contact with employer and employee representatives within a short period of time (preferably 48 hours or less) after becoming aware of a current or projected permanent closure or substantial layoff in order to—

(i) provide information on and facilitate access to available public programs and services; and

(ii) provide emergency assistance adapted to the particular closure or layoff;

(B) to promote the formation of labor-management committees, by providing—

(i) immediate assistance in the establishment of the labor-management committee, including providing immediate financial assistance to cover the start-up costs of the committee;

(ii) a list of individuals from which the chairperson of the committee may be selected;

(iii) technical advice as well as information on sources of assistance, and liaison with other public and private services and programs; and

(iv) assistance in the selection of worker representatives in the event no union is present;

(C) to collect information related to—

(i) economic dislocation (including potential closings or layoffs); and

(ii) all available resources within the State for displaced workers,

which information shall be made available on a regular basis to the Governor and the State job training coordinating council to assist in providing an adequate information base for effective program management, review, and evaluation;

(D) to provide or obtain appropriate financial and technical advice and liaison with economic development agencies and other organizations to assist in efforts to avert worker dislocations;

(E) to disseminate information throughout the State on the availability of services and activities carried out by the dislocated worker unit or office; and

(F) to assist the local community in developing its own coordinated response and in obtaining access to State economic development assistance.

(2) In a situation involving an impending permanent closure or substantial layoff, a State may provide funds, where other public or private resources are not expeditiously available, for a preliminary assessment of the advisability of conducting a comprehensive study exploring the feasibility of having a company or group, including the workers, purchase the plant and continue it in operation.

(3) The Secretary shall oversee the administration by each State of the rapid response assistance services provided in such State and the effectiveness, efficiency, and timeliness of the delivery of such services. If the Secretary determines that such services are not being performed adequately, the Secretary shall implement appropriate corrective action, including, where necessary, the selection of a new rapid response assistance service provider.

(4) For purposes of rapid response assistance provided by a State dislocated worker unit, the term ''substantial layoff'' means a layoff of 50 or more individuals.

(c) Basic readjustment services

Funds allotted under section 1652 of this title may be used to provide basic readjustment services to eligible dislocated workers. Subject to limitations set forth in subsection (e) of this section and section 1661d(a) of this title, the services may include (but are not limited to)—

(1) development of individual readjustment plans for participants in programs under this subchapter;

(2) outreach and intake;

(3) early readjustment assistance;

(4) job or career counseling;

(5) testing;

(6) orientation;

(7) assessment, including evaluation of educational attainment and participant interests and aptitudes;

(8) determination of occupational skills;

(9) provision of future world-of-work and occupational information;

(10) job placement assistance;

(11) labor market information;

(12) job clubs;

(13) job search;

(14) job development;

(15) supportive services, including child care, commuting assistance, and financial and personal counseling which shall terminate not later than the 90th day after the participant has completed other services under this part, except that counseling necessary to assist participants to retain employment shall terminate not later than 6 months following the completion of training;

(16) prelayoff assistance;

(17) relocation assistance; and

(18) programs conducted in cooperation with employers or labor organizations to provide early intervention in the event of closures of plants or facilities.

(d) Retraining services

(1) Funds allotted under section 1652 of this title may be used to provide training services under this part to eligible dislocated workers. Such services may include (but are not limited to)—

(A) classroom training;

(B) occupational skill training;

(C) on-the-job training;

(D) out-of-area job search;

(E) relocation;

(F) basic and remedial education;

(G) literacy and English for non-English speakers training;

(H) entrepreneurial training; and

(I) other appropriate training activities directly related to appropriate employment opportunities in the substate area.

(2) No funds under this part may be expended to provide wages for public service employment.

(e) Needs-related payments

(1) Funds allocated to a substate grantee under section 1652(d) of this title may be used pursuant to a substate plan under section 1661b of this title to provide needs-related payments to an eligible dislocated worker who is unemployed and does not qualify or has ceased to qualify for unemployment compensation, in order to enable such worker to participate in training or education programs under this subchapter. To be eligible for such payments, an eligible dislocated worker who has ceased to qualify for unemployment compensation must have been enrolled in training by the end of the 13th week of the worker's initial unemployment compensation benefit period, or, if later, the end of the 8th week after an employee is informed that a short-term layoff will in fact exceed 6 months.

(2) The level of needs-related payments shall be made available at a level not greater than the higher of—

(A) the applicable level of unemployment compensation; or

(B) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

(f) Coordination with unemployment compensation

(1) Funds allocated to a State under section 1652 of this title may be used for coordination of worker readjustment programs and the unemployment compensation system, consistent with the limitation on administrative expenses in section 1661d of this title. Each State shall be responsible for coordinating the unemployment compensation system and worker readjustment programs within such State.

(2) An eligible dislocated worker participating in training (except for on-the-job training) under this subchapter shall be deemed to be in training with the approval of the State agency for purposes of section 3304(a)(8) of title 26.

(g) Joint funding

(1) Funds allotted under section 1652 of this title may be used to provide additional funds under an applicable program if—

(A) such program otherwise meets the requirements of this chapter and the requirements of the applicable program;

(B) such program serves the same individuals that are served under this subchapter;

(C) such program provides services in a coordinated manner with services provided under this subchapter; and

(D) such funds would be used to supplement, and not supplant, funds provided from non-Federal sources.

(2) For purposes of this subsection, the term ''applicable program'' means any program under any of the following provisions of law:

(A) The Carl D. Perkins Vocational and Applied Technology Education Act [20 U.S.C. 2301 et seq.].

(B) The Wagner-Peyser Act [29 U.S.C. 49 et seq.].

(h) Clarification of definition of eligible dislocated workers for certain services

(1) The term ''eligible dislocated workers'' includes individuals who have not received specific notice of termination or lay off and work at a facility at which the employer has made a public announcement that such facility will close (except those individuals likely to remain employed with the same employer or likely to retire instead of seeking new employment)—

(A) with respect to basic readjustment services provided under paragraphs (1) through (14), (16), and (18) of subsection (c) of this section; and

(B) with respect to services provided under this section beginning 180 days before the date on which the facility is scheduled to close.

(2) Services described in paragraph (1)(A) and provided to the individuals described in paragraph (1) shall, to the extent practicable, be funded under section 1652(c)(1) of this title.

(Pub. L. 97–300, title III, § 314, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1532; amended Pub. L. 101–392, § 5(a)(3), Sept. 25, 1990, 104 Stat. 759; Pub. L. 102–367, title III, § 301, Sept. 7, 1992, 106 Stat. 1073; Pub. L. 102–484, div. D, title XLIV, § 4467(b)–(d), Oct. 23, 1992, 106 Stat. 2750.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational and Applied Technology Education Act, referred to in subsec. (g)(2)(A), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The Wagner-Peyser Act, referred to in subsec. (g)(2)(B), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified principally to chapter 4B (§ 49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(3), (4). Pub. L. 102–484, § 4467(b), (c), added pars. (3) and (4).

Subsec. (e)(1). Pub. L. 102–484, § 4467(d)(1), inserted ''is unemployed and'' before ''does not qualify''.

Subsec. (f). Pub. L. 102–367 designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 102–484, § 4467(d)(2), added subsec. (h).

1990—Subsec. (g). Pub. L. 101–392 added subsec. (g).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–392 effective July 1, 1991, see section 702(a) of Pub. L. 101–392, set out as a note under section 2301 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516, 1652, 1661, 1661a, 1661b, 1661d, 1661e, 1662b, 1662d, 1662d–1, 1662e of this title.

§ 1661d. Limitations on uses of funds

(a) Retraining services

(1) Of the funds allocated to a substate grantee under this part for any program year, not less than 50 percent shall be expended for retraining services specified under section 1661c(d) of this title.

(2) A substate grantee may apply to the Governor for a waiver of the requirement in paragraph (1). Such waiver may not permit less than 30 percent of the funds to be spent for such retraining services. The waiver may be granted in whole or in part if the substate grantee demonstrates that the worker readjustment program in the area will be consistent with the principle that dislocated workers be prepared for occupations or industries with long-term potential. The Governor shall prescribe criteria for the demonstration required by the previous sentence.

(3) An application for such a waiver shall be submitted at such time and in such form as the Governor may prescribe. The Governor shall provide an opportunity for public comment on the application.

(b) Needs-related payments and supportive services limitation

Of the funds allocated to a substate grantee or to the Governor under this part for any program

year, not more than 25 percent may be expended to provide needs-related payments and other supportive services.

(c) Administrative cost limitation

Of the funds allocated to a substate grantee or to the Governor under this part for any program year, not more than 15 percent may be expended to cover the administrative cost of programs. For purposes of this subsection, administrative cost does not include the cost of activities under section 1661c(b) of this title.

(d) Combination of funds

Substate grantees within a State may combine funds under this subchapter for the provision of services to eligible dislocated workers from 2 or more substate areas.

(e) "Allocated" defined

As used in this section, the term ''allocated'',[1] means allocated for a program year, as adjusted for reallocations between substate areas, and for reallotments in accordance with section 1653 of this title.

(Pub. L. 97–300, title III, § 315, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1535; amended Pub. L. 102–367, title III, § 302, Sept. 7, 1992, 106 Stat. 1073.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–367, § 302(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Not less than 50 percent of the funds expended under this subchapter by any substate grantee shall be expended for retraining services specified under section 1661c(d) of this title.''

Subsec. (b). Pub. L. 102–367, § 302(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Not more than 25 percent of the funds expended under this subchapter by any substate grantee or by the Governor may be used to provide needs-related payments and other supportive services.''

Subsec. (c). Pub. L. 102–367, § 302(c), amended first sentence generally. Prior to amendment, first sentence read as follows: ''Not more than 15 percent of the funds expended under this subchapter by any substate grantee or by the Governor may be expended to cover the administrative cost of programs under this subchapter.''

Subsec. (d). Pub. L. 102–367, § 302(d), added subsec. (d).

Subsec. (e). Pub. L. 102–367, § 302(e), added subsec. (e).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1518, 1661c of this title.

§ 1661e. Retraining services availability

(a) Alternative methods of providing retraining services

A substate grantee may provide retraining services described in section 1661c(d) of this title to an eligible dislocated worker—

(1) by beginning such services promptly upon the worker's application for the program under this subchapter;

(2) by deferring the beginning of such services and providing the worker with a certificate of continuing eligibility in accordance with subsection (b)(1) and (2) of this section; or

(3) by permitting the worker to obtain such services from a service provider using such certificate in accordance with subsection (b)(3) of this section.

(b) Certification of continuing eligibility

(1) A substate grantee may issue to any eligible dislocated worker who has applied for the program authorized in this part a certificate of continuing eligibility. Such a certificate of continuing eligibility may be effective for periods not to exceed 104 weeks. No such certificate shall include any reference to any specific amount of funds. Any such certificate shall state that it is subject to the availability of funds at the time that any such training services are to be provided. Acceptance of such a certificate shall not be deemed to be enrollment in training.

(2) Any individual to whom a certificate of continuing eligibility has been issued under paragraph (1) of this subsection shall remain eligible for the program authorized under this part for the period specified in the certificate, notwithstanding section 1651(a) of this title, and may use the certificate in order to receive the retraining services, subject to the limitations contained in the certificate.

(3) A substate grantee may provide training services through systems that permit eligible dislocated workers to use certificates of continuing eligibility to seek out and arrange their own retraining with service providers approved by that substate grantee. Retraining provided pursuant to the certificate shall be conducted under a grant, contract, or other arrangement between the substate grantee and the service provider.

(Pub. L. 97–300, title III, § 316, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1535.)

§ 1661f. Functions of State job training coordinating council

For purposes of this subchapter, the State job training coordinating council shall—

(1) provide advice to the Governor regarding the use of funds under this subchapter, including advice on—

(A) the designation of substate areas and substate grantees, and the procedures for the selection of representatives within such areas under section 1661a of this title; and

(B) the methods for allocation and reallocation of funds, including the method for distribution of funds reserved under section 1652(c)(2) of this title and funds subject to reallocation under section 1653(d) of this title;

(2) submit comments to the Governor and the Secretary on the basis of review of the State and substate programs under this subchapter;

(3) review, and submit written comments on, the State plan (and any modification thereof) before its submission under section 1661 of this title;

(4) review, and submit written comments on, each substate plan submitted to the Governor under section 1661b of this title; and

[1] So in original. The comma probably should not appear.

(5) provide advice to the Governor regarding performance standards.

(Pub. L. 97–300, title III, § 317, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1536.)

PART B—FEDERAL RESPONSIBILITIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1652 of this title.

§ 1662. Federal administration

(a) Standards

The Secretary shall promulgate standards for the conduct and evaluation of programs under this subchapter.

(b) By-pass authority

In the event that any State fails to submit a plan that is approved under section 1661 of this title, the Secretary shall use the amount that would be allotted to that State to provide for the delivery in that State of the programs, activities, and services authorized by this subchapter until the State plan is submitted and approved under that section.

(Pub. L. 97–300, title III, § 321, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1536.)

§ 1662a. Federal delivery of dislocated worker services

(a) General authority

The Secretary shall, with respect to programs required by this subchapter—

(1) distribute funds to States in accordance with the requirements of section 1652 of this title;

(2) provide funds to exemplary and demonstration programs on plant closings and worker dislocation;

(3) otherwise allocate discretionary funds to projects serving workers affected by multi-State or industry-wide dislocations and to areas of special need in a manner that efficiently targets resources to areas of most need, encourages a rapid response to economic dislocations, and promotes the effective use of funds;

(4) monitor performance and expenditures and annually certify compliance with standards prescribed by the Secretary under section 1516(c) of this title;

(5) conduct research and serve as a national clearinghouse for gathering and disseminating information on plant closings and worker dislocation; and

(6) provide technical assistance and staff training services to States, communities, businesses, and unions, as appropriate.

(b) Administrative provisions

The Secretary shall designate or create an identifiable dislocated workers unit or office to coordinate the functions of the Secretary under this subchapter.

(Pub. L. 97–300, title III, § 322, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1536; amended Pub. L. 102–367, title I, § 115(b), Sept. 7, 1992, 106 Stat. 1034.)

AMENDMENTS

1992—Subsec. (a)(4). Pub. L. 102–367 substituted ''1516(c)'' for ''1516(g)''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, with provisions relating to issuance of revised performance standards under amendments by section 115 of Pub. L. 102–367, see section 701(a) and (b) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1662b. Allowable activities

(a) Circumstances and activities for use of funds

Amounts reserved for this part under section 1652(a)(2) of this title may be used to provide services of the type described in section 1661c of this title in the following circumstances:

(1) mass layoffs, including mass layoffs caused by natural disasters or Federal actions (such as relocations of Federal facilities) when the workers are not expected to return to their previous occupations;

(2) industrywide projects;

(3) multistate projects;

(4) special projects carried out through agreements with Indian tribal entities;

(5) special projects to address national or regional concerns;

(6) demonstration projects, including the projects described in section 1662c of this title;

(7) to provide additional financial assistance to programs and activities provided by States and substate grantees under part A of this subchapter; and

(8) to provide additional assistance under proposals for financial assistance that are submitted to the Secretary and approved by the Secretary after consultation with the Governor of the State in which the project is to operate.

(b) Use of funds in emergencies

Amounts reserved for this part under section 1652(a)(2) of this title may also be used to provide services of the type described in section 1661c of this title whenever the Secretary (with agreement of the Governor) determines that an emergency exists with respect to any particular distressed industry or any particularly distressed area to provide emergency financial assistance to dislocated workers. The Secretary may make arrangements for the immediate provision of such emergency financial assistance for the purposes of this section with any necessary supportive documentation to be submitted at a date agreed to by the Governor and the Secretary.

(c) Staff training and technical assistance

(1) Amounts reserved for this part under section 1652(a)(2) of this title may be used to provide staff training and technical assistance services to States, communities, businesses and labor organizations, and other entities involved in providing adjustment assistance to workers. Applications for technical assistance funds shall be submitted in accordance with procedures issued by the Secretary.

(2) Not more than 5 percent of the funds reserved for this part in any fiscal year shall be used for the purpose of this subsection.

(d) Training of rapid response staffs

Amounts reserved for this part under section 1652(a)(2) of this title shall be used to provide training of staff, including specialists, providing rapid response services. Such training shall include instruction in proven methods of promoting, establishing, and assisting labor-management committees.

(Pub. L. 97–300, title III, § 323, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1537.)

§ 1662c. Demonstration programs

(a) Authorized programs

From the amount reserved for this part under section 1652(a)(2) of this title for the fiscal years 1992 through 1996, not less than 10 percent of such amount shall be used for demonstration programs. Such demonstration programs may be up to three years in length, and shall include (but need not be limited to) at least two of the following demonstration programs:

(1) self-employment opportunity demonstration program;

(2) public works employment demonstration program;

(3) dislocated farmer demonstration program; and

(4) job creation demonstration program.

(b) Evaluation and report

The Secretary shall conduct or provide for an evaluation of the success of each demonstration program, and shall prepare and submit to the Congress a report of the evaluation not later than October 1, 1992, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.

(Pub. L. 97–300, title III, § 324, as added Pub. L. 100–418, title VI, § 6302(a), Aug. 23, 1988, 102 Stat. 1538; amended Pub. L. 102–367, title III, § 303, Sept. 7, 1992, 106 Stat. 1074.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367 substituted ''1992 through 1996'' for ''1989, 1990, and 1991''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1662b of this title.

§ 1662d. Defense conversion adjustment program

(a) In general

From funds made available to carry out this section, the Secretary may make grants to States, substate grantees, employers, employer associations, and representatives of employees to provide training, adjustment assistance, and employment services to eligible employees adversely affected by reductions in expenditures by the United States for defense, by closures of United States military facilities, or by reductions in the export of defense articles and defense services as a result of United States policy, including reductions in the amount of defense articles and defense services under agreements to provide such articles or services or through termination or completion of any such agreements. For purposes of this section, an eligible employee is an eligible dislocated worker as defined in section 1651(a) of this title who has been terminated or laid off, or has received a notice of termination or lay off, as a consequence of reductions in expenditures by the United States for defense, by closures of United States military facilities, or by reductions in the export of defense articles and defense services as a result of United States policy, including reductions in the amount of defense articles and defense services under agreements to provide such articles or services or through termination or completion of any such agreements as determined in accordance with regulations of the Secretary.

(b) Application

In reviewing applications for grants under subsection (a) of this section, the Secretary shall give priority to applications from areas which have the greatest number of eligible employees.

(c) Use of funds

Grants under subsection (a) of this section may be used for any purpose for which funds may be used under section 1661c of this title or this part.

(d) Demonstration projects

In carrying out the grant program established under subsection (a) of this section, the Secretary may make grants to entities referred to in that subsection for the purpose of developing demonstration projects to encourage and promote innovative responses to the dislocation resulting from reductions in expenditures by the United States for defense, by closures of United States military facilities, or by reductions in the export of defense articles and defense services as a result of United States policy, including reductions in the amount of defense articles and defense services under agreements to provide such articles or services or through termination or completion of any such agreements. Such demonstration projects may include—

(1) projects to facilitate the placement of eligible employees in occupations experiencing skill shortages that will make use of the skills acquired by the eligible employees during their employment;

(2) projects to assist in retraining and reorganization efforts designed to avert layoffs that would otherwise occur as a result of such reductions or closures; and

(3) projects to assist communities in addressing and reducing the impact of such economic dislocation.

(e) Notice of termination for certain Defense employees

(1) In general

A civilian employee of the Department of Defense employed at a military installation being closed or realigned under the laws referred to in paragraph (2) shall be eligible for training, adjustment assistance, and employment services under subsection (a) of this sec-

tion beginning on the date on which such employee receives actual notice of termination, or the date determined by the Secretary of Defense under paragraph (3), whichever occurs earlier.

(2) Certain defense laws

The laws referred to in this paragraph are—

(A) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note); and

(B) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(3) Date

The date determined under this paragraph is the date that is 24 months before the date on which the military installation is to be closed or the realignment of the installation is to be completed, as the case may be.

(f) "Defense articles and defense services" defined

For purposes of this section, the term ''defense articles and defense services'' means defense articles, defense services, or design and construction services under the Arms Export Control Act (22 U.S.C. 2751 et seq.), including defense articles and defense services licensed or approved for export under section 38 of that Act (22 U.S.C. 2778).

(Pub. L. 97–300, title III, § 325, as added Pub. L. 101–510, div. D, title XLII, § 4202, Nov. 5, 1990, 104 Stat. 1852; amended Pub. L. 102–484, div. D, title XLIV, § 4467(e), Oct. 23, 1992, 106 Stat. 2751; Pub. L. 103–337, div. A, title XI, §§ 1136(b), 1137(a), Oct. 5, 1994, 108 Stat. 2878.)

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (e)(2)(A), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, as amended, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

The Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (e)(2)(B), is Pub. L. 100–526, Oct. 24, 1988, 102 Stat. 2623, as amended. Title II of the Act is set out as a note under section 2687 of Title 10. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of Title 10 and Tables.

The Arms Export Control Act, referred to in subsec. (f), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 1137(a)(1), substituted '', by closures of United States military facilities, or by reductions in the export of defense articles and defense services as a result of United States policy, including reductions in the amount of defense articles and defense services under agreements to provide such articles or services or through termination or completion of any such agreements'' for ''or by closures of United States military facilities'' in two places.

Pub. L. 103–337, § 1136(b), substituted ''From funds made available to carry out this section,'' for ''From the amount appropriated pursuant to section 4203 of the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990,''.

Subsec. (d). Pub. L. 103–337, § 1137(a)(2), substituted '', by closures of United States military facilities, or by reductions in the export of defense articles and defense services as a result of United States policy, including reductions in the amount of defense articles and defense services under agreements to provide such articles or services or through termination or completion of any such agreements'' for ''or by the closure of United States military installations''.

Subsec. (f). Pub. L. 103–337, § 1137(a)(3), added subsec. (f).

1992—Subsec. (e). Pub. L. 102–484 added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 12653c.

§ 1662d–1. Defense diversification program

(a) In general

From funds made available to carry out this section, the Secretary, in consultation with the Secretary of Defense, may make grants to States, substate grantees, employers, representatives of employees, labor-management committees, and other employer-employee entities to provide for training, adjustment assistance, and employment services to eligible individuals described in subsection (b) of this section and to develop plans for defense diversification or conversion assistance to affected facilities located within an area directly affected by reductions in expenditures by the United States for defense or by closures of United States military facilities.

(b) Individuals eligible for training, assistance, and services

(1) Certain members of the Armed Forces

A member of the Armed Forces shall be eligible for training, adjustment assistance, and employment services under this section if the member—

(A) was on active duty or full-time National Guard duty on September 30, 1990;

(B) during the 5-year period beginning on that date—

(i) is involuntarily separated (as defined in section 1141 of title 10) from active duty or full-time National Guard duty; or

(ii) is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program under section 1174a of title 10 or the voluntary separation incentive program under section 1175 of that title;

(C) is not entitled to retired or retainer pay incident to that separation; and

(D) applies for such training, adjustment assistance, or employment services before the end of the 180-day period beginning on the date of that separation.

(2) Certain defense employees

(A) In general

Except as provided in subparagraph (B), a civilian employee of the Department of Defense or the Department of Energy shall be eligible for training, adjustment assistance, and employment services under this section if the employee—

(i) during the 5-year period beginning on October 1, 1992, is terminated or laid off (or

receives a notice of termination or lay off) from such employment as a result of reductions in defense spending, as determined by the Secretary of Defense or the Secretary of Energy, except that, in the case of a notice of termination or lay off, the eligibility of the employee shall not begin until 180 days before the projected date of the termination or lay off; and

(ii) is not entitled to retired or retainer pay incident to that termination or lay off.

(B) Special rule for civilian employees of the Department of Defense employed at certain military installations

(i) In general

A civilian employee of the Department of Defense employed at a military installation being closed or realigned under the laws referred to in clause (ii) shall be eligible for training, adjustment assistance, and employment services under this section beginning on the date on which such employee receives actual notice of termination, or the date determined by the Secretary of Defense under clause (iii), whichever occurs earlier.

(ii) Certain defense laws

The laws referred to in this clause are—

(I) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note);

(II) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

(III) section 2687 of title 10; and

(IV) any other similar law enacted after November 30, 1993.

(iii) Date

The date determined under this clause is the date that is 24 months before the date on which the military installation is to be closed or the realignment of the installation is to be completed, as the case may be.

(3) Certain defense contractor employees

An employee of a private defense contractor shall be eligible for training, adjustment assistance, and employment services under this section if the employee—

(A) during the 5-year period beginning on October 1, 1992, is terminated or laid off (or receives a notice of termination or lay off) from such employment as a result of reductions in defense spending, the closure or realignment of a military installation, or reductions in the export of defense articles and defense services as a result of United States policy, including reductions in the amount of defense articles and defense services under agreements to provide such articles or services or through termination or completion of any such agreements, as determined by the Secretary of Defense, except that, in the case of a notice of termination or lay off, the eligibility of the employee shall not begin until 180 days before the projected date of the termination or lay off; and

(B) is not entitled to retired or retainer pay incident to that termination.

(c) Application requirements

(1) In general

To receive a grant under subsection (a) of this section, an applicant shall submit to the Secretary an application which contains such information as the Secretary may require and which meets the following requirements:

(A) Consultation

(i) In general

(I) In the case of an applicant other than a State, such applicant shall submit an application to the Secretary developed in consultation with the State, and, where appropriate, in consultation with the labor-management committee or other employer-employee entity established pursuant to subparagraph (C)(ii) at the affected facility and in consultation with representatives from the Department of Defense.

(II) Prior to the submission of an application under subclause (I) to the Secretary, the applicant shall submit the application to the State for review. The State shall have 30 calendar days to review the application. The applicant may submit the application to the Secretary after the date on which the State completes its review of the application or upon expiration of the 30 calendar days, whichever occurs first.

(ii) States

In the case of an applicant that is a State, such State shall submit an application to the Secretary developed in consultation with appropriate substate grantees, and, where appropriate, in consultation with the labor-management committee or other employer-employee entity established pursuant to subparagraph (C)(ii) at the affected facility and in consultation with representatives from the Department of Defense.

(B) Contents of application

An application shall contain a local labor market analysis, a general assessment of basic skills, career interests, income needs, and strategies necessary for the training and placement of the population that may be served, and, where appropriate—

(i) a preliminary outline of a program to convert the affected defense base or facility;

(ii) preliminary plant or military base conversion proposals, and proposals for the effective use or conversion of surplus Federal property; and

(iii) assurances that the applicant will coordinate the activities and services provided under this section with the Office of Economic Adjustment and other relevant agencies.

(C) Provision of State dislocated worker services

The applicant shall provide verification that the State dislocated worker unit has provided, or is in the process of providing, in addition to the services described in section 1661(b)(3) and 1661c(b) of this title, the following activities and services:

(i) The State dislocated worker unit, in conjunction with the substate grantee (and where appropriate, representatives from the Department of Defense), has established on-site contact with employers and employee representatives affected by a dislocation or potential dislocation of eligible individuals, preferably not later than 2 business days after notification of such dislocation.

(ii) The State dislocated worker unit has promoted the formation of a labor-management committee or other employer-employee entity in the case of a facility affected by an employee dislocation or potential dislocation in accordance with section 1661c(b)(1)(B) of this title, including the provision of technical assistance and, where appropriate, financial assistance to cover the start-up costs of such committee.

(iii) The State dislocated worker unit has provided, in conjunction with the labor-management committee or other employer-employee entity established pursuant to clause (ii), the following services:

(I) An initial survey of potential eligible individuals to determine the approximate number of such individuals interested in receiving services under this section, orientation sessions, counseling services, and early intervention services for eligible individuals and management. Such services may be provided in coordination with representatives from the United States Employment Service, the Interstate Job Bank, the Department of Defense, and the National Occupational Information Coordinating Committee.

(II) Initial basic readjustment services in conjunction with such services provided by substate grantees.

(D) Skills upgrading

The applicant shall provide assurances satisfactory to the Secretary that if the applicant uses amounts from a grant under subsection (a) of this section for skills upgrading at defense facilities pursuant to subsection (f)(2) of this section, the applicant will maintain its expenditures from all other sources for skills upgrading at or above the average level of such expenditures in the fiscal year preceding October 23, 1992.

(2) Technical assistance

The Secretary may provide technical assistance to an applicant for the purpose of assisting the applicant to meet the application requirements under paragraph (1).

(3) Timely decision

The Secretary shall make a determination with regard to an application received under paragraph (1) not later than 30 calendar days after the date on which the Secretary receives the application.

(4) Timely notification

The Secretary shall provide timely written notification to an applicant upon determination by the Secretary that the applicant has not satisfied the requirements under paragraph (1).

(d) Selection requirements

(1) In general

In reviewing applications for grants under subsection (a) of this section, the Secretary—

(A) shall not approve an application for a grant unless the application contains assurances that the applicant will use amounts from a grant to provide needs-related payments in accordance with subsection (i) of this section;

(B) shall select applications from areas most severely impacted by the reduction in defense expenditures and base closures, particularly areas with existing high poverty levels or existing high unemployment levels; and

(C) shall select applications from areas which have the greatest number of eligible individuals, taking into account the ratio of eligible individuals in the affected community to the population of such community.

(2) Priority

In reviewing applications for grants under subsection (a) of this section, the Secretary shall give priority to each of the following:

(A) Applications received from substate grantees.

(B) Applications received from any applicant on behalf of affected employers in a similar defense-related industry or on behalf of a single employer with multiple bases or plants within a State.

(C) Applications demonstrating employer-employee cooperation, including the participation of labor-management committees or other employer-employee entities.

(e) Retention of portion of grant amount

(1) Portion relating to general application requirements

Subject to paragraph (2), the Secretary shall retain 25 percent of the amount of a grant awarded under subsection (a) of this section and shall disburse the amount to the applicant not later than 90 days after the date on which the Secretary determines that the applicant is satisfactorily implementing the plans and strategies described in subsection (c)(1)(B) of this section.

(2) Portion relating to State dislocated worker services

The Secretary shall retain up to 20 percent of the amount retained under paragraph (1) (not to exceed $50,000) and shall disburse the amount to the State dislocated worker unit not later than 90 days after the date on which the Secretary determines that the applicant has provided verification that such unit has satisfactorily provided the activities and serv-

ices described in subsection (c)(1)(C) of this section. The amount disbursed under the preceding sentence shall be used to reimburse such unit for expenses incurred in providing such activities and services.

(f) Use of funds

Subject to the requirements of subsections (g), (h), (i), and (j) of this section, grants under subsection (a) of this section may be used only for the following purposes:

(1) Any purpose for which funds may be used under section 1661c of this title or this section.

(2) Skills upgrading, which may be provided to—

(A) individuals who are employed in non-managerial positions, including individuals in such positions who have received notice of termination or lay off, if such upgrading—

(i) is integral to the conversion of a defense facility and necessary to prevent a closure or mass layoff which would result in the termination or layoff of such individuals; and

(ii) is to replace or update obsolete skills of such individuals with marketable skills; and

(B) individuals who have received notice of termination or lay off from non-managerial positions, including individuals who have been terminated or laid off from such positions, if such upgrading is to replace or update obsolete skills of such individuals with marketable skills, without which reemployment in a high demand occupation or industry would be unlikely.

(3) The development and introduction of high performance workplace systems, employee and participative management systems, and workforce participation in the evaluation, selection, and implementation of new production technologies.

(g) Limitation

Not more than 20 percent of amounts received from a grant under subsection (a) of this section shall be used for administration, conversion planning activities, and the activities described in subsection (f)(3) of this section.

(h) Adjustment assistance requirements

The adjustment assistance requirements described in section 1662e(e) of this title shall apply for purposes of grants made under subsection (a) of this section for adjustment assistance.

(i) Needs-related payments requirements

The Secretary shall prescribe regulations with respect to the use of funds from grants under subsection (a) of this section for needs-related payments in accordance with the requirements described in section 1662e(f) of this title in order to enable eligible individuals to complete training or education programs. Priority for needs-related payments shall be given to eligible individuals participating in certificate or degree awarding vocational training or education programs of 1 year or more.

(j) Department of Defense financial assistance requirement

The Secretary of Defense, in consultation with the Secretary of Labor, shall prescribe regulations to ensure that student financial assistance authorized under programs for employees of the Department of Defense and veterans is provided prior to adjustment assistance under subsection (h) of this section, needs-related payments under subsection (i) of this section, and any other student financial assistance provided under Federal law.

(k) Demonstration projects

(1) In general

In carrying out the grant program established under subsection (a) of this section, the Secretary, in consultation with the Secretary of Defense, may make grants to the entities referred to in that subsection for the purpose of developing demonstration projects to encourage and promote innovative responses to the dislocation resulting from reductions in expenditures by the United States for defense, the closure of United States military installations, or reductions in the export of defense articles and defense services as a result of United States policy, including reductions in the amount of defense articles and defense services under agreements to provide such articles or services or through termination or completion of any such agreements. Such demonstration projects may include—

(A) projects to assist in retraining efforts designed to address the needs of individuals who have received notice of termination or lay off and individuals who have been terminated or laid off in communities affected by such reductions or closures;

(B) projects to assist in retraining and reorganization efforts designed to avert layoffs that would otherwise occur as a result of such reductions or closures;

(C) projects to assist communities in addressing and reducing the impact of such economic dislocation;

(D) projects involving teams of transition assistance specialists from Federal, State, and local agencies to provide onsite services, including assisting affected communities in short-term and long-term planning and assisting affected individuals through counseling and referrals to appropriate services, at the site of such reductions or closures within 60 days of the announcement of such reductions or closures;

(E) projects to assist in establishing transition assistance centers at the installations where large dislocations occur to provide comprehensive services to individuals affected by such dislocations;

(F) projects involving the joint efforts of Federal agencies, such as the Department of Labor, the Department of Defense, the Department of Commerce, and the Small Business Administration, to assist communities affected by such reductions or closures in developing integrated community planning processes to facilitate the retraining of affected individuals and the conversion of installations to commercial uses;

(G) projects to develop new information and data systems to assist individuals and communities affected by such reductions or closures, including the development of data

bases with the capability to provide an affected individual with a civilian economy skills profile which takes into account the skills acquired while working on defense-related matters; and

(H) projects to assist small and medium-sized firms affected by such reductions or closures in the formation of learning consortia, which will promote joint efforts for staff training, human resource development, product development, and the marketing of products.

(2) Limitation

Not more than 10 percent of the funds available to the Secretary to carry out this section for any fiscal year may be used to carry out the projects established under paragraph (1).

(*l*) Staff training and technical assistance

In carrying out the grant program established under subsection (a) of this section, the Secretary may provide staff training and technical assistance services to States, communities, businesses, and labor organizations, and other entities involved in providing adjustment assistance to workers.

(m) Administrative expenses

Not more than 2 percent of the funds available to the Secretary to carry out this section for any fiscal year may be retained by the Secretary for the administration of activities authorized under this section.

(n) Coordination with technology reinvestment projects

The Secretary, in consultation with the Secretary of Defense, shall ensure that activities carried out under this section are coordinated with relevant activities carried out pursuant to title IV of the Department of Defense Appropriations Act, 1993 (Public Law 102–396; 106 Stat. 1890).

(*o*) Definitions

For purposes of this section, the following definitions apply:

(1) Labor-management committee

The term ''labor-management committee''

(A) has the meaning given such term in section 1651(b)(1) of this title; and

(B) includes a committee established at a military installation to assist members of the Armed Forces who are being separated and civilian employees of the Department of Defense and the Department of Energy who are being terminated.

(2) Defense contractor

The term ''defense contractor'' means a private person producing goods or services pursuant to—

(A) one or more defense contracts which have a total amount not less than $500,000 entered into with the Department of Defense; or

(B) one or more subcontracts entered into in connection with a defense contract and which have a total amount not less than $500,000.

(3) Defense articles and defense services

The term ''defense articles and defense services'' means defense articles, defense services, or design and construction services under the Arms Export Control Act (22 U.S.C. 2751 et seq.), including defense articles and defense services licensed or approved for export under section 38 of that Act (22 U.S.C. 2778).

(Pub. L. 97–300, title III, § 325A, as added Pub. L. 102–484, div. D, title XLIV, § 4465(a), Oct. 23, 1992, 106 Stat. 2742; amended Pub. L. 103–160, div. A, title XIII, § 1339, Nov. 30, 1993, 107 Stat. 1807; Pub. L. 103–337, div. A, title XI, §§ 1136(a), 1137(b), Oct. 5, 1994, 108 Stat. 2878, 2879.)

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (b)(2)(B)(ii)(I), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, as amended, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

The Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (b)(2)(B)(ii)(II), is Pub. L. 100–526, Oct. 24, 1988, 102 Stat. 2623, as amended. Title II of the Act is set out as a note under section 2687 of Title 10. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of Title 10 and Tables.

The Department of Defense Appropriations Act, 1993, referred to in subsec. (n), is Pub. L. 102–396, Oct. 6, 1992, 106 Stat. 1876. Title IV of the Act is not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Arms Export Control Act, referred to in subsec. (*o*)(3), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 1136(a)(1), substituted ''From funds made available to carry out this section, the Secretary, in consultation with the Secretary of Defense,'' for ''From the amount made available under section 4465(c) of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992, the Secretary of Defense, in consultation with the Secretary of Labor,''.

Subsec. (b)(3)(A). Pub. L. 103–337, § 1137(b)(1), substituted '', the closure or realignment of a military installation, or reductions in the export of defense articles and defense services as a result of United States policy, including reductions in the amount of defense articles and defense services under agreements to provide such articles or services or through termination or completion of any such agreements'' for ''or the closure or realignment of a military installation''.

Subsec. (c). Pub. L. 103–337, § 1136(a)(2), in par. (1), substituted ''Secretary an'' for ''Secretary of Defense an'' in introductory provisions, ''Secretary'' for ''Secretary of Defense'' in subpar. (A)(i)(I), ''Secretary, the'' for ''Secretary of Defense, the'' in subpar. (A)(i)(II), and ''Secretary'' for ''Secretary of Defense'' in subpars. (A)(ii) and (D), and in pars. (2) to (4), substituted ''The Secretary'' for ''The Secretary of Defense''.

Subsec. (d). Pub. L. 103–337, § 1136(a)(2), substituted ''Secretary'' for ''Secretary of Defense'' in pars. (1) and (2).

Subsec. (d)(1)(A). Pub. L. 103–337, § 1136(a)(3), struck out ''in consultation with the Secretary of Labor,'' before ''shall not approve''.

Subsec. (e). Pub. L. 103–337, § 1136(a)(2), (4), struck out ''by Secretary of Defense'' after ''grant amount'' in heading and substituted ''Secretary shall'' for ''Secretary of Defense shall'' in pars. (1) and (2).

Subsec. (i). Pub. L. 103–337, § 1136(a)(2), substituted ''Secretary'' for ''Secretary of Defense''.

Subsec. (k)(1). Pub. L. 103–337, § 1137(b)(2), substituted ‘‘, the closure of United States military installations, or reductions in the export of defense articles and defense services as a result of United States policy, including reductions in the amount of defense articles and defense services under agreements to provide such articles or services or through termination or completion of any such agreements’’ for ‘‘or by the closure of United States military installations’’ in introductory provisions.

Pub. L. 103–337, § 1136(a)(5), substituted ‘‘Secretary, in consultation with the Secretary of Defense’’ for ‘‘Secretary of Defense, in consultation with the Secretary of Labor’’ in introductory provisions.

Subsecs. (k)(2), (*l*), (m). Pub. L. 103–337, § 1136(a)(2), substituted ‘‘Secretary’’ for ‘‘Secretary of Defense’’ wherever appearing.

Subsec. (n). Pub. L. 103–337, § 1136(a)(6), substituted ‘‘Secretary, in consultation with the Secretary of Defense’’ for ‘‘Secretary of Defense, in consultation with the Secretary of Labor’’.

Subsec. (*o*)(3). Pub. L. 103–337, § 1137(b)(3), added par. (3).

1993—Subsec. (b)(2)(B)(ii)(III), (IV). Pub. L. 103–160, § 1339(a), added subcls. (III) and (IV).

Subsec. (k)(1)(D) to (H). Pub. L. 103–160, § 1339(b), added subpars. (D) to (H).

Subsecs. (*l*) to (*o*). Pub. L. 103–160, § 1339(c), added subsecs. (*l*) to (n) and redesignated former subsec. (*l*) as (*o*).

REGIONAL RETRAINING SERVICES CLEARINGHOUSES

Section 1373 of Pub. L. 103–160 provided that:

‘‘(a) ESTABLISHMENT REQUIRED.—The Secretary of Labor, in consultation with the Secretary of Defense, may carry out a demonstration project to establish one or more regional retraining services clearinghouses to serve eligible persons described in subsection (b).

‘‘(b) PERSONS ELIGIBLE FOR CLEARINGHOUSE SERVICES.—The following persons shall be eligible to receive services through the clearinghouses:

‘‘(1) Members of the Armed Forces who are discharged or released from active duty.

‘‘(2) Civilian employees of the Department of Defense who are terminated from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense.

‘‘(3) Employees of defense contractors who are terminated or laid off (or receive a notice of termination or lay off) as a result of the completion or termination of a defense contract or program or reductions in defense spending, as determined by the Secretary of Defense.

‘‘(c) INFORMATIONAL ACTIVITIES OF CLEARINGHOUSES.—The clearinghouses shall—

‘‘(1) collect educational materials that have been prepared for the purpose of providing information regarding available retraining programs, in particular those programs dealing with critical skills needed in advanced manufacturing and skill areas in which shortages of skilled employees exist;

‘‘(2) establish and maintain a data base for the purpose of storing and categorizing such materials based on the different needs of eligible persons; and

‘‘(3) furnish such materials, upon request, to educational institutions and other interested persons.

‘‘(d) FUNDING.—From the unobligated balance of funds made available pursuant to section 4465(c) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 29 U.S.C. 1662d–1 note) to carry out section 325A of the Job Training Partnership Act (29 U.S.C. 1662d–1), not more than $10,000,000 shall be available to the Secretary of Labor to carry out this section during fiscal year 1994. Funds made available under section 1302 [107 Stat. 1783] for defense conversion, reinvestment, and transition assistance programs shall not be used to carry out this section.’’

AUTHORITY TO TRANSFER FUNCTIONS

Section 4465(b) of Pub. L. 102–484 provided that: ‘‘The Secretary of Defense may transfer any function of such Secretary under the amendment made by subsection (a) [enacting this section] to the Secretary of Labor. Whenever such a transfer is made, any funds available to the Secretary of Defense for the performance of such function shall be transferred to the appropriate accounts of the Department of Labor.’’

FUNDING FOR FISCAL YEAR 1993

Section 4465(c) of Pub. L. 102–484 provided that: ‘‘Of the amount authorized to be appropriated in section 301 [106 Stat. 2360] for Defense Agencies, $75,000,000 shall be available to carry out section 325A of the Job Training Partnership Act [29 U.S.C. 1662d–1], as added by subsection (a).’’

JOB BANK PROGRAM FOR DISCHARGED MILITARY PERSONNEL, TERMINATED DEFENSE EMPLOYEES, AND DISPLACED EMPLOYEES OF DEFENSE CONTRACTORS

Section 4468 of Pub. L. 102–484 provided that:

‘‘(a) INTERSTATE JOB BANK PROGRAM.—The Secretary of Defense shall establish a program to expand the services of and provide access to the Interstate Job Bank program in the United States Employment Service to individuals eligible for training, adjustment assistance, and employment services under sections 325 and 325A of the Job Training Partnership Act [29 U.S.C. 1662d, 1662d–1] and, in the case of members of the Armed Forces so eligible, the spouses of such members. The Secretary may establish such program in coordination with the Defense Outplacement Referral System and other automated job opening networks.

‘‘(b) SERVICES INCLUDED.—The program established under subsection (a) may include the following services:

‘‘(1) A phone bank reachable by a toll-free number, staffed by an international ‘help desk’ of individuals familiar with the services provided under section 1144 of title 10, United States Code, and related transition programs under chapter 58 of such title (in the case of members of the Armed Forces, priority shall be given to recently-discharged veterans, members of the Armed Forces who have been separated from active duty, and their spouses).

‘‘(2) Interstate Job Bank satellite offices or systems at defense contractor plants by State employment security agencies and at all military bases for direct access and self service to job listings.

‘‘(3) Specialized job banks to integrate with the Interstate Job Bank for specialized listings or services such as the Defense Outplacement Referral System (DORS) of resumes, National Academy of Sciences Network, commercial systems, and the outplacement of defense-related personnel in high-tech occupations through the expansion and coordination of existing networks to ensure that resources are available at all service locations.

‘‘(4) A system by which individuals and public and private organizations may access the Interstate Job Bank using individual modems or related automated employment systems.

‘‘(c) FUNDING FOR FISCAL YEAR 1993.—Of the amount authorized to be appropriated in section 301 [106 Stat. 2360] for Defense Agencies, $4,000,000 shall be available to carry out the program established under subsection (a).’’

TREATMENT OF CERTAIN PROVISIONS OF LAW UPON TRANSFER OF AMOUNTS PROVIDED UNDER PUB. L. 102–484

Section 4473 of Pub. L. 102–484 provided that:

‘‘(a) CONTINGENT REPEAL.—

‘‘(1) IN GENERAL.—If a transfer is made in accordance with section 4501(c) [10 U.S.C. 114 note] of the full amount of an amount described in subparagraph (A) or (B) of paragraph (2) [no such transfer has been made], then the section referred to in that subparagraph (including the amendments made by the section) is repealed, effective as of the date of the enactment of this Act [Oct. 23, 1992], and the provisions of

any Act amended by such section shall apply as if the amendments had not been enacted.

''(2) AMOUNTS DESCRIBED.—(A) The amount described in this subparagraph is the amount provided under subsection (c) of section 4465 [set out above] for the amendments to the Job Training Partnership Act under such section [enacting this section].

''(B) The amount described in this subparagraph is the amount provided under subsection (c) of section 4468 [set out above] for the program under such section.

''(b) PUBLICATION IN THE FEDERAL REGISTER.—If a transfer described in subsection (a)(1) is made, then the Secretary of Defense shall promptly publish in the Federal Register a notice of such transfer. Such notice shall specify the date on which such transfer occurred.''

§ 1662e. Clean air employment transition assistance

(a) Determination of eligibility

(1) Definitions

For purposes of this section, the term ''eligible individual'' means an individual who—

(A) is an eligible dislocated worker, as that term is defined in section 1651(a) of this title, and

(B) has been terminated or laid off, or has received a notice of termination or lay off, as a consequence of compliance with the Clean Air Act [42 U.S.C. 7401 et seq.].

(2) Determinations

The determination of eligibility under paragraph (1)(B) of this subsection shall be made by the Secretary of Labor, pursuant to criteria established by the Secretary, in consultation with the Administrator of the Environmental Protection Agency.

(b) Grants authorized

The Secretary may make grants to States, substate grantees (as defined in section 1661a(c) of this title), employers, employer associations, and representatives of employees—

(1) to provide training, adjustment assistance, and employment services to eligible individuals adversely affected by compliance with the Clean Air Act [42 U.S.C. 7401 et seq.]; and

(2) to make needs-related payments to such individuals in accordance with subsection (f) of this section.

(c) Priority and approval

(1) Priority

In reviewing applications for grants under subsection (b) of this section, the Secretary shall give priority to applications proposing to provide training, adjustment assistance, and services in areas which have the greatest number of eligible individuals.

(2) Needs-related payments required

The Secretary shall not approve an application for a grant under subsection (b) of this section unless the application contains assurances that the applicant will use grant funds to provide needs-related payments in accordance with subsection (f) of this section.

(d) Use of funds

Subject to the requirements of subsections (e) and (f) of this section, grants under subsection (b) of this section may be used for any purpose for which funds may be used under section 1661c of this title.

(e) Adjustment assistance

(1) Job search allowance

(A) In general

Grants under subsection (b) of this section for adjustment assistance may be used to provide job search allowances to eligible individuals. Such allowance, if granted, shall provide reimbursement to the individual of not more than 90 percent of the cost of necessary job search expenses, as prescribed by regulations of the Secretary, but may not exceed $800 unless the need for a greater amount is justified in the application and approved by the Secretary.

(B) Criteria for granting job search allowances

A job search allowance may be granted only—

(i) to assist an eligible individual who has been totally separated in securing a job within the United States; and

(ii) where the Secretary determines that such employee cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(2) Relocation allowance

(A) In general

Grants under subsection (b) of this section for adjustment assistance may be used to provide relocation allowances to eligible individuals. Such an allowance may only be granted to assist an eligible individual in relocating within the United States and only if the Secretary determines that—

(i) such employee cannot reasonably be expected to secure suitable employment in the commuting area in which the employee resides; and

(ii) such employee—

(I) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which the employee wishes to relocate, or has obtained a bona fide offer of such employment, and

(II) is totally separated from employment at the time relocation commences.

(B) Amount of relocation allowance

The amount of any relocation allowance for any eligible individual may not exceed the amount which is equal to the sum of—

(i) 90 percent of the reasonable and necessary expenses, specified in regulations prescribed by the Secretary, incurred in transporting an individual and the individual's family, if any, and household effects, and

(ii) a lump sum equivalent to 3 times the employee's average weekly wage, up to a maximum payment of $800, unless the need for a greater amount is justified in the application and approved by the Secretary.

(f) Needs-related payments

The Secretary shall prescribe regulations with respect to the use of funds from grants under

subsection (b) of this section for needs-related payments in order to enable eligible individuals to complete training or education programs under this section. Such regulations shall—

(1) require that such payments shall be provided to an eligible individual only if such individual—

(A) does not qualify or has ceased to qualify for unemployment compensation;

(B) has been enrolled in training by the end of the 13th week of the individual's initial unemployment compensation benefit period, or, if later, the end of the 8th week after an individual is informed that a short-term layoff will in fact exceed 6 months; and

(C) is participating in training or education programs under this section, except that such regulations shall protect an individual from being disqualified pursuant to this clause for a failure to participate that is not the fault of the individual;

(2) provide that to qualify for such payments the individual currently receives, or is a member of a family which currently receives, a total family income (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, is not in excess of the lower living standard income level;

(3) provide that the levels of such payments shall be equal to the higher of—

(A) the applicable level of unemployment compensation; or

(B) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget;

(4) provide for the adjustment of payments to reflect changes in total family income; and

(5) provide that the grantee shall obtain information with respect to such income, and changes therein, from the eligible individual.

(g) Administrative expenses

The Secretary of Labor may reserve not more than 5 percent of the funds appropriated under this section for the administration of activities authorized under this section, including the provision of technical assistance for the preparation of grant applications.

(h) Authorization of appropriations

In addition to amounts authorized to be appropriated by section 1502(b) of this title, there are authorized to be appropriated $50,000,000 for fiscal year 1991, and such sums as may be necessary for each of fiscal years 1992, 1993, 1994, and 1995 to carry out this section. The total amount appropriated for all 5 such fiscal years shall not exceed $250,000,000. Amounts appropriated pursuant to this subsection shall remain available until expended.

(i) Regulations

The Secretary shall prescribe regulations to carry out this section not later than 180 days after November 15, 1990.

(j) GAO assessment of effects of Clean Air Act compliance on employment

The Comptroller General of the United States shall—

(1) identify and assess, to the extent possible, the effects on employment that are attributable to compliance with the provisions of the Clean Air Act [42 U.S.C. 7401 et seq.]; and

(2) submit to the Congress on the 4th anniversary of November 15, 1990, a written report on the assessments required under paragraph (1).

(Pub. L. 97–300, title III, § 326, as added Pub. L. 101–549, title XI, § 1101(a), Nov. 15, 1990, 104 Stat. 2709; amended Pub. L. 102–367, title I, § 102(b), Sept. 7, 1992, 106 Stat. 1024.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (a)(1)(B), (b)(1), and (j)(1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

CODIFICATION

November 15, 1990, referred to in subsec. (j)(2), was in the original ''the date of the enactment of this subtitle'', and was translated as meaning the date of the enactment of Pub. L. 101–549 which enacted this section, to reflect the probable intent of Congress because the Job Training Partnership Act which is classified to this chapter does not contain subtitles.

AMENDMENTS

1992—Subsec. (h). Pub. L. 102–367 substituted ''1502(b)'' for ''1502(c)''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1502, 1662d–1 of this title.

SUBCHAPTER IV—FEDERALLY ADMINISTERED PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 31 section 6703; title 42 section 4368a.

PART A—EMPLOYMENT AND TRAINING PROGRAMS FOR NATIVE AMERICANS AND MIGRANT AND SEASONAL FARMWORKERS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1502, 1516 of this title.

§ 1671. Native American programs

(a) Congressional findings

The Congress finds that (1) serious unemployment and economic disadvantages exist among members of Indian, Alaskan Native, and Hawaiian Native communities; (2) there is a compelling need for the establishment of comprehensive training and employment programs for members of those communities; and (3) such programs are essential to the reduction of economic disadvantages among individual members of those communities and to the advancement of

economic and social development in the communities consistent with their goals and lifestyles.

(b) Congressional declaration of guidelines

The Congress therefore declares that, because of the special relationship between the Federal Government and most of the individuals to be served by the provisions of this section, (1) such programs shall be administered at the national level; (2) such programs shall be available to federally recognized Indian tribes, bands, and groups and to other groups and individuals of Native American descent; and (3) such programs shall be administered in such a manner as to maximize the Federal commitment to support growth and development as determined by representatives of the communities and groups served by this section.

(c) Operation through Native American organizations where possible

(1)(A) In carrying out responsibilities under this section, the Secretary shall, wherever possible, utilize Indian tribes, bands, or groups on Federal or State reservations, Oklahoma Indians, and including for the purpose of this chapter, Alaska Native villages or groups as defined in the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], having a governing body for the provision of employment and training services under this section. When the Secretary determines that such tribe, band, or group has demonstrated the capability to effectively administer a comprehensive employment and training program, the Secretary shall require such tribe, band, or group to submit a comprehensive plan meeting such requirements as the Secretary prescribes.

(B) The Secretary shall arrange for programs to meet the employment and training needs of Hawaiian natives through such organizations as the Secretary determines will best meet their needs.

(2) In carrying out responsibilities under this section, the Secretary shall make arrangements with organizations (meeting requirements prescribed by the Secretary) serving nonreservation Native Americans for programs and projects designed to meet the needs of such Native Americans for employment and training and related services.

(d) Alternative operation through approved organizations

Whenever the Secretary determines not to utilize Indian tribes, bands, or groups for the provision of employment and training services under this section, the Secretary shall, to the maximum extent feasible, enter into arrangements for the provision of such services with organizations which meet with the approval of the tribes, bands, or groups to be served.

(e) Monitoring of programs

The Secretary is directed to take appropriate action to establish administrative procedures and machinery (including personnel having particular competence in this field) for the selection, administration, monitoring, and evaluation of Native American employment and training programs authorized under this chapter.

(f) Availability of funds for other job training activities

Funds available for this section shall be expended for programs and activities consistent with the purposes of this section including but not limited to such programs and activities carried out by recipients under other provisions of this chapter.

(g) Continuation of Federal trust responsibilities

No provision of this section shall abrogate in any way the trust responsibilities of the Federal Government to Native American bands, tribes, or groups.

(h) Consultation with Native Americans in prescription of regulations; performance goals

(1) The Secretary shall, after consultation with representatives of Indians and other Native Americans, prescribe such rules, regulations, and performance standards pursuant to section 1516 of this title relating to Native American programs under this section as may be required to meet the special circumstances under which such programs operate.

(2) Recipients of funds under this section shall establish performance goals, which shall, to the extent required by the Secretary, comply with performance standards established by the Secretary pursuant to section 1516 of this title.

(i) Technical assistance to Native American organizations

The Secretary shall provide technical assistance as necessary to tribes, bands, and groups eligible for assistance under this section.

(j) Organizational unit responsible for administration

(1) The Secretary shall designate a single organizational unit that shall have as its primary responsibility the administration of all Native American programs authorized under this chapter.

(2) Such organizational unit shall—

(A) be responsible for administering the provisions of the Native American programs authorized under this chapter, including monitoring such programs and making recommendations regarding the selection of the recipients of financial assistance;

(B) be responsible for the development of the policies and procedures related to the implementation of such programs; and

(C) coordinate the development of policy and procedures for the employment and training programs within the Department relating to services for Native American workers.

(3) In the hiring and promotion of the professional staff for the organizational unit designated under paragraph (1), special consideration shall be given to individuals who have field experience in the daily operation of service and training programs for Native Americans, and individuals who are Indians or Alaskan Natives. The Secretary shall take such additional actions as may be necessary to promote the recruitment and promotion of Indians, Alaskan Natives, and Hawaiian Natives to positions in such unit.

(k) Native American Employment and Training Council

(1) There is hereby established a Native American Employment and Training Council (referred to in this subsection as the ''Council''), which shall consist of not fewer than 17 Indians, Alaskan Natives, and Hawaiian Natives appointed by the Secretary from among individuals nominated by Indian tribes or Indian, Alaskan Native, or Hawaiian Native organizations. The membership of the Council shall represent all geographic areas of the United States with a substantial Indian, Alaskan Native, or Hawaiian Native population and shall include representatives of tribal governments and of nonreservation Native American organizations who are service providers under this chapter. A majority of the members of the Council shall have field experience in the daily operation of the program authorized under this section.

(2) The Council shall select a chairperson from among its members by a majority vote. The Council shall meet not less often than twice each program year.

(3) Members of the Native American Programs Advisory Committee that existed before September 7, 1992—

(A) shall serve as members of the Council until their successors are appointed; and

(B) may be appointed as members of the Council, if such appointment is consistent with the provisions of this subsection.

(4) Each member of the Council shall serve for a term of 2 years, except that—

(A) one-half of the members initially appointed (as designated by the Secretary) shall serve for terms of 1 year;

(B) any vacancy occurring in the membership of the Council shall be filled in the same manner as the original appointment, and shall not affect the power of the remaining members to execute the duties of the Council;

(C) any member appointed to such a vacancy shall serve for the remainder of the term for which the predecessor of the member was appointed; and

(D) members may be reappointed.

(5) The initial membership of the Council shall be appointed not later than the beginning of program year 1993.

(6) The Council shall—

(A) solicit the views of a wide variety of Indian tribes and Native American groups, including groups operating employment and training programs funded under this section, on issues affecting the operation and administration of such programs;

(B) advise the Secretary with respect to the implementation of programs under this section and other programs providing services to Native American youth and adults under this chapter;

(C) advise and make recommendations to the Secretary with respect to the design and implementation of performance standards developed under section 1516(f) of this title;

(D) advise and make recommendations to the Secretary with respect to the services obtained or to be obtained by the Department of Labor through contracts or arrangements with non-Federal agencies or entities that involve the program authorized by this section;

(E) evaluate the effectiveness of Native American job training programs and make recommendations with respect to the improvement of such programs;

(F) advise the Secretary with respect to individuals to be considered to fill the position of the official in charge of the organizational unit designated under subsection (j)(1) of this section whenever a vacancy in such position occurs; and

(G) prepare and submit directly to the Secretary and to the Congress, not later than January 1 of each even numbered year, a report containing information on the progress of Native American job training programs and recommendations for improving their administration and effectiveness.

(7) Members of the Council shall serve without compensation. Each member of the Council shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(8) The Secretary shall provide the Council with such administrative support as may be necessary to perform its functions.

(*l*) Competition for grants; waiver; 2-year grant period

The competition for grants under this section shall be conducted every 2 years, except that if a recipient of such a grant has performed satisfactorily under the terms of the existing grant agreement, the Secretary may waive the requirement for such competition on receipt from the recipient of a satisfactory 2-year program plan for the succeeding 2-year grant period.

(Pub. L. 97–300, title IV, § 401, Oct. 13, 1982, 96 Stat. 1368; Pub. L. 97–404, § 4(a), Dec. 31, 1982, 96 Stat. 2026; Pub. L. 102–367, title IV, § 401(a)–(d), Sept. 7, 1992, 106 Stat. 1074–1076.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(1)(A), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

1992—Subsec. (h)(1). Pub. L. 102–367, § 401(a), inserted ''pursuant to section 1516 of this title'' after ''performance standards''.

Subsec. (j). Pub. L. 102–367, § 401(b), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: ''For the purpose of carrying out this section, the Secretary shall reserve, from funds available for this subchapter (other than part B of this subchapter) for any fiscal year, an amount equal to 3.3 percent of the amount available for part A of subchapter II of this chapter for such fiscal year.''

Subsec. (k). Pub. L. 102–367, § 401(c), added subsec. (k).

Subsec. (*l*). Pub. L. 102–367, § 401(d), added subsec. (*l*).

1982—Subsec. (h)(2). Pub. L. 97–404 substituted reference to section 1516 of this title for reference to section 1513 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1502, 1631, 1673, 1781, 1782a, 1782h, 1783, 1784a, 1784b of this title.

§ 1672. Migrant and seasonal farmworker programs

(a) Congressional findings

The Congress finds and declares that—

(1) chronic seasonal unemployment and underemployment in the agricultural industry, aggravated by continual advancements in technology and mechanization resulting in displacement, constitute a substantial portion of the Nation's rural employment problem and substantially affect the entire national economy; and

(2) because of the special nature of farmworker employment and training problems, such programs shall be centrally administered at the national level.

(b) Monitoring of programs for migrant and seasonal employment

The Secretary is directed to take appropriate action to establish administrative procedures and machinery (including personnel having particular competence in this field) for the selection, administration, monitoring, and evaluation of migrant and seasonal employment and training programs authorized under this chapter.

(c) Operation through experienced organizations; use of procedures consistent with competitive procurement policies; competition for grants; waiver; goals of programs; recipient performance goals; section programs not exclusive of other kinds of aid

(1) The Secretary shall provide services to meet the employment and training needs of migrant and seasonal farmworkers through such public agencies and private nonprofit organizations as the Secretary determines to have an understanding of the problems of migrant and seasonal farmworkers, a familiarity with the area to be served, and a previously demonstrated capability to administer effectively a diversified employability development program for migrant and seasonal farmworkers. In awarding any grant or contract for services under this section, the Secretary shall use procedures consistent with standard competitive Government procurement policies.

(2) The competition for grants under this section shall be conducted every 2 years, except that if a recipient of such a grant has performed satisfactorily under the terms of the existing grant agreement, the Secretary may waive the requirement for such competition upon receipt from the recipient of a satisfactory 2-year program plan for the succeeding 2-year grant period.

(3) Programs and activities supported under this section, including those carried out under other provisions of this chapter, shall enable farmworkers and their dependents to obtain or retain employment, to participate in other program activities leading to their eventual placement in unsubsidized agricultural or nonagricultural employment, and to participate in activities leading to stabilization in agricultural employment, and shall include related assistance and supportive services.

(4) Recipients of funds under this section shall establish performance goals, which shall, to the extent required by the Secretary, comply with performance standards established by the Secretary pursuant to section 1516 of this title.

(5) No programs and activities supported under this section shall preclude assistance to farmworkers under any other provision of this chapter.

(d) Consultation with State and local officials

In administering programs under this section, the Secretary shall consult with appropriate State and local officials.

(e) Monitoring of programs for migrant and seasonal farmworker's employment

The Secretary is directed to take appropriate action to establish administrative procedures and machinery (including personnel having particular competence in this field) for the selection, administration, monitoring, and evaluation of migrant and seasonal farmworker's employment and training programs authorized under this chapter.

(Pub. L. 97–300, title IV, § 402, Oct. 13, 1982, 96 Stat. 1369; Pub. L. 97–404, § 4(b), Dec. 31, 1982, 96 Stat. 2026; Pub. L. 102–367, title IV, § 401(e), (f), Sept. 7, 1992, 106 Stat. 1076.)

AMENDMENTS

1992—Subsec. (c)(2). Pub. L. 102–367, § 401(e), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary may approve the designation of grantees under this section for a period of two years.''

Subsec. (f). Pub. L. 102–367, § 401(f), struck out subsec. (f) which read as follows: ''For the purpose of carrying out this section, the Secretary shall reserve, from funds available for this subchapter (other than part B of this subchapter) for any fiscal year, an amount equal to 3.2 percent of the amount available for part A of subchapter II of this chapter for such fiscal year.''

1982—Subsec. (a)(2). Pub. L. 97–404, § 4(b)(1), inserted ''the special nature of'' after ''because of''.

Subsec. (c)(4). Pub. L. 97–404, § 4(b)(2), substituted reference to section 1516 of this title for reference to section 1513 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

ASSISTANCE TO LOW-INCOME AGRICULTURAL WORKERS

Pub. L. 100–387, title V, § 503, Aug. 11, 1988, 102 Stat. 960, provided that: ''Notwithstanding any other provision of law, for necessary services to be provided by agencies that have received funds under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] to low-income agricultural workers who have been adversely affected by the drought of 1988, not to exceed $5,000,000 shall be made available to be derived by transfer from the Disaster Relief Program of the Federal Emergency Management Agency. The funds shall be distributed by the Secretary of Labor within 30 days after the date of the enactment of this Act [Aug. 11, 1988] based on an assessment of the number of low-income agricultural workers in each grantee's service delivery area who have lost income or are unable to work due to the drought, including those workers who have stayed at home in anticipation of work shortages. Emergency services to be provided under this section may include all types of assistance that the Secretary determines to be necessary. For the purposes of this section, a low-income agricultural worker receiving assistance must meet the income eligibility requirements of the section 402 [29 U.S.C. 1672] program under the Job Training Partnership Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1502, 1673, 1781, 1782a, 1782h, 1783, 1784a, 1784b of this title; title 20 section 1070d–2.

§ 1673. Grant procedures

Grants under sections 1671 and 1672 of this title shall be subject to the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.) and charging of costs under such sections shall be subject to appropriate circulars issued by the Office of Management and Budget.

(Pub. L. 97–300, title IV, § 403, as added Pub. L. 102–367, title IV, § 401(g), Sept. 7, 1992, 106 Stat. 1076.)

REFERENCES IN TEXT

The Single Audit Act of 1984, referred to in text, is Pub. L. 98–502, Oct. 19, 1984, 98 Stat. 2327, which is classified generally to chapter 75 (§ 7501 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 7501 of Title 31 and Tables.

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

PART B—JOB CORPS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1502, 1516, 1533, 1645, 1791c of this title; title 20 section 6103; title 42 section 3796ee.

§ 1691. Congressional declaration of purpose

This part maintains a Job Corps for economically disadvantaged young men and women which shall operate exclusively as a distinct national program, sets forth standards and procedures for selecting individuals as enrollees in the Job Corps, authorizes the establishment of residential and nonresidential centers in which enrollees will participate in intensive programs of education, vocational training, work experience, counseling and other activities, and prescribes various other powers, duties, and responsibilities incident to the operation and continuing development of the Job Corps. The purpose of this part is to assist young individuals who need and can benefit from an unusually intensive program, operated in a group setting, to become more responsible, employable, and productive citizens; and to do so in a way that contributes, where feasible, to the development of national, State, and community resources, and to the development and dissemination of techniques for working with the disadvantaged that can be widely utilized by public and private institutions and agencies.

(Pub. L. 97–300, title IV, § 421, Oct. 13, 1982, 96 Stat. 1370.)

§ 1692. Establishment of the Job Corps

There shall be within the Department of Labor a ''Job Corps''.

(Pub. L. 97–300, title IV, § 422, Oct. 13, 1982, 96 Stat. 1370.)

§ 1693. Individuals eligible for the Job Corps

To become an enrollee in the Job Corps, a young man or woman must be an eligible youth who—

(1) has attained age 14 but not attained age 22 at the time of enrollment, except that not more than 20 percent of the individuals enrolled may be age 22 through 24, and that either such maximum age limitation may be waived, in accordance with regulations of the Secretary, in the case of any individual with a disability;

(2) is economically disadvantaged or is a member of a family which is economically disadvantaged, and who requires additional education, training, or intensive counseling and related assistance in order to secure and hold meaningful employment, participate successfully in regular school work, qualify for other suitable training programs, or satisfy Armed Forces requirements;

(3) is currently living in an environment so characterized by cultural deprivation, a disruptive homelife, or other disorienting conditions as to substantially impair prospects for successful participation in other programs providing needed training, education, or assistance;

(4) is determined, after careful screening as provided for in sections 1694 and 1695 of this title to have the present capabilities and aspirations needed to complete and secure the full benefit of the Job Corps and to be free of medical and behavioral problems so serious that the individual could not adjust to the standards of conduct, discipline, work, and training which the Job Corps involves; and

(5) meets such other standards for enrollment as the Secretary may prescribe and agrees to comply with all applicable Job Corps rules and regulations.

(Pub. L. 97–300, title IV, § 423, Oct. 13, 1982, 96 Stat. 1370; Pub. L. 102–367, title I, § 103(b)(4), title IV, § 402(a), Sept. 7, 1992, 106 Stat. 1026, 1076.)

AMENDMENTS

1992—Par. (1). Pub. L. 102–367 inserted ''not more than 20 percent of the individuals enrolled may be age 22

through 24, and that either'' after ''except that'' and substituted ''individual with a disability'' for ''handicapped individual''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1703a of this title; title 42 section 12653c.

§ 1694. Screening and selection of applicants: general provisions

(a) Prescription of standards and procedures; implementation through experienced organizations; consultation with concerned agencies and individuals; interview with applicant

The Secretary shall prescribe specific standards and procedures for the screening and selection of applicants for the Job Corps. To the extent practicable, these rules shall be implemented through arrangements with agencies and organizations such as community action agencies, public employment offices, entities administering programs under subchapter II of this chapter, professional groups, labor organizations, and agencies and individuals having contact with youth over substantial periods of time and able to offer reliable information as to their needs and problems. The rules shall provide for necessary consultation with other individuals and organizations, including court, probation, parole, law enforcement, education, welfare, and medical authorities and advisers. The rules shall also provide for the interviewing of each applicant for the purpose of—

(1) determining whether the applicant's educational and vocational needs can best be met through the Job Corps or an alternative program in the applicant's home community;

(2) obtaining from the applicant pertinent data relating to background, needs, and interests for determining eligibility and potential assignment; and

(3) giving the applicant a full understanding of the Job Corps and what will be expected of an enrollee in the event of acceptance.

(b) Authorization of payment for active recruiting

The Secretary is authorized to make payments to individuals and organizations for the cost of the recruitment, screening, and selection of candidates, as provided for in this part. The Secretary shall make no payments to any individual or organization solely as compensation for referring the names of candidates for Job Corps.

(c) Rural enrollees; residential facilities

The Secretary shall assure that Job Corps enrollees include an appropriate number of candidates selected from rural areas, taking into account the proportions of eligible youth who reside in rural areas and the need to provide residential facilities for such youth.

(Pub. L. 97–300, title IV, § 424, Oct. 13, 1982, 96 Stat. 1371.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1693, 1703a of this title.

§ 1695. Screening and selection: special limitations

(a) Disciplinary standards for enrollees

No individual shall be selected as an enrollee unless there is reasonable expectation that the individual can participate successfully in group situations and activities, is not likely to engage in behavior that would prevent other enrollees from receiving the benefit of the program or be incompatible with the maintenance of sound discipline and satisfactory relationships between the center to which the individual might be assigned and surrounding communities, and unless the individual manifests a basic understanding of both the rules to which the individual will be subject and of the consequences of failure to observe those rules.

(b) Enrollees on probation, parole, or supervised release; contact with criminal justice system no bar

An individual on probation, parole, or supervised release may be selected only if release from the supervision of the probation or parole officials is satisfactory to those officials and the Secretary and does not violate applicable laws or regulations. No individual shall be denied a position in the Job Corps solely on the basis of that individual's contact with the criminal justice system.

(Pub. L. 97–300, title IV, § 425, Oct. 13, 1982, 96 Stat. 1372; Pub. L. 98–473, title II, § 231, Oct. 12, 1984, 98 Stat. 2031.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–473 substituted '', parole, or supervised release'' for first reference to ''or parole''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1693, 1703a of this title.

§ 1696. Enrollment and assignment

(a) Maximum enrollment period

No individual may be enrolled in the Job Corps for more than two years, except in any case in which completion of an advanced career program under section 1698 of this title would require an individual to participate in excess of two years, or except as the Secretary may authorize in special cases.

(b) Military obligation unaffected

Enrollment in the Job Corps shall not relieve any individual of obligations under the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

(c) Proximity of center to enrollee's home

After the Secretary has determined that an enrollee is to be assigned to a Job Corps center,

the enrollee shall be assigned to the center which is closest to the enrollee's home, except that the Secretary may waive this requirement for good cause, including to ensure an equitable opportunity for youth from various sections of the Nation to participate in the program, to prevent undue delays in assignment, to adequately meet the educational or other needs of an enrollee, and for efficiency and economy in the operation of the program.

(d) Concurrent or subsequent participation in Job Corps and training services programs for disadvantaged not prohibited

Nothing in this chapter shall be construed to prohibit an individual who has been a participant in the Job Corps from concurrently or subsequently participating in programs under subchapter II of this chapter, or to prohibit an individual who has been a participant in programs under subchapter II of this chapter from concurrently or subsequently participating in the Job Corps.

(Pub. L. 97–300, title IV, § 426, Oct. 13, 1982, 96 Stat. 1372; Pub. L. 102–367, title IV, § 402(b), Sept. 7, 1992, 106 Stat. 1076.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (b), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–367 added subsec. (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1697. Job Corps centers

(a) Operation through existing agencies and organizations; center functions; Civilian Conservation Centers; training centers; limit on nonresidential participants

(1) The Secretary may make agreements with Federal, State, or local agencies, including a State board or agency designated pursuant to section 111(a)(1) of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2321(a)(1)] which operates or wishes to develop area vocational education school facilities or residential vocational schools (or both) as authorized by such Act [20 U.S.C. 2301 et seq.], or private organizations for the establishment and operation of Job Corps centers. Job Corps centers may, subject to paragraph (2), be residential or nonresidential in character, or both, and shall be designed and operated so as to provide enrollees, in a well-supervised setting, with education, vocational training, work experience (either in direct program activities or through arrangements with employers), counseling, and other services appropriate to their needs. The centers shall include Civilian Conservation Centers, located primarily in rural areas, which shall provide, in addition to other training and assistance, programs of work experience to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest. The centers shall also include training centers located in either urban or rural areas which shall provide activities including training and other services for specific types of skilled or semiskilled employment.

(2) In any year, not more than 20 percent of the individuals enrolled in the Job Corps may be nonresidential participants. In enrolling individuals who are to be nonresidential participants, priority shall be given to those eligible individuals who are single parents with dependent children. The Secretary shall not reduce the number of residential participants in Job Corps programs under this part during any program year below the number of residential participants during program year 1991 in order to increase the number of individuals who are nonresidential participants in the Job Corps.

(b) Availability of center opportunities to participants in other programs

To the extent feasible, Job Corps centers shall offer education and vocational training opportunities, together with supportive services, on a nonresidential basis to participants in other programs under this chapter. Such opportunities may be offered on a reimbursable basis or through such other arrangements as the Secretary may specify.

(c) Limitation of use of Department of Labor appropriations; nongovernmental contracts

No funds appropriated to the Department of Labor for any fiscal year may be used to carry out any contract with a nongovernmental entity to administer or manage a Civilian Conservation Center of the Job Corps.

(Pub. L. 97–300, title IV, § 427, Oct. 13, 1982, 96 Stat. 1372; Pub. L. 98–524, § 4(a)(4), Oct. 19, 1984, 98 Stat. 2487; Pub. L. 102–367, title IV, § 402(c), (d), Sept. 7, 1992, 106 Stat. 1076, 1077.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (a)(1), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, known as the Carl D. Perkins Vocational and Applied Technology Education Act, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–367, § 402(c), substituted "20 percent" for "10 percent" and inserted at end "In enrolling individuals who are to be nonresidential participants, priority shall be given to those eligible individuals who are single parents with dependent children. The Secretary shall not reduce the number of residential participants in Job Corps programs under this part during any program year below the number of residential participants during program year 1991 in order to increase the number of individuals who are nonresidential participants in the Job Corps."

Subsec. (c). Pub. L. 102–367, § 402(d), added subsec. (c).

1984—Subsec. (a)(1). Pub. L. 98–524 substituted "section 111(a)(1) of the Carl D. Perkins Vocational Education Act" for "section 104(a)(1) of the Vocational Education Act of 1963".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effec-

tive Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98–524, set out as an Effective Date note under section 2301 of Title 20, Education.

CLOSING OF JOB CORPS CENTER

Pub. L. 99–349, title I, July 2, 1986, 100 Stat. 741, provided that: ''No Job Corps Center operating under part B of title IV of the Job Training Partnership Act [29 U.S.C. 1691 et seq.] shall be closed prior to July 1, 1987.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1703a of this title.

§ 1698. Program activities

(a) Center programs: training; counseling; center maintenance

Each Job Corps center shall provide enrollees with an intensive, well-organized, and fully supervised program of education, vocational training, work experience, planned vocational and recreational activities, physical rehabilitation and development, and counseling. To the fullest extent feasible, the required program shall include activities to assist enrollees in choosing realistic career goals, coping with problems they may encounter in home communities, or in adjusting to new communities, and planning and managing their daily affairs in a manner that will best contribute to long-term upward mobility. Center programs shall include required participation in center maintenance work to assist enrollees in increasing their sense of contribution, responsibility, and discipline.

(b) Use of existing educational agencies providing substantially equivalent training

The Secretary may arrange for enrollee education and vocational training through local public or private educational agencies, vocational educational institutions, or technical institutes, whenever such institutions provide training substantially equivalent in cost and quality to that which the Secretary could provide through other means.

(c) High school equivalency certificates

To the extent feasible, arrangements for education, both at the center and at other locations, shall provide opportunities for qualified enrollees to obtain the equivalent of a certificate of graduation from high school. The Secretary, with the concurrence of the Secretary of Education, shall develop certificates to be issued to each enrollee who satisfactorily completes service in the Job Corps and which will reflect the enrollee's level of educational attainment.

(d) Advanced career training: postsecondary institutions; company-sponsored training programs; availability of benefits; demonstration of reasonable program completion and placement

(1) The Secretary may arrange for programs of advanced career training for selected Corps enrollees in which they may continue to participate for a period not to exceed one year in addition to the period of participation to which Corps enrollees would otherwise be limited.

(2) Advanced career training may be provided for in postsecondary institutions for Corps enrollees who have attained a high school diploma or its equivalent, have demonstrated commitment and capacity in their previous Job Corps participation, and have an identified occupational goal.

(3) The Secretary may contract with private for-profit businesses and labor unions to provide intensive training in company-sponsored training programs, combined with internships in work settings.

(4) During the period of participation in advanced career training programs, Corps enrollees shall be eligible for full Job Corps benefits or a monthly stipend equal to the average value of residential support, food, allowances, and other benefits in residential Job Corps centers, except that the total amount for which an enrollee shall be eligible shall be reduced by the amount of any scholarship or other educational grant assistance received by such enrollee.

(5) After an initial period of time, determined to be reasonable by the Secretary, any Job Corps center seeking to enroll new Corps enrollees in any advanced career training program shall demonstrate that such program has achieved a reasonable rate of completion and placement in training-related jobs before such new enrollments may occur.

(e) Child care

The Secretary shall, to the extent practicable, provide child care at or near Job Corps centers, for individuals who require child care for their children in order to participate in the Job Corps.

(f) Alcohol and drug abuse counseling

Each Job Corps center shall provide to enrollees who are dependent on, or who have a history of abuse of, alcohol or drugs, with counseling and referral to related services necessary to prevent the continuance or recurrence of such dependency or abuse.

(Pub. L. 97–300, title IV, § 428, Oct. 13, 1982, 96 Stat. 1373; Pub. L. 102–367, title IV, § 402(e), Sept. 7, 1992, 106 Stat. 1077.)

AMENDMENTS

1992—Subsecs. (e), (f). Pub. L. 102–367 added subsecs. (e) and (f).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1696, 1699, 1703a of this title.

§ 1699. Allowances and support

(a) Subsistence; rates of allowances; incentive and disciplinary variations

The Secretary shall provide enrollees with such personal, travel, and leave allowances, and such quarters, subsistence, transportation, equipment, clothing, recreational services, and

other expenses as he may deem necessary or appropriate to their needs. For the fiscal year ending September 30, 1983, personal allowances shall be established at a rate not to exceed $65 per month during the first six months of an enrollee's participation in the program and not to exceed $110 per month thereafter, except that allowances in excess of $65 per month, but not exceeding $110 per month, may be provided from the beginning of an enrollee's participation if it is expected to be of less than six months' duration and the Secretary is authorized to pay personal allowances in excess of the rates specified in this subsection in unusual circumstances as determined by him. Such allowances shall be graduated up to the maximum so as to encourage continued participation in the program, achievement and the best use by the enrollee of the funds so provided and shall be subject to reduction in appropriate cases as a disciplinary measure. To the degree reasonable, enrollees shall be required to meet or contribute to costs associated with their individual comfort and enjoyment from their personal allowances.

(b) Rules governing leave

The Secretary shall prescribe rules governing the accrual of leave by enrollees. Except in the case of emergency, he shall in no event assume transportation costs connected with leave of any enrollee who has not completed at least six months' service in the Job Corps.

(c) Termination readjustment allowance: minimum period; advances; misconduct penalty; payment in case of death

The Secretary may provide each former enrollee upon termination, a readjustment allowance at a rate not to exceed, for the fiscal year ending September 30, 1983, $110 for each month of satisfactory participation in the Job Corps. No enrollee shall be entitled to a readjustment allowance unless he has remained in the program at least 90 days, except in unusual circumstances as determined by the Secretary. The Secretary may, from time to time, advance to or on behalf of an enrollee such portions of his readjustment allowances as the Secretary deems necessary to meet extraordinary financial obligations incurred by that enrollee. The Secretary is authorized, pursuant to rules or regulations, to reduce the amount of an enrollee's readjustment allowance as a penalty for misconduct during participation in the Job Corps. In the event of an enrollee's death during his period of service, the amount of any unpaid readjustment allowance shall be paid in accordance with the provisions of section 5582 of title 5.

(d) Remittance to dependents; supplement

Such portion of the readjustment allowance as prescribed by the Secretary may be paid monthly during the period of service of the enrollee directly to a spouse or child of an enrollee, or to any other relative who draws substantial support from the enrollee, and any amount so paid shall be supplemented by the payment of an equal amount by the Secretary.

(e) Child care costs

In addition to child care assistance provided under section 1698(e) of this title, the Secretary shall provide enrollees who otherwise could not participate in the Job Corps with allowances to pay for child care costs, such as food, clothing, and health care for the child. Allowances under this subsection may only be provided during the first 2 months of an enrollee's participation in the program and shall be in an amount that does not exceed the maximum amount that may be provided by the State pursuant to section 602(g)(1)(C) of title 42.

(Pub. L. 97–300, title IV, § 429, Oct. 13, 1982, 96 Stat. 1374; Pub. L. 103–239, title VII, § 731, May 4, 1994, 108 Stat. 607.)

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–239 added subsec. (e).

§ 1700. Standards of conduct

(a) Stringent enforcement; dismissal or transfer

Within Job Corps centers standards of conduct shall be provided and stringently enforced. If violations are committed by enrollees, dismissal from the Corps or transfers to other locations shall be made if it is determined that their retention in the Corps, or in the particular center, will jeopardize the enforcement of such standards or diminish the opportunities of other enrollees.

(b) Disciplinary measures by center directors; appeal to Secretary

To promote the proper moral and disciplinary conditions in the Job Corps, the directors of Job Corps centers shall take appropriate disciplinary measures against enrollees, including dismissal from the Job Corps, subject to expeditious appeal to the Secretary.

(Pub. L. 97–300, title IV, § 430, Oct. 13, 1982, 96 Stat. 1375.)

§ 1701. Community participation

The Secretary shall encourage and cooperate in activities to establish a mutually beneficial relationship between Job Corps centers and nearby communities. These activities shall include the establishment of community advisory councils to provide a mechanism for joint discussion of common problems and for planning programs of mutual interest. Youth shall be represented on the advisory council and separate youth councils may be established composed of enrollees and young people from the communities. The Secretary shall assure that each center is operated with a view to achieving, so far as possible, objectives which shall include—

(1) giving community officials appropriate advance notice of changes in center rules, procedures, or activities that may affect or be of interest to the community;

(2) affording the community a meaningful voice in center affairs of direct concern to it, including policies governing the issuance and terms of passes to enrollees;

(3) providing center officials with full and rapid access to relevant community groups and agencies, including law enforcement agencies and agencies which work with young people in the community;

(4) encouraging the fullest practicable participation of enrollees in programs for commu-

nity improvement or betterment, with appropriate advance consultation with business, labor, professional, and other interested community groups;

(5) arranging recreational, athletic, or similar events in which enrollees and local residents may participate together;

(6) providing community residents with opportunities to work with enrollees directly as part-time instructors, tutors, or advisers, either in the center or in the community;

(7) developing, where feasible, job or career opportunities for enrollees in the community; and

(8) promoting interchanges of information and techniques among, and cooperative projects involving, the center and community schools and libraries, educational institutions, agencies serving young people and recipients of funds under this chapter.

(Pub. L. 97–300, title IV, § 431, Oct. 13, 1982, 96 Stat. 1375.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1703 of this title.

§ 1702. Counseling and placement

(a) Regular counseling and testing

The Secretary shall counsel and test each enrollee at regular intervals to measure progress in educational and vocational programs.

(b) Counseling and testing prior to scheduled termination; placement assistance; use of public employment service system

The Secretary shall counsel and test enrollees prior to their scheduled terminations to determine their capabilities and shall make every effort to place them in jobs in the vocation for which they are trained or to assist them in attaining further training or education. In placing enrollees in jobs, the Secretary shall utilize the public employment service system to the fullest extent possible.

(c) Provision for further education, training, and counseling

The Secretary shall determine the status and progress of enrollees scheduled for termination and make every effort to assure that their needs for further education, training, and counseling are met.

(d) Payment of readjustment allowance to former enrollees

The Secretary shall arrange for the readjustment allowance to be paid to former enrollees (who have not already found employment) at the State employment service office nearest the home of any such former enrollee who is returning home, or at the nearest such office where the former enrollee has indicated an intent to reside. If the Secretary uses any other public agency or private organization in lieu of the public employment service system, the Secretary shall arrange for that organization or agency to pay the readjustment allowance.

(Pub. L. 97–300, title IV, § 432, Oct. 13, 1982, 96 Stat. 1376.)

§ 1703. Experimental and developmental projects and coordination with other programs

(a) Authorization for efficiency studies; young adult pilot projects; violent or delinquent youth pilot projects; consultation with similarly concerned State and Federal agencies; funding from substantially similar projects; discretion to waive provisions; inclusion in annual report to Congress

(1) The Secretary is authorized to undertake experimental, research, or demonstration projects to develop or test ways of better using facilities, encouraging a more rapid adjustment of enrollees to community life that will permit a reduction in their period of enrollment, reducing transportation and support costs, or otherwise promoting greater efficiency and effectiveness in the program. These projects shall include one or more projects providing youth with education, training, and other supportive services on a combined residential and nonresidential basis.

(2) The Secretary is authorized to undertake one or more pilot projects designed to determine the value of Job Corps participation for young adults aged 22 to 24, inclusive.

(3) The Secretary is authorized to undertake one or more pilot projects designed to involve youth who have a history of serious and violent behavior against persons or property, repetitive delinquent acts, narcotics addiction, or other behavioral aberrations.

(4) Projects under this subsection shall be developed after appropriate consultation with other Federal or State agencies conducting similar or related programs or projects and with the administrative entity in the communities where the projects will be carried out. They may be undertaken jointly with other Federal or federally assisted programs, and funds otherwise available for activities under those programs shall, with the consent of the head of any agency concerned, be available for projects under this section to the extent they include the same or substantially similar activities. The Secretary is authorized to waive any provision of this part which the Secretary finds would prevent the carrying out of elements of projects under this subsection essential to a determination of their feasibility and usefulness. The Secretary shall, in the annual report of the Secretary, report to the Congress concerning the actions taken under this section, including a full description of progress made in connection with combined residential and nonresidential projects.

(b) Model community vocational education schools and skill centers

In order to determine whether upgraded vocational education schools could eliminate or substantially reduce the school dropout problem, and to demonstrate how communities could make maximum use of existing educational and training facilities, the Secretary, in cooperation with the Secretary of Education, is authorized to enter into one or more agreements with State educational agencies to pay the cost of establishing and operating model community vocational education schools and skill centers.

(c) Dissemination of information gained from Job Corps experience; testing of efficacy of various activities and dissemination of results

(1) The Secretary, through the Job Corps and activities authorized under sections 1732 and 1733 of this title, shall develop and implement activities designed to disseminate information gained from Job Corps program experience which may be of use in the innovation and improvement of related programs. To carry out this purpose, the Secretary may enter into appropriate arrangements with any Federal or State agency.

(2) The Secretary is authorized to develop Job Corps programs to test at various centers the efficacy of selected education or training activities authorized under this chapter or any other Act and to appropriately disseminate the results of such tests. To carry out this purpose, the Secretary may enter into appropriate arrangements with any Federal or State agency.

(d) Pilot projects to prepare youth for military service; cooperation with the Secretary of Defense; establishment of permanent programs; reimbursement of certain costs by Secretary of Defense in funds, materials, or services

The Secretary is authorized to enter into appropriate arrangements with the Secretary of Defense for the development of pilot projects at Job Corps centers to prepare youth to qualify for military service. In the event that the Secretary of Labor and the Secretary of Defense agree that such pilot projects should be expanded into permanent programs, the Secretary may establish such permanent programs within the Job Corps, if the Secretary of Defense agrees (1) to provide 50 percent of the costs attributable to such permanent programs, and (2) to reimburse the Secretary of Labor for an additional amount if more than 50 percent of the enrollees in such programs become members of the Armed Forces. Such additional amount shall be equal to a percentage of such costs which is the percentage by which more than 50 percent of such enrollees become such members. In addition to the provision of funds, such reimbursement may include the provision of equipment, materials, transportation, technical assistance, or other assistance, as specified by the Secretary.

(e) Pilot projects using community-based organizations

In order to determine whether community participation as required under section 1701 of this title can be improved through the closer involvement of community-based organizations, the Secretary is authorized to undertake one or more pilot projects utilizing community-based organizations of demonstrated effectiveness for Job Corps center operation. For purposes of such pilot projects, the term ''community-based organizations'' may include nonprofit educational foundations organized on a State or local basis.

(Pub. L. 97–300, title IV, § 433, Oct. 13, 1982, 96 Stat. 1376; Pub. L. 102–367, title VII, § 702(a)(13), Sept. 7, 1992, 106 Stat. 1112.)

AMENDMENTS

1992—Subsec. (c)(1). Pub. L. 102–367 substituted ''sections 1732 and 1733'' for ''sections 1732 and 1735''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1703a. Job Corps centers for homeless families

(a) Authorization

Subject to the availability of appropriations therefor, the Secretary is authorized, in accordance with section 1697 of this title, to provide services and facilities in accordance with this section to eligible homeless individuals and their families at Job Corps centers. Job Corps centers serving homeless individuals and their families shall—

(1) be residential;

(2) be operated under a project agreement with one or more State or local agencies that complies with subsection (b) of this section;

(3) provide room and board for enrollees and their dependents and child care to the extent practicable for dependent children of enrollees; and

(4) provide enrollees—

(A) program activities that include both activities to sustain the operation of the center and regular Job Corps activities required under section 1698 of this title; and

(B) the benefits and services given to any other enrollee under this part.

(b) Project agreements

Each Job Corps center providing services and facilities to homeless individuals under this section shall provide such services and facilities under a project agreement with one or more State or local agencies that—

(1) requires such State and local agencies to provide, in the aggregate, not less than 50 percent of the cost of such services and facilities;

(2) contains provisions to ensure that enrollees and their families are effectively assisted in obtaining all necessary health, education, and social services provided by existing Federal, State, and local programs in such State or locality;

(3) require such State and local agencies to provide such transitional assistance, including housing, necessary to effect successful job placements for enrollees; and

(4) contains or is accompanied by such other information and assurances as the Secretary may require.

(c) Eligibility for enrollment

To become an enrollee in the Job Corps at a center established providing services and facilities to homeless individuals under this section, an individual—

(1) shall qualify as a homeless individual under section 11302 of title 42;

(2) shall have not attained the age of 25 at the time of enrollment; and

(3) shall meet the requirements of paragraphs (2) through (5) of section 1693 of this title.

(d) Screening standards

The Secretary shall prescribe special screening standards under sections 1694 and 1695 of this

title to identify and select enrollees for purposes of this section.

(e) Evaluation of centers

The Secretary shall, pursuant to section 1732(d) of this title, conduct evaluations of the centers providing services and facilities to homeless individuals under this section. The Secretary shall submit to the Congress a report on the results of such evaluations, together with the Secretary's recommendations concerning such centers, not later than 3 years after November 29, 1990.

(f) "Family" defined

As used in the[1] section, the term ''family'' may include, at a minimum, dependent children, and the brothers, sisters and parents of those dependent children.

(Pub. L. 97–300, title IV, § 433A, as added Pub. L. 101–645, title VI, § 622, Nov. 29, 1990, 104 Stat. 4744; amended Pub. L. 102–367, title VII, § 702(a)(14), Sept. 7, 1992, 106 Stat. 1112.)

AMENDMENTS

1992—Subsec. (c)(2). Pub. L. 102–367, § 702(a)(14)(A), struck out ''may be over the maximum age permitted by section 1693(1) of this title, but'' before ''shall have not attained''.

Subsec. (e). Pub. L. 102–367, § 702(a)(14)(B), substituted ''section 1732(d)'' for ''section 1734''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1704. Advisory boards and committees

The Secretary is authorized to make use of advisory committees in connection with the operation of the Job Corps, and the operation of Job Corps centers, whenever the Secretary determines that the availability of outside advice and counsel on a regular basis would be of substantial benefit in identifying and overcoming problems, in planning program or center development, or in strengthening relationships between the Job Corps and agencies, institutions, or groups engaged in related activities.

(Pub. L. 97–300, title IV, § 434, Oct. 13, 1982, 96 Stat. 1378.)

§ 1705. Participation of the States

(a) Consultation with State agencies on State law enforcement, discipline, development of meaningful work experience, and coordination with State programs

The Secretary shall take action to facilitate the effective participation of States in the Job Corps programs, including consultation with appropriate State agencies on matters pertaining to the enforcement of applicable State laws, standards of enrollee conduct and discipline, development of meaningful work experience and other activities for enrollees, and coordination with State-operated programs.

(b) Authorization to participate in and subsidize related State programs

The Secretary is authorized to enter into agreements with States to assist in the operation or administration of State-operated programs which carry out the purpose of this part. The Secretary is authorized, pursuant to regulations, to pay part or all of the costs of such programs to the extent such costs are attributable to carrying out the purpose of this part.

(c) Notice to Governor of Job Corps center establishment; thirty days to disapprove

No Job Corps center or other similar facility designed to carry out the purpose of this part shall be established within a State unless a notice setting forth such proposed establishment has been submitted to the Governor, and the establishment has not been disapproved by the Governor within thirty days of such submission.

(d) Concurrent criminal jurisdiction for Job Corps centers

All property which would otherwise be under exclusive Federal legislative jurisdiction shall be under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement as long as a Job Corps center is operated on such property.

(Pub. L. 97–300, title IV, § 435, Oct. 13, 1982, 96 Stat. 1378.)

§ 1706. Application of provisions of Federal law

(a) Enrollees not deemed Federal employees; exceptions: Federal tax provisions; survivor and disability benefits; work injuries and terms of compensation; tort claims

Except as otherwise provided in this subsection and in section 8143(a) of title 5, enrollees in the Job Corps shall not be considered Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those regarding hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits:

(1) For purposes of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.) enrollees shall be deemed employees of the United States and any service performed by an individual as an enrollee shall be deemed to be performed in the employ of the United States.

(2) For purposes of subchapter I of chapter 81 of title 5 (relating to compensation to Federal employees for work injuries), enrollees shall be deemed civil employees of the United States within the meaning of the term ''employee'' as defined in section 8101 of title 5 and the provisions of that subchapter shall apply except—

(A) the term ''performance of duty'' shall not include any act of an enrollee while absent from the assigned post of duty of such enrollee, except while participating in an activity (including an activity while on pass or during travel to or from such post or duty) authorized by or under the direction and supervision of the Job Corps;

(B) in computing compensation benefits for disability or death, the monthly pay of an enrollee shall be deemed that received under the entrance salary for a grade GS–2 employee, and sections[1] 8113(a) and (b) of title 5 shall apply to enrollees; and

[1] So in original. Probably should be ''this''.

[1] So in original. Probably should be ''section''.

(C) compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee is terminated.

(3) For purposes of the Federal tort claims provisions in title 28, enrollees shall be considered employees of the Government.

(b) Adjustment and settlement of claims

Whenever the Secretary finds a claim for damages to persons or property resulting from the operation of the Job Corps to be a proper charge against the United States, and it is not cognizable under section 2672 of title 28, the Secretary is authorized to adjust and settle it in an amount not exceeding $1,500.

(c) Status of uniformed services personnel

Personnel of the uniformed services who are detailed or assigned to duty in the performance of agreements made by the Secretary for the support of the Corps shall not be counted in computing strength under any law limiting the strength of such services or in computing the percentage authorized by law for any grade in such services.

(Pub. L. 97–300, title IV, § 436, Oct. 13, 1982, 96 Stat. 1378; Pub. L. 102–367, title VII, § 702(a)(15), Sept. 7, 1992, 106 Stat. 1112.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1), 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.

The Federal tort claim provisions in title 28, referred to in subsec. (a)(3), are the provisions of the Federal Tort Claims Act, which is classified generally to section 1346(b) and to chapter 171 (§ 2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–367 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1707. Special provisions

(a) Enrollment of women

The Secretary shall immediately take steps to achieve an enrollment of 50 percent women in the Job Corps consistent with (1) efficiency and economy in the operation of the program, (2) sound administrative practice, and (3) the socioeconomic, educational, and training needs of the population to be served.

(b) Job Corps documents and data to be United States property

The Secretary shall assure that all studies, evaluations, proposals, and data produced or developed with Federal funds in the course of the Job Corps program shall become the property of the United States.

(c) Taxation of Job Corps operations prohibited

Transactions conducted by a private for-profit contractor or a nonprofit contractor in connection with the contractor's operation of a Job Corps Center, program, or activity shall not be considered as generating gross receipts. Such contractors shall not be liable, directly or indirectly, to any State or subdivision thereof (nor to any person acting on behalf thereof) for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes imposed on, or measured by, gross receipts in connection with any payments made to or by such contractor for operating a Job Corps Center, program, or activity. Such contractors shall not be liable to any State or subdivision thereof to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such contractors of any property, service, or other item in connection with the operation of a Job Corps Center, program, or activity.

(d) Negotiated management fees for all Job Corps contractors

The Secretary shall provide all Job Corps contractors with an equitable and negotiated management fee of not less than 1 percent of the contract amount.

(Pub. L. 97–300, title IV, § 437, Oct. 13, 1982, 96 Stat. 1379; Pub. L. 99–496, § 12, Oct. 16, 1986, 100 Stat. 1264; Pub. L. 102–367, title IV, § 402(f), Sept. 7, 1992, 106 Stat. 1077.)

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–367 added subsec. (d).

1986—Subsec. (c). Pub. L. 99–496 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Transactions conducted by private for-profit contractors for Job Corps centers which they are operating on behalf of the Secretary shall not be considered as generating gross receipts.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1708. General provisions

The Secretary is authorized to—

(1) disseminate, with regard to the provisions of section 3204 of title 39, data and information in such forms as the Secretary shall deem appropriate, to public agencies, private organizations, and the general public;

(2) collect or compromise all obligations to or held by the Secretary and all legal or equitable rights accruing to the Secretary in connection with the payment of obligations until such time as such obligations may be referred to the Attorney General for suit or collection; and

(3) expend funds made available for purposes of this part—

(A) for printing and binding, in accordance with applicable law and regulation; and

(B) without regard to any other law or regulation, for rent of buildings and space in buildings and for repair, alteration, and improvement of buildings and space in buildings rented by the Secretary, except that the Secretary shall not utilize the authority contained in this subparagraph—

(i) except when necessary to obtain an item, service, or facility, which is required

in the proper administration of this part, and which otherwise could not be obtained, or could not be obtained in the quantity or quality needed, or at the time, in the form or under the conditions in which it is needed; and

(ii) prior to having given written notification to the Administrator of General Services (if the exercise of such authority would affect an activity which otherwise would be under the jurisdiction of the General Services Administration) of the Secretary's intention to exercise such authority, the item, service, or facility with respect to which such authority is proposed to be exercised, and the reasons and justifications for the exercise of such authority.

(Pub. L. 97–300, title IV, § 438, Oct. 13, 1982, 96 Stat. 1379.)

§ 1709. Donations

The Secretary is authorized to accept on behalf of the Job Corps or individual Job Corps centers charitable donations of cash or other assistance, including but not limited to, equipment and materials, if such donations are available for appropriate use for the purposes set forth in this part.

(Pub. L. 97–300, title IV, § 439, Oct. 13, 1982, 96 Stat. 1380.)

PART C—VETERANS' EMPLOYMENT PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1502 of this title; title 38 section 4103A.

§ 1721. Programs authorized

(a) Programs for disabled, Vietnam era, and recent veterans; operation through experienced agencies; enhancement of services; employment and training services; outreach and public information

(1) The Secretary shall conduct, directly or through grant or contract, programs to meet the employment and training needs of service-connected disabled veterans, veterans of the Vietnam era, and veterans who are recently separated from military service.

(2) Programs supported under this part may be conducted through public agencies and private nonprofit organizations, including recipients under other provisions of this chapter that the Secretary determines have an understanding of the unemployment problems of such veterans, familiarity with the area to be served, and the capability to administer effectively a program of employment and training assistance for such veterans.

(3) Programs supported under this part shall include, but not be limited to—

(A) activities to enhance services provided veterans by other providers of employment and training services funded by Federal, State, or local government;

(B) activities to provide employment and training services to such veterans not adequately provided by other public employment and training service providers; and

(C) outreach and public information activities to develop and promote maximum job and job training opportunities for such veterans and to inform such veterans about employment, jobtraining, on-the-job training and educational opportunities under this chapter, under title 38, and under other provisions of law.

(b) Administration through Assistant Secretary for Veterans' Employment and Training; fiscal management; consultation with Secretary of Veterans Affairs and coordination with related programs

(1) The Secretary shall administer programs supported under this part through the Assistant Secretary for Veterans' Employment and Training.

(2) In carrying out responsibilities under this part, the Assistant Secretary for Veterans' Employment and Training shall—

(A) be responsible for the awarding of grants and the distribution of funds under this part and for the establishment of appropriate fiscal controls, accountability, and program-performance standards for grant recipients under this part; and

(B) consult with the Secretary of Veterans Affairs and take steps to ensure that programs supported under this part are coordinated, to the maximum extent feasible, with related programs and activities conducted under title 38, including programs and activities conducted under subchapter II of chapter 77 of such title, chapters 31 and 34 of such title, and sections 1712A, 1720A, 3687, and 4103A of such title.

(Pub. L. 97–300, title IV, § 441, Oct. 13, 1982, 96 Stat. 1380; Pub. L. 99–619, § 2(b)(3), Nov. 6, 1986, 100 Stat. 3491; Pub. L. 102–54, § 13(k)(2)(C), June 13, 1991, 105 Stat. 277; Pub. L. 103–446, title XII, § 1203(c)(2), Nov. 2, 1994, 108 Stat. 4690.)

AMENDMENTS

1994—Subsec. (b)(2)(B). Pub. L. 103–446 substituted "subchapter II of chapter 77" for "subchapter IV of chapter 3" and "sections 1712A, 1720A, 3687, and 4103A of such title" for "sections 612A, 620A, 1787, and 2003A of such title".

1991—Subsec. (b)(2)(B). Pub. L. 102–54 substituted "Secretary of Veterans Affairs" for "Administrator of Veterans' Affairs".

1986—Subsec. (b). Pub. L. 99–619 substituted "Assistant Secretary for Veterans' Employment and Training" for "Assistant Secretary for Veterans' Employment".

COORDINATION OF INFORMATION AND ASSISTANCE

Pub. L. 100–689, title IV, § 402, Nov. 18, 1988, 100 Stat. 4178, provided that:

"(a) PURPOSE.—It is the purpose of this section to ensure that veterans who are dislocated workers eligible for assistance under title III of the Job Training Partnership Act (29 U.S.C. 1651 et seq.) or are otherwise unemployed receive, to the extent feasible, assistance (including information on vocational guidance or vocational counseling, or information on both vocational guidance or vocational counseling), including information on counseling, needed by such veterans—

"(1) to apply for services and benefits for which they are eligible as veterans, dislocated workers, or unemployed persons;

"(2) to obtain resolution of questions and problems relating to such services and benefit[s]; and

"(3) to initiate any authorized administrative appeals of determinations or other actions relating to such services and benefits.

''(b) MEMORANDUM OF UNDERSTANDING.—(1) Not later than one year after the date of the enactment of this Act [Nov. 18, 1988], the Secretary of Labor and the Administrator of Veterans' Affairs shall enter into a memorandum of understanding to carry out the purpose of this section. The memorandum shall include provisions that define the relationships and responsibilities of the Veterans' Administration, the Department of Labor, and State and local agencies with respect to the provision of the following information, forms, and assistance:

''(A) Information on services and benefits referred to in subsection (d).

''(B) All application forms and related forms necessary for individuals to apply for such services and to claim such benefits.

''(C) Assistance in resolving questions and problems relating to receipt of such services and benefits.

''(D) Assistance in contacting other Federal Government offices and State offices where such services or benefits are provided or administered.

''(2) The memorandum of understanding entered into pursuant to paragraph (1) shall include a provision for the periodic evaluation, by the Secretary of Labor and the Administrator of Veterans' Affairs, of the implementation of their respective responsibilities under such memorandum.

''(c) COORDINATION OF DEPARTMENT OF LABOR ACTIVITIES.—The Assistant Secretary of Labor for Veterans' Employment and Training, in consultation with the office designated or created under section 322(b) of the Job Training Partnership Act [29 U.S.C. 1662a(b)], shall, except as the Secretary of Labor may otherwise direct, coordinate the activities of the components of the Department of Labor performing the responsibilities of the Secretary of Labor under this section.

''(d) COVERED SERVICES AND BENEFITS.—This section applies with respect to the following services and benefits:

''(1) Employment assistance under—

''(A) part C of title IV of the Job Training Partnership Act (96 Stat. 1380; 29 U.S.C. 1721 et seq.); and

''(B) the Veterans' Job Training Act (97 Stat. 443; 29 U.S.C. 1721 note).

''(2) Employment and training assistance for dislocated workers under title III of the Job Training Partnership Act (29 U.S.C. 1651 et seq.).

''(3) Employment assistance and unemployment compensation under the trade adjustment assistance program provided in chapter 2 of title II of the Trade Act of 1974 (29 U.S.C. 2271 et seq.) [19 U.S.C. 2271 et seq.] and under any other program administered by the Employment and Training Administration of the Department of Labor.

''(4) Educational assistance under—

''(A) the Adult Education Act (20 U.S.C. 1201 et seq.); and

''(B) chapters 30, 31, 32, 34, and 35 of title 38, United States Code, and chapter 106 of title 10, United States Code.

''(5) Certification of a veteran as a member of a targeted group eligible for the targeted jobs credit determined under section 51 of the Internal Revenue Code of 1986 [26 U.S.C. 51].

''(e) DEFINITION.—In this section, the term 'veteran' has the meaning given such term in section 101(2) of title 38, United States Code.''

TRAINING AND EMPLOYMENT STUDY AND REPORT

Pub. L. 100–323, § 12, May 20, 1988, 102 Stat. 570, provided that: ''The Administrator of Veterans' Affairs shall provide for a study, based on valid statistical samplings, of the implementation of the Veterans' Job Training Act [Pub. L. 98–77, set out as a note below] and shall transmit, not later than one year after the date of the enactment of this Act [May 20, 1988], a report to the Committees on Veterans' Affairs of the Senate and the House of Representatives containing the findings and conclusions of such study, including, to the extent feasible—

''(1) a listing, by regional office and by State, of the number of veterans placed in a program of job training under the Veterans' Job Training Act and the percentage that this number represents of the total number of veterans certified (not including renewal of certifications), by regional office and by State, as eligible for participation under such Act;

''(2) a description, by regional office and by State, of the demographic nature (including race, sex, age, educational level, service-connected disability status, income before placement, and income after placement) of veterans placed in a program of job training under such Act;

''(3) a description, by regional office and by State, of the demographic nature (including, race, sex, age, educational level, service-connected disability status, and income) of veterans certified as eligible for participation under such Act but not placed in a job training program;

''(4) an analysis of the reasons that veterans certified as eligible for participation have not been placed in a program of job training under such Act;

''(5) a listing, by regional office and by State, of the number of veterans who were certified as eligible for participation under such Act and were not placed in a program of job training under such Act but were later placed in another job training program or employment;

''(6) a description, by regional office and by State, of the rate at which veterans have discontinued participation in, without completing, a program of job training under such Act, with a separate rate stated for those who discontinued within 3 months after beginning such a program, those who discontinued within 3 to 6 months after such beginning, and those who discontinued within 6 to 9 months after such beginning;

''(7) an analysis of the major reasons for veterans failing to complete such a training program;

''(8) a ranking of the twenty-five categories of employment (by types of business or industry and trade) for which programs of job training have most frequently been denied approval under such Act, with such ranking being made on the basis of the number of denials for each such category; and

''(9) a ranking of the twenty-five categories of employment (by types of business or industry and trade) for which veterans have most frequently received employment as a result of a program of job training under such Act, with such ranking being made on the basis of the number of jobs provided in each such category.''

VETERANS' JOB TRAINING ACT

Pub. L. 98–77, Aug. 15, 1983, 97 Stat. 443, as amended by Pub. L. 98–160, title VII, § 704, Nov. 21, 1983, 97 Stat. 1011; Pub. L. 98–543, title II, § 212, Oct. 24, 1984, 98 Stat. 2744; Pub. L. 99–108, § 4, Sept. 30, 1985, 99 Stat. 481; Pub. L. 99–238, title II, § 201(a)(1), (b)–(e), Jan. 13, 1986, 99 Stat. 1767, 1768; Pub. L. 100–77, title IX, § 901, July 22, 1987, 101 Stat. 538; Pub. L. 100–227, title II, § 201, Dec. 31, 1987, 101 Stat. 1555; Pub. L. 100–323, §§ 11(a)(1), (2), (3)(B), (4), (b)–(f), 15(b)(2), (c)(2), May 20, 1988, 102 Stat. 567–570, 574; Pub. L. 102–40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406, provided that:

''SHORT TITLE

''SECTION 1. This Act may be cited as the 'Veterans' Job Training Act'.

''PURPOSE

''SEC. 2. The purpose of this Act is to address the problem of severe and continuing unemployment among veterans by providing, in the form of payments to defray the costs of training, incentives to employers to hire and train certain wartime veterans who have been unemployed for long periods of time for stable and permanent positions that involve significant training.

''DEFINITIONS

''SEC. 3. For the purposes of this Act:

''(1) The term 'Administrator' means the Administrator of Veterans' Affairs.

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

''(3) The terms 'veteran', 'Korean conflict', 'compensation', 'service-connected', 'State', 'active military, naval, or air service', and 'Vietnam era', have the meanings given such terms in paragraphs (2), (9), (13), (16), (20), (24), and (29), respectively, of section 101 of title 38, United States Code.

''ESTABLISHMENT OF PROGRAM

''SEC. 4. (a) The Administrator and, to the extent specifically provided by this Act, the Secretary shall carry out a program in accordance with this Act to assist eligible veterans in obtaining employment through training for employment in stable and permanent positions that involve significant training. The program shall be carried out through payments to employers who employ and train eligible veterans in such jobs in order to assist such employers in defraying the costs of necessary training.

''(b) The Secretary shall carry out the Secretary's responsibilities under this Act through the Assistant Secretary of Labor for Veterans' Employment and Training established under section 4102A of title 38, United States Code.

''ELIGIBILITY FOR PROGRAM; DURATION OF ASSISTANCE

''SEC. 5. (a)(1) To be eligible for participation in a job training program under this Act, a veteran must be a Korean conflict or Vietnam-era veteran who—

''(A) is unemployed at the time of applying for participation in a program under this Act; and

''(B) has been unemployed for at least 10 of the 15 weeks immediately preceding the date of such veteran's application for participation in a program under this Act.

''(2) For purposes of paragraph (1), the term 'Korean conflict or Vietnam-era veteran' means a veteran—

''(A) who served in the active military, naval, or air service for a period of more than one hundred and eighty days, any part of which was during the Korean conflict or the Vietnam era; or

''(B) who served in the active military, naval, or air service during the Korean conflict or the Vietnam era and—

''(i) was discharged or released therefrom for a service-connected disability; or

''(ii) is entitled to compensation (or but for the receipt of retirement pay would be entitled to compensation).

''(3) For purposes of paragraph (1), a veteran shall be considered to be unemployed during any period the veteran is without a job and wants and is available for work.

''(b)(1) A veteran who desires to participate in a program of job training under this Act shall submit to the Administrator an application for participation in such a program. Such an application—

''(A) shall include a certification by the veteran that the veteran is unemployed and meets the other criteria for eligibility prescribed by subsection (a); and

''(B) shall be in such form and contain such additional information as the Administrator may prescribe.

''(2)(A) Subject to subparagraph (B), the Administrator shall approve an application by a veteran for participation in a program of job training under this Act unless the Administrator finds that the veteran is not eligible to participate in a program of job training under this Act.

''(B) The Administrator may withhold approval of an application of a veteran under this Act if the Administrator determines that, because of limited funds available for the purpose of making payments to employers under this Act, it is necessary to limit the number of participants in programs under this Act.

''(3)(A) Subject to section 14(c), the Administrator shall certify as eligible for participation under this Act a veteran whose application is approved under this subsection and shall furnish the veteran with a certificate of that veteran's eligibility for presentation to an employer offering a program of job training under this Act. Any such certificate shall expire 90 days after it is furnished to the veteran. The date on which a certificate is furnished to a veteran under this paragraph shall be stated on the certificate.

''(B) A certificate furnished under this paragraph may, upon the veteran's application, be renewed in accordance with the terms and conditions of subparagraph (A).

''(c) The maximum period of training for which assistance may be provided on behalf of a veteran under this Act is—

''(1) fifteen months in the case of—

''(A) a veteran with a service-connected disability rated at 30 percent or more; or

''(B) a veteran with a service-connected disability rated at 10 percent or 20 percent who has been determined under section 3106 of title 38, United States Code, to have a serious employment handicap; and

''(2) nine months in the case of any other veteran.

''EMPLOYER JOB TRAINING PROGRAMS

''SEC. 6. (a)(1) Except as provided in paragraph (2), in order to be approved as a program of job training under this Act, a program of job training of an employer approved under section 7 must provide training for a period of not less than six months in an occupation in a growth industry, in an occupation requiring the use of new technological skills, or in an occupation for which demand for labor exceeds supply.

''(2) A program of job training providing training for a period of at least three but less than six months may be approved if the Administrator determines (in accordance with standards which the Administrator shall prescribe) that the purpose of this Act would be met through that program.

''(b) Subject to section 10 and the other provisions of this Act, a veteran who has been approved for participation in a program of job training under this Act and has a current certificate of eligibility for such participation may enter a program of job training that has been approved under section 7 and that is offered to the veteran by the employer.

''APPROVAL OF EMPLOYER PROGRAMS

''SEC. 7. (a)(1) An employer may be paid assistance under section 8(a) on behalf of an eligible veteran employed by such employer and participating in a program of job training offered by that employer only if the program is approved under this section and in accordance with such procedures as the Administrator may by regulation prescribe.

''(2) Except as provided in subsection (b), the Administrator shall approve a proposed program of job training of an employer unless the Administrator determines that the application does not contain a certification and other information meeting the requirements established under this Act or that withholding of approval is warranted under subsection (g).

''(b) The Administrator may not approve a program of job training—

''(1) for employment which consists of seasonal, intermittent, or temporary jobs;

''(2) for employment under which commissions are the primary source of income;

''(3) for employment which involves political or religious activities;

''(4) for employment with any department, agency, instrumentality, or branch of the Federal Government (including the United States Postal Service and the Postal Rate Commission); or

''(5) if the training will not be carried out in a State.

''(c) An employer offering a program of job training that the employer desires to have approved for the purposes of this Act shall submit to the Administrator a written application for such approval. Such application shall be in such form as the Administrator shall prescribe.

''(d) An application under subsection (c) shall include a certification by the employer of the following:

''(1) That the employer is planning that, upon a veteran's completion of the program of job training, the employer will employ the veteran in a position for which the veteran has been trained and that the employer expects that such a position will be available on a stable and permanent basis to the veteran at the end of the training period.

''(2) That the wages and benefits to be paid to a veteran participating in the employer's program of job training will be not less than the wages and benefits normally paid to other employees participating in a comparable program of job training.

''(3) That the employment of a veteran under the program—

''(A) will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits); and

''(B) will not be in a job (i) while any other individual is on layoff from the same or any substantially equivalent job, or (ii) the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its work force with the intention of hiring a veteran in such job under this Act.

''(4) That the employer will not employ in the program of job training a veteran who is already qualified by training and experience for the job for which training is to be provided.

''(5) That the job which is the objective of the training program is one that involves significant training.

''(6) That the training content of the program is adequate, in light of the nature of the occupation for which training is to be provided and of comparable training opportunities in such occupation, to accomplish the training objective certified under clause (2) of subsection (e).

''(7) That each participating veteran will be employed full time in the program of job training.

''(8) That the training period under the proposed program is not longer than the training periods that employers in the community customarily require new employees to complete in order to become competent in the occupation or job for which training is to be provided.

''(9) That there are in the training establishment or place of employment such space, equipment, instructional material, and instructor personnel as needed to accomplish the training objective certified under clause (2) of subsection (e).

''(10) That the employer will keep records adequate to show the progress made by each veteran participating in the program and otherwise to demonstrate compliance with the requirements established under this Act.

''(11) That the employer will furnish each participating veteran, before the veteran's entry into training, with a copy of the employer's certification under this subsection and will obtain and retain the veteran's signed acknowledgment of having received such certification.

''(12) That, as applicable, the employer will provide each participating veteran with the full opportunity to participate in a personal interview pursuant to section 14(b)(1)(A) during the veteran's normal workday.

''(13) That the program meets such other criteria as the Administrator may determine are essential for the effective implementation of the program established by this Act.

''(e) A certification under subsection (d) shall include—

''(1) a statement indicating (A) the total number of hours of participation in the program of job training to be offered a veteran, (B) the length of the program of job training, and (C) the starting rate of wages to be paid to a participant in the program; and

''(2) a description of the training content of the program (including any agreement the employer has entered into with an educational institution under section 10) and of the objective of the training.

''(f)(1) Except as specified in paragraph (2), each matter required to be certified to in paragraphs (1) through (11) of subsection (d) shall be considered to be a requirement established under this Act.

''(2)(A) For the purposes of section 8(c), only matters required to be certified in paragraphs (1) through (10) of subsection (d) shall be so considered.

''(B) For the purposes of section 11, a matter required to be certified under paragraph (12) of subsection (d) shall also be so considered.

''(g) In accordance with regulations which the Administrator shall prescribe, the Administrator may withhold approval of an employer's proposed program of job training pending the outcome of an investigation under section 12 and, based on the outcome of such an investigation, may disapprove such program.

''(h) For the purposes of this section, approval of a program of apprenticeship or other on-job training for the purposes of section 3687 of title 38, United States Code, shall be considered to meet all requirements established under the provisions of this Act (other than subsections (b) and (d)(3)) for approval of a program of job training.

''PAYMENTS TO EMPLOYERS; OVERPAYMENT

''SEC. 8. (a)(1) Except as provided in paragraph (3) and subsection (b) and subject to the provisions of section 9, the Administrator shall make quarterly payments to an employer of a veteran participating in an approved program of job training under this Act. Subject to section 5(c) and paragraph (2), the amount paid to an employer on behalf of a veteran for any period of time shall be 50 percent of the product of (A) the starting hourly rate of wages paid to the veteran by the employer (without regard to overtime or premium pay), and (B) the number of hours worked by the veteran during that period.

''(2) The total amount that may be paid to an employer on behalf of a veteran participating in a program of job training under this Act is $10,000.

''(3) In order to relieve financial burdens on business enterprises with relatively few numbers of employees, the Administrator may make payments under this Act on a monthly, rather than quarterly, basis to an employer with a number of employees less than a number which shall be specified in regulations which the Administrator shall prescribe for the purposes of this paragraph.

''(b) Payment may not be made to an employer for a period of training under this Act on behalf of a veteran until the Administrator has received—

''(1) from the veteran, a certification that the veteran was employed full time by the employer in a program of job training during such period; and

''(2) from the employer, a certification—

''(A) that the veteran was employed by the employer during that period and that the veteran's performance and progress during such period were satisfactory; and

''(B) of the number of hours worked by the veteran during that period.

With respect to the first such certification by an employer with respect to a veteran, the certification shall indicate the date on which the employment of the veteran began and the starting hourly rate of wages paid to the veteran (without regard to overtime or premium pay).

''(c)(1)(A) Whenever the Administrator finds that an overpayment under this Act has been made to an employer on behalf of a veteran as a result of a certification, or information contained in an application, submitted by an employer which was false in any material respect, the amount of such overpayment shall constitute a liability of the employer to the United States.

''(B) Whenever the Administrator finds that an employer has failed in any substantial respect to comply for a period of time with a requirement established under this Act (unless the employer's failure is the result of false or incomplete information provided by the veteran), each amount paid to the employer on behalf of a veteran for that period shall be considered to be an overpayment under this Act, and the amount of such overpayment shall constitute a liability of the employer to the United States.

''(2) Whenever the Administrator finds that an overpayment under this Act has been made to an employer on behalf of a veteran as a result of a certification by the veteran, or as a result of information provided to an employer or contained in an application submitted by the veteran, which was willfully or negligently false in any material respect, the amount of such overpayment shall constitute a liability of the veteran to the United States.

''(3) Any overpayment referred to in paragraph (1) or (2) may be recovered in the same manner as any other debt due the United States. Any overpayment recovered shall be credited to funds available to make payments under this Act. If there are no such funds, any overpayment recovered shall be deposited into the Treasury.

''(4) Any overpayment referred to in paragraph (1) or (2) may be waived, in whole or in part, in accordance with the terms and conditions set forth in section 5302 of title 38, United States Code.

''ENTRY INTO PROGRAM OF JOB TRAINING

''SEC. 9. Notwithstanding any other provision of this Act, the Administrator may withhold or deny approval of a veteran's entry into an approved program of job training if the Administrator determines that funds are not available to make payments under this Act on behalf of the veteran to the employer offering that program. Before the entry of a veteran into an approved program of job training of an employer for purposes of assistance under this Act, the employer shall notify the Administrator of the employer's intention to employ that veteran. The veteran may begin such program of job training with the employer two weeks after the notice is transmitted to the Administrator unless within that time the employer has received notice from the Administrator that approval of the veteran's entry into that program of job training must be withheld or denied in accordance with this section.

''PROVISION OF TRAINING THROUGH EDUCATIONAL INSTITUTIONS

''SEC. 10. An employer may enter into an agreement with an educational institution that has been approved for the enrollment of veterans under chapter 34 of title 38, United States Code, in order that such institution may provide a program of job training (or a portion of such a program) under this Act. When such an agreement has been entered into, the application of the employer under section 7 shall so state and shall include a description of the training to be provided under the agreement.

''DISCONTINUANCE OF APPROVAL OF PARTICIPATION IN CERTAIN EMPLOYER PROGRAMS

''SEC. 11. (a) If the Administrator finds at any time that a program of job training previously approved by the Administrator for the purposes of this Act thereafter fails to meet any of the requirements established under this Act, the Administrator may immediately disapprove further participation by veterans in that program. The Administrator shall provide to the employer concerned, and to each veteran participating in the employer's program, a statement of the reasons for, and an opportunity for a hearing with respect to, such disapproval. The employer and each such veteran shall be notified of such disapproval, the reasons for such disapproval, and the opportunity for a hearing. Notification shall be by a certified or registered letter, and a return receipt shall be secured.

''(b)(1) If the Administrator determines that the rate of veterans' successful completion of an employer's programs of job training previously approved by the Administrator for the purposes of this Act is disproportionately low because of deficiencies in the quality of such programs, the Administrator shall disapprove participation in such programs on the part of veterans who had not begun such participation on the date that the employer is notified of the disapproval. In determining whether any such rate is disproportionately low because of such deficiencies, the Administrator shall take into account appropriate data, including—

''(A) the quarterly data provided by the Secretary with respect to the number of veterans who receive counseling in connection with training under this Act, are referred to employers under this Act, participate in job training under this Act, complete such training or do not complete such training, and the reasons for noncompletion; and

''(B) data compiled through the particular employer's compliance surveys.

''(2) With respect to a disapproval under paragraph (1), the Administrator shall provide to the employer concerned the kind of statement, opportunity for hearing, and notice described in subsection (a).

''(3) A disapproval under paragraph (1) shall remain in effect until such time as the Administrator determines that adequate remedial action has been taken.

''INSPECTION OF RECORDS; INVESTIGATIONS

''SEC. 12. (a) The records and accounts of employers pertaining to veterans on behalf of whom assistance has been paid under this Act, as well as other records that the Administrator determines to be necessary to ascertain compliance with the requirements established under this Act, shall be available at reasonable times for examination by authorized representatives of the Federal Government.

''(b) The Administrator may monitor employers and veterans participating in programs of job training under this Act to determine compliance with the requirements established under this Act.

''(c) The Administrator may investigate any matter the Administrator considers necessary to determine compliance with the requirements established under this Act. The investigations authorized by this subsection may include examining records (including making certified copies of records), questioning employees, and entering into any premises or onto any site where any part of a program of job training is conducted under this Act, or where any of the records of the employer offering or providing such program are kept.

''(d) The Administrator may administer functions under subsections (b) and (c) in accordance with an agreement between the Administrator and the Secretary providing for the administration of such subsections (or any portion of such subsections) by the Department of Labor. Under such an agreement, any entity of the Department of Labor specified in the agreement may administer such subsections, notwithstanding section 4(b).

''COORDINATION WITH OTHER PROGRAMS

''SEC. 13. (a)(1) Assistance may not be paid under this Act to an employer on behalf of a veteran for any period of time described in paragraph (2) and to such veteran under chapter 31, 32, 34, 35, or 36 of title 38, United States Code, for the same period of time.

''(2) A period of time referred to in paragraph (1) is the period of time beginning on the date on which the veteran enters into an approved program of job train-

ing of an employer for purposes of assistance under this Act and ending on the last date for which such assistance is payable.

''(b) Assistance may not be paid under this Act to an employer on behalf of an eligible veteran for any period if the employer receives for that period any other form of assistance on account of the training or employment of the veteran, including assistance under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) or a credit under section 44B of the Internal Revenue Code of 1954 (26 U.S.C. 44B) (relating to credit for employment of certain new employees).

''(c) Assistance may not be paid under this Act on behalf of a veteran who has completed a program of job training under this Act.

''COUNSELING

''SEC. 14. (a)(1) The Administrator and the Secretary may, upon request, provide employment counseling services to any veteran eligible to participate under this Act in order to assist such veteran in selecting a suitable program of job training under this Act.

''(2) The Administrator shall, after consultation with the Secretary, provide a program of job-readiness skills development and counseling services designed to assist veterans in need of such assistance in finding, applying for, and successfully participating in a suitable program of job training under this Act. As part of providing such services, the Administrator shall coordinate activities, to the extent practicable, with the readjustment counseling program described in section 1712A of title 38, United States Code. The Administrator shall advise veterans participating under this Act of the availability of such services and encourage them to request such services whenever appropriate.

''(b)(1) The Secretary shall provide for a program under which—

''(A) except as provided in paragraph (2), a disabled veteran's outreach program specialist appointed under section 4103A(a) of title 38, United States Code, is assigned as a case manager for each veteran participating in a program of job training under this Act;

''(B) the veteran has an in-person interview with the case manager not later than 60 days after entering into a program of training under this Act; and

''(C) periodic (not less frequent than monthly) contact is maintained with each such veteran for the purpose of (i) avoiding unnecessary termination of employment, (ii) referring the veteran to appropriate counseling, if necessary, (iii) facilitating the veteran's successful completion of such program, and (iv) following up with the employer and the veteran in order to determine the veteran's progress in the program and the outcome regarding the veteran's participation in and successful completion of the program.

''(2) No case manager shall be assigned pursuant to paragraph (1)(A)—

''(A) for a veteran if, on the basis of a recommendation made by a disabled veterans' outreach program specialist, the Secretary determines that there is no need for a case manager for such veteran; or

''(B) in the case of the employees of an employer, if the Secretary determines that—

''(i) the employer has an appropriate and effective employee assistance program that is available to all veterans participating in the employer's programs of job training under this Act; or

''(ii) the rate of veterans' successful completion of the employer's programs of job training under this Act, either cumulatively or during the previous program year, is 60 percent or higher.

''(3) The Secretary and the Administrator shall jointly provide, to the extent feasible—

''(A) a program of counseling or other services (to be provided pursuant to subchapter IV of chapter 3 [now subchapter II of chapter 77] of title 38, United States Code, and sections 1712A, 4103A, and 4104 of such title) designed to resolve difficulties that may be encountered by veterans during their training under this Act; and

''(B) a program of information services under which—

''(i) each veteran who enters into a program of job training under this Act and each employer participating under this Act is informed of the supportive services and resources available to the veteran (I) under clauses (A) and (B), (II) through Veterans' Administration counseling and career-development activities (especially, in the case of a Vietnam-era veteran, readjustment counseling services under section 1712A of such title) and under part C of title IV [29 U.S.C. 1721 et seq.] of the Job Training Partnership Act (29 U.S.C. 1501 et seq.), and (III) through other appropriate agencies in the community; and

''(ii) veterans and employers are encouraged to request such services whenever appropriate.

''(c) Before a veteran who voluntarily terminates from a program of job training under this Act or is involuntarily terminated from such program by the employer may be eligible to be provided with a further certificate, or renewal of certification, of eligibility for participation under this Act, such veteran must be provided by the Secretary, after consultation with the Administrator, with a case manager.

''(d) Payments made under this Act pursuant to contracts entered into for the provision of job-readiness skills development and counseling services under subsection (a)(2) may only be paid out of the same account used to make payments under section 3104(a)(7) of title 38, United States Code, and the amount paid out of such account in any fiscal year for such services shall not exceed an amount equal to 5 percent of the amount obligated to carry out this Act for such fiscal year, except that for fiscal year 1988 the amount shall not exceed 5 percent of the amount available to carry out this Act on October 1, 1987.

''INFORMATION AND OUTREACH; USE OF AGENCY RESOURCES

''SEC. 15. (a)(1) The Administrator and the Secretary shall jointly provide for an outreach and public information program—

''(A) to inform veterans about the employment and job training opportunities available under this Act, under chapters 31, 34, 36, 41, and 42 of title 38, United States Code, and under other provisions of law; and

''(B) to inform private industry and business concerns (including small business concerns), public agencies and organizations, educational institutions, trade associations, and labor unions about the job training opportunities available under, and the advantages of participating in, the program established by this Act.

''(2) The Secretary, in consultation with the Administrator, shall promote the development of employment and job training opportunities for veterans by encouraging potential employers to make programs of job training under this Act available for eligible veterans, by advising other appropriate Federal departments and agencies of the program established by this Act, and by advising employers of applicable responsibilities under chapters 41 and 42 of title 38, United States Code, with respect to veterans.

''(b) The Administrator and the Secretary shall coordinate the outreach and public information program under subsection (a)(1), and job development activities under subsection (a)(2), with job counseling, placement, job development, and other services provided for under chapters 41 and 42 of title 38, United States Code, and with other similar services offered by other public agencies and organizations.

''(c)(1) The Administrator and the Secretary shall make available in regional and local offices of the Veterans' Administration and the Department of Labor such personnel as are necessary to facilitate the effective implementation of this Act.

''(2) In carrying out the responsibilities of the Secretary under this Act, the Secretary shall make maxi-

mum use of the services of Directors and Assistant Directors for Veterans' Employment and Training, disabled veterans' outreach program specialists, and employees of local offices appointed pursuant to sections 4103, 4103A, and 4104 of title 38, United States Code. The Secretary shall also use such resources as are available under part C of title IV [29 U.S.C. 1721 et seq.] of the Job Training Partnership Act (29 U.S.C. 1501 et seq.). To the extent that the Administrator withholds approval of veterans' applications under this Act pursuant to section 5(b)(2)(B), the Secretary shall take steps to assist such veterans in taking advantage of opportunities that may be available to them under title III of that Act [29 U.S.C. 1651 et seq.] or under any other program carried out with funds provided by the Secretary.

''(d) The Secretary shall request and obtain from the Administrator of the Small Business Administration a list of small business concerns and shall, on a regular basis, update such list. Such list shall be used to identify and promote possible training and employment opportunities for veterans.

''(e) The Administrator and the Secretary shall assist veterans and employers desiring to participate under this Act in making application and completing necessary certifications.

''(f) The Secretary shall, on a not less frequent than quarterly basis, collect and compile from the heads of State employment services and Directors for Veterans' Employment and Training for each State information available to such heads and Directors, and derived from programs carried out in their respective States, with respect to the numbers of veterans who receive counseling services pursuant to section 14, who are referred to employers participating under this Act, who participate in programs of job training under this Act, and who complete such programs, and the reasons for veterans' noncompletion.

''AUTHORIZATION OF APPROPRIATIONS

''SEC. 16. (a) There is authorized to be appropriated to the Veterans' Administration (1) $150,000,000 for each of fiscal years 1984 and 1985, (2) a total of $65,000,000 for fiscal years 1986, and 1987, and (3) $60,000,000 for each of the fiscal years 1988 and 1989 for the purpose of making payments to employers under this Act and for the purpose of section 18 of this Act. Amounts appropriated pursuant to this section shall remain available until September 30, 1991.

''(b) Notwithstanding any other provision of law, any funds appropriated under subsection (a) for any fiscal year which are obligated for the purpose of making payments under section 8 on behalf of a veteran (including funds so obligated which previously had been obligated for such purpose on behalf of another veteran and were thereafter deobligated) and are later deobligated shall immediately upon deobligation become available to the Administrator for obligation for such purpose. The further obligation of such funds by the Administrator for such purpose shall not be delayed, directly or indirectly, in any manner by any officer or employee in the executive branch.

''TIME PERIODS FOR APPLICATION AND INITIATION OF TRAINING

''SEC. 17. Assistance may not be paid to an employer under this Act—

''(1) on behalf of a veteran who initially applies for a program of job training under this Act after September 30, 1989; or

''(2) for any such program which begins after March 31, 1990.

''EXPANSION OF TARGETED DELIMITING DATE EXTENSION

''SEC. 18. (a) Subject to the limitation on the availability of funds set forth in subsection (b), an associate degree program which is predominantly vocational in content may be considered by the Administrator, for the purposes of section 3462(a)(3) of title 38, United States Code, to be a course with an approved vocational objective if such degree program meets the requirements established in such title for approval of such program.

''(b) Funds for the purpose of carrying out subsection (a) shall be derived only from amounts appropriated pursuant to the authorizations of appropriations in section 16. Not more than a total of $25,000,000 of amounts so appropriated for fiscal years 1984 and 1985 shall be available for that purpose.

''EFFECTIVE DATE

''SEC. 19. This Act shall take effect on October 1, 1983.''

[Amendment of Pub. L. 98–77, set out above, by Pub. L. 100–323 effective on 60th day after May 20, 1988, see section 16(b)(2) of Pub. L. 100–323, set out as a note under section 3104 of Title 38, Veterans' Benefits.]

[Section 201(f) of Pub. L. 99–238 provided that:

[''(1) Except as provided in paragraph (2), the amendments made by this section [amending Pub. L. 98–77 above] shall take effect on the date of the enactment of this Act [Jan. 13, 1986].

[''(2) The amendment made by subsection (e)(2) [amending section 17(a)(1) of Pub. L. 98–77 above] shall take effect on February 1, 1986.''']

COORDINATION WITH PROGRAMS UNDER OTHER LAWS

For provisions requiring coordination of programs under section 3116(b) of Title 38, Veterans' Benefits, with programs under the Veterans' Job Training Act, Pub. L. 98–77, set out above, see section 202 of Pub. L. 99–238, set out as a note under section 3116 of Title 38.

CROSS REFERENCES

Employment, training, and counseling programs for veterans, see sections 4100 et seq. and 4211 et seq. of Title 38, Veterans' Benefits.

PART D—NATIONAL ACTIVITIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1502 of this title.

§ 1731. National partnership and special training programs

(a) Statement of purpose

It is the purpose of this section to—

(1) improve access to employment and training opportunities for individuals with special needs;

(2) help alleviate skill shortages and enhance the competitiveness of the labor force;

(3) meet special training needs that are best addressed on a multistate or industry-wide basis; and

(4) encourage the participation and support of all segments of society to further the purposes of this chapter.

(b) Program authorized

The Secretary may establish a system of, and award, special grants to eligible entities to carry out programs that are most appropriately administered at the national level.

(c) Programs

Programs that are most appropriately administered at the national level include—

(1) partnership programs with national organizations with special expertise in developing, organizing, and administering employment and training programs at the national, State, and local levels, such as industry and labor associations, public interest groups, community-based organizations representative of groups

that encounter special difficulties in the labor market, and other organizations with special knowledge or capabilities in education and training;

(2) programs that—

(A) address industry-wide skill shortages;

(B) meet training needs that are best addressed on a multistate basis; and

(C) further the goals of increasing the competitiveness of the United States labor force; and

(3) programs that require technical expertise available at the national level to serve specialized needs of particular client groups, including at-risk youth, offenders, individuals of limited-English language proficiency, individuals with disabilities, women, immigrants, single parents, substance abusers, displaced homemakers, youth, older individuals, veterans, school dropouts, public assistance recipients, and other individuals who the Secretary determines require special assistance.

(Pub. L. 97–300, title IV, § 451, Oct. 13, 1982, 96 Stat. 1381; Pub. L. 102–367, title IV, § 403(a)(1), Sept. 7, 1992, 106 Stat. 1077.)

AMENDMENTS

1992—Pub. L. 102–367 amended section generally, substituting provisions relating to national partnership and special training programs for provisions relating to administration of multistate job training programs at the national level.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1732. Research, demonstration, and evaluation

(a) Statement of purpose

It is the purpose of this section to assist the United States in expanding employment opportunities and ensuring access to such opportunities for all who desire such opportunities.

(b) Program established

(1) In general

The Secretary shall establish a comprehensive program of training and employment research, utilizing the methods, techniques, and knowledge of the behavioral and social sciences and such other methods, techniques, and knowledge as will aid in the solution of the employment and training problems of the United States.

(2) Studies

The program established under this section may include studies concerning—

(A) the development or improvement of Federal, State, local, and privately supported employment and training programs;

(B) labor market processes and outcomes, including improving workplace literacy;

(C) policies and programs to reduce unemployment and the relationships of the policies and programs with price stability and other national goals;

(D) productivity of labor;

(E) improved means of using projections of labor supply and demand, including occupational and skill requirements and areas of labor shortages at the national and subnational levels;

(F) methods of improving the wages and employment opportunities of low-skilled, disadvantaged, and dislocated workers, and workers with obsolete skills;

(G) methods of addressing the needs of at-risk populations, such as youth, homeless individuals and other dependent populations, older individuals, and other groups with multiple barriers to employment;

(H) methods of developing information on immigration, international trade and competition, technological change, and labor shortages; and

(I) methods of easing the transition from school to work, from transfer payment receipt to self-sufficiency, from one job to another, and from work to retirement.

(c) Pilot and demonstration programs

(1) Program established

(A) In general

The Secretary shall establish a program of pilot and demonstration programs for the purpose of developing and improving techniques and demonstrating the effectiveness of specialized methods in addressing employment and training needs. The Secretary may award grants and enter into contracts with entities to carry out the programs.

(B) Projects

Such programs may include projects in such areas as—

(i) school-to-work transition;

(ii) new methods of imparting literacy skills and basic education;

(iii) new training techniques (including projects undertaken with the private sector);

(iv) methods to eliminate artificial barriers to employment;

(v) approaches that foster participation of groups that encounter special problems in the labor market (such as displaced homemakers, teen parents, welfare recipients, and older individuals);

(vi) processes that demonstrate effective methods for alleviating the adverse effects of dislocations and plant closings on workers and their communities; and

(vii) cooperative ventures among business, industry, labor, trade associations, community-based organizations or nonprofit organizations to develop new and cost-effective approaches to improving work force literacy.

(2) Evaluation component

Demonstration programs assisted under this subsection shall include a formal, rigorous evaluation component. Pilot programs assisted under this subsection shall include an appropriate evaluation component.

(3) Special rule

No demonstration program under this subsection shall be assisted under this section for a period of more than 7 years. No pilot program under this subsection shall be assisted

under this section for a period of more than 3 years.

(d) Evaluation

(1) Programs

(A) Job training programs

The Secretary shall provide for the continuing evaluation of programs conducted under this chapter, including the cost effectiveness of the program in achieving the purposes of this chapter.

(B) Other programs

The Secretary may conduct evaluations of other federally funded employment-related activities including programs administered under—

(i) the Wagner-Peyser Act (29 U.S.C. 49 et seq.);

(ii) the National Apprenticeship Act (29 U.S.C. 50 et seq.);

(iii) the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.);

(iv) chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 et seq.); and

(v) the Federal unemployment insurance program under titles III, IX, and XII of the Social Security Act (42 U.S.C. 501 et seq., 1101 et seq., and 1321 et seq.).

(2) Techniques

(A) Methods

Evaluations conducted under paragraph (1) shall utilize sound statistical methods and techniques of the behavioral and social sciences, including random assignment methodologies if feasible.

(B) Analysis

Such evaluations may include cost-benefit analysis of programs, the impact of the programs on community and participants, the extent to which programs meet the needs of various demographic groups, and the effectiveness of the delivery systems used by various programs.

(C) Effectiveness

The Secretary shall evaluate the effectiveness of programs authorized under this chapter with respect to—

(i) the statutory goals;

(ii) the performance standards established by the Secretary; and

(iii) the extent to which such programs enhance the employment and earnings of participants, reduce income support costs, improve the employment competencies of participants in comparison to comparable persons who did not participate in such programs, and, to the extent feasible, increase the level of total employment over the level that would have existed in the absence of such programs.

(Pub. L. 97–300, title IV, § 452, Oct. 13, 1982, 96 Stat. 1381; Pub. L. 102–367, title IV, § 403(a)(2), Sept. 7, 1992, 106 Stat. 1078.)

REFERENCES IN TEXT

The Wagner-Peyser Act, referred to in subsec. (d)(1)(B)(i), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified generally to chapter 4B (§ 49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

The National Apprenticeship Act, referred to in subsec. (d)(1)(B)(ii), is act Aug. 16, 1937, ch. 663, 50 Stat. 664, as amended, which is classified generally to chapter 4C (§ 50 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 50 of this title and Tables.

The Older Americans Act of 1965, referred to in subsec. (d)(1)(B)(iii), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§ 3001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

The Trade Act of 1974, referred to in subsec. (d)(1)(B)(iv), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 2 of title II of the Act is classified principally to part 2 (§ 2271 et seq.) of subchapter II of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of Title 19 and Tables.

The Social Security Act, referred to in subsec. (d)(1)(B)(v), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles III, IX, and XII of the Act are classified generally to subchapters III (§ 501 et seq.), IX (§ 1101 et seq.), and XII (§ 1321 et seq.), respectively, 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

1992—Pub. L. 102–367 amended section generally. Prior to amendment, section related to employment and training research, including experimental, developmental, and demonstration projects to improve effectiveness of methods for meeting employment and training problems.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516, 1571, 1703, 1703a of this title.

§ 1733. Capacity building, information, dissemination, and replication activities

(a) National strategy

The Secretary shall develop a national strategy for carrying out the activities described in subsection (b)(2) of this section and the replication of programs described in subsection (c) of this section, and shall ensure the implementation of the national strategy.

(b) Network

(1) Establishment

(A) In general

The Secretary shall establish a Capacity Building and Information and Dissemination Network (referred to in this section as the ''Network'') to enhance the effectiveness of and to strengthen the caliber of services provided through programs authorized under this chapter and other Federal, State, and local employment and training programs.

(B) Administration

The Secretary shall establish and maintain such Network—

(i) directly;

(ii) under an interagency agreement; or

(iii) through a grant or contract awarded on a competitive basis to a single entity, or to a system of entities coordinated by the Secretary, with appropriate expertise.

(2) Activities

The Network shall—

(A) provide, coordinate, and support the development of, appropriate training, technical assistance, staff development, and other activities that will—

(i) enhance the skills, knowledge, and expertise of the personnel who staff employment and training and other closely related human service systems, including service providers;

(ii) improve the quality of services provided to individuals served under this chapter and other Federal employment and training programs and encourage integrated service delivery under such programs using—

(I) where cost effective, interactive communication systems and satellite technology; and

(II) where possible, staff trained in a variety of Federal human resource programs;

(iii) improve the planning, procurement, and contracting practices pursuant to this chapter; and

(iv) provide broad human services policy and planning training to—

(I) private industry council volunteers; and

(II) where appropriate, members of State human resource investment councils and other State councils;

(B) prepare and disseminate staff training curricula and materials, primarily using computer-based technologies, for employment and training professionals and support staff, that focus on enhancing staff competencies and professionalism, including instruction on the administrative requirements of this chapter, such as procurement and contracting standards and regulations; and

(C)(i) identify, develop, disseminate, and provide training in the techniques learned from, innovative and successful program models, materials, methods, and information, by using computer-based technologies for organizing a data base and dissemination and communication system for the Network, and establishing a computer-based communications and dissemination methodology to share information among employment and training personnel and institutions; and

(ii) in identifying such program models, ensure that consideration shall be given to—

(I) the size and scope of the program;

(II) the length of time that the program has been operating;

(III) the nature and reliability of measurable outcomes for the program;

(IV) the capacity of the sponsoring organization to provide the technical assistance necessary for States and service delivery areas to replicate the program; and

(V) the likelihood that the program will be successful in diverse economic, geographic, and cultural environments.

(3) Charges

The Network may require cost-sharing to offset the actual costs of institute training, materials acquisition, or information dissemination. Any resulting income shall be used in accordance with section 1551(m) of this title.

(4) Coordination

(A) In general

The Secretary shall consult with the Secretaries of Education and Health and Human Services, as appropriate, to coordinate the activities of the Network with other relevant institutes, centers, laboratories, clearinghouses, or dissemination networks, such as the National Diffusion Network.

(B) Coordination with replication grant program

To the extent possible, the Network shall coordinate the activities of the Network with activities assisted under the replication grant program conducted under subsection (c) of this section.

(c) Replication

(1) Replication program authorized

The Secretary shall make competitive grants to public or private nonprofit organizations for technical assistance, and to States and service delivery areas for planning and program development, to promote the replication of employment and training programs that are successful in improving the employment prospects of populations served under this chapter and that are replicable on a large scale. In making such grants, the Secretary shall consider the recommendations described in paragraph (2)(B) of the review panel established under paragraph (2)(A) regarding such programs.

(2) Review panel

(A) Establishment

The Secretary shall establish a review panel comprised of not more than 6 individuals appointed by the Secretary who are recognized experts in the operation and evaluation of employment and training programs for economically disadvantaged youth and adults, and dislocated workers.

(B) Recommendations

The review panel shall make recommendations to the Secretary regarding model programs that the panel considers likely to be successful in improving such employment prospects of populations served under this chapter and to be replicable on a large scale.

(C) Considerations

In recommending such programs the review panel shall use the considerations described in subsection (b)(2)(C)(ii) of this section.

(D) Meetings

The review panel shall meet not more than once each year to carry out the responsibilities described in this paragraph.

(E) Conflict of interest

No member of such panel shall have a direct financial interest in or affiliation with a potential recipient of funds under the program authorized by this section.

(3) Applications

(A) Nonprofit organization

Any public or private nonprofit organization desiring to receive such a grant to provide the technical assistance necessary for program replication may submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(B) State; service delivery area

Any State or service delivery area desiring to receive such a grant for planning and program development associated with a replication effort shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(C) Contents

Each application described in subparagraph (A) or (B) shall contain—

(i) a description of the program proposed for replication and available evidence of the success of the program in improving the employment prospects of economically disadvantaged youth and adults, and dislocated workers, within each such service delivery area; and

(ii) in the case of applications described in subparagraph (A), an assurance that the organization will enter into an agreement with the service delivery areas in which the program is to be replicated, to participate in the replication program.

(4) Grant limitations

(A) Limitation

In any 3-year period the Secretary shall not approve grants for the same replication activities in more than 10 States or communities. During such 3-year period, the results of such limited replication efforts shall be carefully evaluated and examined by the Secretary regarding the advisability of replicating the model program in more than 10 States or communities or for longer than 3 years.

(B) Waiver

The Secretary may waive the limitation set forth in subparagraph (A) for a program if immediate replication efforts on a larger scale are warranted by extensive evaluation of the program prior to designation as a model program under this subsection.

(5) Coordination

To the extent possible, the Secretary shall coordinate the activities assisted under the replication grant program conducted under this subsection with the activities of the Network under subsection (b) of this section. The Secretary shall ensure that information on the programs replicated under this subsection shall be available through the Network.

(d) Management capability

(1) Grants

From the amounts reserved under section 1502(c)(2)(B)(ii)(III) of this title for each fiscal year to carry out this subsection, the Secretary may award grants to States for the purpose of assisting the States in carrying out the activities described in section 1602(c)(1)(A) of this title.

(2) Eligibility

A State that receives an amount under section 1602(c)(1)(A) of this title for a fiscal year that is less than $500,000 shall be eligible to receive a grant under this subsection for the fiscal year.

(3) Amount of grant

The amount of a grant awarded to a State for a fiscal year under paragraph (1) shall not exceed the lesser of—

(A) $100,000; or

(B) the difference obtained by subtracting from $500,000 the amount received by the State for the fiscal year under section 1602(c)(1)(A) of this title.

(4) Award of grants

In determining whether to award a grant to a State under paragraph (1), and in determining the amount of such a grant, the Secretary shall take into account the demonstrated need of the State to receive such a grant, as indicated by—

(A) the number of service delivery areas in the State; and

(B) the demonstrated insufficiency of resources of the State to administer State responsibilities under sections 1531 and 1532 of this title.

(5) Application

To be eligible to receive a grant under this subsection for a fiscal year, a State shall submit an application at such time, in such manner, and containing such information as the Secretary may require, including sufficient information to enable the Secretary to make the determinations described in paragraph (4).

(6) Use of funds

The Secretary shall make available to carry out subsections (b) and (c) of this section any amounts reserved under section 1502(c)(2)(B)(ii)(III) of this title for a fiscal year and not expended to make grants under paragraph (1) for such year.

(Pub. L. 97–300, title IV, § 453, Oct. 13, 1982, 96 Stat. 1382; Pub. L. 99–496, § 13, Oct. 16, 1986, 100 Stat. 1265; Pub. L. 102–367, title IV, § 403(a)(3), Sept. 7, 1992, 106 Stat. 1080.)

AMENDMENTS

1992—Pub. L. 102–367 amended section generally, substituting provisions relating to capacity building, information, dissemination, and replication activities for provisions relating to pilot projects meeting the employment needs of people.

1986—Subsec. (a). Pub. L. 99–496 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1502, 1602, 1642, 1644, 1703 of this title; title 20 sections 5934, 6194.

§ 1734. Guidance on eligibility verification

(a) Establishment

The Secretary shall provide guidance and technical assistance, to States and service delivery areas, relating to the documentation required to verify the eligibility of participants under parts A, B, and C of subchapter II of this chapter, particularly the hard-to-serve individuals specified in section 1603(b) of this title and subsections (b) and (d) of section 1643 of this title. Such documentation shall, to the extent practicable, be uniform and standard.

(b) Guidance

The guidance provided pursuant to subsection (a) of this section, while maintaining program integrity, shall—

(1) limit the documentation burden to the minimum necessary to adequately verify such eligibility; and

(2) ensure, to the extent practicable, that the documentation requirements shall not discourage the participation of eligible individuals.

(c) Contents

The guidance provided pursuant to subsection (a) of this section shall specifically address income eligibility, assessment, the determination regarding whether an individual is a hard-to-serve individual, and specific uniform or standardized documentation forms or procedures (including simplified standardized forms, automated intake procedures, and self-certification documents) and other documentation proxies (such as JOBS and Job Corps eligibility forms).

(d) Date

The Secretary shall provide the guidance described in subsection (a) of this section not later than December 18, 1992.

(Pub. L. 97–300, title IV, § 454, as added Pub. L. 102–367, title IV, § 403(b), Sept. 7, 1992, 106 Stat. 1084.)

PRIOR PROVISIONS

A prior section 1734, Pub. L. 97–300, title IV, § 454, Oct. 13, 1982, 96 Stat. 1383; Pub. L. 97–404, § 4(c), Dec. 31, 1982, 96 Stat. 2026, related to evaluation of effectiveness of programs, activities, and projects authorized by this chapter, prior to repeal by Pub. L. 102–367, title IV, § 403(a)(4), title VII, § 701(a), Sept. 7, 1992, 106 Stat. 1084, 1103, effective July 1, 1993.

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367 set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1735. Uniform reporting requirements

(a) Finding

Congress finds that closer coordination and more effective use of resources among a variety of employment and training programs can be facilitated if the programs have common data elements and definitions.

(b) Data elements

The Secretaries of Labor, Education, and Health and Human Services, in consultation with other appropriate departments and with the National Occupational Information Coordinating Committee, shall identify a core set of consistently defined data elements for employment and training programs, including those funded under this subchapter and subchapters II and III of this chapter, the Wagner-Peyser Act (29 U.S.C. 49 et seq.), the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.), the JOBS program, and title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.).

(c) Report

The Secretary shall prepare and submit to Congress not later than January 1, 1994, a report listing recommended data elements and their definitions, and containing an analysis of the benefits of the adoption of the data elements and definitions.

(d) Consultation

The Secretary shall consult with experts and practitioners, at the Federal, State, and local levels and in the various program areas, in fulfilling the requirements of this section. The Secretary shall also consult with the General Accounting Office in fulfilling the requirements of this section.

(Pub. L. 97–300, title IV, § 455, as added Pub. L. 102–367, title IV, § 404(a), Sept. 7, 1992, 106 Stat. 1084.)

REFERENCES IN TEXT

The Wagner-Peyser Act, referred to in subsec. (b), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified generally to chapter 4B (§ 49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

The Carl D. Perkins Vocational and Applied Technology Education Act, referred to in subsec. (b), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this Title 20 and Tables.

The Older Americans Act of 1965, referred to in subsec. (b), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Title V of the Act, known as the ''Older Americans Community Services Employment Act'', is classified generally to subchapter IX (§ 3056 et seq.) of chapter 35 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1735, Pub. L. 97–300, title IV, § 455, Oct. 13, 1982, 96 Stat. 1383, related to personnel training and technical assistance with respect to programs under this chapter, prior to repeal by Pub. L. 102–367, title IV, § 403(a)(4), title VII, § 701(a), Sept. 7, 1992, 106 Stat. 1084, 1103, effective July 1, 1993.

EFFECTIVE DATE

Section effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992

Amendment; Transition Provisions note under section 1501 of this title.

§ 1736. Repealed. Pub. L. 102–367, title IV, § 403(a)(4), Sept. 7, 1992, 106 Stat. 1084

Section, Pub. L. 97–300, title IV, § 456, as added Pub. L. 99–496, § 14(a), Oct. 16, 1986, 100 Stat. 1265, related to projects designed to serve populations with multiple barriers to employment.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1737. Nontraditional employment demonstration program

(a) Grants to develop programs

(1) From funds available under this part for each of the fiscal years 1992, 1993, 1994, and 1995, the Secretary shall use $1,500,000 in each such fiscal year to make grants to States to develop demonstration and exemplary programs to train and place women in nontraditional employment.

(2) The Secretary may award no more than 6 grants in each fiscal year.

(b) Criteria for award of grants

In awarding grants pursuant to subsection (a) of this section, the Secretary shall consider—

(1) the level of coordination between this chapter and other resources available for training women in nontraditional employment;

(2) the extent of private sector involvement in the development and implementation of training programs under this chapter;

(3) the extent to which the initiatives proposed by a State supplement or build upon existing efforts in a State to train and place women in nontraditional employment;

(4) whether the proposed grant amount is sufficient to accomplish measurable goals;

(5) the extent to which a State is prepared to disseminate information on its demonstration training programs; and

(6) the extent to which a State is prepared to produce materials that allow for replication of such State's demonstration training programs.

(c) Use of funds

(1) Each State receiving financial assistance pursuant to this section may use such funds to—

(A) award grants to service providers in the State to train and otherwise prepare women for nontraditional employment;

(B) award grants to service delivery areas that plan and demonstrate the ability to train, place, and retain women in nontraditional employment; and

(C) award grants to service delivery areas on the basis of exceptional performance in training, placing, and retaining women in nontraditional employment.

(2) Each State receiving financial assistance pursuant to subsection (c)(1)(A) of this section may only award grants to—

(A) community based organizations,

(B) educational institutions, or

(C) other service providers,

that have demonstrated success in occupational skills training.

(3) Each State receiving financial assistance under this section shall ensure, to the extent possible, that grants are awarded for training, placing, and retaining women in growth occupations with increased wage potential.

(4) Each State receiving financial assistance pursuant to subsection (c)(1)(B) or (c)(1)(C) of this section may only award grants to service delivery areas that have demonstrated ability or exceptional performance in training, placing, and retaining women in nontraditional employment that is not attributable or related to the activities of any service provider awarded funds under subsection (c)(1)(A) of this section.

(d) Retention of percentage of grant by State

In any fiscal year in which a State receives a grant pursuant to this section such State may retain an amount not to exceed 10 percent of such grant to—

(1) pay administrative costs,

(2) facilitate the coordination of statewide approaches to training and placing women in nontraditional employment, or

(3) provide technical assistance to service providers.

(e) Evaluation

The Secretary shall provide for evaluation of the demonstration programs carried out pursuant to this section, including evaluation of the demonstration programs' effectiveness in—

(1) preparing women for nontraditional employment, and

(2) developing and replicating approaches to train and place women in nontraditional employment.

(Pub. L. 97–300, title IV, § 456, formerly § 457, as added Pub. L. 102–235, § 9, Dec. 12, 1991, 105 Stat. 1809; renumbered § 456 and amended Pub. L. 102–367, title IV, § 403(a)(5), Sept. 7, 1992, 106 Stat. 1084.)

PRIOR PROVISIONS

A prior section 456 of Pub. L. 97–300 was classified to section 1736 of this title, prior to repeal by Pub. L. 102–367, title IV, § 403(a)(4), Sept. 7, 1992, 106 Stat. 1084.

AMENDMENTS

1992—Pub. L. 102–367, § 403(a)(5)(B), substituted ''Nontraditional employment demonstration program'' for prior section catchline.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

CONSTRUCTION

Section not to be construed to require, sanction, or authorize discrimination on the basis of race, color, religion, sex, national origin, handicap, or age, see section 11 of Pub. L. 102–235, set out as a Construction of 1991 Amendment note under section 1501 of this title.

REPORT TO CONGRESS; RECOMMENDATIONS

Section 10 of Pub. L. 102–235 provided that:

''(a) REPORT.—The Secretary of Labor shall report to the Congress within 5 years of the date of enactment of this Act [Dec. 12, 1991] on—

''(1) the extent to which States and service delivery areas have succeeded in training, placing, and retaining women in nontraditional employment, together with a description of the efforts made and the results of such efforts; and

''(2) the effectiveness of the demonstration programs established by section 457 [now 456] of the Job Training Partnership Act [29 U.S.C. 1737] in developing and replicating approaches to train and place women in nontraditional employment, including a summary of activities performed by grant recipients under the demonstration programs authorized by section 457 [now 456] of the Job Training Partnership Act.

''(b) RECOMMENDATIONS.—The report described in subsection (a) shall include recommendations on the need to continue, expand, or modify the demonstration programs established by section 457 [now 456] of the Job Training Partnership Act [29 U.S.C. 1737], as well as recommendations for legislative and administrative changes necessary to increase nontraditional employment opportunities for women under the Job Training Partnership Act [29 U.S.C. 1501 et seq.].''

PART E—LABOR MARKET INFORMATION

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1502, 1535 of this title.

§ 1751. Labor market information; availability of funds

(a) Publicly accessible labor market information system

The Secretary shall set aside, out of sums available to the Department for any fiscal year including sums available for this subchapter, such sums as may be necessary to maintain a comprehensive system of labor market information on a national, regional, State, local, or other appropriate basis, which shall be made publicly available in a timely fashion.

(b) Availability of funds for State labor market information

Funds available for purposes of this part shall also be available for purposes of section 1535 of this title (relating to State labor market information).

(c) Funds available from other programs

Notwithstanding any other provision of law, funds available to other Federal agencies for carrying out chapter 35 of title 44, the Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.], and the Act of June 6, 1933 (popularly known as the Wagner-Peyser Act) [29 U.S.C. 49 et seq.], may be made available by the head of each such agency to assist in carrying out the provisions of this part.

(Pub. L. 97–300, title IV, § 461, Oct. 13, 1982, 96 Stat. 1383; Pub. L. 98–524, § 4(a)(5), Oct. 19, 1984, 98 Stat. 2488.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (c), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, known as the Carl D. Perkins Vocational and Applied Technology Education Act, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

Act of June 6, 1933 (popularly known as the Wagner-Peyser Act), referred to in subsec. (c), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified generally to chapter 4B (§ 49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–524 substituted ''the Carl D. Perkins Vocational Education Act'' for ''the Vocational Education Act of 1963''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98–524, set out as an Effective Date note under section 2301 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1535 of this title.

§ 1752. Cooperative labor market information program

(a) Maintenance of current multilevel employment data

The Secretary shall develop and maintain for the Nation, State, and local areas, current employment data by occupation and industry, based on the occupational employment statistics program, including selected sample surveys, and projections by the Bureau of Labor Statistics of employment and openings by occupation.

(b) Maintenance of job descriptions and requirements

The Secretary shall maintain descriptions of job duties, training and education requirements, working conditions, and characteristics of occupations.

(c) Elimination of departmental data systems overlap; coordination with Federal reporting services; use of standard definitions

In carrying out the provisions of this section, the Secretary shall assure that—

(1) departmental data collecting and processing systems are consolidated to eliminate overlap and duplication;

(2) the criteria of chapter 35 of title 44 are met; and

(3) standards of statistical reliability and national standardized definitions of employment, unemployment, and industrial and occupational definitions are used.

(d) Annual measure of labor market related economic hardship; multilevel measure of cost of living; annual labor force and income report

(1) The Secretary is authorized to develop data for an annual statistical measure of labor market related economic hardship in the Nation. Among the factors to be considered in developing such a measure are unemployment, labor force participation, involuntary part-time employment, and full-time employment at wages less than the poverty level.

(2) The Secretary is authorized to develop and maintain, on national, State, local, and other appropriate bases, household budget data at different levels of living, including a level of adequacy, to reflect the differences of household living costs in regions and localities, both urban and rural.

(3) The Secretary shall publish, at least annually, a report relating labor force status to earnings and income.

(e) Maintenance of permanent layoff and plant closing data

The Secretary shall develop and maintain statistical data relating to permanent lay-offs and plant closings. The Secretary shall publish a report based upon such data, as soon as practicable, after the end of each calendar year. Among the data to be included are—

(1) the number of such closings;
(2) the number of workers displaced;
(3) the location of the affected facilities; and
(4) the types of industries involved.

(f) Data on displaced farmers and ranchers; scope of data; reporting requirements

(1) The Secretary shall develop, in coordination with the Secretary of Agriculture, statistical data relating to permanent dislocation of farmers and ranchers due to farm and ranch failures. Among the data to be included are—

(A) the number of such farm and ranch failures;
(B) the number of farmers and ranchers displaced;
(C) the location of the affected farms and ranches;
(D) the types of farms and ranches involved; and
(E) the identification of farm family members, including spouses, and farm workers working the equivalent of a full-time job on the farm who are dislocated by such farm and ranch failures.

(2) The Secretary shall publish a report based upon such data as soon as practicable after the end of each calendar year. Such report shall include a comparison of data contained therein with data currently used by the Bureau of Labor Statistics in determining the Nation's annual employment and unemployment rates and an analysis of whether farmers and ranchers are being adequately counted in such employment statistics. Such report shall also include an analysis of alternative methods for reducing the adverse effects of displacements of farmers and ranchers, not only on the individual farmer or rancher, but on the surrounding community.

(g) Nationwide database on quarterly earnings, industry affiliation, and geographic location of employment of individuals

(1) Taking into consideration research previously conducted by the National Commission for Employment Policy and other entities, the Commissioner of Labor Statistics, in cooperation with the States, shall determine appropriate procedures for establishing a nationwide database containing information on the quarterly earnings, establishment and industry affiliation, and geographic location of employment, for all individuals for whom such information is collected by the States.

(2) The Commissioner of Labor Statistics shall determine appropriate procedures for maintaining such information in a longitudinal manner and for making such information available for policy research or program evaluation purposes or both, while ensuring the confidentiality of information and the privacy of individuals.

(3) The Secretary shall prepare and submit to the Congress, not later than 12 months after September 7, 1992, a report that shall describe the costs and benefits, including savings on program followup surveys, of a nationwide database containing the information described in paragraph (1) and a schedule that would allow for the establishment of such a database.

(Pub. L. 97–300, title IV, § 462, Oct. 13, 1982, 96 Stat. 1384; Pub. L. 100–418, title VI, § 6306(a), Aug. 23, 1988, 102 Stat. 1540; Pub. L. 102–367, title IV, § 405(a), title VII, § 702(a)(16), Sept. 7, 1992, 106 Stat. 1085, 1112.)

AMENDMENTS

1992—Subsec. (f)(2). Pub. L. 102–367, § 702(a)(16), inserted period at end.

Subsec. (g). Pub. L. 102–367, § 405(a), added subsec. (g).

1988—Subsec. (f). Pub. L. 100–418 added subsec. (f).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1502, 1652 of this title.

§ 1753. Special Federal responsibilities

(a) Interdepartmental cooperation; review and coordination of national data systems; standardized national definitions; aid for State labor and occupational opportunity information systems

The Secretary, in cooperation with the Secretary of Commerce, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Education, the Secretary of Health and Human Services, and the Director of the Office of Management and Budget, through the National Occupational Information Coordinating Committee established under section 422 of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2422], shall—

(1) review the need for and the application of all operating national data collection and processing systems related to labor market information in order to identify gaps, overlap, and duplications, and integrate at the national level currently available data sources in order to improve the management of information systems;

(2) maintain, assure timely review, and implement national standardized definitions with respect to terms, geographic areas, timing of collection, and coding measures related to labor market information, to the maximum extent feasible; and

(3) provide technical assistance to the States in the development, maintenance, and utilization of labor market/occupational supply and demand information systems and projections of supply and demand as described in section 1535 of this title, with special emphasis on assistance in the utilization of cost-efficient automated systems and improving access of individuals to career opportunities information in local and State labor markets.

(b) Integrated occupational opportunity information system; Armed Forces career opportunities

The Secretary, in cooperation with the Secretary of Defense, shall assure the development of an integrated occupational supply and demand information system to be used by States and, in particular, in secondary and postsecondary educational institutions in order to assure young persons adequate information on career opportunities in the Armed Forces.

(c) Sufficient funds for Federal level coordinating staff

The Secretary and the Director of the Office of Management and Budget shall assure that, from the funds reserved for this part, sufficient funds are available to provide staff at the Federal level to assure the coordination functions described in this section.

(Pub. L. 97–300, title IV, § 463, Oct. 13, 1982, 96 Stat. 1384; Pub. L. 97–404, § 4(d), Dec. 31, 1982, 96 Stat. 2027; Pub. L. 98–524, § 4(a)(6)(A), (D), Oct. 19, 1984, 98 Stat. 2488; Pub. L. 99–159, title VII, § 713(b)(2), Nov. 22, 1985, 99 Stat. 907; Pub. L. 102–367, title IV, § 405(b), Sept. 7, 1992, 106 Stat. 1085.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (a), as amended is known as the Carl D. Perkins Vocational and Applied Technology Education Act.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367 inserted ''the Secretary of Health and Human Services,'' after ''the Secretary of Education,''.

1985—Subsec. (a). Pub. L. 99–159 repealed Pub. L. 98–524, § 4(a)(6)(D). See 1984 Amendment note below.

1984—Subsec. (a). Pub. L. 98–524, § 4(a)(6)(A), substituted ''section 422 of the Carl D. Perkins Vocational Education Act'' for ''section 161(b) of the Vocational Education Act of 1963''.

Pub. L. 98–524, § 4(a)(6)(D), which substituted ''section 422 of the Carl D. Perkins Vocational Education Act'' for ''section 161(b) of the Vocational Education Act of 1963'', was repealed by Pub. L. 99–159.

1982—Subsec. (a)(1). Pub. L. 97–404, § 4(d)(1), inserted ''related to labor market information'' after ''processing systems''.

Subsec. (a)(2). Pub. L. 97–404, § 4(d)(2), inserted ''related to labor market information'' after ''coding measures''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–159 effective July 1, 1985, see section 714(a) of Pub. L. 99–159, set out as a note under section 2311 of Title 20, Education.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98–524, set out as an Effective Date note under section 2301 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1754 of this title; title 20 section 2421.

§ 1754. National Occupational Information Coordinating Committee

(a) Authorization limit; membership; support of State occupational information coordinating committees

(1) Of the amounts available for this part for each fiscal year, $6,000,000 is authorized to be reserved for the National Occupational Information Coordinating Committee (established pursuant to section 422 of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2422]).

(2) In addition to the members required by such Act [20 U.S.C. 2301 et seq.], the Committee shall include the Assistant Secretary of Commerce for Economic Development and the Assistant Secretary of Defense[1] Force Management and Personnel.

(3) Not less than 75 percent of the funds transferred by the Secretary to the National Occupational Information Coordinating Committee shall be used to support State occupational information coordinating committees and other organizational units designated under section 1535 of this title for carrying out State labor market information programs.

(b) Special Federal responsibilities

In addition to its responsibilities under the Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.], the National Occupational Information Coordinating Committee shall—

(1) carry out the provisions of section 1753 of this title;

(2) give special attention to the career development and labor market information needs of youth and adults, including activities such as (A) assisting and encouraging States to adopt methods of translating national occupational outlook information into State and local terms; (B) assisting and encouraging the development of State occupational information systems, including career information delivery systems and the provision of technical assistance for programs of on-line computer systems and other facilities to provide career information at sites such as local schools, public employment service offices, and job training programs authorized under this chapter; (C) in cooperation with educational agencies and institutions, encouraging programs providing career information, counseling, and employment services for postsecondary youth; and (D) in cooperation with State and local correctional agencies, encouraging programs of counseling and employment services for youth and adults in correctional institutions;

(3) provide training and technical assistance, and continuing support to State occupational information coordinating committees, in the development, maintenance, and use of occupational supply and demand information systems, with special emphasis on the use of cost efficient automated systems for delivering occupational information to planners and administrators of education and training programs and on improving the access of such planners and administrators to occupational information systems;

[1] So in original. Probably should be followed by ''for''.

(4) publish at least annually a report on the status of occupational information capabilities at the State and national levels, which may include recommendations for improvement of occupational information production and dissemination capabilities;

(5) conduct research and demonstration projects designed to improve any aspect of occupational and career information systems and coordination and compatibility of human resources data systems operated by Federal agencies or the States, including systems to assist economic development activities and, where appropriate, provide support to States in the implementation of such system improvements.;[2]

(6) provide technical assistance for programs designed to encourage public and private employers to list all available job opportunities with occupational information and career counseling programs conducted by administrative entities and with local public employment service offices and to encourage cooperation and contact among such employers and such administrative entities and public employment service offices; and

(7) provide assistance to units of general local government and private industry councils to familiarize them with labor market information resources available to meet their needs.

(c) Funds available from other programs

All funds available to the National Occupational Information Coordinating Committee under this chapter, under section 422 of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2422], and under section 12 of the Career Education Act [20 U.S.C. 2611][3] may be used by the Committee to carry out any of its functions and responsibilities authorized by law.

(Pub. L. 97–300, title IV, § 464, Oct. 13, 1982, 96 Stat. 1385; Pub. L. 97–404, § 4(e), Dec. 31, 1982, 96 Stat. 2027; Pub. L. 98–524, § 4(a)(6)(B), (C), (E), Oct. 19, 1984, 98 Stat. 2488; Pub. L. 102–367, title IV, § 405(c), Sept. 7, 1992, 106 Stat. 1085.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsecs. (a)(1), (2) and (b), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, known as the Carl D. Perkins Vocational and Applied Technology Education Act, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

Section 12 of the Career Education Act [20 U.S.C. 2611], referred to in subsec. (c), was repealed by Pub. L. 97–35, title V, § 587(a)(4), Aug. 13, 1981, 95 Stat. 480.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–367, § 405(c)(1)(A), substituted ''$6,000,000'' for ''not more than $5,000,000''.

Subsec. (a)(2). Pub. L. 102–367, § 405(c)(1)(B), substituted ''Force Management and Personnel'' for ''for Manpower, Reserve Affairs, and Logistics''.

Subsec. (b)(2). Pub. L. 102–367, § 405(c)(2)(A), inserted ''career development and'' after ''give special attention to the''.

Subsec. (b)(5). Pub. L. 102–367, § 405(c)(2)(B), inserted ''and coordination and compatibility of human resources data systems operated by Federal agencies or the States, including systems to assist economic development activities and, where appropriate, provide support to States in the implementation of such system improvements.'' after ''career information systems''.

1984—Subsec. (a)(1). Pub. L. 98–524, § 4(a)(6)(B), substituted ''section 422 of the Carl D. Perkins Vocational Education Act'' for ''section 161(b) of the Vocational Education Act of 1963''.

Subsec. (b). Pub. L. 98–524, § 4(a)(6)(E), substituted ''the Carl D. Perkins Vocational Education Act'' for ''the Vocational Education Act of 1963''.

Subsec. (c). Pub. L. 98–524, § 4(a)(6)(C), substituted ''section 422 of the Carl D. Perkins Vocational Education Act'' for ''section 161 of the Vocational Education Act of 1963''.

1982—Subsec. (a)(1). Pub. L. 97–404, § 4(e)(1), inserted ''for each fiscal year'' after ''part''.

Subsec. (b)(7). Pub. L. 97–404, § 4(e)(2), substituted ''provide'' for ''providing''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98–524, set out as an Effective Date note under section 2301 of Title 20, Education.

§ 1755. Job bank program

The Secretary is authorized to establish and carry out a nationwide computerized job bank and matching program (including the listing of all suitable employment openings with local offices of the State employment service agencies by Federal contractors and subcontractors and providing for the affirmative action as required by section 4212(a) of title 38[1] on a regional, State, and local basis, using electronic data processing and telecommunications systems to the maximum extent possible for the purpose of identifying sources of available individuals and job vacancies, providing an expeditious means of matching the qualifications of unemployed, underemployed, and economically disadvantaged individuals with employer requirements and job opportunities, and referring and placing such individuals in jobs. An occupational information file may be developed, containing occupational projections of the numbers and types of jobs on regional, State, local, and other appropriate bases, as well as labor supply information by occupation.

(Pub. L. 97–300, title IV, § 465, Oct. 13, 1982, 96 Stat. 1386; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406.)

AMENDMENTS

1991—Pub. L. 102–83 substituted ''section 4212(a) of title 38'' for ''section 2012(a) of title 38''.

PART F—NATIONAL COMMISSION FOR EMPLOYMENT POLICY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1502 of this title.

[2] So in original.

[3] See References in Text note below.

[1] So in original. Probably should be followed by a closing parenthesis.

§ 1771. Statement of purpose

The purpose of this part is to establish a National Commission for Employment Policy which shall have the responsibility for examining broad issues of development, coordination, and administration of employment and training programs, and for advising the President and the Congress on national employment and training issues. For the purpose of providing funds for the Commission, the Secretary shall reserve $2,000,000 of the sums appropriated for this subchapter for each fiscal year.

(Pub. L. 97–300, title IV, § 471, Oct. 13, 1982, 96 Stat. 1387.)

§ 1772. Establishment

(a) Composition of membership

There is established a National Commission for Employment Policy (hereinafter in this part referred to as the ''Commission''). The Commission shall be composed of 15 members, appointed by the President. The members of the Commission shall be individuals who are nationally prominent and the Commission shall be broadly representative of agriculture, business, labor, commerce, education (including elementary, secondary, postsecondary, and vocational and technical education), veterans, current State and local elected officials, community-based organizations, assistance programs, and members of the general public with expertise in human resource development or employment and training policy. The membership of the Commission shall be generally representative of significant segments of the labor force, including women and minority groups.

(b) Term of office; unfinished terms; terms of initial members

The term of office of each member of the Commission appointed by the President under subsection (a) of this section shall be three years, except that—

(1) any such member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed, and

(2) of such members first taking office—

(A) five shall serve for terms of one year;

(B) five shall serve for terms of two years; and

(C) five shall serve for terms of three years;

as designated by the President at the time of appointment.

(c) Selection of Chairman; frequency of meetings; quorum and voting

(1) The Chairman shall be selected by the President.

(2) The Commission shall meet not fewer than three times each year at the call of the Chairman.

(3) A majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings. Any recommendation may be passed only by a majority of the members present. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

(d) Appointment of Director

The Chairman (with the concurrence of the Commission) shall appoint a Director, who shall be chief executive officer of the Commission and shall perform such duties as are prescribed by the Chairman.

(Pub. L. 97–300, title IV, § 472, Oct. 13, 1982, 96 Stat. 1387; Pub. L. 98–524, § 4(a)(7), Oct. 19, 1984, 98 Stat. 2488; Pub. L. 102–367, title VII, § 702(a)(17), Sept. 7, 1992, 106 Stat. 1112.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367 struck out after third sentence ''One of the members shall be a representative of the National Council on Vocational Education (established under section 431 of the Carl D. Perkins Vocational Education Act).''

1984—Subsec. (a). Pub. L. 98–524 substituted ''National Council on Vocational Education (established under section 431 of the Carl D. Perkins Vocational Education Act)'' for ''National Advisory Council on Vocational Education (established under section 162 of the Vocational Education Act of 1963)''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98–524, set out as an Effective Date note under section 2301 of Title 20, Education.

§ 1773. Functions

The Commission shall—

(1) identify the employment goals and needs of the Nation, and assess the extent to which employment and training, vocational education, institutional training, vocational rehabilitation, economic opportunity programs, public assistance policies, employment-related tax policies, labor exchange policies, and other policies and programs under this chapter and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs and achieving such goals;

(2) develop and make appropriate recommendations designed to meet the needs and goals described in clause (1);

(3) examine and evaluate the effectiveness of federally assisted employment and training programs (including programs assisted under this chapter), with particular reference to the contributions of such programs to the achievement of objectives sought by the recommendations made under clause (2);

(4) advise the Secretary on the development of national performance standards and the parameters of variations of such standards for programs conducted pursuant to this chapter;

(5) evaluate the impact of tax policies on employment and training opportunities;

(6) examine and evaluate major Federal programs which are intended to, or potentially could, contribute to achieving major objectives of existing employment and training and related legislation or the objectives set forth in the recommendations of the Commission,

and particular attention shall be given to the programs which are designed, or could be designed, to develop information and knowledge about employment and training problems through research and demonstration projects or to train personnel in fields (such as occupational counseling, guidance, and placement) which are vital to the success of employment and training programs;

(7) identify the employment and training and vocational education needs of the Nation and assess the extent to which employment and training, vocational education, rehabilitation, and other programs assisted under this chapter and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs.[1]

(8) study and make recommendations on how, through policies and actions in the public and private sectors, the Nation can attain and maintain full employment, with special emphasis on the employment difficulties faced by the segments of the labor force that experience differentially high rates of unemployment;

(9) identify and assess the goals and needs of the Nation with respect to economic growth and work improvements, including conditions of employment, organizational effectiveness and efficiency, alternative working arrangements, and technological changes;

(10) evaluate the effectiveness of training provided with Federal funds in meeting emerging skill needs; and

(11) study and make recommendations on the use of advanced technology in the management and delivery of services and activities conducted under this chapter.

(Pub. L. 97–300, title IV, § 473, Oct. 13, 1982, 96 Stat. 1388; Pub. L. 98–524, § 4(a)(8), Oct. 19, 1984, 98 Stat. 2488; Pub. L. 102–367, title VII, § 702(a)(18), Sept. 7, 1992, 106 Stat. 1112.)

AMENDMENTS

1992—Par. (7). Pub. L. 102–367 redesignated subpar. (A) as entire par., struck out ", after consultation with the National Council on Vocational Education," after "identify", substituted a period for "; and" after "meeting such needs", and struck out subpar. (B) which read as follows: "comment, at least once annually, on the reports of the National Council on Vocational Education, which comments shall be included in one of the reports submitted by the National Commission pursuant to this subchapter and in one of the reports submitted by the National Council on Vocational Education pursuant to part D of subchapter IV of the Carl D. Perkins Vocational Education Act;".

1984—Par. (7). Pub. L. 98–524 substituted "National Council on Vocational Education" for "National Advisory Council on Vocational Education", wherever appearing, and "part D of subchapter IV of the Carl D. Perkins Vocational Education Act" for "section 162 of the Vocational Education Act of 1963".

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98–524, set out as an Effective Date note under section 2301 of Title 20, Education.

[1] So in original. Probably should be a semicolon.

§ 1774. Administrative provisions

(a) Authority of Chairman: rules; staff and compensation; consultants; voluntary services; acceptance of gifts; contracts; studies and hearings; use of governmental facilities; advances and payments

Subject to such rules and regulations as may be adopted by the Commission, the Chairman is authorized to—

(1) prescribe such rules and regulations as may be necessary;

(2) appoint and fix the compensation of such staff personnel as the Chairman deems necessary, and without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and the General Schedule pay rates, appoint not to exceed five additional professional personnel;

(3) procure the services of experts and consultants in accordance with section 3109 of title 5;

(4) accept voluntary and uncompensated services of professional personnel, consultants, and experts, notwithstanding any other provision of law;

(5) accept in the name of the United States and employ or dispose of gifts or bequests to carry out the functions of the Commission under this subchapter;

(6) enter into contracts and make such other arrangements and modifications, as may be necessary;

(7) conduct such studies, hearings, research activities, demonstration projects, and other similar activities as the Commission deems necessary to enable the Commission to carry out its functions under this subchapter;

(8) use the services, personnel, facilities, and information of any department, agency, and instrumentality of the executive branch of the Federal Government and the services, personnel, facilities, and information of State and local public agencies and private research agencies, with the consent of such agencies, with or without reimbursement therefor; and

(9) make advances, progress, and other payments necessary under this chapter without regard to the provisions of section 3324(a) and (b) of title 31.

(b) Availability of Federal agencies and information

Upon request made by the Chairman of the Commission, each department, agency, and instrumentality of the executive branch of the Federal Government is authorized and directed to make its services, personnel, facilities, and information (including computer-time, estimates, and statistics) available to the greatest practicable extent to the Commission in the performance of its functions under this chapter.

(Pub. L. 97–300, title IV, § 474, Oct. 13, 1982, 96 Stat. 1389.)

CODIFICATION

In subsec. (a)(9) ''section 3324(a) and (b) of title 31'' substituted for ''section 3648 of the Revised Statutes (31 U.S.C. 529)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 1775. Reports

The Commission shall make at least annually a report of its findings and recommendations to the President and to the Congress. The Commission may make such interim reports or recommendations to the Congress, the President, the Secretary, or to the heads of other Federal departments and agencies, and in such form, as it may deem desirable. The Commission shall include in any report made under this section any minority or dissenting views submitted by any member of the Commission.

(Pub. L. 97–300, title IV, § 475, Oct. 13, 1982, 96 Stat. 1389.)

PART G—TRAINING TO FULFILL AFFIRMATIVE ACTION OBLIGATIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1502 of this title.

§ 1781. Affirmative action

(a) Contractor's obligations; training program contents

A contractor subject to the affirmative action obligations of Executive Order 11246, as amended, issued September 24, 1965, may establish or participate in training programs pursuant to this section for individuals meeting the eligibility criteria established in section[1] 1603, 1643, 1671, and 1672 of this title, which are designed to assist such contractors in meeting the affirmative action obligations of such Executive order. To qualify under this section, such a training program shall contain—

(1) a description of the jobs in the contractor's work force or in the service delivery area, for which the contractor has determined there is a need for training;

(2) a description of the recruiting, training, or other functions that the contractor, or the organization that will be engaged to perform the training, will perform and the steps that will be taken to insure that eligible individuals will—

(A) be selected for participation in training,

(B) be trained in necessary skills, and

(C) be referred for job openings,

in accordance with the objectives of such Executive order;

(3) whenever an organization other than the contractor will perform the training, a description of the demonstrated effectiveness of the organization as a provider of employment and training services;

(4) a description of how the contractor will monitor the program to keep an accurate accounting of all trainees, including (A) whether the trainees successfully complete the training program, and (B) whether the trainees are or are not placed; and

(5) an estimation of the cost of the program and an assurance that the contractor will assume all costs of the program or the pro rata share of costs to the contractor of the program.

(b) Review of community-need directed programs; programs includable in performance accomplishments; determination of affirmative action compliance; notice of compliance; abbreviated affirmative action program; successful performance and presumption of good faith effort; limitation; "successful performance or operation" defined

(1)(A) If the training proposal is designed to meet the needs of the community rather than, or in addition to, the employment needs of the contractor, and has not been approved by another Federal agency, the program shall be submitted to the private industry council established under section 1512 of this title for a determination that there is a need for such training in the community.

(B) Individuals trained under any program satisfying the requirements of this section may be included by the private industry council in its performance accomplishments and the wage gains of such individuals shall be included in determining the compliance of the job training program of the private industry council with applicable standards.

(2) The Director of the Office of Federal Contract Compliance Programs, Department of Labor, shall promulgate regulations setting forth how the Office will determine, during a compliance review, the degree to which a training program will satisfy the contractor's affirmative action obligations. The training and placement of trainees with employers other than the contractor may be considered in evaluating such contractor's overall good faith efforts, but in no event may placement of trainees with employers other than the contractor be permitted to affect that contractor's affirmative action obligations respecting its work force. The content of the training program will not be subject to review or regulation by the Office of Federal Contract Compliance Programs. If during a compliance review the Director of the Office of Federal Contract Compliance Programs determines that a training program does not comply with its regulations, the Director shall—

(A) notify the contractor of the disapproval,

(B) set forth the reasons for the disapproval, and

(C) provide a list of recommendations which, if accepted, will qualify the training program under this section.

(3) A contractor who has a training program which contains the criteria set forth in subsection (a) of this section and which is in accordance with regulations promulgated under paragraph (2) of this subsection shall continue to meet the affirmative action obligations of Executive Order 11246, as amended, but the contractors required to maintain a written affirmative action program need only maintain an abbreviated affirmative action program, the content and length of which shall be determined by the Director of the Office of Federal Contract Compliance Programs, to satisfy the written af-

[1] So in original. Probably should be ''sections''.

firmative action program portion of their obligations under Executive Order 11246, as amended. Successful performance or operation of a training program meeting the criteria set forth in subsection (a) of this section shall create a presumption that the contractor has made a good faith effort to meet its affirmative action obligations to the degree specified by the Director under paragraph (2) of this subsection, but that presumption shall not be applicable to the satisfaction of other affirmative action obligations not directly related to the training and hiring requirements of this section, or other affirmative action obligations not affected by this section. For the purpose of the preceding sentence, ''successful performance or operation'' means training and placing in jobs a number of individuals which bears a reasonable relationship to the number of job openings in the contractors's[2] facilities or in the relevant labor market area.

(c) Limitations: compulsory program involvement; exclusive compliance criteria; obligations of nonparticipating contractors; interference with private industry councils; restriction of Secretary's authority; short form affirmative action plan

Nothing in this section may be interpreted—

(1) to compel contractor involvement in such programs,

(2) to establish the exclusive criteria by which a contractor can be found to have fulfilled its affirmative action obligations,

(3) to provide authority for imposing any additional obligations on contractors not participating in such training activities,

(4) to permit the Office of Federal Contract Compliance Programs to intervene or interfere with the authority and responsibilities of the private industry councils,

(5) to restrict or limit the authority of the Secretary to investigate the employment practices of any Government contractor, to initiate such investigation by the Director, to determine whether any nondiscrimination contractual provisions have been violated, or to enforce Executive Order 11246, or

(6) to prohibit the Secretary or the Director, or other authorized officers of the United States, from requesting or compelling any contractor preparing and maintaining a short form affirmative action plan under subsection (b) of this section to provide information necessary to conduct a compliance review or to provide data necessary to determine whether any violation of Executive Order 11246 has occurred.

(Pub. L. 97–300, title IV, § 481, Oct. 13, 1982, 96 Stat. 1390; Pub. L. 102–367, title VII, § 702(a)(19), Sept. 7, 1992, 106 Stat. 1112.)

REFERENCES IN TEXT

Executive Order 11246, as amended, referred to in subsecs. (a), (b)(3), and (c)(5), (6), is Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, which is set out as a note under section 2000e of Title 42, The Public Health and Welfare.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–367, which directed the substitution of ''section 1603, 1643'' for ''section 1603(a)(1)'', was executed by making the substitution for ''sections 1603(a)(1)'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

[2] So in original.

PART H—YOUTH FAIR CHANCE PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1502 of this title; title 20 section 6235; title 42 section 11421.

§ 1782. Statement of purpose

It is the purpose of the Youth Fair Chance program under this part to—

(1) ensure access to education and job training assistance for youth residing in high poverty areas of urban and rural communities;

(2) provide a comprehensive range of education, training, and employment services to disadvantaged youth who are not currently served or are underserved by Federal education and job training programs;

(3) enable communities with high concentrations of poverty to establish and meet goals for improving the opportunities available to youth within the community; and

(4) facilitate the coordination of comprehensive services to serve youth in such communities.

(Pub. L. 97–300, title IV, § 491, as added Pub. L. 102–367, title IV, § 406, Sept. 7, 1992, 106 Stat. 1086.)

EFFECTIVE DATE

Part effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1782a. Program authorized

(a) Establishment of program

The Secretary is authorized to establish a national program of Youth Fair Chance grants to pay the Federal share attributable to this part of providing comprehensive services to youth living in high poverty areas in the cities and rural areas of the Nation.

(b) Eligibility for grants

(1) Recipients

The Secretary may only award grants under this part to—

(A) the service delivery area (on behalf of the participating community) in which a target area is located;

(B) in the case of a grant involving a target area located in an Indian reservation or Alaska Native village, the grantee designated under subsection (c) or (d) of section 1671 of this title, or a consortium of such grantees and the State; or

(C) in the case of a grant involving a target area located in a migrant or seasonal farmworker community, the grantee designated under section 1672(c) of this title, or a consortium of such grantees and the State.

(2) Number of grants

(A) In general

The Secretary may award not more than 25 grants during the first fiscal year that the program is authorized.

(B) Indian reservations and Alaska Native villages

In awarding grants under this part during the first 5 fiscal years that the program is assisted, the Secretary shall award—

(i) at least 1 grant to a grantee or consortium described in paragraph (1)(B); and

(ii) at least 1 grant to a grantee or consortium described in paragraph (1)(C).

(c) Renewability of grants

(1) In general

Grants awarded under this part shall be for a 1-year period. Such a grant shall be renewable for each of the 2 succeeding fiscal years if the Secretary determines the grant recipient complied with conditions of the grant during the previous fiscal year.

(2) Extension

The Secretary may extend the renewal period set forth in paragraph (1) for an additional 2 fiscal years on reapplication.

(d) Factors for awards

In awarding grants under this part, the Secretary shall consider the quality of the proposed project, the goals to be achieved, the likelihood of successful implementation, the extent of community support, other Federal and non-Federal funds available for similar purposes, and additional State, local, or private resources that will be provided. The Secretary shall give priority to participating communities with the highest poverty rates.

(Pub. L. 97–300, title IV, § 492, as added Pub. L. 102–367, title IV, § 406, Sept. 7, 1992, 106 Stat. 1086.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1782b, 1782e of this title.

§ 1782b. Application

(a) Eligibility to apply

Participating communities that have the highest concentrations of poverty, as determined by the Secretary based on the latest Bureau of the Census estimates, shall be eligible to apply for a Youth Fair Chance grant.

(b) Contents of application

(1) In general

Each participating community desiring a grant under this part shall, through the individuals set forth in subsection (c) of this section, submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(2) Contents

Each such application shall—

(A) include a comprehensive plan for the Youth Fair Chance initiative designed to achieve identifiable goals for youth in the target area;

(B) set forth measurable program goals and outcomes, which may include increasing the proportion of—

(i) youth completing high school or its equivalent;

(ii) youth entering into postsecondary institutions, apprenticeships, or other advanced training programs;

(iii) youth placed in jobs; or

(iv) youth participating in education, training, and employment services;

(C) include supporting goals for the target area such as increasing security and safety, or reducing the number of drug-related arrests;

(D) provide assurances that the applicant will comply with the terms of the agreement described in section 1782c of this title;

(E) demonstrate how the participating community will make use of the resources, expertise, and commitment of institutions of higher education, educational agencies, and vocational and technical schools and institutes;

(F) provide an assurance that all youth in the target areas will have access to a coordinated and comprehensive range of education and training opportunities that serve the broadest range of youth interests and needs and simultaneously mobilizes the diverse range of education and training providers in the participating community;

(G) provide assurances that the youth in the target area will have access to supportive services necessary for successful participation, including such services as child care, transportation, and assistance in resolving personal or family crises, such as crises related to substance abuse, homelessness, migration, and family violence;

(H) include a description of a system of common intake procedures or sites, individualized assessment, and case management to be used by the program;

(I) demonstrate how the participating community will make use of the resources, expertise, and commitment of such programs and service providers as—

(i) community-based organizations providing vocational skills, literacy skills, remedial education, and general equivalency preparation, including community-based organizations serving youth with limited-English proficiency;

(ii) youth corps programs, including youth conservation and human service corps;

(iii) Job Corps centers;

(iv) apprenticeship programs; and

(v) other projects and programs funded under this chapter;

(J) include an estimate of the expected number of youth in the target area to be served;

(K) include a description of the resources available in the participating community from private, local government, State, and Federal sources that will be used to achieve the goals of the program;

(L) include an estimate of funds required to ensure access to appropriate education, training, and support services for all youth in the target area who seek such opportunities; and

(M) provide evidence of support for accomplishing the stated goals of the participating community from—

(i) local elected officials;

(ii) the local school system;

(iii) appropriate postsecondary education and training institutions;

(iv) the applicable private industry council;

(v) local community leaders;

(vi) business;

(vii) labor organizations; and

(viii) other appropriate organizations.

(c) Submission of application

The application for funds described in subsection (b) of this section may only be submitted to the Secretary on behalf of a participating community by—

(1) the mayor of a city or the chief elected official in a metropolitan statistical area, after the Governor of the State has had an opportunity to comment on the application;

(2) the chief elected official of a nonmetropolitan county or the designated chief elected official of contiguous nonmetropolitan counties, after the Governor of the State has had an opportunity to comment on the application; or

(3) a grantee or consortium described in subparagraph (B) or (C) of section 1782a(b)(1) of this title in applications for Native American or migrant or seasonal farmworker communities, respectively.

(Pub. L. 97–300, title IV, § 493, as added Pub. L. 102–367, title IV, § 406, Sept. 7, 1992, 106 Stat. 1087.)

§ 1782c. Grant agreement

(a) In general

Each grant recipient receiving a grant under this part on behalf of a participating community shall enter into an agreement with the Secretary.

(b) Contents

Each such agreement shall—

(1) designate a target area that—

(A) will be the focus of the demonstration project; and

(B) shall have a population of—

(i) not more than 25,000; or

(ii) in an appropriate case, not more than 50,000,

except that in the event that the population of an area from which a high school draws a substantial portion of its enrollment exceeds either limit, the target area may encompass such boundary;

(2) contain assurances that funds provided under this part will be used to support education, training, and supportive activities selected from a set of youth program models designated by the Secretary or from alternative models described in the application and approved by the Secretary, such as—

(A) nonresidential learning centers;

(B) alternative schools;

(C) combined activities including summer remediation, work experience and work readiness training, and school-to-work, apprenticeship, or postsecondary education programs;

(D) teen parent programs;

(E) special programs administered by community colleges;

(F) youth centers;

(G) initiatives aimed at increased rural student enrollment in postsecondary institutions;

(H) public-private collaborations to assure private sector employment and continued learning opportunities for youth; and

(I) initiatives, such as youth corps programs, that combine community and youth service opportunities with education and training activities;

(3) provide that funds received under this part will be used for services to youth ages 14 through 30 at the time of enrollment;

(4) contain assurances that the local educational agency and any other educational agency that operates secondary schools in the target area shall provide such activities and resources as are necessary to achieve the educational goals specified in the application;

(5) contain assurances that the participating community will provide such activities and local resources as are necessary to achieve the goals specified in the application;

(6) contain assurances that the participating community will undertake outreach and recruitment efforts in the target area to encourage, to the maximum extent possible, participation by the disadvantaged youth who are currently unserved, or underserved, by education and training programs, including targeted measures specifically designed to enlist the participation of youth, particularly males, under the jurisdiction of the child welfare, juvenile justice, and criminal justice systems;

(7) provide that the participating community will carry out special efforts to establish coordination with Federal, State, or local programs that serve the target population;

(8) provide assurances that funds provided under this part for a fiscal year will be used only to pay the Federal share attributable to this part of the cost of programs and services not otherwise available in the target area and will supplement, and not supplant, funding from other local, State, and Federal sources available to youth in the target area during the previous year; and

(9) permit funds provided under this part to be used to support paid work experience programs if such programs are combined with other education and training activities.

(Pub. L. 97–300, title IV, § 494, as added Pub. L. 102–367, title IV, § 406, Sept. 7, 1992, 106 Stat. 1089; amended Pub. L. 103–50, ch. V, § 502, July 2, 1993, 107 Stat. 254.)

AMENDMENTS

1993—Subsec. (b)(3). Pub. L. 103–50 substituted ''30'' for ''21''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1782b of this title.

§ 1782d. Job guarantees

(a) Program authority

The Secretary shall permit a reasonable number of the grant recipients under this part to enter into an agreement to provide, in accordance with this section, a job guarantee program to youths meeting prior school attendance and performance standards.

(b) Guarantee agreements

A grant recipient providing such a job guarantee program shall enter into an agreement with the Secretary, which agreement shall—

(1) provide that the program be available to youth age 16 to 19 who undertake a commitment to continue and complete their high school education;

(2) require the grant recipient to guarantee employment to each youth undertaking the commitment if such youth meets school attendance and performance standards for the previous school semester, as established by the Secretary in consultation with the Secretary of Education;

(3) provide that the grant recipient will make additional services available to support the undertaking of any such youth, which shall include counseling, job development and placement, and supportive services (including child care and transportation);

(4) specify the conditions under which funds provided under this part may be used to provide wage subsidies of up to 50 percent through employers, which conditions shall—

(A) encourage subsidies to employers who provide advanced or specialized training, or who provide a structured and integrated learning experience involving the school and employer; and

(B) limit the duration of such subsidies to not more than 1 year;

(5) require that the employment provided to any such youth shall not exceed 15 hours per week during the school year;

(6) permit employment to continue through the summer following high school graduation, or until the youth reaches age 19, whichever is later; and

(7) contain such other terms and conditions as the Secretary requires by regulation.

(c) Selection of grant recipients

In determining which grant recipients to permit to enter an agreement under this section, the Secretary shall seek to target funds to areas with the highest poverty rates.

(d) Youth eligibility

All youth, regardless of income, residing in an eligible high poverty area shall be eligible to participate in the job guarantee program.

(e) Private funds

Nothing in this section shall be construed to prohibit the grant recipient from raising funds to augment such grant if such funds are utilized under the conditions of the grant, except that such funds shall not be used for administration.

(Pub. L. 97–300, title IV, § 495, as added Pub. L. 102–367, title IV, § 406, Sept. 7, 1992, 106 Stat. 1090.)

§ 1782e. Payments; Federal share

(a) Payments required

In any fiscal year, the amount of a grant awarded under this part shall be based on the size of the target area and the extent of the poverty in such area, and shall be of sufficient size and scope to carry out an effective program under this part.

(b) Federal share

The Federal share attributable to this part of the cost of providing comprehensive services as provided in section 1782a(a) of this title shall be not less than 70 percent for each fiscal year a grant recipient receives assistance under this chapter.

(c) Other Federal sources

In providing for the remaining share of such cost, each grant recipient may provide not more than 20 percent of such cost from Federal sources other than funds received pursuant to this part.

(d) Non-Federal share

A grant recipient shall provide non-Federal funds in an amount not less than 10 percent of such cost, an in-kind contribution equivalent to such percent (as determined by the Secretary), or a combination thereof.

(Pub. L. 97–300, title IV, § 496, as added Pub. L. 102–367, title IV, § 406, Sept. 7, 1992, 106 Stat. 1091.)

§ 1782f. Reporting

The Secretary is authorized to establish such reporting procedures as are necessary to carry out the purposes of this part.

(Pub. L. 97–300, title IV, § 497, as added Pub. L. 102–367, title IV, § 406, Sept. 7, 1992, 106 Stat. 1091.)

§ 1782g. Federal responsibilities

(a) In general

The Secretary shall provide assistance to participating communities in implementing the projects assisted under this part.

(b) Independent evaluation

(1) In general

The Secretary shall provide for a thorough, independent evaluation of the Youth Fair Chance program to assess the outcomes of youth participating in programs assisted under this part.

(2) Evaluation measures

In conducting the evaluation described in paragraph (1) the Secretary shall include an assessment of—

(A) the impact on youth residing in target areas, including the rates of school completion, enrollment in advanced education or training, and employment of the youth;

(B) the extent to which participating communities fulfilled the goal of guaranteed ac-

cess to appropriate education, training, and supportive services to all eligible youth residing in target areas who seek to participate;

(C) the effectiveness of guaranteed access to comprehensive services combined with outreach and recruitment efforts in enlisting the participation of previously unserved or underserved youth residing in target areas;

(D) the effectiveness of efforts to integrate service delivery in target areas, including systems of common intake, assessment, and case management; and

(E) the feasibility of extending guaranteed access to comprehensive education, training and support services for youth in all areas of the United States, including possible approaches to incremental extension of such access over time.

(c) Report

The Secretary shall prepare a report detailing the results of the independent evaluation described in subsection (b) of this section and shall submit such report to the Congress not later than December 31, 1996, along with an analysis of expenditures made, results achieved, and problems in the operations and coordination of programs assisted under this part.

(d) Reservation of funds

The Secretary may reserve not more than 5 percent of the amount appropriated under this part in each fiscal year to carry out the provisions of this section.

(Pub. L. 97–300, title IV, § 498, as added Pub. L. 102–367, title IV, § 406, Sept. 7, 1992, 106 Stat. 1091.)

§ 1782h. Definitions

For the purposes of this part—

(1) Participating community

The term ''participating community''—

(A) in the case of a community conducting a project in an urban area, means a city in a metropolitan statistical area;

(B) in the case of a community conducting a project in a rural area, means a nonmetropolitan county or contiguous nonmetropolitan counties;

(C) in the case of a community conducting a project in an Indian reservation or Alaska Native village, the[1] grantee designated under subsection (c) or (d) of section 1671 of this title, or a consortium of such grantees and the State; or

(D) in the case of a community conducting a project in a migrant or seasonal farmworker community, the[1] grantee designated under section 1672(c) of this title, or a consortium of such grantees and the State.

(2) High poverty area

The term ''high poverty area'' means an urban census tract, a nonmetropolitan county, a Native American Indian reservation, or an Alaska Native village, with a poverty rate of 30 percent or more, as determined by the Bureau of the Census, or a migrant or seasonal farmworker community.

(3) Target area

The term ''target area'' means a high poverty area or set of contiguous high poverty areas that will be the focus of the program in each participating community.

(Pub. L. 97–300, title IV, § 498A, as added Pub. L. 102–367, title IV, § 406, Sept. 7, 1992, 106 Stat. 1092.)

PART I—MICROENTERPRISE GRANTS PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1502 of this title.

§ 1783. Microenterprise grants

(a) Program authority

From the amount appropriated to carry out this section for fiscal years 1993 through 1997, the Secretary of Labor shall make grants of not more than $500,000 per year to not more than 10 States per year to implement and enhance community-based microenterprise activities. Such grants shall be an amount adequate to ensure that the activities will be of sufficient size and scope to produce substantial benefits. Such activities shall be for the benefit of economically disadvantaged persons.

(b) Use of funds

Such funds shall be used, notwithstanding section 1551(q) of this title—

(1) to train program staff in such entrepreneurial activities as business plan development, business management, resource inventory design, and marketing approaches, and other activities necessary to provide effective entry level training to persons developing a microenterprise;

(2) to provide to owners or potential owners of a microenterprise such technical assistance (including technical assistance with respect to business planning, securing funding, marketing, and production of marketing materials) and other assistance as may be necessary to develop microenterprise activities; and

(3) to provide microenterprise support (such as peer support programs and counseling).

(c) Application and selection

The Secretary shall award grants competitively under this section on the basis of—

(1) the State commitment, as evidenced by existing or proposed related programs and support;

(2) evidence of ability to conduct and monitor the microenterprise activities;

(3) evidence of linkage to private, community-based credit and technical assistance providers; and

(4) size of the non-Federal match.

(d) Timing

Not later than April 1 of any fiscal year, a State may submit to the Secretary an application. Not later than the following June 1, the Secretary shall approve not more than 10 of the applications. Not later than the following July 1, the Secretary shall authorize the applicant to

[1] So in original. Probably should be ''means the''.

begin the programs. The Secretary may consider making multiyear grants.

(e) Matching requirement

(1) In general

No State shall receive a grant under this section unless the State agrees to provide, to carry out the microenterprise programs, non-Federal contributions in an amount equal to 100 percent of Federal funds provided under such grant.

(2) Determination

The non-Federal contribution may be in cash or in-kind, fairly evaluated, including plant, equipment, or services.

(f) Reports

Each State receiving a grant under this section shall, for each fiscal year for which funds are received, submit to the Secretary a report that describes—

(1) the programs that have been established and developed with such funds, including a description of the persons participating and the microenterprises developed;

(2) the quantitative and qualitative benefits of such programs; and

(3) the contributions of such programs to economic self-sufficiency and economic development.

(g) Definitions

As used in this section:

(1) Microenterprise

The term ''microenterprise'' means a commercial enterprise if—

(A) the enterprise has 5 or fewer employees, 1 or more of whom owns the enterprise; and

(B) each of the owners of the enterprise is economically disadvantaged.

(2) State

The term ''State'' includes—

(A) in the case of a community conducting a project in an Indian reservation or Alaska Native village, the grantee designated under subsection (c) or (d) of section 1671 of this title, or a consortium of such grantees and the State; and

(B) in the case of a community conducting a project in a migrant or seasonal farmworker community, the grantee designated under section 1672(c) of this title, or a consortium of such grantees and the State.

(Pub. L. 97–300, title IV, § 499, as added Pub. L. 102–367, title IV, § 407, Sept. 7, 1992, 106 Stat. 1093.)

EFFECTIVE DATE

Part effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

PART J—DISASTER RELIEF EMPLOYMENT ASSISTANCE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1502 of this title.

§ 1784. General authority

(a) Qualification for funds

Funds appropriated to carry out this part shall be made available in a timely manner by the Secretary to the Governor of any State within which is located an area that has suffered an emergency or a major disaster as defined in paragraphs (1) and (2), respectively, of section 102 of the Disaster Relief Act of 1974[1] (42 U.S.C. 5122(1) and (2)) (referred to in this part as the ''disaster area'').

(b) Substate allocation

Not less than 80 percent of the funds made available to any Governor under subsection (a) of this section shall be allocated by the Governor to units of general local government located, in whole or in part, within such disaster areas. The remainder of such funds may be reserved by the Governor for use, in concert with State agencies, in cleanup, rescue, repair, renovation, and rebuilding activities associated with such major disaster.

(c) Coordination

Funds made available under this part to Governors and units of general local government shall be expended in consultation with—

(1) agencies administering programs for disaster relief provided under the Disaster Relief Act of 1974[1] [42 U.S.C. 5121 et seq.]; and

(2) the administrative entity and the private industry council in each service delivery area within which disaster employment programs will be conducted under this part.

(Pub. L. 97–300, title IV, § 499A, as added Pub. L. 102–367, title IV, § 408, Sept. 7, 1992, 106 Stat. 1094.)

REFERENCES IN TEXT

The Disaster Relief Act of 1974, referred to in subsecs. (a) and (c)(1), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. The 1974 Act was renamed the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and was substantially revised by Pub. L. 100–707, Nov. 23, 1988, 102 Stat. 4689. Section 102(b) of Pub. L. 100–707 provided that a reference in any other law to a provision of the Disaster Relief Act of 1974 shall be deemed to be a reference to such provision of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. For complete classification of this Act to the Code, see Short title note set out under section 5121 of Title 42 and Tables.

EFFECTIVE DATE

Part effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1784a. Use of funds

(a) Projects restricted to disaster areas

Funds made available under this part to any unit of general local government in a disaster area—

(1) shall be used exclusively to provide employment on projects to provide food, clothing, shelter, and other humanitarian assist-

[1] See References in Text note below.

ance for disaster victims and on projects regarding demolition, cleanup, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within the disaster area; and

(2) may be expended through public and private agencies and organizations engaged in such projects.

(b) Eligible participants

An individual shall be eligible to be offered disaster employment under this part if such individual is—

(1)(A) eligible to participate or enroll, or is a participant or enrolled, under subchapter III of this chapter, other than an individual who is actively engaged in a training program; or

(B) eligible to participate in programs or activities assisted under section 1671 or 1672 of this title; and

(2) unemployed as a consequence of the disaster.

(c) Limitations on disaster relief employment

No individual shall be employed under this part for more than 6 months for work related to recovery from a single natural disaster.

(d) Regulations

The Secretary shall prescribe such regulations as may be necessary to promote the fiscal integrity of programs conducted with funds made available under this part.

(Pub. L. 97–300, title IV, § 499B, as added Pub. L. 102–367, title IV, § 408, Sept. 7, 1992, 106 Stat. 1095.)

§ 1784b. Definitions

As used in this part, the term ''unit of general local government'' includes—

(1) in the case of a community conducting a project in an Indian reservation or Alaska Native village, the grantee designated under subsection (c) or (d) of section 1671 of this title, or a consortium of such grantees and the State; and

(2) in the case of a community conducting a project in a migrant or seasonal farmworker community, the grantee designated under section 1672(c) of this title, or a consortium of such grantees and the State.

(Pub. L. 97–300, title IV, § 499C, as added Pub. L. 102–367, title IV, § 408, Sept. 7, 1992, 106 Stat. 1095.)

SUBCHAPTER V—JOBS FOR EMPLOYABLE DEPENDENT INDIVIDUALS INCENTIVE BONUS PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1502, 1514, 1531 of this title.

§ 1791. Statement of purpose

It is the purpose of this subchapter to provide incentives to reduce welfare dependency, promote self-sufficiency, increase child support payments, and increase employment and earnings of individuals by providing to each participating State a bonus for providing job training to—

(1) absent parents of children receiving aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), who subsequent to such training pay child support for their children; and

(2) blind or disabled individuals receiving supplemental security income under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), who subsequent to such training are successfully placed in and retain employment.

(Pub. L. 97–300, title V, § 501, as added Pub. L. 100–628, title VII, § 712(a)(3), Nov. 7, 1988, 102 Stat. 3248; amended Pub. L. 102–367, title V, § 501, Sept. 7, 1992, 106 Stat. 1096.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Title XVI of the Act is classified generally to subchapter XVI (§ 1381 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 501 of Pub. L. 97–300, which enacted sections 49e, 49f, 49*l*, and 49*l*–1 of this title, amended sections 49 to 49b, 49d, and 49g to 49j of this title, and enacted provisions set out as a note under section 49 of this title, was renumbered section 601 of Pub. L. 97–300.

AMENDMENTS

1992—Pub. L. 102–367 amended section generally. Prior to amendment, section read as follows: ''It is the purpose of this subchapter to entitle each State to the payment of a bonus for the successful job placement of certain employable dependent individuals.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1791a. Payments

(a) In general

For each program year for which funds are appropriated to carry out this subchapter, the Secretary shall pay to each participating State the amount that State is eligible to receive under this subchapter.

(b) Ratable reductions

If the amount so appropriated is not sufficient to pay each State the amount each State is eligible to receive, the Secretary shall ratably reduce the amount paid to each State.

(c) Ratable increases

If any additional amount is made available for carrying out this subchapter for any program year after the application of subsection (b) of this section, such additional amount shall be allocated among the States by increasing such payments in the same manner as they were reduced, except that no such State shall be paid an amount that exceeds the amount that the State is eligible to receive under this subchapter.

(d) Reprogramming

If the amount appropriated for a program year is in excess of the amount necessary to pay each

State the amount each State is eligible to receive, the Secretary shall allot the excess amount to the States for allocation to the service delivery areas in accordance with section 1602 of this title to carry out part A of subchapter II of this chapter.

(Pub. L. 97–300, title V, § 502, as added Pub. L. 100–628, title VII, § 712(a)(3), Nov. 7, 1988, 102 Stat. 3248; amended Pub. L. 102–367, title V, § 501, Sept. 7, 1992, 106 Stat. 1096.)

PRIOR PROVISIONS

A prior section 502 of Pub. L. 97–300, which amended sections 632 and 633 of Title 42, The Public Health and Welfare, was renumbered section 602 of Pub. L. 97–300.

AMENDMENTS

1992—Pub. L. 102–367 amended section generally, substituting provisions relating to payments under this subchapter for provisions defining terms used in this subchapter.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1791b. Amount of incentive bonus

The amount of the incentive bonus paid to each State shall be the sum of—

(1) an amount equal to the total of the amounts of child support paid by each individual eligible under section 1791e(1) of this title within the State, for up to 2 years after the termination of the individual from activities provided under this chapter; and

(2) an amount equal to the total reduction in the Federal contribution to the amounts received under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) by each individual eligible under section 1791e(2) of this title within the State, for up to 2 years after the termination of the individual from activities provided under this chapter.

(Pub. L. 97–300, title V, § 503, as added Pub. L. 100–628, title VII, § 712(a)(3), Nov. 7, 1988, 102 Stat. 3249; amended Pub. L. 102–367, title V, § 501, Sept. 7, 1992, 106 Stat. 1096.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVI of the Act is classified generally to subchapter XVI (§ 1381 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.

PRIOR PROVISIONS

A prior section 503 of Pub. L. 97–300, which amended section 602 of Title 42, The Public Health and Welfare, was renumbered section 603 of Pub. L. 97–300.

AMENDMENTS

1992—Pub. L. 102–367 amended section generally, substituting provisions relating to amount of incentive bonus for provisions relating to eligibility for incentive bonuses. See section 1791e of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1791d of this title.

§ 1791c. Use of incentive bonus funds

(a) In general

(1) Allocation

(A) Administrative costs

During any program year, the Governor may use an amount not to exceed 5 percent of the total bonus payments of a State for administrative costs incurred under this subchapter, including data and information collection and compilation, recordkeeping, or the preparation of applications for incentive bonuses.

(B) Distribution of payments

The amount of incentive bonus payments that remains after the deduction of administrative costs under subparagraph (A) shall be distributed to service delivery areas and Job Corps centers within the State in accordance with an agreement between the Governor and representatives of such areas and centers. Such agreement shall reflect an equitable method of distribution that is based on the degree to which the efforts of such area or center contributed to the qualification of the State for an incentive bonus payment under this subchapter.

(2) Special rule

Not more than 10 percent of the amounts received under this subchapter in any program year by each service delivery area and Job Corps center may be used for the administrative costs of establishing and maintaining systems necessary for operation of programs under this subchapter, including the costs of providing incentive payments described in subsection (b) of this section, technical assistance, data and information collection and compilation, management information systems, post-program followup activities, and research and evaluation activities. The balance of funds not so expended shall be used by each service delivery area for activities described in sections 1604 and 1644 of this title, and by each Job Corps center for activities authorized under part B of subchapter IV of this chapter.

(b) Incentive payments to service providers

Each service delivery area or Job Corps center may make incentive payments to service providers, including participating State and local agencies, and community-based organizations, that demonstrate effectiveness in delivering employment and training services to individuals such as those described in section 1791e of this title.

(c) Application of section relating to administrative adjudications

Section 1576 of this title (relating to administrative adjudication) shall apply to the distribution of incentive bonus payments under this section.

(Pub. L. 97–300, title V, § 504, as added Pub. L. 100–628, title VII, § 712(a)(3), Nov. 7, 1988, 102 Stat.

3249; amended Pub. L. 102–367, title V, § 501, Sept. 7, 1992, 106 Stat. 1097.)

PRIOR PROVISIONS

A prior section 504 of Pub. L. 97–300 was renumbered section 604 and is classified to section 1504 of this title.

AMENDMENTS

1992—Pub. L. 102–367 amended section generally, substituting provisions relating to the use of incentive bonus funds for provisions relating to additional eligibility requirements to receive incentive bonuses.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1791d. Notice and application

(a) Notice of intent to participate

Any State seeking to participate in the incentive bonus program established under this subchapter shall notify the Secretary of the intent of the State to participate not later than 30 days before the beginning of the first program year of participation.

(b) Application

(1) In general

Any State seeking to receive an incentive bonus under this subchapter shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require in order to ensure compliance with this subchapter.

(2) Contents

Each such application shall contain, at a minimum—

(A) a list of the eligible individuals in the State who satisfied the requirements of section 1791e of this title during the program year;

(B) the amount of the incentive bonus attributable to each eligible individual and due the State under section 1791b of this title; and

(C) certification that documentation is available to verify the eligibility of participants and the amount of the incentive bonus claimed by the State.

(c) Notice of approval or denial

The Secretary shall promptly inform a State after receipt of the application as to whether or not the application of the State has been approved.

(Pub. L. 97–300, title V, § 505, as added Pub. L. 100–628, title VII, § 712(a)(3), Nov. 7, 1988, 102 Stat. 3250; amended Pub. L. 102–367, title V, § 501, Sept. 7, 1992, 106 Stat. 1097.)

CODIFICATION

A section 505 of title VI of Pub. L. 97–300, as added Pub. L. 100–418, title VI, § 6307(a), Aug. 23, 1988, 102 Stat. 1541, and amended, was renumbered section 605 of title VI of Pub. L. 97–300 by Pub. L. 102–367, title VII, § 702(a)(20), Sept. 7, 1992, 106 Stat. 1113, and is classified to section 1505 of this title.

AMENDMENTS

1992—Pub. L. 102–367 amended section generally, substituting provisions relating to notice and application requirements for State participation in incentive bonus program for provisions relating to amount of incentive bonus. See section 1791b of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1791e. Eligibility for incentive bonuses

An individual shall be eligible to participate in a program established under this subchapter if—

(1) the individual—

(A) was an absent parent of any child receiving aid to families with dependent children under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] at the time such individual was determined to be eligible to participate in activities provided under this chapter;

(B) has participated in education, training or other activities (including the Job Corps) provided under this chapter; and

(C) pays child support for a child specified in subparagraph (A) following termination from activities provided under this chapter; or

(2) the individual—

(A) is blind or disabled;

(B) was receiving benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] (relating to supplemental security income) at the time such individual was determined to be eligible to participate in activities under this chapter;

(C) has participated in education, training, or other activities (including the Job Corps) provided under this chapter; and

(D) earns from employment a wage or income.

(Pub. L. 97–300, title V, § 506, as added Pub. L. 100–628, title VII, § 712(a)(3), Nov. 7, 1988, 102 Stat. 3251; amended Pub. L. 102–367, title V, § 501, Sept. 7, 1992, 106 Stat. 1098.)

REFERENCES IN TEXT

The Social Security Act, referred to in pars. (1)(A) and (2)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Title XVI of the Act is classified generally to subchapter XVI (§ 1381 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1992—Pub. L. 102–367 amended section generally, substituting provisions relating to eligibility for incentive bonuses for provisions relating to State application and verification requirements for participation in the incentive bonus program.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1791b, 1791c, 1791d of this title.

§ 1791f. Information and data collection

(a) Technical assistance

In order to facilitate the collection, exchange, and compilation of data and information required by this subchapter, the Secretary is authorized to provide technical assistance to the States. Such assistance may include cost-effective methods for using State and Federal records to which the Secretary has lawful access.

(b) Joint regulations

(1) In general

The Secretary and the Secretary of Health and Human Services shall jointly issue regulations regarding the sharing, among public agencies participating in the programs assisted under this subchapter, of the data and information necessary to fulfill the requirements of this subchapter.

(2) Subjects

Such regulations shall ensure—

(A) the availability of information necessary to verify the eligibility of participants and the amount of the incentive bonus payable; and

(B) the maintenance of confidentiality of the information so shared in accordance with Federal and State privacy laws.

(Pub. L. 97–300, title V, § 507, as added Pub. L. 100–628, title VII, § 712(a)(3), Nov. 7, 1988, 102 Stat. 3252; amended Pub. L. 102–367, title V, § 501, Sept. 7, 1992, 106 Stat. 1098.)

AMENDMENTS

1992—Pub. L. 102–367 amended section generally, substituting provisions relating to information and data collection for provisions relating to payments to participating States.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1791g. Evaluation and report

(a) Evaluation

(1) In general

The Secretary shall conduct or provide for an evaluation of the incentive bonus program assisted under this subchapter.

(2) Considerations

The Secretary shall consider—

(A) whether the program results in increased service under this chapter to absent parents of children receiving aid to families with dependent children under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] and to recipients of supplemental security income under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.];

(B) whether the program results in increased child support payments;

(C) whether the program is administratively feasible and cost effective;

(D) whether the services provided to other eligible participants under part A of subchapter II of this chapter are affected by the implementation and operation of the incentive bonus program; and

(E) such other factors as the Secretary determines to be appropriate.

(b) Report to Congress

Not later than January 1, 1997, the Secretary shall submit a report to the appropriate committees of the Congress on the effectiveness of the incentive bonus program assisted under this subchapter. Such report shall include an analysis of the costs of such program and the results of program activities.

(Pub. L. 97–300, title V, § 508, as added Pub. L. 100–628, title VII, § 712(a)(3), Nov. 7, 1988, 102 Stat. 3252; amended Pub. L. 102–367, title V, § 501, Sept. 7, 1992, 106 Stat. 1099.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Title XVI of the Act is classified generally to subchapter XVI (§ 1381 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1992—Pub. L. 102–367 amended section generally, substituting provisions requiring an evaluation and report on the incentive bonus program for provisions relating to the use of incentive bonus funds. See section 1791c of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§ 1791h. Implementing regulations

The Secretary shall promulgate regulations implementing this subchapter not later than January 31, 1993.

(Pub. L. 97–300, title V, § 509, as added Pub. L. 100–628, title VII, § 712(a)(3), Nov. 7, 1988, 102 Stat. 3253; amended Pub. L. 102–367, title V, § 501, Sept. 7, 1992, 106 Stat. 1099.)

AMENDMENTS

1992—Pub. L. 102–367 amended section generally, substituting provisions relating to implementing regulations for provisions relating to information and data collection.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–367 effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

§§ 1791i, 1791j. Omitted

CODIFICATION

Sections 1791i and 1791j of this title were omitted in the general revision of this subchapter by Pub. L. 102–367, title V, § 501, title VII, § 701(a), Sept. 7, 1992, 106 Stat. 1099, 1103, effective July 1, 1993.

Section 1791i, Pub. L. 97–300, title V, § 510, as added Pub. L. 100–628, title VII, § 712(a)(3), Nov. 7, 1988, 102 Stat. 3253, related to awards to States for start-up costs for participation in the incentive bonus program.

Section 1791j, Pub. L. 97–300, title V, § 511, as added Pub. L. 100–628, title VII, § 712(a)(3), Nov. 7, 1988, 102 Stat. 3254, related to evaluation and performance standards for the incentive bonus program.

SUBCHAPTER VI—STATE HUMAN RESOURCE INVESTMENT COUNCIL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1532, 1533 of this title; title 20 sections 1205a, 2322, 6123, 6143.

§ 1792. Establishment and functions

(a) In general

Each State may, in accordance with the requirements of this subchapter, establish a single State human resource investment council (in this subchapter referred to as the ''State Council'') that—

(1) shall review the provision of services and the use of funds and resources under applicable Federal human resource programs and advise the Governor on methods of coordinating such provision of services and use of funds and resources consistent with the laws and regulations governing such programs;

(2) shall advise the Governor on the development and implementation of State and local standards and measures relating to applicable Federal human resource programs and coordination of such standards and measures;

(3) shall carry out the duties and functions prescribed for existing State councils described under the laws relating to the applicable Federal human resource programs;

(4) may identify the human investment needs in the State and recommend to the Governor goals for meeting such needs;

(5) may recommend to the Governor goals for the development and coordination of the human resource system in the State;

(6) may prepare and recommend to the Governor a strategic plan to accomplish the goals developed pursuant to paragraphs (4) and (5); and

(7) may monitor the implementation of and evaluate the effectiveness of the strategic plan prepared pursuant to paragraph (6).

(b) "Applicable Federal human resource program" defined

(1) In general

(A) Except as provided in subparagraph (B), for purposes of this subchapter, the term ''applicable Federal human resource program'' includes any program authorized under the provisions of law described under paragraph (2)(A) that the Governor and the head of the State agency responsible for the administration of such program jointly agree to include within the jurisdiction of the State Council.

(B) With respect to a program authorized under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.) under paragraph (2)(A)(ii), the term ''applicable Federal human resource program'' shall only apply to such program if, in addition to meeting the requirements of subparagraph (A), the State council on vocational education agrees to include such program under the jurisdiction of the State Council.

(2) Programs

In accordance with the requirements of paragraph (1), applicable Federal human resource programs—

(A) may include the programs authorized under—

(i) this chapter;

(ii) the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.);

(iii) the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.);

(iv) the Adult Education Act (20 U.S.C. 1201 et seq.);

(v) the Wagner-Peyser Act (29 U.S.C. 49 et seq.);

(vi) part F of title IV of the Social Security Act (42 U.S.C. 681 et seq.); and

(vii) the employment program established under section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4)); and

(B) may not include programs authorized under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(Pub. L. 97–300, title VII, § 701, as added Pub. L. 102–367, title VI, § 601(a), Sept. 7, 1992, 106 Stat. 1099.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational and Applied Technology Education Act, referred to in subsec. (b)(1)(B), (2)(A)(ii), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

The National and Community Service Act of 1990, referred to in subsec. (b)(2)(A)(iii), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, which is classified principally to chapter 129 (§ 12501 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

The Adult Education Act, referred to in subsec. (b)(2)(A)(iv), is title III of Pub. L. 89–750, Nov. 3, 1966, 80 Stat. 1216, as amended, which is classified generally to chapter 30 (§ 1201 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 20 and Tables.

The Wagner-Peyser Act, referred to in subsec. (b)(2)(A)(v), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, which is classified generally to chapter 4B (§ 49 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 49 of this title and Tables.

The Social Security Act, referred to in subsec. (b)(2)(A)(vi), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part F of title IV of the Act is classified generally to part F (§ 681 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (b)(2)(B), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified generally to chapter 16 (§ 701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

EFFECTIVE DATE

Subchapter effective July 1, 1993, see section 701(a) of Pub. L. 102–367, set out as an Effective Date of 1992 Amendment; Transition Provisions note under section 1501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1533 of this title.

§ 1792a. Composition

(a) In general

Each State Council shall be composed as follows:

(1) Each State Council shall include the head of each State agency responsible for the administration of an applicable Federal human resource program.

(2)(A) Each State Council shall include one or more representatives, appointed by the Governor to the State Council for a minimum of 2 years, from each of the following:

(i) Local public education.

(ii) A postsecondary institution.

(iii) A secondary or postsecondary vocational educational institution.

(iv) A community-based organization.

(B) The total number of representatives appointed under clause[1] (i), (ii), and (iii) of subparagraph (A) shall constitute not less than 15 percent of the membership of the State Council.

(3)(A) Each State Council shall include individuals, appointed by the Governor to the State Council for a minimum of 2 years, from among the following:

(i) Representatives of business and industry, who shall constitute not less than 15 percent of the membership of the State Council, including individuals who are representatives of business and industry on private industry councils established within the State under section 1512 of this title.

(ii) Representatives of organized labor who—

(I) shall be selected from among individuals nominated by recognized State labor federations; and

(II) shall constitute not less than 15 percent of the membership of the State Council.

(B) If the State labor federation fails to nominate a sufficient number of individuals under subclause (I) of subparagraph (A)(ii) to satisfy the requirement under subclause (II) of such subparagraph, individual workers may be included on the State Council to satisfy such requirement.

(b) Additional members

Each State Council may also include additional qualified members, who may be selected from—

(1) representatives from local welfare agencies;

(2) representatives from public housing agencies;

(3) representatives from units of general local government or consortia of such units, appointed from nominations made by the chief elected officials of such units or consortia;

(4) representatives from the State legislature;

(5) representatives from any State or local program that receives funding under an applicable Federal human resource program that the Governor determines to have a direct interest in the utilization of human resources within the State; and

(6) individuals who have special knowledge and qualifications with respect to special education and career development needs of hard-to-serve individuals.

(c) Additional requirements

(1) Percentage limitation

None of the following categories of individuals may constitute more than 60 percent of the membership of each State Council:

(A) Individuals selected under subsection (a)(1) of this section.

(B) Individuals appointed under subsection (a)(2) of this section.

(C) Individuals appointed under subsection (a)(3)(A)(i) of this section.

(D) Individuals appointed under subsection (a)(3)(A)(ii) of this section.

(E) Individuals selected under subsection (b) of this section.

(2) Expertise

The Governor shall ensure that both the State Council and the staff of the State Council have sufficient expertise to effectively carry out the duties and functions of existing State councils described under the laws relating to the applicable Federal human resource programs. Such expertise shall include, where appropriate, knowledge of—

(A) the long-term needs of individuals preparing to enter the workforce;

(B) the needs of local, State, and regional labor markets; and

(C) the methods for evaluating the effectiveness of vocational training programs in serving varying populations.

(Pub. L. 97–300, title VII, § 702, as added Pub. L. 102–367, title VI, § 601(a), Sept. 7, 1992, 106 Stat. 1101.)

§ 1792b. Administration

(a) Funding

In order to carry out the functions of the State Council, each State establishing a State Council that meets the requirements of this subchapter may—

(1) use funds otherwise available for State councils under the applicable Federal human resource programs;

(2) use funds otherwise available under the applicable Federal human resource programs, consistent with the laws and regulations governing such programs, including funds available to carry out section 1533(a)(2)(D) of this title, except that, with respect to the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.), such State may use funds only to the extent provided under section 112(g) of such Act [20 U.S.C. 2322(g)]; and

(3) use funds, services, personnel, facilities and information provided by State and local public agencies, with the consent of such agencies.

(b) Personnel

Each State Council may obtain the services of such professional, technical, and clerical person-

[1] So in original. Probably should be ''clauses''.

nel as may be necessary to carry out its functions.

(c) Certification

Each State shall certify to the Secretary the establishment and membership of the State Council at least 90 days before the beginning of each period of 2 program years for which a job training plan is submitted under this chapter.

(d) Equitable funding

Each State agency participating in a State Council under this subchapter is encouraged to provide funds to support such Council in a manner consistent with its representation on such Council.

(Pub. L. 97–300, title VII, § 703, as added Pub. L. 102–367, title VI, § 601(a), Sept. 7, 1992, 106 Stat. 1102.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational and Applied Technology Education Act, referred to in subsec. (a)(2), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

CHAPTER 20—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

Sec.
1801. Congressional statement of purpose.
1802. Definitions.
1803. Applicability of chapter.

SUBCHAPTER I—FARM LABOR CONTRACTORS

1811. Certificate of registration required.
(a) Persons engaged in any farm labor contracting activity.
(b) Hire, employ, or use of any individual to perform farm labor contracting activities by farm labor contractor; liability of farm labor contractor for violations.
(c) Possession and exhibition of certificate.
(d) Refusal or failure to produce certificate.
1812. Issuance of certificate of registration.
1813. Registration determinations.
(a) Grounds for refusal to issue or renew, suspension, or revocation of certificate.
(b) Administrative review procedures applicable.
(c) Judicial review procedures applicable.
1814. Transfer or assignment; expiration; renewal.
(a) Transfer or assignment prohibited.
(b) Expiration; renewals.
1815. Notice of address change; amendment of certificate of registration.
1816. Repealed.

SUBCHAPTER II—MIGRANT AGRICULTURAL WORKER PROTECTIONS

1821. Information and recordkeeping requirements.
(a) Written disclosure requirements imposed upon recruiters.
(b) Posting requirements imposed upon employers.
(c) Posting or notice requirements imposed upon housing providers.
(d) Recordkeeping and information requirements imposed upon employers.
(e) Furnishing of records by farm labor contractor; maintenance of records by recipient.
(f) Prohibition on knowingly providing false or misleading information to workers.
(g) Form and language requirements.
1822. Wages, supplies, and other working arrangements.
(a) Payment of wages.
(b) Purchase of goods or services by worker.
(c) Violation of terms of working arrangement.
1823. Safety and health of housing.
(a) Compliance with substantive Federal and State safety and health standards.
(b) Certification that applicable safety and health standards met; posting of certificate of occupancy; retention of certificate and availability for inspection and review; occupancy prior to inspection.
(c) Applicability to providers of housing on a commercial basis to the general public.

SUBCHAPTER III—SEASONAL AGRICULTURAL WORKER PROTECTIONS

1831. Information and recordkeeping requirements.
(a) Written disclosure requirements imposed upon recruiters.
(b) Posting requirements imposed upon employers.
(c) Recordkeeping and information requirements imposed upon employers.
(d) Furnishing of records by farm labor contractor; maintenance of records by recipient.
(e) Prohibition on knowingly providing false or misleading information to workers.
(f) Form and language requirements.
1832. Wages, supplies, and other working arrangements.
(a) Payment of wages.
(b) Purchase of goods or services by worker.
(c) Violation of terms of working arrangement.

SUBCHAPTER IV—FURTHER PROTECTIONS FOR MIGRANT AND SEASONAL AGRICULTURAL WORKERS

1841. Motor vehicle safety.
(a) Mode of transportation subject to coverage.
(b) Applicability of standards, licensing, and insurance requirements; promulgation of regulations for standards; criteria, etc., for regulations; amount of insurance required.
(c) Adjustments of insurance requirements in the event of workers' compensation coverage.
(d) Time for promulgation of regulations for standards implementing requirements; revision of standards.
1842. Confirmation of registration.
1843. Information on employment conditions.
1844. Compliance with written agreements.
(a) Applicability to contracting activity or worker protection.
(b) Statutory liability.

SUBCHAPTER V—GENERAL PROVISIONS

PART A—ENFORCEMENT PROVISIONS

1851. Criminal sanctions.
(a) Violations of chapter or regulations.