

as a note under section 414 of Title 26, Internal Revenue Code.

#### REGULATIONS

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

#### AVAILABILITY OF DOCUMENTS VIA FILING DEPOSITORY

Pub. L. 105-72, §1(b), Nov. 10, 1997, 111 Stat. 1457, provided that: "A fiduciary shall be treated as meeting the requirements of section 3(38)(B)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(38)(B)(ii)] (as amended by subsection (a)) relating to provision to the Secretary of Labor of a copy of the form referred to therein, if a copy of such form (or substantially similar information) is available to the Secretary of Labor from a centralized electronic or other record-keeping database."

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

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

### § 1003. Coverage

#### (a) In general

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

- (1) by any employer engaged in commerce or in any industry or activity affecting commerce; or
- (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or
- (3) by both.

#### (b) Exceptions for certain plans

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

- (1) such plan is a governmental plan (as defined in section 1002(32) of this title);
- (2) such plan is a church plan (as defined in section 1002(33) of this title) with respect to which no election has been made under section 410(d) of title 26;
- (3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;
- (4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

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

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

#### (c) Voluntary employee contributions to accounts and annuities

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

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

#### Editorial Notes

##### REFERENCES IN TEXT

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

##### AMENDMENTS

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

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

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

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

Pub. L. 104-191 inserted at end "The provisions of part 7 of subtitle B of this subchapter shall not apply to a health insurance issuer (as defined in section 1191b(b)(2) of this title) solely by reason of health insurance cov-

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

erage (as defined in section 1191b(b)(1) of this title) provided by such issuer in connection with a group health plan (as defined in section 1191b(a)(1) of this title) if the provisions of this subchapter do not apply to such group health plan.”

1989—Subsec. (b)(2). Pub. L. 101-239 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2002 AMENDMENT

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

##### EFFECTIVE DATE OF 2001 AMENDMENT

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

##### EFFECTIVE DATE OF 1996 AMENDMENTS

Pub. L. 104-204, title VI, §603(c), Sept. 26, 1996, 110 Stat. 2938, provided that: “The amendments made by this section [enacting section 1185 of this title and amending this section and sections 1021, 1022, 1024, 1132, 1136, 1144, 1181, 1191, and 1191a of this title] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.”

Amendment by Pub. L. 104-191 applicable with respect to group health plans for plan years beginning after June 30, 1997, except as otherwise provided, see section 101(g) of Pub. L. 104-191, set out as an Effective Date note under section 1181 of this title.

##### EFFECTIVE DATE OF 1989 AMENDMENT

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

#### SUBTITLE B—REGULATORY PROVISIONS

##### PART 1—REPORTING AND DISCLOSURE

### § 1021. Duty of disclosure and reporting

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

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

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

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

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

- (1) the annual report containing the information required by section 1023 of this title; and

- (2) terminal and supplementary reports as required by subsection (c) of this section.

#### (c) Terminal and supplementary reports

(1) Each administrator of an employee pension benefit plan which is winding up its affairs (without regard to the number of participants remaining in the plan) shall, in accordance with regulations prescribed by the Secretary, file such terminal reports as the Secretary may consider necessary. A copy of such report shall also be filed with the Pension Benefit Guaranty Corporation.

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

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

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

##### (1) In general

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

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

This subsection shall not apply to any failure if the employer has filed a waiver request under section 1083 or 1085a of this title with respect to the plan year to which the required installment relates, except that if the waiver request is denied, notice under paragraph (1) shall be provided within 60 days after the date of such denial.

##### (3) Definitions

For purposes of this subsection, the terms “required installment” and “due date” have the same meanings given such terms by section 1083(j) or 1085a(f) of this title, whichever is applicable.

#### (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 or applicable life insurance 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

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