Public Law 93-406

AN ACT

To provide for pension reform.

September 2, 1974
[H. R. 2]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Employee Retirement Income Security Act of 1974.
29 USC 1001 note.

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Employee Retirement Income Security Act of 1974".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

Subtitle A—General Provisions

Sec. 2. Findings and declaration of policy.
Sec. 3. Definitions.
Sec. 4. Coverage.

Subtitle B—Regulatory Provisions

PART 1—REPORTING AND DISCLOSURE

Sec. 101. Duty of disclosure and reporting.
Sec. 102. Plan description and summary plan description.
Sec. 103. Annual reports.
Sec. 104. Filing with Secretary and furnishing information to participants.
Sec. 105. Reporting of participant's benefit rights.
Sec. 106. Reports made public information.
Sec. 107. Retention of records.
Sec. 108. Reliance on administrative interpretations.
Sec. 109. Forms.
Sec. 110. Alternative methods of compliance.
Sec. 111. Repeal and effective date.

PART 2—PARTICIPATION AND VESTING

Sec. 201. Coverage.
Sec. 202. Minimum participation standards.
Sec. 203. Minimum vesting standards.
Sec. 204. Benefit accrual requirements.
Sec. 205. Joint and survivor annuity requirement.
Sec. 206. Other provisions relating to form and payment of benefits.
Sec. 207. Temporary variances from certain vesting requirements.
Sec. 208. Mergers and consolidations of plans or transfers of plan assets.
Sec. 209. Recordkeeping and reporting requirements.
Sec. 210. Plans maintained by more than one employer, predecessor plans, and employer groups.
Sec. 211. Effective dates.

PART 3—FUNDING

Sec. 301. Coverage.
Sec. 302. Minimum funding standards.
Sec. 303. Variance from minimum funding standard.
Sec. 304. Extension of amortization periods.
Sec. 305. Alternative minimum funding standard.
Sec. 306. Effective dates.

PART 4—FIDUCIARY RESPONSIBILITY

Sec. 401. Coverage.
Sec. 402. Establishment of plan.
Sec. 403. Establishment of trust.
Sec. 404. Fiduciary duties.
Sec. 405. Liability for breach by co-fiduciary.
Sec. 406. Prohibited transactions.
Sec. 407. 10 percent limitation with respect to acquisition and holding of employer securities and employer real property by certain plans.

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U.S. GOVERNMENT
INFORMATION
GPO

TABLE OF CONTENTS—Continued

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS—Continued

PART 4—FIDUCIARY RESPONSIBILITY—Continued

Sec. 408. Exemptions from prohibited transactions.
Sec. 409. Liability for breach of fiduciary duty.
Sec. 410. Exculpatory provisions; insurance.
Sec. 411. Prohibition against certain persons holding certain positions.
Sec. 412. Bonding.
Sec. 413. Limitation on actions.
Sec. 414. Effective date.

PART 5—ADMINISTRATION AND ENFORCEMENT

Sec. 501. Criminal penalties.
Sec. 502. Civil enforcement.
Sec. 503. Claims procedure.
Sec. 504. Investigative authority.
Sec. 505. Regulations.
Sec. 506. Other agencies and departments.
Sec. 507. Administration.
Sec. 508. Appropriations.
Sec. 509. Separability provisions.
Sec. 510. Interference with rights protected under Act.
Sec. 511. Coercive interference.
Sec. 512. Advisory Council.
Sec. 513. Research, studies, and annual report.
Sec. 514. Effect on other laws.

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE RELATING TO RETIREMENT PLANS

Sec. 1001. Amendment of Internal Revenue Code of 1954.

Subtitle A—Participation, Vesting, Funding, Administration, Etc.

PART 1—PARTICIPATION, VESTING, AND FUNDING

Sec. 1011. Minimum participation standards.
Sec. 1012. Minimum vesting standards.
Sec. 1013. Minimum funding standards.
Sec. 1014. Collectively bargained plans.
Sec. 1015. Definitions and special rules.
Sec. 1016. Conforming and clerical amendments.
Sec. 1017. Effective dates and transitional rules.

PART 2—CERTAIN OTHER PROVISIONS RELATING TO QUALIFIED RETIREMENT PLANS

Sec. 1021. Additional plan requirements.
Sec. 1022. Miscellaneous provisions.
Sec. 1023. Retroactive changes in plan.
Sec. 1024. Effective dates.

PART 3—REGISTRATION AND INFORMATION

Sec. 1031. Registration and information.
Sec. 1032. Duties of Secretary of Health, Education, and Welfare.
Sec. 1033. Reports by actuaries.
Sec. 1034. Effective dates.

PART 4—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

Sec. 1041. Tax Court procedure.

PART 5—INTERNAL REVENUE SERVICE

Sec. 1051. Establishment of Office.
Sec. 1052. Authorization of appropriations.

TABLE OF CONTENTS—Continued

TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE RELATING TO RETIREMENT PLANS—Continued

Subtitle B—Other Amendments to the Internal Revenue Code Relating to Retirement Plans

Sec. 2001. Contributions on behalf of self-employed individuals and shareholder-employees.
Sec. 2002. Deduction for retirement savings.
Sec. 2003. Prohibited transactions.
Sec. 2004. Limitations on benefits and contributions.
Sec. 2005. Taxation of certain lump sum distributions.
Sec. 2006. Salary reduction regulations.
Sec. 2007. Rules for certain negotiated plans.
Sec. 2008. Certain armed forces survivor annuities.

TITLE III—JURISDICTION, ADMINISTRATION, ENFORCEMENT; JOINT PENSION TASK FORCE, ETC.

Subtitle A—Jurisdiction, Administration, and Enforcement

Sec. 3001. Procedures in connection with the issuance of certain determination letters by the Secretary of the Treasury.
Sec. 3002. Procedures with respect to continued compliance with requirements relating to participation, vesting, and funding standards.
Sec. 3003. Procedures in connection with prohibited transactions.
Sec. 3004. Coordination between the Department of the Treasury and the Department of Labor.

Subtitle B—Joint Pension Task Force; Studies

PART 1—JOINT PENSION TASK FORCE

Sec. 3021. Establishment.
Sec. 3022. Duties.

PART 2—OTHER STUDIES

Sec. 3031. Congressional study.
Sec. 3032. Protection for employees under Federal procurement, construction, and research contracts and grants.

Subtitle C—Enrollment of Actuaries

Sec. 3041. Establishment of Joint Board for the enrollment of actuaries.
Sec. 3042. Enrollment by Joint Board.
Sec. 3043. Amendment of Internal Revenue Code.

TITLE IV—PLAN TERMINATION INSURANCE

Subtitle A—Pension Benefit Guaranty Corporation

Sec. 4001. Definitions.
Sec. 4002. Pension Benefit Guaranty Corporation.
Sec. 4003. Investigatory authority; cooperation with other agencies; civil actions.
Sec. 4004. Temporary authority for initial period.
Sec. 4005. Establishment of pension benefit guaranty funds.
Sec. 4006. Premium rates.
Sec. 4007. Payment of premiums.
Sec. 4008. Report by the corporation.
Sec. 4009. Portability assistance.

Subtitle B—Coverage

Sec. 4021. Plans covered.
Sec. 4022. Benefits guaranteed.
Sec. 4023. Contingent liability coverage.

TABLE OF CONTENTS—Continued

TITLE IV—PLAN TERMINATION INSURANCE—Continued

Subtitle C—Terminations

Sec. 4041. Termination by plan administrator.
Sec. 4042. Termination by corporation.
Sec. 4043. Reportable events.
Sec. 4044. Allocation of assets.
Sec. 4045. Recapture of certain payments.
Sec. 4046. Reports to trustee.
Sec. 4047. Restoration of plans.
Sec. 4048. Date of termination.

Subtitle D—Liability

Sec. 4061. Amounts payable by the corporation.
Sec. 4062. Liability of employer.
Sec. 4063. Liability of substantial employer for withdrawal.
Sec. 4064. Liability of employers on termination of plan maintained by more than one employer.
Sec. 4065. Annual report of plan administrator.
Sec. 4066. Annual notification to substantial employers.
Sec. 4067. Recovery of employer liability for plan termination.
Sec. 4068. Lien for liability of employer.

Subtitle E—Amendments to Internal Revenue Code of 1954; Effective Dates

Sec. 4081. Amendments to Internal Revenue Code of 1954.
Sec. 4082. Effective date; special rules.

# TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

## SUBTITLE A—GENERAL PROVISIONS

### FINDINGS AND DECLARATION OF POLICY

29 USC 1001.

SEC. 2. (a) 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 is 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) It is hereby declared to be the policy of this Act 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) It is hereby further declared to be the policy of this Act 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.

DEFINITIONS

SEC. 3. For purposes of this title: 29 USC 1002.

(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 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions). 29 USC 186.

(2) 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—

(A) provides retirement income to employees, or

(B) 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.

(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, or the Railway Labor Act.

29 USC 141.
45 USC 151.

(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.

(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.

(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 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 6 of the Securities Exchange Act of 1934, or (ii) if the security is not traded on such a national securities exchange, a price not less

15 USC 78f.

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 203(a)(3).

*Post*, p. 854.

(20) The term "security" has the same meaning as such term has under section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b(1)).

(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 405(c)(1)(B).

*Post*, p. 878.

(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, 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 title, 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.

15 USC 80a-51.

(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 204(b)(1)(G).

*Post*, p. 858.

(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 204(c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

Post, p. 858.

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

(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 10th 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 402(a)(2)) 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.

Post, p. 875.

(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.

Regulations.

(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.

Regulations.

(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.

Regulations.

(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.

Regulations.

(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 applies, and which is financed by contributions required under that Act and any plan of an international

45 USC 215 note, 228a.

organization which is exempt from taxation under the provisions of the International Organizations Immunities Act (59 Stat. 669).

22 USC 288 note.

(33) (A) The term "church plan" means (i) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954, or (ii) a plan described in subparagraph (C).

26 USC 501.

(B) The term "church plan" (notwithstanding the provisions of subparagraph (A)) 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 the Internal Revenue Code of 1954), or

26 USC 513.

(ii) which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501 of the Internal Revenue Code of 1954.

(C) Notwithstanding the provisions of subparagraph (B) (ii), a plan in existence on January 1, 1974, shall be treated as a "church plan" if it is established and maintained by a church or convention or association of churches for its employees and employees of one or more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies of such church (or convention or association), and if such church (or convention or association) and each such agency is exempt from tax under section 501 of the Internal Revenue Code of 1954. The first sentence of this subparagraph shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974. The first sentence of this subparagraph shall not apply with respect to any plan for any plan year beginning after December 31, 1982.

(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—

Post, p. 853.

(A) for the purposes of section 202, shall be treated as an individual account plan, and

Post, p. 858.

(B) for the purposes of paragraph (23) of this section and section 204, 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 the Internal Revenue Code of 1954 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.

Post, p. 979.

(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 an employee organization and more than one employer,

(iii) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions,

(iv) under which benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who had employed that participant except to the extent that such benefits accrued as a result of service with the employer before such employer was required to contribute to such plan, and

(v) which satisfies such other requirements as the Secretary may by regulations prescribe.

(B) For purposes of this paragraph—

(i) if a plan is a multiemployer plan within the meaning of subparagraph (A) for any plan year, clause (iii) of subparagraph (A) shall be applied by substituting "75 percent" for "50 percent" for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions, and

(ii) all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of the Internal Revenue Code of 1954, determined without regard to section 1563(e)(3)(C) of such Code) shall be deemed to be one employer.

26 USC 1563.

(38) The term "investment manager" means any fiduciary (other than a trustee or named fiduciary, as defined in section 402(a)(2))—

*Post*, p. 875.

(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; (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

15 USC 80b-20.

(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, calendar, policy, or fiscal year on which the records of the plan are kept.

COVERAGE

SEC. 4. (a) Except as provided in subsection (b) and in sections 201, 301, and 401, this title shall apply to any employee benefit plan if it is established or maintained—

29 USC 1003.

*Post*, pp. 852, 868, 874.

(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 title shall not apply to any employee benefit plan if—

(1) such plan is a governmental plan (as defined in section 3(32));

(2) such plan is a church plan (as defined in section 3(33)) with respect to which no election has been made under section 410(d) of the Internal Revenue Code of 1954;

Post, p. 898.

(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 3(36)) and is unfunded.

## SUBTITLE B—REGULATORY PROVISIONS

### Part I—Reporting and Disclosure

#### DUTY OF DISCLOSURE AND REPORTING

29 USC 1021.

SEC. 101. (a) The administrator of each employee benefit plan shall cause to be furnished in accordance with section 104(b) 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 102(a)(1); and

(2) the information described in section 104(b)(3) and 105(a) and (c).

(b) The administrator shall, in accordance with section 104(a), file with the Secretary—

(1) the summary plan description described in section 102(a)(1);

(2) a plan description containing the matter required in section 102(b);

(3) modifications and changes referred to in section 102(a)(2);

(4) the annual report containing the information required by section 103; and

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

Terminal reports.

(c)(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) CROSS REFERENCE.—

**For regulations relating to coordination of reports to the Secretaries of Labor and the Treasury, see section 3004.**

PLAN DESCRIPTION AND SUMMARY PLAN DESCRIPTION

29 USC 1022.

SEC. 102. (a)(1) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 104(b). The summary plan description shall include the information described in subsection (b), 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) shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 104(b)(1).

(2) A plan description (containing the information required by subsection (b)) 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 104(a)(1). Any material modification in the terms of the plan and any change in the information described in subsection (b) shall be filed in accordance with section 104(a)(1)(D).

(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 503 of this Act).

ANNUAL REPORTS

29 USC 1023.

SEC. 103. (a)(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 104(a), and shall be made available and furnished to participants in accordance with section 104(b).

(B) The annual report shall include the information described in subsections (b) and (c) and where applicable subsections (d) and (e) 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 title 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 3(16)(B),

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).

Financial statements, examination.

(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 report 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 104(b)(3) 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 104(a)(2) a plan is required only to file a simplified annual report, the Secretary may waive the requirements of this paragraph.

Waiver.

(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) 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.

"Qualified public accountant."

(D) For purposes of this title, 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.

Enrolled actuary.

(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 104(a)(2), a plan is required only to file a simplified report, the Secretary may waive the requirement of this paragraph.

Waiver.

(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 title, the term "enrolled actuary" means an actuary enrolled under subtitle C of title III of this Act.

"Enrolled actuary."
*Post*, p. 1002.

(D) In making a certification under this section the enrolled actuary may rely on the correctness of any accounting matter under section 103(b) as to which any qualified public accountant has expressed an opinion, if he so states his reliance.

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

Financial statement.

(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:

Assets and liabilities.

(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;

Receipts and disbursements.

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

Assets for investment.

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

Parties in interest, transactions.

(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; 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;

Loans or fixed income obligations in default.

(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;

Leases in default.

(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;

Assets and liabilities.

(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

Reportable transactions.

(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—

"Reportable transaction."

(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) 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.

Actuarial statement.

(d) 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 301(b), or (C) a plan described both in section 4021(b) and in paragraph (1), (2), (3), (4), (5), (6), or (7) of section 301(a)) an annual report under this

*Post*, p. 868.
*Post*, p. 1014.

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 302.

*Post*, p. 869.

(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 302 and a statement explaining the basis of such valuation of present value of assets.

(6) 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 4044 of this Act, 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.

*Post*, p. 1025.

Regulations.

(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 302(c)(3) (relating to reasonable actuarial assumptions and methods) have been complied with.

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

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

(11) 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.

Insurance company statement.

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

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

(2) the total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service, or other organization; dividends or retroactive rate adjustments, commissions, and adminis-

trative 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.

FILING WITH SECRETARY AND FURNISHING INFORMATION TO PARTICIPANTS

29 USC 1024.

SEC. 104. (a)(1) The administrator of any employee benefit plan subject to this part shall file with the Secretary—

Annual report.

(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 102(a)(2) 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 public 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. In addition, and without limiting the foregoing sentence, the Secretary may waive or modify the requirements of section 103(d)(6) in such cases or categories of cases as to which he finds that (i) the interests of the plan participants are not harmed thereby and (ii) the expense of compliance with the specific requirements of section 103(d)(6) is 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 103(d)(6).

(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 title 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 title.

Reporting requirements, exemption.

(3) The Secretary may by regulation exempt any welfare benefit plan from all or part of the reporting and disclosure requirements of this title, 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 103(a)(3)(A) or section 103(a)(4)(B).

(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 103(a)(3)(D)) on behalf of the participants to perform an audit,

(B) retain an enrolled actuary (as defined in section 103(a)(4)(C) of this Act) on behalf of the plan participants, to prepare an actuarial statement.

Civil action.

(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 title.

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.

Summary plan descriptions and annual reports, publication.

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

(1) The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, a copy of the summary, plan description, and all modifications and changes referred to in section 102(a)(1)—

(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 102 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 102 every tenth year after the plan becomes subject to this part. If there is a modification or change described in section 102(a)(1), 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 prescribe by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrator 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 103(b)(3) and such other material 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) 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 title.

(d) CROSS REFERENCE—

**For regulations respecting coordination of reports to the Secretaries of Labor and the Treasury, see section 3004.**

REPORTING OF PARTICIPANT'S BENEFIT RIGHTS

SEC. 105. (a) 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— 29 USC 1025.

(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) In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) during any one 12 month period.

(c) Each administrator required to register under section 6057 of the Internal Revenue Code of 1954 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 such Code. *Post*, p. 943.

(d) 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.

REPORTS MADE PUBLIC INFORMATION

29 USC 1026.

SEC. 106. (a) Except as provided in subsection (b), 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 section 105(a) and 105(c) 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 may be disclosed under such Act.

42 USC 401.

RETENTION OF RECORDS

29 USC 1027.

SEC. 107. Every person subject to a requirement to file any description or report or to certify any information therefor under this title or who would be subject to such a requirement but for an exemption or simplified reporting requirement under section 104(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 104(a) (2) or (3).

RELIANCE ON ADMINISTRATIVE INTERPRETATIONS

29 USC 1028.
*Post*, p. 891.
*Post*, p. 888.

SEC. 108. In any criminal proceeding under section 501 based on any act or omission in alleged violation of this part or section 412, 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 412, if he pleads and proves that the act of 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 title, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this part.

FORMS

29 USC 1029.

SEC. 109. (a) Except as provided in subsection (b) of this section, the Secretary may require that any information required under this title to be submitted to him, including but not limited to the information required to be filed by the administrator pursuant to section

103(b)(3) and (c), must be submitted on such forms as he may prescribe.

(b) The financial statement and opinion required to be prepared by an independent qualified public accountant pursuant to section 103(a)(3)(A), the actuarial statement required to be prepared by an enrolled actuary pursuant to section 103(a)(4)(A) and the summary plan description required by section 102(a) shall not be required to be submitted on forms.

(c) The Secretary may prescribe the format and content of the summary plan description, the summary of the annual report described in section 104(b)(3) 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.

ALTERNATIVE METHODS OF COMPLIANCE

SEC. 110. (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— 29 USC 1030.

(1) that the use of such alternative method is consistent with the purposes of this title 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) 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. Notice and opportunity to present views. Publication in Federal Register.

REPEAL AND EFFECTIVE DATE

SEC. 111. (a)(1) The Welfare and Pension Plans Disclosure Act is repealed except that such Act shall continue to apply to any conduct and events which occurred before the effective date of this part. 29 USC 1031. 29 USC 301 note.

(2)(A) Section 664 of title 18, United States Code, 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 provision 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".

*Ante*, p. 829.

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

Effective date.

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

(2) In the case of a plan which has a plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary may postpone by regulation the effective date of the repeal of any provision of the Welfare and Pension Plans Disclosure Act (and of any amendment made by subsection (a)(2)) 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 title authorizing the Secretary to promulgate regulations shall take effect on the date of enactment of this Act.

## PART 2—PARTICIPATION AND VESTING

### COVERAGE

29 USC 1051.

SEC. 201. This part shall apply to any employee benefit plan described in section 4(a) (and not exempted under section 4(b)) 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 the Internal Revenue Code of 1954, if no part of the contributions to or under such plan are made by employers of participants in such plan, or

26 USC 501.

(B) a trust described in section 501(c)(18) of such Code;

(4) a plan which is established and maintained by a labor organization described in section 501(c)(5) of the Internal Revenue Code of 1954 and which does not at any time after the date of enactment of this Act 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 the Internal Revenue Code of 1954;

26 USC 736.

(6) an individual retirement account or annuity described in section 408 of the Internal Revenue Code of 1954, or a retirement bond described in section 409 of such Code; or

*Post*, p. 959.
*Post*, p. 964.

(7) an excess benefit plan.

MINIMUM PARTICIPATION STANDARDS

SEC. 202. (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— 29 USC 1052.

(i) the date on which the employee attains the age of 25; or Age and service requirements.

(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 3 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 "3 years of service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1954) by an employer which is exempt from tax under section 501(a) of such Code, 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 "30" for "25". This clause shall not apply to any plan to which clause (i) applies. 26 USC 170. 26 USC 501.

(2) No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age, 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.

(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. "Year of service."

(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. "Hour of service."

(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. Regulations.

(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).

(2) In the case of any employee who has any 1-year break in service (as defined in section 203(b)(3)(A)) under the plan to which the service requirements of clause (i) of subsection (a)(1)(B) 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) in the case of any participant who has any 1-year break in service (as defined in section 203(b)(3)(A)), 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)) after his return.

(4) 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) 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.

MINIMUM VESTING STANDARDS

29 USC 1053.

SEC. 203. (a) 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 at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(B) 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 a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

| Years of service: | Nonforfeitable percentage |
|---|---|
| 5 | 25 |
| 6 | 30 |
| 7 | 35 |
| 8 | 40 |
| 9 | 45 |
| 10 | 50 |
| 11 | 60 |
| 12 | 70 |
| 13 | 80 |
| 14 | 90 |
| 15 or more | 100. |

(C)(i) A plan satisfies the requirements of this subparagraph if a participant who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

| If years of service equal or exceed— | and sum of age and service equals or exceeds— | then the nonforfeitable percentage is— |
|---|---|---|
| 5 | 45 | 50 |
| 6 | 47 | 60 |
| 7 | 49 | 70 |
| 8 | 51 | 80 |
| 9 | 53 | 90 |
| 10 | 55 | 100. |

(ii) Notwithstanding clause (i), a plan shall not be treated as satisfying the requirements of this subparagraph unless any participant who has completed at least 10 years of service has a nonforfeitable right to not less than 50 percent of his accrued benefit derived from employer contributions and to not less than an additional 10 percent for each additional year of service thereafter.

(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 205).

(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". Regulations.

(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 302(c)(8).

(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 204(c)(2)(C)) 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 204(c)(2)(C) (if such subsection applies) on the date of such

repayment (computed annually from the date of such withdrawal). 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.

(iii) In the case of accrued benefits derived from employer contributions which accrued before the date of the enactment of this Act, 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 the date of the enactment of this Act 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 the date of the enactment of this Act. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

Regulations.

(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 nonforfeitably where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 206(c).**

(b)(1) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2), 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 22, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of subsection (a)(2), the plan may not disregard any such year of service during which the employee was a participant;

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions,

(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; and

(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.

"Year of service."

(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.

"Hour of service."

(B) For purposes of this section, the term "hour of service" has the meaning provided by section 202(a)(3)(C).

(C) 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 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. Regulations.

(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. "1-year break in 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 204(b)(1)(F) who has any 1-year break in service, years of service after such break 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 break.

(D) 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.

(4) CROSS REFERENCES.—

**(A) For definitions of "accrued benefit" and "normal retirement age", see sections 3 (23) and (24).**

**(B) For effect of certain cash out distributions, see section 204(d)(1).**

(c) (1) (A) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) 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. Plan amendment.

(B) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) unless each participant having not less than 5 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) 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 the Internal Revenue Code of 1954. *Post*, p. 938.

(3) The requirements of subsection (a)(2) 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

"Class year plan."

nonforfeitable not later than the end of the 5th plan 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.

(d) A pension plan may allow for nonforfeitable benefits after a lesser period and in greater amounts than are required by this part.

BENEFIT ACCRUAL REQUIREMENTS

29 USC 1054.

SEC. 204. (a) Each pension plan shall satisfy the requirements of subsection (b)(2), and in the case of a defined benefit plan shall also satisfy the requirements of subsection (b)(1).

(b)(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 suparagraph, 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 the date of the enactment of this Act, 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 "years of service" has the meaning provided by section 202(a)(3)(A).

"Years of service."

(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 301(b) (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 301(b) 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 which benefits under the plan—

42 USC 401.

(i) do not exceed social security benefits, and

(ii) terminate when such social security benefits commence.

(2) 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.

"Year of participation."

(3)(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 202(b)) as determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

Part time employees.

(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.

Service less than 1,000 hours.

(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.

Seasonal industry.

(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.

Maritime industry.

Regulations.

(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)(1) For purposes of this section and section 203 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)(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.

"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.

"Accumulated contributions."

(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 203(a)(2) 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 at the rate of 5 percent per annum from the beginning of the first plan year to which section 203(a)(2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.

"Mandatory contributions."

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 plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

Conversion factor, adjustment.

(D) The Secretary of the Treasury is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. 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. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

Accrued benefit, limitation.

(E) 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.

(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) Notwithstanding section 203(b)(1), 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 $1,750) 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) For purposes of determining the employee's accrued benefit, the plan shall not disregard service as provided in subsection (d) unless the plan provides an opportunity for the participant to repay the full amount of a distribution described in subsection (d) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) 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).

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 any 1-year break in service commencing after such withdrawal.

(f) 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) 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 302(c)(8).

(h) CROSS REFERENCE.—

**For special rules relating to class year plans and plan provisions adopted to preclude discrimination, see sections 203(c) (2) and (3).**

JOINT AND SURVIVOR ANNUITY REQUIREMENT

29 USC 1055.

SEC. 205. (a) If a pension plan provides for the payment of benefits in the form of an annuity, such plan shall provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

(b) In the case of a plan which provides for the payment of benefits before the normal retirement age as defined in section 3(24), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

(1) the date the employee reaches the earliest retirement age, or

(2) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

(c)(1) A plan described in subsection (b) does not meet the requirements of subsection (a) unless, under the plan, a participant has a reasonable period in which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subsection (b) ends and ending on the date on which he reaches normal retirement age if he continues his employment during that period.

(2) A plan does not meet the requirements of this subsection unless, in the case of such election, the payments under the survivor annuity are not less than the payments which would have been made under the joint annuity to which the participant would have been entitled if he had made an election under this subsection immediately prior to his retirement and if his retirement had occurred on the date immediately preceding the date of his death and within the period within which an election can be made.

(d) A plan shall not be treated as not satisfying the requirements of this section solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election has been made under subsection (c)) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

(e) A plan shall not be treated as satisfying the requirements of this section unless, under the plan, each participant has a reasonable period (as prescribed by the Secretary of the Treasury by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subsection) not to take such joint and survivor annuity.

(f) A plan shall not be treated as not satisfying the requirements of this section solely because, under the plan there is a provision that any election under subsection (c) or (e), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

(1) the participant dies from accidental causes,

(2) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

(3) such election or revocation is made before such accident occurred.

Definitions.

(g) For purposes of this section:

(1) 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 by reason of disability).

(2) The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(3) The term "qualified joint and survivor annuity" means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single annuity for the life of the participant.

(h) For the purposes of this section, a plan may take into account in any equitable fashion (as determined by the Secretary of the Treasury) any increased costs resulting from providing joint and survivor annuity benefits under an election made under subsection (c).

(i) This section shall apply only if—

(1) the annuity starting date did not occur before the effective date of this section, and

(2) the participant was an active participant in the plan on or after such effective date.

OTHER PROVISIONS RELATING TO FORM AND PAYMENT OF BENEFITS

29 USC 1056.

SEC. 206. (a) 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) 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 separated 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) If—

(1) a participant or beneficiary is receiving benefits under a pension plan, or

(2) a participant is separated from the service and has nonforfeitable 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 or the Railroad Retirement Act of 1937, or any increase in the wage base under such title II, if such increase takes place after the date of the enactment of this Act or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation.

42 USC 401.
45 USC 228a.

(c) 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 203(a)(3)(D)(iii).

(d)(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 the

date of enactment of this Act. 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 nonforfeitable benefit and is exempt from the tax imposed by section 4975 of the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of such Code.

*Post*, p. 971.

TEMPORARY VARIANCES FROM CERTAIN VESTING REQUIREMENTS

SEC. 207. In the case of any plan maintained on January 1, 1974, if, not later than 2 years after the date of enactment of this Act, the administrator petitions the Secretary, the Secretary may prescribe an alternate method which shall be treated as satisfying the requirements of section 203(a)(2) or 204(b)(1) (other than subparagraph (D) thereof) or both for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

29 USC 1057.

(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 303 or 304 of this Act would be inadequate.

*Post*, pp. 872, 873.

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.

MERGERS AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS

SEC. 208. A pension plan may not merge or consolidate with, or transfer its assets or liabilities to, any other plan after the date of the enactment of this Act, 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). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation.

29 USC 1058.

RECORDKEEPING AND REPORTING REQUIREMENTS

SEC. 209. (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

29 USC 1059.

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 203 (b)(3)(A)).

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).

Noncompliance, penalty.

(b) If any person who is required, under subsection (a), 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.

PLANS MAINTAINED BY MORE THAN ONE EMPLOYER, PREDECESSOR PLANS, AND EMPLOYER GROUPS

29 USC 1060.

SEC. 210. (a) 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 202 shall be applied as if all employees of each of the employers were employed by a single employer.

(2) Sections 203 and 204 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 302 shall be determined as if all participants in the plan were employed by a single employer.

(b) 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) For purposes of sections 202, 203, and 204, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of the Internal Revenue Code of 1954, determined without regard to section 1563(a)(4) and (e)(3)(C) of such code) shall be treated as employed by a single employer.

26 USC 1563.

With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 302 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) For purposes of sections 202, 203, and 204, 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).

EFFECTIVE DATES

SEC. 211. (a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after the date of the enactment of this Act. 29 USC 1061.

(b)(1) Except as otherwise provided in subsection (d), sections 205, 206(d), and 208 shall apply with respect to plan years beginning after December 31, 1975.

(2) Except as otherwise provided in subsections (c) and (d) 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 204 and 205 solely 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 the date of the enactment of this Act), or

(B) December 31, 1980.

For purposes of subparagraph (A) and section 306(c), 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 Act or the Internal Revenue Code of 1954 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 the date of enactment of this Act are not less favorable to participants, in the aggregate, than the rules provided under sections 202, 203, and 204. 26 USC 1 *et seq.*

(2) For purposes of paragraph (1), the term "supplementary or special plan provision" means any plan provision which— "Supplementary or special plan provision."

(A) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an 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).

(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 1954 relating to *Post*, p. 932.

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 202 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 202 first becomes effective with respect to such plan) which provides that any employee's participation in the plan would commence at any date later than the later of—

(A) the date on which his participation would commence under the break in service rules of section 202(b), or

(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 203 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 203 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 202(b)(3), 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.

## PART 3—FUNDING

### COVERAGE

29 USC 1081.

SEC. 301. (a) This part shall apply to any employee pension benefit plan described in section 4(a), (and not exempted under section 4(b)), other than—

(1) an employee welfare benefit plan;

(2) an insurance contract plan described in subsection (b);

(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 the Internal Revenue Code of 1954, if no part of the contributions to or under such plan are made by employers of participants in such plan; or

26 USC 501.

(B) a trust described in section 501(c)(18) of such Code;

(5) a plan which has not at any time after the date of enactment of this Act 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 the Internal Revenue Code of 1954;

26 USC 736.

(7) an individual retirement account or annuity as described in section 408(a) of the Internal Revenue Code of 1954, or a retirement bond described in section 409 of such Code;

*Post*, p. 959.

(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 3(35)(B) of this title; or

(9) an excess benefit plan.

"Insurance contract plan."

(b) For the purposes of paragraph (2) of subsection (a) 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 becomes 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.

MINIMUM FUNDING STANDARDS

29 USC 1082.

SEC. 302. (a)(1) Every employee pension benefit plan subject to this part shall satisfy the minimum funding standard (or the alternative minimum funding standard under section 305) 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.

"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.

Funding standard account.

(b)(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 (40 plan years in the case of a multiemployer plan),

(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 (40 plan years in the case of a multiemployer plan),

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years (20 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 30 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 303 (c)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years, 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 (40 plan years in the case of a multiemployer plan),

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years (20 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 30 plan years.

(C) the amount of the waived funding deficiency (within the meaning of section 303(c)) 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 offset 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) 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.

(c)(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.

(3) 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.

(4) For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or 42 USC 1305.

(B) a change in the definition of the term "wages" under section 3121 of the Internal Revenue Code of 1954, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of the Internal Revenue Code of 1954, 26 USC 3121. 26 USC 401.

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) 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.

(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 subsection (g)) 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) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

"Full funding limitation."

(7) 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).

(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 303(b)) and that waiver under section 303(a) 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 3 years, 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 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.

(d) CROSS REFERENCE.—For alternative amortization method for certain multiemployer plans see section 1013(d) of this Act.

*Post*, p. 914.

VARIANCE FROM MINIMUM FUNDING STANDARD

29 USC 1083.

SEC. 303. (a) If an employer, or in the case of a multiemployer 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 substantial business hardship 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 302(a) for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under section 302(b)(2)(C). The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 5 of any 15 consecutive plan years.

Waiver.

Substantial business hardship.

(b) For purposes of this part, the factors taken into account in determining substantial business hardship 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.

"Waived funding deficiency."

(c) 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 302) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

(d) CROSS REFERENCE.—

**For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1954, see section 412(d) of such Code.**

EXTENSION OF AMORTIZATION PERIODS

29 USC 1084.

SEC. 304. (a) The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B) of section 302) 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 Act 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.

(b)(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 303(a) 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 302(c)(8) 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.

Nonapplicability.

(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 302(c)(8), or

(C) is required as a condition of qualification under part I of subchapter D, of chapter 1, of the Internal Revenue Code of 1954.

*Post*, pp. 959, 964, 898, 924, 979.

ALTERNATIVE MINIMUM FUNDING STANDARD

26 USC 401.
29 USC 1085.

SEC. 305. (a) 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) 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 302(c)(10)) for the plan year.

(c) The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under section 302(b)(5) with respect to the funding standard account.

EFFECTIVE DATES

29 USC 1086.

SEC. 306. (a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after the date of the enactment of this Act.

(b) Except as otherwise provided in subsections (c) and (d), 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 211(c)(1).

(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).

*Post*, p. 932.

(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.

26 USC 501.

(e) In the case of a plan maintained by a labor organization which is exempt from tax under section 501(c)(5) of the Internal Revenue Code of 1954 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), the earlier of—

(1) the date on which the second convention of such labor organization held after the date of the enactment of this Act 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) be substituted.

## PART 4—FIDUCIARY RESPONSIBILITY

COVERAGE

29 USC 1101.

*Ante*, p. 11.

SEC. 401. (a) This part shall apply to any employee benefit plan described in section 4(a) (and not exempted under section 4(b)),

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 the Internal Revenue Code of 1954, which provides payments to a retired partner or deceased partner or a deceased partner's successor in interest. 26 USC 736.

(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, 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. 15 USC 80a-51.

(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. "Insurer."

(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. "Guaranteed benefit policy."

ESTABLISHMENT OF PLAN

SEC. 402. (a)(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. 29 USC 1102.

(2) For purposes of this title, 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. "Named fiduciary."

(b) 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 title,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 405(c)(1)),

(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) 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 405(c)(1), 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.

ESTABLISHMENT OF TRUST

29 USC 1103.

SEC. 403. (a) Except as provided in subsection (b), 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 402(a) 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 title, or

(2) authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3).

(b) 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—

(i) some or all of the participants of which are employees described in section 401(c)(1) of the Internal Revenue Code of 1954; or

26 USC 401.

(ii) which consists of one or more individual retirement accounts described in section 408 of the Internal Revenue Code of 1954, 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 such Code, whichever is applicable;

*Post*, p. 959.

(4) to a plan which the Secretary exempts from the requirement of subsection (a) and which is not subject to any of the following provisions of this Act—

(A) part 2 of this subtitle,

(B) part 3 of this subtitle, or

(C) title IV of this Act; or

*Ante*, p. 852.
*Ante*, p. 868.
*Post*, p. 1003.

(5) to a contract established and maintained under section 403(b) of the Internal Revenue Code of 1954 to the extent that the assets of the contract are held in one or more custodial accounts pursuant to section 403(b)(7) of such Code.

*Post*, p. 986.
26 USC 403.
*Post*, p. 940.

(c)(1) Except as provided in paragraph (2) or (3) or subsection (d), or under section 4042 and 4044 (relating to termination of insured plans), 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.

*Post*, pp. 1021, 1025.

(2)(A) In the case of a contribution which is made by an employer 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.

(B) If a contribution is conditioned on qualification of the plan under section 401, 403(a), or 405(a) of the Internal Revenue Code of 1954, and if the plan does not qualify, then paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the date of denial of qualification of the plan.

26 USC 401, 403, 405.

(C) If a contribution is conditioned upon the deductibility of the contribution under section 404 of the Internal Revenue Code of 1954, 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.

*Post*, p. 921.

(3) In the case of a contribution which would otherwise be an excess contribution (as defined in section 4972(b) of the Internal Revenue Code of 1954) 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.

*Post*, p. 955.

(d)(1) Upon termination of a pension plan to which section 4021 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 4044 of this Act, except as otherwise provided in regulations of the Secretary.

*Post*, p. 1025.

(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.

FIDUCIARY DUTIES

SEC. 404. (a)(1) Subject to sections 403 (c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

29 USC 1104.
*Ante*, p. 876; *Post*, pp. 1021, 1025.

(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 title.

(2) In the case of an eligible individual account plan (as defined in section 407(d)(3)), 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 407(d)(4) and (5)).

(b) Except as authorized by the Secretary by regulation, 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) In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over assets in his account, if a participant or beneficiary exercises con-

trol 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.

LIABILITY FOR BREACH BY CO-FIDUCIARY

29 USC 1105.

SEC. 405. (a) In addition to any liability which he may have under any other provision 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 404(a)(1) 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)(1) Except as otherwise provided in subsection (d) and in section 403(a) (1) and (2), 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) 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 403(a)(1).

(c)(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 404(a)(1)—

(i) with respect to such allocation or designation,

(ii) with respect to the establishment or implementation of the procedure under paragraph (1), or

(iii) in continuing the allocation or designation; or

(B) the named fiduciary would otherwise be liable in accordance with subsection (a).

"Trustee responsibility."

(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 402(c)(3).

Liability.

(d)(1) If an investment manager or managers have been appointed under section 402(c)(3), then, notwithstanding subsections (a) (2) and (3) and subsection (b), no trustee 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.

PROHIBITED TRANSACTIONS

29 USC 1106.

SEC. 406. (a) Except as provided in section 408:

(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 407(a).

(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 407(a).

(b) 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) 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.

**10 PERCENT LIMITATION WITH RESPECT TO ACQUISITION AND HOLDING OF EMPLOYER SECURITIES AND EMPLOYER REAL PROPERTY BY CERTAIN PLANS**

29 USC 1107.

SEC. 407. (a) Except as otherwise provided in this section and section 414:

(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.

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) (whichever is applicable).

(b)(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 404(a)(2).**

**(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 408(e).**

**(C) For transitional rules respecting securities or real property subject to binding contracts in effect on June 30, 1974, see section 414(c).**

(c)(1) A plan which makes the election, under paragraph (3) shall be treated as satisfying the requirement of subsection (a)(3) 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.

Definitions.

(d) 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 408(b)(5) 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 the date of enactment of this Act 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 the Internal Revenue Code of 1954.

*Post*, p. 959.

(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 the date of enactment of this Act, this subparagraph shall not take effect until January 1, 1976.

(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 404 (a)(1)(B) to the extent it requires diversification, and sections 404(a)(1)(C), 406, and subsection (a) of this section).

(5) The term "qualifying employer security" means an employer security which is stock or a marketable obligation (as defined in subsection (e)).

(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 both of which are qualified, under section 401 of the Internal Revenue Code of 1954, and which is designed to invest primarily in qualifying employee securities, and

26 USC 401.

(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 the Internal Revenue Code of 1954, 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.

26 USC 1563.

Regulations.

(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.

"Marketable obligation."

(e) For purposes of subsection (d)(5), 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 assets of the plan is invested in obligations of the employer or an affiliate of the employer.

EXEMPTIONS FROM PROHIBITED TRANSACTIONS

29 USC 1108.

SEC. 408. (a) 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 406 and 407(a). 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 Act. 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.

Publication in Federal Register.

Before granting an exemption under this subsection from section 406(a) or 407(a), 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 406(b) 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.

Nonapplicability.

(b) The prohibitions provided in section 406 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, officers, or shareholders 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 407(d)(6)), 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 407(d)(5)).

(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 considerations 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 company. 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 4044 of this Act (relating to allocation of assets). *Post*, p. 1025.

(c) Nothing in section 406 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) Section 407(b) and subsections (a), (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 the Internal Revenue Code of 1954), a member of the family (as defined in section 267(c)(4) of such Code) 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 the Internal

26 USC 401.
26 USC 267.

26 USC 1379.

Revenue Code of 1954) and a participant or beneficiary of an individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409 of the Internal Revenue Code of 1954) and an employer or association of employers which establishes such an account or annuity under section 408(c) of such code shall be deemed to be an owner-employee.

*Post*, pp. 959, 964.

(e) Sections 406 and 407 shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 407 (d)(5)) or acquisition, sale or lease by a plan of qualifying employer real property (as defined in section 407(d)(4))—

(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 407(e)(1)),

(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 407(d)(3)), 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 407(a).

LIABILITY FOR BREACH OF FIDUCIARY DUTY

29 USC 1109.

SEC. 409. (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 title 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 411 of this Act.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

EXCULPATORY PROVISIONS; INSURANCE

29 USC 1110.

SEC. 410. (a) Except as provided in sections 405(b)(1) and 405(d), 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 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.

PROHIBITION AGAINST CERTAIN PERSONS HOLDING CERTAIN POSITIONS

SEC. 411. (a) 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 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)(1)), a violation of any provision of this Act, a violation of section 302 of the Labor-Management Relations Act, 1947 (29 U.S.C. 186), a violation of chapter 63 of title 18, United States Code, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), 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—

29 USC 1111.

21 USC 802.

18 USC 1341.

29 USC 401 note.

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan, or

(2) as a consultant to any employee benefit plan,

during or for five years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such five-year 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) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in paragraph (1) or (2) would not be contrary to the purposes of this title. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in paragraph (1) or (2) 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 Board of Parole that such service would be inconsistent with the intention of this section.

(b) Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

Penalty.

(c) For the purposes of this section:

Definitions.

(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 or the date of the final sustaining of such judgment on appeal, whichever is the later event.

(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 shall not be considered as part of a period of imprisonment.

BONDING

29 USC 1112.

SEC. 412. (a) 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—

(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.

Limitation.

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 6 through 13 of title 6, United States Code. 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) It shall be unlawful for any plan official to whom subsection (a) 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) 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) have not been met.

(c) It shall be unlawful for any person to procure any bond required by subsection (a) 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) Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) 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.

Regulations.

(e) 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.

LIMITATION ON ACTIONS

29 USC 1113.

SEC. 413. (a) No action may be commenced under this title 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 (A) on which the plaintiff had actual knowledge of the breach or violation, 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 title;

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.

EFFECTIVE DATE

29 USC 1114.

SEC. 414. (a) Except as provided in subsections (b), (c), and (d), 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 the date of enactment of this Act.

(2) Upon application of a plan, the Secretary may postpone until not later than January 1, 1976, the applicability of any provision of sections 402, 403 (other than 403(c)), 405 (other than 405 (a) and (d)), and 410(a), as it applies to any plan in existence on the date of enactment of this Act 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 the date of enactment of this Act 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 4021 applies.

*Post*, p. 1014.

(c) Section 406 and 407(a) (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 the Internal Revenue Code of 1954 or the corresponding provisions of prior law);

26 USC 503.

(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 the Internal Revenue Code of 1954) 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 the Internal Revenue Code of 1954) 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 407(a) (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 514) as an act or omission occurring before the effective date of this part.

Post, p. 971.

## PART 5—ADMINISTRATION AND ENFORCEMENT

### CRIMINAL PENALTIES

SEC. 501. 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.

29 USC 1131.
*Ante*, p. 840.

### CIVIL ENFORCEMENT

29 USC 1132.

SEC. 502. (a) 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 409;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title 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 title 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 105(c);

*Ante*, p. 849.

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title; or

(6) by the Secretary to collect any civil penalty under subsection (i).

(b) In the case of a plan which is qualified under section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 (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) with respct to a violation of, or the enforcement of, parts 2 and 3 of this subtitle (relating to participation, vesting, and funding), only if—

26 USC 401, 403, 405.

*Ante*, pp. 852, 868.

(1) requested by the Secretary of the Treasury, or

(2) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe 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.

(c) Any administrator who fails or refuses to comply with a request for any information which such administrator is required by this title 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.

(d)(1) An employee benefit plan may sue or be sued under this title 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 title 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 title.

Jurisdiction.

(e)(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 title brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

(2) Where an action under this title 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) 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) In any action under this title 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.

(h) A copy of the complaint in any action under this title by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) 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) on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

*Ante*, p. 874.

Penalty.

(i) In the case of a transaction prohibited by section 406 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 (as defined in section 4975(f)(4) of the Internal Revenue Code of 1954); 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 such Code) 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

*Post*, p. 971.

apply to a transaction with respect to a plan described in section 4975 (e)(1) of such Code.

Post, p. 971.

(j) In all civil actions under this title, attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28, United States Code), but all such litigation shall be subject to the direction and control of the Attorney General.

(k) 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 Act, or to compel him to take action required under this title, 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.

CLAIMS PROCEDURE

SEC. 503. In accordance with regulations of the Secretary, every employee benefit plan shall— 29 USC 1133.

(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.

INVESTIGATIVE AUTHORITY

SEC. 504. (a) The Secretary shall have the power, in order to determine whether any person has violated or is about to violate any provision of this title or any regulation or order thereunder— 29 USC 1134.

(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 title, 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 title 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 the Internal Revenue Code of 1954 shall be made available only in accordance with regulations prescribed by the Secretary of the Treasury.

Post, p. 941.

(b) 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 title or any regulation or order thereunder.

Books or records, accessability.

(c) For the purposes of any investigation provided for in this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act (15 U.S.C. 49, 50) are hereby made applicable (without regard to any limitation in such sections respect-

ing 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 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

REGULATIONS

29 USC 1135. *Post*, p. 995; *Ante*, p. 850.

SEC. 505. Subject to title III and section 109, the Secretary may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this title. 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 504(a) and (b)).

OTHER AGENCIES AND DEPARTMENTS

29 USC 1136.

SEC. 506. 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 title 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 title. 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 title as may be found to warrant consideration for criminal prosecution under the provisions of this title or other Federal law.

ADMINISTRATION

29 USC 1137.

5 USC 551, 701.

SEC. 507. (a) Subchapter II of chapter 5, and chapter 7, of title 5, United States Code (relating to administrative procedure), shall be applicable to this title.

(b) Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) In addition to the number of positions authorized by subsection (a), the Secretary of Labor is authorized, without regard to any other provision of this section, to place 1 position in the Department of Labor in grade GS-18, and a total of 20 positions in the Department of Labor in grades GS-16 and 17."

(c) No employee of the Department of Labor or the Department of the Treasury shall administer or enforce this title or the Internal Revenue Code of 1954 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.

26 USC 1 *et seq.*

APPROPRIATIONS

SEC. 508. 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 Act. 29 USC 1138.

SEPARABILITY PROVISIONS

SEC. 509. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, 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. 29 USC 1139.

INTERFERENCE WITH RIGHTS PROTECTED UNDER ACT

SEC. 510. 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 title, section 3001, or the Welfare and Pension Plans Disclosure Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this title, 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 Act or the Welfare and Pension Plans Disclosure Act. The provisions of section 502 shall be applicable in the enforcement of this section. 29 USC 1140. *Post*, p. 995. 29 USC 301 note.

COERCIVE INTERFERENCE

SEC. 511. 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 title, section 3001, or the Welfare and Pension Plans Disclosure Act. Any person who willfully violates this section shall be fined $10,000 or imprisoned for not more than one year, or both. 29 USC 1141. Penalty.

ADVISORY COUNCIL

SEC. 512. (a)(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. Advisory Council on Employee Welfare and Pension Benefit Plans. Establishment. 29 USC 1142.

(2) Members shall be persons qualified to appraise the programs instituted under this Act. Membership.

(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 multiemployer 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 fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and the accounting field.

Terms.

(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.

Duties.

(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this Act 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 513(b), the Secretary shall include each recommendation which he has received from the Council during the preceding calendar year.

(c) 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.

5 USC 5332 and note.

(d)(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.

Travel expenses.

(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 of the United States Code.

5 USC app. 14.

(e) Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

RESEARCH, STUDIES, AND ANNUAL REPORT

29 USC 1143.

SEC. 513. (a)(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 Act.

(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 title 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 title, and the enforcement procedures provided for under this title.

(4) The research, surveys, studies, and publications referred to in this subsection may be conducted directly, or indirectly through grant or contract arrangements.

(b) The Secretary shall submit annually a report to the Congress covering his administration of this title for the preceding year, and including (1) an explanation of any variances or extensions granted under section 110, 207, 303, or 304 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 title as he may find advisable.

Report to Congress.

*Ante*, pp. 851, 865, 872, 873.

(c) 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.

EFFECT ON OTHER LAWS

SEC. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

29 USC 1144.

*Post*, p. 1003.

*Ante*, p. 839.

(b)(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 title 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 4(a), which is not exempt under section 4(b) (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 506 of this Act.

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State.

(c) 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.

"State law."

(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 title.

"State."

(d) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b)) or any rule or regulation issued under any such law.

*Ante*, pp. 851, 894.

# TITLE II—AMENDMENTS TO THE INTERNAL REVENUE CODE RELATING TO RETIREMENT PLANS

**SEC. 1001. AMENDMENT OF INTERNAL REVENUE CODE OF 1954.**

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

26 USC 1 *et seq.*

## Subtitle A—Participation, Vesting, Funding, Administration, Etc.

### PART 1—PARTICIPATION, VESTING, AND FUNDING

**SEC. 1011. MINIMUM PARTICIPATION STANDARDS.**

Part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus, plans, etc.) is amended by adding at the end thereof the following:

**"Subpart B—Special Rules**

"Sec. 410. Minimum participation standards.
"Sec. 411. Minimum vesting standards.
"Sec. 412. Minimum funding standards.
"Sec. 413. Collectively bargained plans.
"Sec. 414. Definitions and special rules.
"Sec. 415. Limitations on benefits and contributions under qualified plans.

26 USC 410.

**"SEC. 410. MINIMUM PARTICIPATION STANDARDS.**

"(a) PARTICIPATION.—

"(1) MINIMUM AGE AND SERVICE CONDITIONS.—

"(A) GENERAL RULE.—A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part requires, 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 25; or

"(ii) the date on which he completes 1 year of service.

"(B) SPECIAL RULES FOR CERTAIN PLANS.—

"(i) In the case of any plan which provides that after not more than 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting '3 years of service' for '1 year of service'.

*Post*, p. 901.

"(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii)) by an employer which is exempt from tax under section 501(a) 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 (within the meaning of section 411) at the time such benefit accrues, clause (i) of

26 USC 170.
26 USC 501.

*Post*, p. 901.

subparagraph (A) shall be applied by substituting '30' for '25'. This clause shall not apply to any plan to which clause (i) applies.

"(2) MAXIMUM AGE CONDITIONS.—A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part excludes from participation (on the basis of age) employees who have attained a specified age, unless— 26 USC 401.

"(A) the plan is a—

"(i) defined benefit plan, or

"(ii) target benefit plan (as defined under regulations prescribed by the Secretary or his delegate), 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.

"(3) DEFINITION OF YEAR OF SERVICE.—

"(A) GENERAL RULE.—For purposes of this subsection, 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, under regulations prescribed by the Secretary of Labor, 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) SEASONAL INDUSTRIES.—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 of Labor.

"(C) HOURS OF SERVICE.—For purposes of this subsection, the term 'hour of service' means a time of service determined under regulations prescribed by the Secretary of Labor.

"(D) MARITIME INDUSTRIES.—For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out this subparagraph.

"(4) TIME OF PARTICIPATION.—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.

"(5) BREAKS IN SERVICE.—

"(A) GENERAL RULE.—Except as otherwise provided in subparagraphs (B), (C), and (D), 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 paragraph (1).

"(B) EMPLOYEES UNDER 3-YEAR 100 PERCENT VESTING.—In the case of any employee who has any 1-year break in service (as defined in section 411(a)(6)(A)) under a plan to which the service requirements of clause (i) of paragraph (1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

Post, p. 901.

"(C) 1-YEAR BREAK IN SERVICE.—In computing an employee's period of service for purposes of subsection (a)(1) in the case of any participant who has any 1-year break in service (as defined in section 411(a)(6)(A)), 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 paragraph (3)) after his return.

"(D) NONVESTED PARTICIPANTS.—In the case of a participant 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) 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 subparagraph by reason of any prior break in service.

"(b) ELIGIBILITY.—

"(1) IN GENERAL.—A trust shall not constitute a qualified trust under section 401(a) unless the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under section 401(a) which benefits either—

26 USC 401.

"(A) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have not satisfied the minimum age and service requirements, if any, prescribed by the plan as a condition of participation, or

"(B) such employees as qualify under a classification set up by the employer and found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, or highly compensated.

"(2) EXCLUSION OF CERTAIN EMPLOYEES.—For purposes of paragraph (1), there shall be excluded from consideration—

"(A) employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers,

"(B) in the case of a trust established or maintained pursuant to an agreement which the Secretary of Labor finds to be a collective bargaining agreement between air pilots represented in accordance with title II of the Railway Labor Act and one or more employers, all employees not covered by such agreement, and

45 USC 181.

"(C) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(b)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)). 26 USC 911. 26 USC 861.

Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard aircraft in flight.

"(c) APPLICATION OF PARTICIPATION STANDARDS TO CERTAIN PLANS.—

"(1) The provisions of this section (other than paragraph (2) of this subsection) shall not apply to—

"(A) a governmental plan (within the meaning of section 414(d)), *Post*, p. 925.

"(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by subsection (d) of this section has not been made,

"(C) a plan which has not at any time after the date of the enactment of the Employee Retirement Income Security Act of 1974 provided for employer contributions, and

"(D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) if no part of the contributions to or under such plan are made by employers of participants in such plan. 26 USC 501.

"(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a), if such plan meets the requirements of section 401(a)(3) as in effect on the day before the date of the enactment of this section. 26 USC 401.

"(d) ELECTION BY CHURCH TO HAVE PARTICIPATION, VESTING, FUNDING, ETC., PROVISIONS APPLY.—

"(1) IN GENERAL.—If the church or convention or association of churches which maintains any church plan makes an election under this subsection (in such form and manner as the Secretary or his delegate may by regulations prescribe), then the provisions of this title relating to participation, vesting, funding, etc. (as in effect from time to time) shall apply to such church plan as if such provisions did not contain an exclusion for church plans.

"(2) ELECTION IRREVOCABLE.—An election under this subsection with respect to any church plan shall be binding with respect to such plan, and, once made, shall be irrevocable."

**SEC. 1012. MINIMUM VESTING STANDARDS.**

(a) IN GENERAL.—Subpart B of part I of subchapter D of chapter 1 is amended by adding after section 410 the following new section:

**"SEC. 411. MINIMUM VESTING STANDARDS.** 26 USC 411.

"(a) GENERAL RULE.—A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in subsection (a)(8)) and in addition satisfies the requirements of paragraphs (1) and (2) of this subsection and the requirements of paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b).

"(1) EMPLOYEE CONTRIBUTIONS.—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) EMPLOYER CONTRIBUTIONS.—A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

"(A) 10-YEAR VESTING.—A plan satisfies the requirements of this subparagraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

"(B) 5- TO 15-YEAR VESTING.—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 a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

| "Years of service: | Nonforfeitable percentage |
|---|---|
| 5 | 25 |
| 6 | 30 |
| 7 | 35 |
| 8 | 40 |
| 9 | 45 |
| 10 | 50 |
| 11 | 60 |
| 12 | 70 |
| 13 | 80 |
| 14 | 90 |
| 15 or more | 100. |

"(C) RULE OF 45.—

"(i) A plan satisfies the requirements of this subparagraph if an employee who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

| "If years of service equal or exceed— | and sum of age and service equals or exceeds— | then the nonforfeitable percentage is— |
|---|---|---|
| 5 | 45 | 50 |
| 6 | 47 | 60 |
| 7 | 49 | 70 |
| 8 | 51 | 80 |
| 9 | 53 | 90 |
| 10 | 55 | 100. |

"(ii) Notwithstanding clause (i), a plan shall not be treated as satisfying the requirements of this subparagraph unless any employee who has completed at least 10 years of service has a nonforfeitable right to not less than 50 percent of his accrued benefit derived from employer contributions and to not less than an additional 10 percent for each additional year of service thereafter.

"(3) CERTAIN PERMITTED FORFEITURES, SUSPENSIONS, ETC.—For purposes of this subsection—

"(A) FORFEITURE ON ACCOUNT OF DEATH.—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 401(a)(11)).

*Post*, p. 935.

"(B) SUSPENSION OF BENEFITS UPON REEMPLOYMENT OF RETIREE.—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 the 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, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced.

The Secretary of Labor 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'. Regulations.

"(C) EFFECT OF RETROACTIVE PLAN AMENDMENTS.—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 412(c)(8). *Post*, p. 914.

"(D) WITHDRAWAL OF MANDATORY CONTRIBUTION.—

"(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 subsection (c)(2)(C)) 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 subsection (c)(2)(C) on the date of such repayment (computed annually from the date of such withdrawal). 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 one-year break in service commencing after the withdrawal.

"(iii) In the case of accrued benefits derived from employer contributions which accrued before the date of the enactment of the Employee Retirement Income Security Act of 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 (as defined in subsection (c)(2)(C)) made by such participant before the date of the enactment of the Act 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 the date of the enactment of such Act. The Secretary or *Ante*, p. 829. Regulations.

his delegate 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) For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 401(a)(19).

26 USC 401.

"(4) SERVICE INCLUDED IN DETERMINATION OF NONFORFEITABLE PERCENTAGE.—In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), 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 22, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of paragraph (2), the plan may not disregard any such year of service during which the employee was a participant;

"(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

"(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan (as defined under regulations prescribed by the Secretary or his delegate);

"(D) service not required to be taken into account under paragraph (6);

"(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970; and

"(F) years of service before the first plan year to which this section applies, 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.

"(5) YEAR OF SERVICE.—

"(A) GENERAL RULE.—For purposes of this subsection, 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 of Labor) during which the participant has completed 1,000 hours of service.

"(B) HOURS OF SERVICE.—For purposes of this subsection, the term 'hours of service' has the meaning provided by section 410(a)(3)(C).

*Ante*, p. 898.

"(C) SEASONAL INDUSTRIES.—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 of Labor.

"(D) MARITIME INDUSTRIES.—For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.

"(6) BREAKS IN SERVICE.—

"(A) DEFINITION OF 1-YEAR BREAK IN SERVICE.—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 of Labor) during which the participant has not completed more than 500 hours of service.

"(B) 1 YEAR OF SERVICE AFTER 1-YEAR BREAK IN SERVICE.—For purposes of paragraph (4), 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) 1-YEAR BREAK IN SERVICE UNDER DEFINED CONTRIBUTION PLAN.—For purposes of paragraph (4), in the case of any participant in a defined contribution plan, or an insured defined benefit plan which satisfies the requirements of subsection (b)(1)(F), who has any 1-year break in service, years of service after such break 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 break.

"(D) NONVESTED PARTICIPANTS.—For purposes of paragraph (4), 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.

"(7) ACCRUED BENEFIT.—

"(A) IN GENERAL.—For purposes of this section, the term 'accrued benefit' means—

"(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

"(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

"(B) EFFECT OF CERTAIN DISTRIBUTIONS.—Notwithstanding paragraph (4), 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—

"(i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $1,750) permitted under regulations prescribed by the Secretary or his delegate, or

"(ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Clause (i) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause (ii) of this subparagraph 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 or his delegate.

"(C) REPAYMENT OF SUBPARAGRAPH (b) DISTRIBUTIONS.—For purposes of determining the employee's accrued benefit under a plan, the plan may not disregard service as provided in subparagraph (B) unless the plan provides an opportunity for the participant to repay the full amount of the distribution described in such subparagraph (B) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subparagraph shall apply only in the case of a participant who—

"(i) 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,

"(ii) resumes employment covered under the plan, and

"(iii) 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).

In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has any one-year break in service commencing after such withdrawal.

"(8) NORMAL RETIREMENT AGE.—For purposes of this section, 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 10th anniversary of the time a plan participant commenced participation in the plan.

"(9) NORMAL RETIREMENT BENEFIT.—For purposes of this section, 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 benefits commencing before benefits payable under title II of the Social Security Act become payable which—

42 USC 401.

"(i) do not exceed such social security benefits, and

"(ii) terminate when such social security benefits commence.

"(10) CHANGES IN VESTING SCHEDULE.—

"(A) GENERAL RULE.—A plan amendment changing any vesting schedule under the plan shall be treated as not satisfy-

ing the requirements of paragraph (2) 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) ELECTION OF FORMER SCHEDULE.—A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) unless each participant having not less than 5 years of service is permitted to elect, within a reasonable period after the adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

"(b) ACCRUED BENEFIT REQUIREMENTS.—

(1) GENERAL RULES.—

"(A) 3-PERCENT METHOD.—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 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) 133⅓ PERCENT RULE.—A defined benefit plan satisfies the requirements of this paragraph for 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) FRACTIONAL RULE.—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 on which 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) ACCRUAL FOR SERVICE BEFORE EFFECTIVE DATE.—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 the date of the enactment of the Employee Retirement Income Security Act of 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) FIRST TWO YEARS OF SERVICE.—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 'years of service' has the meaning provided by section 410(a)(3)(A).

*Ante*, p. 898.

"(F) CERTAIN INSURED DEFINED BENEFIT PLANS.—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 412(i) (relating to certain insurance contract plans),

Post, p. 914.

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 412(i) were satisfied.

"(G) ACCRUED BENEFIT MAY NOT DECREASE ON ACCOUNT OF INCREASING AGE OR SERVICE.—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 entitlement to benefits payable under title II of the Social Security Act which benefits under the plan—

42 USC 401.

"(i) do not exceed such social security benefits, and

"(ii) terminate when such social security benefits commence.

"(2) SEPARATE ACCOUNTING REQUIRED IN CERTAIN CASES.—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.

"(3) YEAR OF PARTICIPATION.—

"(A) DEFINITION.—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 410(a)(5)) as determined under regulations prescribed by the Secretary of Labor which provide for the calculation of such period on any reasonable and consistent basis.

Ante, p. 898.

"(B) LESS THAN FULL TIME SERVICE.—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) LESS THAN 1,000 HOURS OF SERVICE DURING YEAR.—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 of Labor) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis solely because such service is not taken into account.

"(D) SEASONAL INDUSTRIES.—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 of Labor.

Regulations.

"(E) MARITIME INDUSTRIES.—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 of Labor may prescribe regulations to carry out the purposes of this subparagraph.

"(c) ALLOCATION OF ACCRUED BENEFITS BETWEEN EMPLOYER AND EMPLOYEE CONTRIBUTIONS.—

"(1) ACCRUED BENEFIT DERIVED FROM EMPLOYER CONTRIBUTIONS.—For purposes of this section, 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) ACCRUED BENEFIT DERIVED FROM EMPLOYEE CONTRIBUTIONS.—

"(A) PLANS OTHER THAN DEFINED BENEFIT PLANS.—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.—

"(i) IN GENERAL.—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) APPROPRIATE CONVERSION FACTOR.—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 or his delegate.

"(C) DEFINITION OF ACCUMULATED CONTRIBUTIONS.—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 subsection (a)(2) 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 at the rate of 5 percent per annum from the beginning of the first plan year to which subsection (a)(2) applies (by reason of the applicable effective date) to the date upon which the employee would attain 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 plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

"Mandatory contributions."

"(D) ADJUSTMENTS.—The Secretary or his delegate is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary or his delegate 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. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

"(E) LIMITATION.—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.

"(3) ACTUARIAL ADJUSTMENT.—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).

"(d) SPECIAL RULES.—

"(1) COORDINATION WITH SECTION 401(a)(4).—A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401(a)(4) unless—

*Post*, p. 938.

"(A) there has been a pattern of abuse under the plan (such as a dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are officers, shareholders, or highly compensated, or

"(B) there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are officers, shareholders, or highly compensated.

"(2) PROHIBITED DISCRIMINATION.—Subsection (a) 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 or his delegate to preclude the discrimination prohibited by section 401(a)(4).

*Post*, p. 938.

"(3) TERMINATION OR PARTIAL TERMINATION; DISCONTINUANCE OF CONTRIBUTIONS.—Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401 (a) unless the plan of which such trust is a part provides that—

"(A) upon its termination or partial termination, or

*Post*, p. 914.

"(B) in the case of a plan to which section 412 does not apply, upon complete discontinuance of contributions under the plan,

the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by section 401(a)(4), may not be used for designated employees in the event of early termination of the plan.

"(4) CLASS YEAR PLANS.—The requirements of subsection (a)(2) 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 plan year following the plan year for which such contributions were made. For purposes of this section, 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.

"(5) TREATMENT OF VOLUNTARY EMPLOYEE CONTRIBUTIONS.—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.

"(6) ACCRUED BENEFIT NOT TO BE DECREASED BY AMENDMENT.—A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8).

"(e) APPLICATION OF VESTING STANDARDS TO CERTAIN PLANS.—

"(1) The provisions of this section (other than paragraph (2)) shall not apply to—

"(A) a governmental plan (within the meaning of section 414(d)),

*Post*, p. 925.

"(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,

*Ante*, p. 898.

"(C) a plan which has not, at any time after the date of the enactment of the Employee Retirement Income Security Act of 1974, provided for employer contributions, and

"(D) a plan established and maintained by a society, order, or association described in section 501(c) (8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan. 26 USC 501.

"(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a), if such plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) as in effect on the day before the date of the enactment of the Employee Retirement Income Security Act of 1974." *Post*, p. 938. 26 USC 401.

(b) COMPARABILITY OF PLANS.—Section 401(a) (relating to requirements for qualification) is amended by adding at the end of paragraph (5) the following: "For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate. For the purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary or his delegate to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates."

(c) VARIATIONS FROM CERTAIN VESTING AND ACCRUED BENEFITS REQUIREMENTS.—In the case of any plan maintained on January 1, 1974, if, not later than 2 years after the date of the enactment of this Act, the plan administrator petitions the Secretary of Labor, the Secretary of Labor may prescribe an alternate method which shall be treated as satisfying the requirements of subsection (a)(2) of section 411 of the Internal Revenue Code of 1954, or of subsection (b)(1) (other than subparagraph (D) thereof) of such section 411, or of both such provisions for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that— 26 USC 411 note. *Ante*, p. 901.

(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 412(d) or (e) would be inadequate. *Post*, p. 914.

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 plan administrator petitions the Secretary of Labor 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.

**SEC. 1013. MINIMUM FUNDING STANDARDS.**

(a) IN GENERAL.—Subpart B of part I of subchapter D of chapter 1 is amended by adding after section 411 the following new section:

26 USC 412.

**"SEC. 412. MINIMUM FUNDING STANDARDS.**

"(a) GENERAL RULE.—Except as provided in subsection (h), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan—

"(1) such plan included a trust which qualified (or was determined by the Secretary or his delegate to have qualified) under section 401(a), or

26 USC 401.

"(2) such plan satisfied (or was determined by the Secretary or his delegate to have satisfied) the requirements of section 403 (a) or 405(a).

*Post*, pp. 969, 991.
26 USC 405.

A plan to which this section 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. For purposes of this section and section 4971, 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 section 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.

"Accumulated funding deficiency."
*Post*, p. 920.

"(b) FUNDING STANDARD ACCOUNT.—

"(1) ACCOUNT REQUIRED.—Each plan to which this section applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

"(2) CHARGES TO ACCOUNT.—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 section 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 section applies, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

"(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 (40 plan years in the case of a multiemployer plan),

"(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years (20 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 30 plan years,

"(C) the amount necessary to amortize each waived funding deficiency (within the meaning of subsection (d)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years, 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) CREDITS TO ACCOUNT.—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 (40 plan years in the case of a multiemployer plan),

"(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years (20 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 30 plan years,

"(C) the amount of the waived funding deficiency (within the meaning of subsection (d)(3) 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) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary or his delegate, 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 offset 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.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary or his delegate) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

"(c) SPECIAL RULES.—

"(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this section, 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) VALUATION OF ASSETS.—

"(A) IN GENERAL.—For purposes of this section, 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 or his delegate.

"(B) ELECTION WITH RESPECT TO BONDS.—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 or his delegate shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary or his delegate.

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—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 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.

"(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

42 USC 1305.

"(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

26 USC 3121.

"(B) a change in the definition of the term 'wages' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

26 USC 401.

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) CHANGE IN FUNDING METHOD OR IN PLAN YEAR REQUIRES APPROVAL.—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 or his delegate. 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 or his delegate.

"(6) FULL FUNDING.—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 subsection (g)) 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) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

"(7) FULL FUNDING LIMITATION.—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).

"(8) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

"(A) is adopted after the close of such plan year but no later than 2 and one-half 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 of Labor notifying him of such amendment and the Secretary of Labor 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 of Labor unless he determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (d)(2)) and that a waiver under subsection (d)(1) is unavailable or inadequate.

Notification of amendment.

Approval.

"(9) 3-YEAR VALUATION.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every 3 years, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary or his delegate.

"(10) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, 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 paragraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary or his delegate.

"(d) VARIANCE FROM MINIMUM FUNDING STANDARD.—

"(1) WAIVER IN CASE OF SUBSTANTIAL BUSINESS HARDSHIP.—If a employer or in the case of a multiemployer 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 substantial business hardship and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary or his delegate may waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under subsection (b)(2)(C). The Secretary or his delegate shall not waive the mini-

mum funding standard with respect to a plan for more than 5 of any 15 consecutive plan years.

"(2) DETERMINATION OF SUBSTANTIAL BUSINESS HARDSHIP.—For purposes of this section, the factors taken into account in determining substantial business hardship shall include (but shall not be limited to) whether or not—

"(A) the employer is operating at an economic loss,

"(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

"(C) the sales and profits of the industry concerned are depressed or declining, and

"(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

"(3) WAIVED FUNDING DEFICIENCY.—For purposes of this section, the term 'waived funding deficiency' means the portion of the minimum funding standard (determined without regard to subsection (b)(3)(C)) for a plan year waived by the Secretary or his delegate and not satisfied by employer contributions.

"(e) EXTENSION OF AMORTIZATION PERIODS.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any plan may be extended by the Secretary of Labor for a period of time (not in excess of 10 years) if he determines that such extension would carry out the purposes of the Employee Retirement Income Security Act of 1974 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—

*Ante*, p. 829.

"(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.

"(f) BENEFITS MAY NOT BE INCREASED DURING WAIVER OR EXTENSION PERIOD.—

"(1) IN GENERAL.—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 subsection (d)(1) or an extension of time under subsection (e) is in effect with respect to the plan, or if a plan amendment described in subsection (c)(8) has been made at any time in the preceding 12 months (24 months for multiemployer plans). 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) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

"(A) the Secretary of Labor 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 subsection (c)(8), or

"(C) is required as a condition of qualification under this part.

"(g) ALTERNATIVE MINIMUM FUNDING STANDARD.—

"(1) IN GENERAL.—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 subsection.

"(2) CHARGES AND CREDITS TO ACCOUNT.—For a plan year the alternative minimum funding standard account shall be—

"(A) charged with the sum of—

"(i) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,

"(ii) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

"(iii) an amount equal to the excess (if any) of credits to the alternative minimum standard account for all prior plan years over charges to such account for all such years, and

"(B) credited with the amount considered contributed by the employer to or under the plan for the plan year.

"(3) SPECIAL RULES.—The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under subsection (b)(5) with respect to the funding standard account.

"(h) EXCEPTIONS.—This section shall not apply to—

"(1) any profit-sharing or stock bonus plan,

"(2) any insurance contract plan described in subsection (i),

"(3) any governmental plan (within the meaning of section 414(d)), *Post*, p. 925.

"(4) any church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made, *Ante*, p. 898.

"(5) any plan which has not, at any time after the date of the enactment of the Employee Retirement Income Security Act of 1974, provided for employer contributions, or *Ante*, p. 829.

"(6) any plan established and maintained by a society, order, or association described in section 501(c) (8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan. 26 USC 501.

No plan described in paragraph (3), (4), or (6) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on the day before the date of the enactment of the Employee Retirement Income Security Act of 1974. 26 USC 401.

"(i) CERTAIN INSURANCE CONTRACT PLANS.—A plan is described in this subsection 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 becomes 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 or his delegate to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection."

(b) EXCISE TAX ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.—Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

"Sec. 4971. Taxes on failure to meet minimum funding standards.

26 USC 4971.

"SEC. 4971. TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.

"(a) INITIAL TAX.—For each taxable year of an employer who maintains a plan to which section 412 applies, there is hereby imposed a tax of 5 percent on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year. The tax imposed by this subsection shall be paid by the employer responsible for contributing to or under the plan the amount described in section 412(b)(3)(A).

*Ante*, p. 914.

"(b) ADDITIONAL TAX.—In any case in which an initial tax is imposed by subsection (a) on an accumulated funding deficiency and such accumulated funding deficiency is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency to the extent not corrected. The tax imposed by this subsection shall be paid by the employer described in subsection (a).

"(c) DEFINITIONS.—For purposes of this section—

"(1) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning given to such term by the last sentence of section 412(a).

"(2) CORRECT.—The term 'correct' means, with respect to an accumulated funding deficiency, the contribution, to or under the plan, of the amount necessary to reduce such accumulated funding deficiency as of the end of a plan year in which such deficiency arose to zero.

"(3) CORRECTION PERIOD.—The term 'correction period' means, with respect to an accumulated funding deficiency, the period beginning with the end of a plan year in which there is an accumulated funding deficiency and ending 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (b), extended—

26 USC 6212.

"(A) by any period in which a deficiency cannot be assessed under section 6213(a), and

26 USC 6213.

"(B) by any other period which the Secretary or his delegate determines is reasonable and necessary to permit a reduction of the accumulated funding deficiency to zero under this section.

"(d) NOTIFICATION OF THE SECRETARY OF LABOR.—Before issuing a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary or his delegate shall notify the Secretary of Labor and provide him a reasonable opportunity (but not more than 60 days)—

"(1) to require the employer responsible for contributing to or under the plan to eliminate the accumulated funding deficiency, or

"(2) to comment on the imposition of such tax.

"(e) CROSS REFERENCES.—

**"For disallowance of deduction for taxes paid under this section, see section 275.**

**"For liability for tax in case of an employer party to collective bargaining agreement, see section 413(b)(6).**

**"For provisions concerning notification of Secretary of Labor of imposition of tax under this section, waiver of the tax imposed by subsection (b), and other coordination between Secretary of the Treasury and Secretary of Labor with respect to compliance with this section, see section 3002(b) of title III of the Employee Retirement Income Security Act of 1974.".**

(c) AMENDMENTS TO SECTION 404.—

(1) Paragraph (1) of section 404(a) (relating to deduction for employer contributions to pension trusts) is amended to read as follows: 26 USC 404.

"(1) PENSION TRUSTS.

"(A) IN GENERAL.—In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in an amount determined as follows: 26 USC 501.

"(i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan), *Ante*, p. 914.

"(ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary or his delegate, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years.

"(iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary or his delegate, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary or his delegate.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under

*Ante*, p. 914.

section 412, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 412.

"(B) SPECIAL RULE IN CASE OF CERTAIN AMENDMENTS.—In the case of a plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph (in such manner and at such time as may be provided under regulations prescribed by the Secretary or his delegate), if the full funding limitation determined under section 412(c)(7) for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under section 412(c)(7)(B) exceeds the amount determined under section 412(c)(7)(A), and if the funding method and the actuarial assumptions used are those used for such year under section 412, the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of—

"(i) the full funding limitation for such year determined by applying section 412(c)(7) but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present value of all unamortized liabilities resulting from such amendment, or

"(ii) the normal cost under the plan reduced by the amount necessary to amortize in equal annual installments over 10 years (until fully amortized) the decrease described in clause (i).

In the case of any election under this subparagraph, the amount deductible under the limitations of this paragraph with respect to any of the plan years following the plan year for which such election was made shall be determined as provided under such regulations as may be prescribed by the Secretary or his delegate to carry out the purposes of this subparagraph.

"(C) CERTAIN COLLECTIVELY-BARGAINED PLANS.—In the case of a plan which the Secretary of Labor finds to be collectively bargained, established or maintained by an employer doing business in not less than 40 States and engaged in the trade or business of furnishing or selling services described in section 167(l)(3)(A)(iii), with respect to which the rates have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof, and in the case of any employer which is a member of a controlled group with such employer, subparagraph (B) shall be applied by substituting for the words 'plan amendment' the words 'plan amendment or increase in benefits payable under title II of the Social Security Act'. For purposes of this subparagraph, the term 'controlled group' has the meaning provided by section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C).

26 USC 167.

42 USC 401.

"Controlled group."

26 USC 1563.

"(D) CARRYOVER.—Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations."

(2) Paragraph (6) of section 404(a) (relating to taxpayers on accrual basis) is amended to read as follows: 26 USC 404.

"(6) TIME WHEN CONTRIBUTIONS DEEMED MADE.—For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)."

(3) Paragraph (7) of section 404(a) (relating to limit on deductions) is amended to read as follows:

"(7) LIMIT ON DEDUCTIONS.—If amounts are deductible under paragraphs (1) and (3), or (2) and (3), or (1), (2), and (3), in connection with two or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed the greater of 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries of the trusts or plans, or the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year). In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this paragraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this paragraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than one trust or a trust and an annuity plan." *Ante*, p. 914.

(d) ALTERNATIVE AMORTIZATION METHOD FOR CERTAIN MULTIEMPLOYER PLANS.— 26 USC 412 note.

(1) GENERAL RULE.—In the case of any multiemployer plan (as defined in section 414(f) of the Internal Revenue Code of 1954) to which section 412 of such Code applies, if— *Post*, p. 925.

(A) on January 1, 1974, the contributions under the plan were based on a percentage of pay,

(B) the actuarial assumptions with respect to pay are reasonably related to past and projected experience, and

(C) the rates of interest under the plan are determined on the basis of reasonable actuarial assumptions,

the plan may elect (in such manner and at such time as may be provided under regulations prescribed by the Secretary of the Treasury or his delegate) to fund the unfunded past service liability under the plan existing as of the date 12 months following the first date on which such section 412 first applies to the plan by charging the funding standard account with an equal annual percentage of the aggregate pay of all participants in the plan in lieu of the level dollar charges to such account required under clauses (i), (ii), and (iii) of section 412(b)(2)(B) of such Code and section 302(b)(2)(B)(i), (ii), and (iii) of this Act.

(2) LIMITATION.—In the case of a plan which makes an election under paragraph (1), the aggregate of the charges required under such paragraph for a plan year shall not be less than the interest

on the unfunded past service liabilities described in clauses (i), (ii), and (iii) of section 412(b)(2)(B) of the Internal Revenue Code of 1954.

Ante, p. 914.

**SEC. 1014. COLLECTIVELY BARGAINED PLANS, ETC.**

Subpart B of part I of subchapter D of chapter 1 (relating to special rules) is amended by inserting after section 412 the following new section:

26 USC 413.

**"SEC. 413. COLLECTIVELY BARGAINED PLANS, ETC.**

"(a) APPLICATION OF SUBSECTION (b).—Subsection (b) applies to—

"(1) a plan maintained pursuant to an agreement which the Secretary of Labor finds to be a collective-bargaining agreement between employee representatives and one or more employers, and

"(2) each trust which is a part of such plan.

"(b) GENERAL RULE.—If this subsection applies to a plan, notwithstanding any other provision of this title—

Ante, p. 898.

"(1) PARTICIPATION.—Section 410 shall be applied as if all employees of each of the employers who are parties to the collective-bargaining agreement and who are subject to the same benefit computation formula under the plan were employed by a single employer.

Post, p. 938; Ante, p. 901.

"(2) DISCRIMINATION, ETC.—Sections 401(a)(4) and 411(d)(3) shall be applied as if all participants who are subject to the same benefit computation formula and who are employed by employers who are parties to the collective bargaining agreement were employed by a single employer.

"(3) EXCLUSIVE BENEFIT.—For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries, all plan participants shall be considered to be his employees.

"(4) VESTING.—Section 411 (other than subsection (d)(3)) shall be applied as if all employers who have been parties to the collective-bargaining agreement 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 of Labor.

"(5) FUNDING.—The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.

Ante, p. 920.

"(6) LIABILITY FOR FUNDING TAX.—For a plan year the liability under section 4971 of each employer who is a party to the collective bargaining agreement shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary or his delegate—

"(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

"(B) then on the basis of their respective liabilities for contributions under the plan.

26 USC 404.

"(7) DEDUCTION LIMITATIONS.—Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who is a party to the agreement, for the portion of his taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a manner consistent with the manner in which actual employer contributions for such plan year are determined) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section

404 shall be determined in accordance with regulations prescribed by the Secretary or his delegate. 26 USC 404.

"(8) EMPLOYEES OF LABOR UNIONS.—For purposes of this subsection, employees of employee representatives shall be treated as employees of an employer described in subsection (a)(1) if such representatives meet the requirements of sections 401(a)(4) and 410 with respect to such employees. *Post*, p. 938; *Ante*, p. 898.

"(c) PLANS MAINTAINED BY MORE THAN ONE EMPLOYER.—In the case of a plan maintained by more than one employer—

"(1) PARTICIPATION.—Section 410(a) shall be applied as if all employees of each of the employers who maintain the plan were employed by a single employer.

"(2) EXCLUSIVE BENEFIT.—For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries all plan participants shall be considered to be his employees.

"(3) VESTING.—Section 411 shall be applied as if all employers who maintain the plan 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 of Labor. *Ante*, p. 901.

"(4) FUNDING.—The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer. *Ante*, p. 914.

"(5) LIABILITY FOR FUNDING TAX.—For a plan year the liability under section 4971 of each employer who maintains the plan shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary or his delegate— *Ante*. p. 920.

"(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

"(B) then on the basis of their respective liabilities for contributions under the plan.

"(6) DEDUCTION LIMITATIONS.—Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who maintains the plan, for the portion of this taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary or his delegate) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

Allocations of amounts under paragraphs (4), (5), and (6), among the employers maintaining the plan, shall not be inconsistent with regulations prescribed for this purpose by the Secretary or his delegate."

**SEC. 1015. DEFINITIONS AND SPECIAL RULES.**

Subpart B of part I of subchapter D of chapter 1 is amended by inserting after section 413 the following new section:

**"SEC. 414. DEFINITIONS AND SPECIAL RULES.** 26 USC 414.

"(a) SERVICE FOR PREDECESSOR EMPLOYER.—For purposes of this part—

"(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 or his delegate, be treated as service for the employer.

26 USC 401. *Ante*, pp. 898, 901; *Post*, p. 979.

"(b) EMPLOYEES OF CONTROLLED GROUP OF CORPORATIONS.—For purposes of sections 401, 410, 411, and 415, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) 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 412, the tax imposed by section 4971, and the applicable limitations provided by section 404(a) 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 or his delegate.

26 USC 1563.

*Ante*, p. 920.

"(c) EMPLOYEES OF PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—For purposes of sections 401, 410, 411, and 415, under regulations prescribed by the Secretary or his delegate, 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 (b).

"(d) GOVERNMENTAL PLAN.—For purposes of this part, the term 'governmental plan' means a plan 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. The term 'governmental plan' also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669).

45 USC 215-228 notes, 228a.

22 USC 288 note.

"(e) CHURCH PLAN.—

"(1) IN GENERAL.—For purposes of this part the term 'church plan' means—

"(A) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501, or

26 USC 501.

"(B) a plan described in paragraph (3).

"(2) CERTAIN UNRELATED BUSINESS OR MULTIEMPLOYER PLANS.—The term 'church plan' does not include a plan—

"(A) 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), or

"(B) which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501.

"(3) SPECIAL TEMPORARY RULE FOR CERTAIN CHURCH AGENCIES UNDER CHURCH PLAN.—

"(A) Notwithstanding the provisions of paragraph (2)(B), a plan in existence on January 1, 1974, shall be

treated as a church plan if it is established and maintained by a church or convention or association of churches and one or more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies of such church (or convention or association), and if such church (or convention or association) and each such agency is exempt from tax under section 501. 26 USC 501.

"(B) Subparagraph (A) shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974.

"(C) Subparagraph (A) shall not apply with respect to any plan for any plan year beginning after December 31, 1982.

"(f) MULITIEMPLOYER PLAN.—

"(1) IN GENERAL.—For purposes of this part, the term 'multiemployer plan' means a plan—

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

"(B) which is maintained pursuant to a collective-bargaining agreement between employee representatives and more than one employer,

"(C) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions,

"(D) under which benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who employed that participant except to the extent that such benefits accrued as a result of service with the employer before such employer was required to contribute to such plan, and

"(E) which satisfies such other requirements as the Secretary of Labor may by regulations prescribe.

"(2) SPECIAL RULES.—For purposes of this subsection—

"(A) If a plan is a multiemployer plan within the meaning of paragraph (1) for any plan year, subparagraph (C) of paragraph (1) shall be applied by substituting '75 percent' for '50 percent' for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions.

"(B) All corporations which are members of a controlled group of corporations (within the meaning of section 1563 (a), determined without regard to section 1563(e)(3)(C)) shall be deemed to be one employer. 26 USC 1563.

"(g) PLAN ADMINISTRATOR.—For purposes of this part, the term 'plan administrator' means—

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

"(2) in the absence of a designation referred to in paragraph (1)—

"(A) in the case of a plan maintained by a single employer, such employer,

"(B) in the case of a plan 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 maintained the plan, or

"(C) in any case to which subparagraph (A) or (B) does not apply, such other person as the Secretary or his delegate may by regulation, prescribe.

"(h) TAX TREATMENT OF CERTAIN CONTRIBUTIONS.—

"(1) IN GENERAL.—Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed—

26 USC 401.

"(A) to an employees' trust described in section 401(a), or

26 USC 403, 405.

"(B) under a plan described in section 403(a) or 405(a), shall not be treated as having been made by the employer if it is designated as an employee contribution.

"(2) DESIGNATION BY UNITS OF GOVERNMENT.—For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

"(i) DEFINED CONTRIBUTION PLAN.—For purposes of this part, the term 'defined contribution plan' means a plan which provides for an individual account for each participant and for benefits based solely on 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.

"(j) DEFINED BENEFIT PLAN.—For purposes of this part, the term 'defined benefit plan' means any plan which is not a defined contribution plan.

"(k) CERTAIN PLANS.—A defined benefit plan which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant shall—

*Ante*, p. 898.

"(1) for purposes of section 410 (relating to minimum participation standards), be treated as a defined contribution plan,

*Ante*, p. 901.

*Post*, p. 979.

"(2) for purposes of sections 411(a)(7)(A) (relating to minimum vesting standards) and 415 (relating to limitations on benefits and contributions under qualified plans), be treated as consisting of a defined contribution plan to the extent benefits are based on the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan, and

*Post*, p. 971.

"(3) for purposes of section 4975 (relating to tax on prohibited transactions), be treated as a defined benefit plan.

"(l) MERGERS AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.—A trust which forms a part of a plan shall not constitute a qualified trust under section 401 and a plan shall be treated as not described in section 403(a) or 405 unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust plan after the date of the enactment of the Employee Retirement Income Security Act of 1974, 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). This paragraph

*Ante*, p. 829.

shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation."

**SEC. 1016. CONFORMING AND CLERICAL AMENDMENTS.**

(a) CONFORMING AMENDMENTS.—

(1) Section 275(a) (relating to denial of deduction for certain taxes) is amended by adding at the end thereof the following new paragraph: 26 USC 275.

"(6) Taxes imposed by chapter 42 and chapter 43." 26 USC 4940.

(2) Section 401(a) (relating to requirements for qualification) is amended— *Ante*, p. 920. 26 USC 401.

(A) by striking out paragraph (3) and inserting in lieu thereof:

"(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and", *Ante*, p. 898.

(B) by striking out "paragraph (3)(B) or (4)" in paragraph (5) and inserting in lieu thereof "paragraph (4) or section 410(b) (without regard to paragraph (1)(A) thereof)", and

(C) by striking out paragraph (7) and inserting in lieu thereof:

"(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards)." *Ante*, p. 901.

(3) Section 404(a)(2) (relating to deduction for contributions of an employer to an employee's annuity plan) is amended by striking out "and (8)," and inserting in lieu thereof "(8), (11), (12), (13), (14), and (15)". 26 USC 404.

(4) Section 406(b)(1) (relating to certain employees of foreign subsidiaries) is amended by striking out "paragraphs (3)(B) and (4) of section 401(a)" and inserting in lieu thereof "section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)". 26 USC 406. *Post*, p. 938.

(5) Section 407(b)(1) (relating to certain employees of domestic subsidiaries engaged in business outside the United States) is amended by striking out "paragraph (3)(B) and (4) of section 401(a)" and inserting in lieu thereof "section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)". 26 USC 407.

(6) Section 805(d)(1)(C) (relating to definition of pension plan reserves) is amended by striking out "and (8)" and inserting in lieu thereof "(8), (11), (12), (13), (14), and (15)". 26 USC 805.

(7) Section 6161(b)(1) (relating to extensions of time for paying tax) is amended by striking out "or 42" and inserting in lieu thereof "42 or 43". The second sentence of section 6161(b) is amended by striking out "or 42" and inserting in lieu thereof ", 42, or chapter 43". 26 USC 6161.

(8) Section 6201(d) (relating to assessment authority) is amended by striking out "and chapter 42" and inserting in lieu thereof ", chapter 42, and chapter 43". 26 USC 6201.

(9) Section 6211 (defining deficiency) is amended— 26 USC 6211.

(A) by striking out so much of subsection (a) as precedes paragraph (1) thereof and inserting in lieu thereof the following:

"(a) IN GENERAL.—For purposes of this title in the case of income, estate, and gift taxes imposed by subtitles A and B and excise taxes imposed by chapters 42 and 43, the term 'deficiency' means the amount 26 USC 1, 2001.

26 USC 1, 2001, 4940. *Ante*, p. 920.

by which the tax imposed by subtitle A or B, or chapter 42 or 43, exceeds the excess of—"; and

(B) by striking out "chapter 42" in subsection (b)(2) and inserting in lieu thereof "chapter 42 or 43".

26 USC 6212.

(10) Section 6212 (relating to notice of deficiency) is amended—

(A) by striking out "chapter 42" in subsection (a) and inserting in lieu thereof "chapter 42 or 43",

(B) by striking out "or chapter 42" in subsection (b)(1) and inserting in lieu thereof "chapter 42, or chapter 43",

(C) by striking out "chapter 42, and this chapter" in subsection (b)(1) and inserting in lieu thereof "chapter 42, chapter 43, and this chapter", and

(D) by striking out "of the same decedent," in subsection (c) and inserting in lieu thereof "of the same decedent, of chapter 43 tax for the same taxable years,".

(11) Section 6213 (relating to restrictions applicable to deficiencies and petition to Tax Court) is amended—

(A) by striking out "or chapter 42" in subsection (a) and inserting in lieu thereof ", chapter 42 or 43",

(B) by striking out the heading of subsection (e) and inserting in lieu thereof:

"(e) SUSPENSION OF FILING PERIOD FOR CERTAIN EXCISE TAXES.—",

(C) by striking out "or 4945 (relating to taxes on taxable expenditures)" in subsection (e) and inserting in lieu thereof "4945 (relating to taxes on taxable expenditures), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise taxes on prohibited transactions)"; and

*Ante*, p. 920.

*Post*, p. 971.

(D) by striking out "or 4945(h)(2)" in subsection (e) and inserting in lieu thereof ", 4945(i)(2), 4971(c)(3), or 4975(f)(4),".

(12) Section 6214 (relating to determinations by Tax Court) is amended—

(A) by amending the heading of subsection (c) to read as follows:

"(c) TAXES IMPOSED BY SECTION 507 OR CHAPTER 42 OR 43.—",

(B) by inserting after "chapter 42" each place it appears in subsection (c) "or 43"; and

(C) by striking out "chapter 42" in subsection (d) and inserting in lieu thereof "chapter 42 or 43".

26 USC 6344.

(13) Section 6344(a)(1) (relating to cross references) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43".

26 USC 6501.

(14) Section 6501(e)(3) (relating to limitations on assessment and collection) is amended by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43".

26 USC 6503.

(15) Section 6503 (relating to suspension of running of period of limitations) is amended—

(A) by striking out "chapter 42 taxes)" in subsection (a)(1) and inserting in lieu thereof "certain excise taxes)", and

(B) by inserting after "section 507" in subsection (h) "or section 4971 or section 4975", and by striking out "or 4945(h)(2)" in subsection (h) and inserting in lieu thereof "4945(i)(2), 4971(c)(3), or 4975(f)(4)".

26 USC 6512.

(16) Section 6512 (relating to limitations in case of petition to Tax Court) is amended by striking out "chapter 42" each place it appears therein and inserting in lieu thereof "chapter 42 or 43".

26 USC 6601.

(17) Section 6601(d) (relating to interest on underpayment,

nonpayment, or extensions of time for payment of tax) is amended by—

(A) striking out in the heading thereof "CHAPTER 42" and inserting in lieu thereof "CHAPTER 42 OR 43", and

26 USC 4940. *Ante*, p. 920.

(B) striking out "chapter 42" and inserting in lieu thereof "certain excise".

(18) Section 6653(c)(1) (relating to income, estate, gift, and chapter 42 taxes) is amended by striking out "chapter 42" each place it appears therein (including the heading) and inserting in lieu thereof "certain excise".

26 USC 6653.

(19) Section 6659(b) (relating to applicable rules) is amended by striking out "chapter 42" and inserting in lieu thereof "certain excise".

26 USC 6659.

(20) Section 6676(b) (relating to failure to supply identifying numbers) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

26 USC 6676.

(21) Section 6677(b) (relating to failure to file information returns with respect to certain foreign trusts) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

26 USC 6677.

(22) Section 6679(b) (relating to failure to file returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

26 USC 6679.

(23) Section 6682(b) (relating to false information with respect to withholding allowances based on itemized deductions) is amended by striking out "chapter 42" and inserting in lieu thereof "and certain excise".

26 USC 6682.

(24) The heading of section 6861 (relating to jeopardy assessments of income, estate, and gift taxes) is amended by striking out "and gift taxes.", and inserting in lieu thereof ", gift, and certain excise taxes.".

26 USC 6861.

(25) Section 6862 (relating to jeopardy assessment of taxes other than income, estate, and gift taxes) is amended—

26 USC 6862.

(A) by striking out "and Gift Taxes.", in the heading and inserting in lieu thereof ", Gift, and Certain Excise Taxes.",

(B) by striking out "and gift tax)" in subsection (a) and inserting in lieu thereof "gift tax, and certain excise taxes)".

(26) Section 7422 (relating to civil actions for refund) is amended—

26 USC 7422.

(A) by striking out "chapter 42" and inserting in lieu thereof "chapter 42 or 43" in subsection (e),

(B) by striking out "CHAPTER 42" in the heading of subsection (g) and inserting in lieu thereof "CHAPTER 42 or 43",

(C) by striking out "or 4945" in subsection (g)(1) and inserting in lieu thereof "4945, 4971, or 4975",

26 USC 4945. *Ante*, p. 920; *Post*, p. 971.

(D) by striking out "section 4945(a) (relating to initial taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(a) (relating to initial taxes on taxable expenditures), 4971(a) (relating to initial tax on failure to meet minimum funding standard), 4975(a) (relating to initial tax on prohibited transactions)",

(E) by striking out "or section 4945(b) (relating to additional taxes on taxable expenditures)" in subsection (g)(1) and inserting in lieu thereof "section 4945(b) (relating to additional taxes on taxable expenditures), section 4971(b) (relating to additional tax on failure to meet minimum fund-

ing standard), or section 4975(b) (relating to additional tax on prohibited transactions)", and

(F) by striking out "or 4945" in paragraphs (2) and (3) of subsection (g) and inserting in lieu thereof "4945, 4971, or 4975".

26 USC 4945. *Ante*, p. 920; *Post*, p. 971. 26 USC 6204.

(27) Section 6204(b) (relating to supplemental assessments) is amended by striking out "and gift taxes" and inserting in lieu thereof "gift, and certain excise taxes".

(b) CLERICAL AMENDMENTS.—

(1) Part I of subchapter D of chapter 1 is amended by inserting after the heading and before the table of sections the following:

"Subpart A. General rule.
"Subpart B. Special rules.

**"Subpart A—General Rule".**

(2) The table of chapters for subtitle D is amended by adding at the end thereof the following new item:

"CHAPTER 43. Qualified pension, etc., plans."

(3) The table of sections for subchapter B of chapter 68 is amended by striking out the item relating to the section captioned "Assessable penalties with respect to information required to be furnished under section 7654" and inserting in lieu thereof:

"Sec. 6688. Assessable penalties with respect to information required to be furnished under section 7654."

(4) Subchapter B of chapter 68 is amended by striking out the heading of the section immediately preceding section 6689 and inserting in lieu thereof:

26 USC 6688.

**"SEC. 6688. ASSESSABLE PENALTIES WITH RESPECT TO INFORMATION REQUIRED TO BE FURNISHED UNDER SECTION 7654."**

(5) The table of sections for part II of subchapter A of chapter 70 is amended by striking out "and gift taxes" in the items relating to sections 6861 and 6862 and inserting in lieu thereof "gift, and certain excise taxes".

26 USC 6861, 6862.

26 USC 410 note.

**SEC. 1017. EFFECTIVE DATES AND TRANSITIONAL RULES.**

(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this part shall apply for plan years beginning after the date of the enactment of this Act.

(b) EXISTING PLANS.—Except as otherwise provided in subsections (c) through (h), in the case of a plan in existence on January 1, 1974, the amendments made by this part shall apply for plan years beginning after December 31, 1975.

(c) EXISTING PLANS UNDER COLLECTIVE BARGAINING AGREEMENTS.—

(1) APPLICATION OF VESTING RULES TO CERTAIN PLAN PROVISIONS.—

(A) WAIVER OF APPLICATION.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, during the special temporary waiver period the plan shall not be treated as not meeting the requirements of section 411(b) (1) or (2) of the Internal Revenue Code of

1954 solely by reason of a supplementary or special plan provision (within the meaning of subparagraph (D)). *Ante*, p. 901.

(B) SPECIAL TEMPORARY WAIVER PERIOD.—For purposes of this paragraph, the term "special temporary waiver period" means plan years beginning after December 31, 1975, and before the earlier of—

(i) 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

(ii) January 1, 1981.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act shall not be treated as a termination of such collective bargaining agreement.

(C) DETERMINATION BY SECRETARY OF LABOR REQUIRED.—Subparagraph (A) shall not apply unless the Secretary of Labor determines that the participation and vesting rules in effect on the date of the enactment of this Act are not less favorable to the employees, in the aggregate, than the rules provided under sections 410 and 411 of the Internal Revenue Code of 1954. *Ante*, pp. 898, 901.

(D) SUPPLEMENTARY OR SPECIAL PLAN PROVISIONS.—For purposes of this paragraph, the term "supplementary or special plan provision" means any plan provision which—

(i) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant, or

(ii) 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.

(2) APPLICATION OF FUNDING RULES.—

(A) IN GENERAL.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, section 412 of the Internal Revenue Code of 1954, and other amendments made by this part to the extent such amendments relate to such section 412, shall not apply during the special temporary waiver period (as defined in paragraph (1)(B)). *Ante*, p. 914.

(B) WAIVER OF UNDERFUNDING.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, if by reason of subparagraph (A) the requirements of section 401(a)(7) of the Internal Revenue Code of 1954 apply without regard to the amendment of such section 401(a)(7) by section 1016(a)(2)(C) of this Act, the plan shall not be treated as not meeting such requirements solely by reason of the application of the amendments made by sections 1011 and 1012 of this Act or related amendments made by this part. 26 USC 401. *Ante*, p. 929. *Ante*, pp. 898, 901.

(C) LABOR ORGANIZATION CONVENTIONS.—In the case of a plan maintained by a labor organization, which is exempt from tax under section 501(c)(5) of the Internal Revenue

26 USC 501.
*Ante*, p. 914.

Code of 1954, exclusively for the benefit of its employees and their beneficiaries, section 412 of such Code and other amendments made by this part to the extent such amendments relate to such section 412, shall be applied by substituting for the term "December 31, 1975" in subsection (b), the earlier of—

(i) the date on which the second convention of such labor organization held after the date of the enactment of this Act ends, or

(ii) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subparagraph (A) or (B) be substituted.

(d) EXISTING PLANS MAY ELECT NEW PROVISIONS.—In the case of a plan in existence on January 1, 1974, the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit (as in effect from time to time) shall apply in the case of the plan year (which begins after the date of the enactment of this Act but before the applicable effective date determined under subsection (b) or (c)) selected by the plan administrator and to all subsequent plan years, if the plan administrator elects (in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe) to have such provisions so apply. Any election made under this subsection, once made, shall be irrevocable.

26 USC 1 *et seq.*

(e) CERTAIN DEFINITIONS AND SPECIAL RULES.—Section 414 of the Internal Revenue Code of 1954 (other than subsections (b) and (c) of such section 414), as added by section 1015(a) of this Act, shall take effect on the date of the enactment of this Act.

*Ante*, p. 925.

(f) TRANSITIONAL RULES WITH RESPECT TO BREAKS IN SERVICE.—

(1) PARTICIPATION.—In the case of a plan to which section 410 of the Internal Revenue Code of 1954 applies, if 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 such section 410 first becomes effective with respect to such plan) provides that any employee's participation in the plan would commence at any date later than the later of—

*Ante*, p. 898.

(A) the date on which his participation would commence under the break in service rules of section 410(a)(5) of such Code, or

(B) the date on which his participation would commence under the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code.

26 USC 403, 405.
26 USC 401.

(2) VESTING.—In the case of a plan to which section 411 of the Internal Revenue Code of 1954 applies, if 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 such section 411 first becomes effective with respect to such plan) 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—

*Ante*, p. 901.

(A) the break in service rules of section 411(a)(6) of such Code, or

(B) the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code. 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.

(g) 3-YEAR DELAY FOR CERTAIN PROVISIONS.—Subparagraphs (B) and (C) of section 404(a)(1) shall apply only in the case of plan years beginning on or after 3 years after the date of the enactment of this Act.

Ante, p. 921.

(h)(1) Except as provided in paragraph (2), section 413 of the Internal Revenue Code of 1954 shall apply to plan years beginning after December 31, 1953.

Ante, p. 924.

(2)(A) For plan years beginning before the applicable effective date of section 410 of such Code, the provisions of paragraphs (1) and (8) of subsection (b) of such section 413 shall be applied by substituting "401(a)(3)" for "410".

Ante, p. 898.

(B) For plan years beginning before the applicable effective date of section 411 of such Code, the provisions of subsection (b)(2) of such section 413 shall be applied by substituting "401(a)(7)" for "411(d)(3)".

Ante, p. 901.

(C)(i) The provisions of subsection (b)(4) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 411 of such Code.

(ii) The provisions of subsection (b)(5) (other than the second sentence thereof) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 412 of such Code.

Ante, p. 914.

## PART 2—CERTAIN OTHER PROVISIONS RELATING TO QUALIFIED RETIREMENT PLANS

### SEC. 1021. ADDITIONAL PLAN REQUIREMENTS.

(a) JOINT AND SURVIVOR ANNUITY REQUIREMENT.—

(1) IN GENERAL.—Effective with respect to plan years beginning after December 31, 1975, section 401(a) (relating to requirements for qualification) is amended by inserting after paragraph (10) the following new paragraph:

26 USC 401 note.
26 USC 401.

"(11)(A) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for the payment of benefits in the form of an annuity unless such plan provides for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

"(B) Notwithstanding the provisions of subparagraph (A), in the case of a plan which provides for the payment of benefits before the normal retirement age (as defined in section 411(a)(8)), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

"(i) the date the employee reaches the earliest retirement age under the plan, or

"(ii) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

"(C) A plan described in subparagraph (B) does not meet the requirements of subparagraph (A) unless, under the plan, a participant has a reasonable period during which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subparagraph (B) ends and ending on the date on which he reaches normal retirement age (as defined in section 411(a)(8)) if he continues his employment during that period. A plan does not meet the requirements of this subparagraph unless, in the case of such an election, the payments under the survivor annuity are not less than the payments which would have been made under the

joint annuity to which the participant would have been entitled if he made an election described in this subparagraph immediately prior to his retirement and if his retirement had occurred on the day before his death and within the period within which an election can be made.

"(D) A plan shall not be treated as not satisfying the requirements of this paragraph solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election described in subparagraph (C) has been made under subparagraph (C)) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

"(E) A plan shall not be treated as satisfying the requirements of this paragraph unless, under the plan, each participant has a reasonable period (as described by the Secretary or his delegate by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subparagraph) not to take such joint and survivor annuity.

"(F) A plan shall not be treated as not satisfying the requirements of this paragraph solely because under the plan there is a provision that any election described in subparagraph (C) or (E), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

"(i) the participant dies from accidental causes,

"(ii) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

"(iii) such election or revocation is made before such accident occurred.

Definitions.

"(G) For purposes of this paragraph—

"(i) 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 by reason of disability),

"(ii) the term 'earliest retirement age' means the earliest date on which, under the plan, the participant could elect to receive retirement benefits, and

"(iii) the term 'qualified joint and survivor annuity' means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single life annuity for the life of the participant.

For purposes of this paragraph, a plan may take into account in any equitable manner (as determined by the Secretary or his delegate) any increased costs resulting from providing joint and survivor annuity benefits.

"(H) This paragraph shall apply only if—

"(i) the annuity starting date did not occur before the effective date of this paragraph, and

"(ii) the participant was an active participant in the plan on or after such effective date."

(2) CERTAIN ADDITIONAL REQUIREMENTS APPLY ONLY TO PLANS TO WHICH VESTING REQUIREMENTS APPLY.—Section 401(a) (relating to requirements for qualification) is amended by adding at the end thereof the following new sentence: "Paragraphs (11), (12), (13), (14), (15), and (19) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section."

26 USC 401.

Ante, p. 901.

(b) REQUIREMENTS IN CASE OF MERGERS AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.—Effective with respect to plan years beginning after December 31, 1975, section 401(a) is amended by inserting after paragraph (11) the following new paragraph:

26 USC 401 note.

Ante, p. 935.

"(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after the date of the enactment of the Employee Retirement Income Security Act of 1974, 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). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation."

Ante, p. 829.

(c) RETIREMENT BENEFITS MAY NOT BE ASSIGNED OR ALIENATED.—Section 401(a) is amended by inserting after paragraph (12) the following new paragraph:

Supra.

"(13) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for 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 nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975 (d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on the date of the enactment of the Employee Retirement Income Security Act of 1974."

Post, p. 971.

(d) REQUIREMENT THAT PAYMENT OF BENEFITS BEGIN NOT LATER THAN WHEN THE PARTICIPANT ATTAINS AGE 65 OR HAS COMPLETED 10 YEARS OF PARTICIPATION.—Section 401(a) is amended by inserting after paragraph (13) the following new paragraph:

Supra.

"(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

"(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

"(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

"(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated 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 or his delegate."

(e) REQUIREMENT THAT PLAN BENEFITS ARE NOT DECREASED BY CERTAIN SOCIAL SECURITY INCREASES.—Section 401(a) is amended by inserting after paragraph (14) the following new paragraph:

Ante, p. 937.

"(15) a trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

"(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

"(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits, such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after the date of the enactment of the Employee Retirement Income Security Act of 1974 or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be."

42 USC 401.

(f) REQUIREMENT OF NONFORFEITABILITY IN CASE OF CERTAIN WITHDRAWALS.—Section 401(a) is amended by inserting after paragraph (18) the following new paragraph:

Post, p. 953.

"(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part 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 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 (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before enactment of the Employee Retirement Income Security Act of 1974, in the event of withdrawal of certain mandatory contributions)."

Ante, p. 901.

**SEC. 1022. MISCELLANEOUS PROVISIONS.**

(a) REQUIREMENT THAT PLAN NOT BE DISCRIMINATORY.—Section 401(a)(4) (disqualifying discriminatory plans) is amended to read as follows:

26 USC 401.

"(4) If the contributions or the benefits provided under the plan do not discriminate in favor of employees who are—

"(A) officers,

"(B) shareholders, or

"(C) highly compensated.

For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(2) (A) and (C)." *Ante*, p. 898.

(b) AMENDMENTS RELATING TO SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—

(1) AMENDMENT OF SECTION (401)(a)(10).—So much of subparagraph (A) of section 401(a)(10) as precedes clause (i) thereof is amended to read as follows: 26 USC 401.

"(A) paragraph (3), the first and second sentences of paragraph (5), and section 410 shall not apply, but—".

(2) AMENDMENT OF SECTION (401)(d)(3).—Section 401(d)(3) (relating to additional requirements for qualification of trusts and and plans benefiting owner-employees) is amended to read as follows:

"(3)(A) The plan benefits each employee having 3 or more years of service (within the meaning of section 410(a)(3)).

"(B) For purposes of subparagraph (A), the term 'employee' does not include—

"(i) any employee included in a unit of employees covered by a collective-bargaining agreement described in section 410(b)(2)(A), and

"(ii) any employee who is a nonresident alien individual described in section 410(b)(2)(C)."

(c) PERSONS OTHER THAN BANKS MAY BE TRUSTEES OF TRUSTS BENEFITTING OWNER-EMPLOYEES.—

(1) The first sentence of section 401(d)(1) is amended to read as follows: "In the case of a trust which is created on or after October 10, 1962, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will administer the trust will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so administering the trust may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, or exchanges)." 26 USC 501.

(2) The second sentence of section 401(d)(1) is amended by striking out "the date of the enactment of this subsection" and inserting in lieu thereof "October 10, 1962,".

(d) CERTAIN CUSTODIAL ACCOUNTS.—Effective as of January 1, 1974, subsection (f) of section 401 (relating to certain custodial accounts) is amended to read as follows: 26 USC 401 note.

"(f) CERTAIN CUSTODIAL ACCOUNTS AND ANNUITY CONTRACTS.—For purposes of this title, a custodial account or an annuity contract shall be treated as a qualified trust under this section if—

"(1) the custodial account or annuity contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

"(2) in the case of a custodial account the assets thereof are held by a bank (as defined in subsection (d)(1)) or another person who demonstrates, to the satisfaction of the Secretary or his delegate, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or annuity contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof."

26 USC 403 and note.

(e) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—Effective as of January 1, 1974, section 403(b) (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by adding at the end thereof the following new paragraph:

26 USC 501.

"(7) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—

"(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account.

*Ante*, p. 939.

"(B) ACCOUNT TREATED AS PLAN.—For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

"(C) REGULATED INVESTMENT COMPANY.—For purposes of this paragraph, the term 'regulated investment company' means a domestic corporation which is a regulated investment company within the meaning of section 851(a), and which issues only redeemable stock."

26 USC 851.

26 USC 401 and note.

(f) INSURED CREDIT UNIONS.—Effective as of January 1, 1974, the last sentence of section 401(d)(1) is amended by striking out "section 581," and inserting in lieu thereof "section 581, an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act),".

12 USC 1752.

(g) PUBLIC INSPECTION OF CERTAIN INFORMATION WITH RESPECT TO PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.—

26 USC 6104.

(1) AMENDMENT OF SECTION 6104(a).—Paragraph (1) of section 6104(a) (relating to public inspection of applications for tax exemption) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D) and by inserting after subparagraph (A) the following new subparagraphs:

"(B) PENSION, ETC., PLANS.—The following shall be open to public inspection at such times and in such places as the Secretary or his delegate may prescribe:

"(i) any application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan

under section 401(a), 403(a), or 405(a), an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408 (b),

26 USC 401, 403, 405.
26 USC 408.

"(ii) any application filed with respect to the exemption from tax under section 501(a) of an organization forming part of a plan or account referred to in clause (i),

26 USC 501.

"(iii) any papers submitted in support of an application referred to in clause (i) or (ii), and

"(iv) any letter or other document issued by the Internal Revenue Service and dealing with the qualification referred to in clause (i) or the exemption from tax referred to in clause (ii).

Except in the case of a plan participant, this subparagraph shall not apply to any plan referred to in clause (i) having not more than 25 participants.

"(C) CERTAIN NAMES AND COMPENSATION NOT TO BE OPENED TO PUBLIC INSPECTION.—In the case of any application, document, or other papers, referred to in subparagraph (B), information from which the compensation (including deferred compensation) of any individual may be ascertained shall not be open to public inspection under subparagraph (B)."

(B) The heading of subparagraph (A) of section 6104(a)(1) is amended to read as follows:

26 USC 6104.

"(A) ORGANIZATIONS DESCRIBED IN SECTION 501.—".

(C) The heading of subparagraph (D) of section 6104(a)(1) as redesignated by subparagraph (A) of this paragraph is amended to read as follows:

"(D) WITHHOLDING OF CERTAIN OTHER INFORMATION.—".

(D) Subparagraph (D) of section 6104(a)(1) (as so redesignated) is amended by striking out "subparagraph (A)" each place it appears and inserting in lieu thereof "subparagraph (A) or (B)".

(2) AMENDMENT OF SECTION 6104(a)(2).—Subparagraph (A) of section 6104(a)(2) is amended by adding at the end thereof "any application referred to in subparagraph (B) of subsection (a)(1) of this section, and".

(3) AMENDMENT OF SECTION 6104(b).—Section 6104(b) (relating to inspection of annual information returns) is amended by striking out "and 6056" and inserting in lieu thereof "6956, and 6058".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to applications filed (or documents issued) after the date of enactment of this Act.

26 USC 6104 note.

(h) PUBLICITY OF RETURNS.—Effective on the date of the enactment of this Act, section 6103 (relating to publicity of returns and disclosure of information as to persons filing income tax returns) is amended by adding at the end thereof a new subsection (g) to read as follows:

26 USC 6103 and note.

"(g) DISCLOSURE OF INFORMATION WITH RESPECT TO DEFERRED COMPENSATION PLANS.—The Secretary or his delegate is authorized to furnish—

"(1) returns with respect to any tax imposed by this title or information with respect to such returns to the proper officers and employees of the Department of Labor and the Pension Benefit

Guaranty Corporation for purposes of administration of Titles I and IV of the Employee Retirement Income Security Act of 1974, and

*Ante*, p. 832.
*Post*, p. 1003.

"(2) registration statements (as described in section 6057) and information with respect to such statements to the proper officers and employees of the Department of Health, Education, and Welfare for purposes of administration of section 1131 of the Social Security Act."

26 USC 6057.

*Post*, p. 947.

(i) CERTAIN PUERTO RICAN PENSION, ETC., PLANS TO BE EXEMPT FROM TAX UNDER SECTION 501(a).—

(1) GENERAL RULE.—Effective for taxable years beginning after December 31, 1973, for purposes of section 501(a) of the Internal Revenue Code of 1954 (relating to exemption from tax), any trust forming part of a pension, profit-sharing, or stock bonus plan all of the participants of which are residents of the Commonwealth of Puerto Rico shall be treated as an organization described in section 401(a) of such Code if such trust—

26 USC 501 and note.

26 USC 501.

26 USC 401.

(A) forms part of a pension, profit-sharing, or stock bonus plan, and

(B) is exempt from income tax under the laws of the Commonwealth of Puerto Rico.

(2) ELECTION TO HAVE PROVISIONS OF, AND AMENDMENTS MADE BY, TITLE II OF THIS ACT APPLY.—

(A) If the administrator of a pension, profit-sharing, or stock bonus plan which is created or organized in Puerto Rico elects, at such time and in such manner as the Secretary of the Treasury may require, to have the provisions of this paragraph apply, for plan years beginning after the date of election any trust forming a part of such plan shall be treated as a trust created or organized in the United States for purposes of section 401(a) of the Internal Revenue Code of 1954.

(B) An election under subparagraph (A), once made, is irrevocable.

(C) This paragraph applies to plan years beginning after the date of enactment of this Act.

(D) The source of any distributions made under a plan which makes an election under this paragraph to participants and beneficiaries residing outside of the United States shall be determined, for purposes of subchapter N of chapter 1 of the Internal Revenue Code of 1954, by the Secretary of the Treasury in accordance with regulations prescribed by him. For purposes of this subparagraph the United States means the United States as defined in section 7701(a)(9) of the Internal Revenue Code of 1954.

26 USC 7701.

26 USC 404 note.

(j) YEAR OF DEDUCTION FOR CERTAIN EMPLOYER CONTRIBUTIONS FOR SEVERANCE PAYMENTS REQUIRED BY FOREIGN LAW.—Effective for taxable years beginning after December 31, 1973, if—

(1) an employer is engaged in a trade or business in a foreign country,

(2) such employer is required by the laws of that country to make payments, based on periods of service, to its employees or their beneficiaries after the employees' retirement, death, or other separation from the service, and

(3) such employer establishes a trust (whether organized

within or outside the United States) for the purpose of funding the payments required by such law,

then, in determining for purposes of paragraph (5) of section 404(a) of the Internal Revenue Code of 1954 the taxable year in which any contribution to or under the plan is includible in the gross income of the nonresident alien employees of such employer, such paragraph (5) shall be treated as not requiring that separate accounts be maintained for such nonresident alien employees. 26 USC 404.

(k) RECEIPTS FOR EMPLOYEES.—Section 6051 (relating to receipts for employees) is amended by inserting after "exemption," in subsection (a) the following: "or every employer engaged in a trade or business who pays remuneration for services performed by an employee, including the cash value of such remuneration paid in any medium other than cash,". 26 USC 6051.

**SEC. 1023. RETROACTIVE CHANGES IN PLAN.**

Section 401(b) (relating to certain retroactive changes in plan) is amended to read as follows: 26 USC 401.

"(b) CERTAIN RETROACTIVE CHANGES IN PLAN.—A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary or his delegate may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period."

**SEC. 1024. EFFECTIVE DATES.** 26 USC 401 note.

Except as otherwise provided in section 1021, the amendments made by section 1021 shall apply to plan years to which part I applies. Except as otherwise provided in section 1022, the amendments made by section 1022 shall apply to plan years to which part I applies. Section 1023 shall take effect on the date of the enactment of this Act.

## PART 3—REGISTRATION AND INFORMATION

**SEC. 1031. REGISTRATION AND INFORMATION.**

(a) ANNUAL REGISTRATION AND INFORMATION RETURNS.—Part III of subchapter A of chapter 61 (relating to information returns) is amended by adding at the end thereof the following new subpart:

## "SUBPART E—REGISTRATION OF AND INFORMATION CONCERNING PENSION, ETC., PLANS

"Sec. 6057. Annual registration, etc.
"Sec. 6058. Information required in connection with certain plans of deferred compensation.
"Sec. 6059. Periodic report by actuary.

**"SEC. 6057. ANNUAL REGISTRATION, ETC.** 26 USC 6057.

"(a) ANNUAL REGISTRATION.—

"(1) GENERAL RULE.—Within such period after the end of a plan year as the Secretary or his delegate may by regulations prescribe, the plan administrator (within the meaning of section 414(g)) of each plan to which the vesting standards of section 203 of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 applies for such plan year shall file a registration statement with the Secretary or his delegate. *Ante*, p. 925. *Ante*, p. 854.

"(2) CONTENTS.—The registration statement required by paragraph (1) shall set forth—

"(A) the name of the plan,

"(B) the name and address of the plan administrator,

"(C) the name and taxpayer identifying number of each participant in the plan—

"(i) who, during such plan year, separated from the service covered by the plan,

"(ii) who is entitled to a deferred vested benefit under the plan as of the end of such plan year, and

"(iii) with respect to whom retirement benefits were not paid under the plan during such plan year,

"(D) the nature, amount, and form of the deferred vested benefit to which such participant is entitled, and

"(E) such other information as the Secretary or his delegate may require.

At the time he files the registration statement under this subsection, the plan administrator shall furnish evidence satisfactory to the Secretary or his delegate that he has complied with the requirement contained in subsection (e).

"(b) NOTIFICATION OF CHANGE IN STATUS.—Any plan administrator required to register under subsection (a) shall also notify the Secretary or his delegate, at such time as may be prescribed by regulations, of—

"(1) any change in the name of the plan,

"(2) any change in the name or address of the plan administrator,

"(3) the termination of the plan, or

"(4) the merger or consolidation of the plan with any other plan or its division into two or more plans.

"(c) VOLUNTARY REPORTS.—To the extent provided in regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may receive from—

"(1) any plan to which subsection (a) applies, and

"(2) any other plan (including any governmental plan or church plan (within the meaning of section 414)),

*Ante*, p. 925.

such information (including information relating to plan years beginning before January 1, 1974) as the plan administrator may wish to file with respect to the deferred vested benefit rights of any participant separated from the service covered by the plan during any plan year.

"(d) TRANSMISSION OF INFORMATION TO SECRETARY OF HEALTH, EDUCATION, AND WELFARE.—The Secretary or his delegate shall transmit copies of any statements, notifications, reports, or other information obtained by him under this section to the Secretary of Health, Education, and Welfare.

"(e) INDIVIDUAL STATEMENT TO PARTICIPANT.—Each plan administrator required to file a registration statement under subsection (a) shall, before the expiration of the time prescribed for the filing of such registration statement, also furnish to each participant described in subsection (a)(2)(C) an individual statement setting forth the information with respect to such participant required to be contained in such registration statement.

"(f) REGULATIONS.—

"(1) IN GENERAL.—The Secretary, after consultation with the Secretary of Health, Education, and Welfare, may prescribe such regulations as may be necessary to carry out the provisions of this section.

"(2) PLANS TO WHICH MORE THAN ONE EMPLOYER CONTRIBUTES.—This section shall apply to any plan to which more than one

employer is required to contribute only to the extent provided in regulations prescribed under this subsection.

"(g) CROSS REFERENCES.—

**"For provisions relating to penalties for failure to register or furnish statements required by this section, see section 6652(e) and section 6690.**

**"For coordination between Department of the Treasury and the Department of Labor with regard to administration of this section, see section 3004 of the Employee Retirement Income Security Act of 1974.**

**"SEC. 6058. INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.** 26 USC 6058.

"(a) IN GENERAL.—Every employer who maintains a pension, annuity, stock bonus, profit-sharing, or other funded plan of deferred compensation described in part I of subchapter D of chapter 1, or the plan administrator (within the meaning of section 414(g)) of the plan, shall file an annual return stating such information as the Secretary or his delegate may by regulations prescribe with respect to the qualification, financial condition, and operations of the plan; except that, in the discretion of the Secretary or his delegate, the employer may be relieved from stating in its return any information which is reported in other returns. 26 USC 401. *Ante*, p. 925.

"(b) ACTUARIAL STATEMENT IN CASE OF MERGERS, ETC.—Not less than 30 days before a merger, consolidation, or transfer of assets or liabilities of a plan described in subsection (a) to another plan, the plan administrator (within the meaning of section 414(g)) shall file an actuarial statement of valuation evidencing compliance with the requirements of section 401(a)(12). *Ante*, p. 937.

"(c) EMPLOYER.—For purposes of this section, the term 'employer' includes a person described in section 401(c)(4) and an individual who establishes an individual retirement account or annuity described in section 408. 26 USC 401. 26 USC 408.

"(d) CROSS REFERENCES.—

**"For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).**

**"For coordination between the Department of the Treasury and the Department of Labor with respect to the information required under this section, see section 3004 of title III of the Employee Retirement Income Security Act of 1974.".**

(b) SANCTIONS.—

(1) FAILURE TO FILE REGISTRATION STATEMENTS OR NOTIFICATION OF CHANGE IN STATUS.—

(A) Section 6652 (relating to failure to file certain information returns) is amended by redesignating subsection (e) as subsection (g) and by inserting after subsection (d) the following new subsections: 26 USC 6652.

"(e) ANNUAL REGISTRATION AND OTHER NOTIFICATION BY PENSION PLAN.—

"(1) REGISTRATION.—In the case of any failure to file a registration statement required under section 6057(a) (relating to annual registration of certain plans) which includes all participants required to be included in such statement, on the date prescribed therefor (determined without regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, an amount equal to $1 for each participant with respect to whom there is a failure to file, multiplied by the number of days during which such failure continues, but the total amount imposed under this paragraph on any person for any failure to file with respect to any plan year shall not exceed $5,000. *Ante*, p. 943.

Ante, p. 943.

"(2) NOTIFICATION OF CHANGE OF STATUS.—In the case of failure to file a notification required under section 6057(b) (relating to notification of change of status) on the date prescribed therefor (determined without regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $1 for each day during which such failure continues, but the total amounts imposed under this paragraph on any person for failure to file any notification shall not exceed $1,000.

"(f) INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION.—In the case of failure to file a return or statement required under section 6058 (relating to information required in connection with certain plans of deferred compensation) or 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing so to file, $10 for each day during which such failure continues, but the total amount imposed under this subsection on any person for failure to file any return shall not exceed $5,000."

Ante, p. 945.
Post, p. 970.
26 USC 6047.

26 USC 6652.

(B)(i) The section heading for section 6652 is amended by adding ", Registration Statements, etc." before the period at the end thereof.

(ii) The item relating to section 6652 in the table of contents for subchapter A of chapter 68 is amended by adding ", registration statements, etc." before the period of the end thereof.

(2) FAILURE TO FURNISH STATEMENT TO PARTICIPANT.—

(A) Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

26 USC 6690.

**"SEC. 6690. FRAUDULENT STATEMENT OR FAILURE TO FURNISH STATEMENT TO PLAN PARTICIPANT.**

"Any person required under section 6057(e) to furnish a statement to a participant who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6057(e), or regulations prescribed thereunder, shall for each such act, or for each such failure, be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111."

26 USC 3111.

(B) The table of sections for such subchapter B is amended by adding at the end thereof the following new item:

"Sec. 6690. Fraudulent statement or failure to furnish statement to plan participant."

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for such part III is amended by adding at the end thereof the following:

"Subpart E. Registration of and information concerning pension, etc., plans."

26 USC 6033.

(2) Section 6033(c) (relating to cross references) is amended by adding at the end thereof the following:

"For provisions relating to information required in connection with certain plans of deferred compensation, see section 6058."

(3) Subsection (d) of section 6047 (relating to information with respect to certain trusts and annuity and bond purchase plans) is amended to read as follows: 26 USC 6047.

"(d) CROSS REFERENCES.—

**"(1) For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).**

**"(2) For criminal penalty for furnishing fraudulent information, see section 7207."**

**SEC. 1032. DUTIES OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE.**

Title XI of the Social Security Act (relating to general provisions) is amended by adding at the end of part A thereof the following new section:

"NOTIFICATION OF SOCIAL SECURITY CLAIMANT WITH RESPECT TO DEFERRED VESTED BENEFITS

"SEC. 1131. (a) Whenever— 42 USC 1320b-1.

"(1) the Secretary makes a finding of fact and a decision as to—

"(A) the entitlement of any individual to monthly benefits under section 202, 223, or 228, 42 USC 402, 423, 428.

"(B) the entitlement of any individual to a lump-sum death payment payable under section 202(i) on account of the death of any person to whom such individual is related by blood, marriage, or adoption, or

"(C) the entitlement under section 226 of any individual to hospital insurance benefits under part A of title XVIII, or 42 USC 426. 42 USC 1395c.

"(2) the Secretary is requested to do so—

"(A) by any individual with respect to whom the Secretary holds information obtained under section 6057 of the Internal Revenue Code of 1954, or *Ante*, p. 943.

"(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 204(d) of this Act. 42 USC 404.

he shall transmit to the individual referred to in paragraph (1) or the individual making the request under paragraph (2) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Secretary pursuant to such section 6057 with respect to the individual referred to in paragraph (1) or (2)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

"(b)(1) For purposes of section 201(g)(1), expenses incurred in the administration of subsection (a) shall be deemed to be expenses incurred for the administration of title II. 42 USC 401.

"(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Secretary deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a)." Appropriation.

**SEC. 1033. REPORTS BY ACTUARIES.**

(a) REPORTS BY ACTUARIES.—Subpart E of part III of subchapter A of chapter 61 (relating to registration of and information concerning pension, etc., plans) as added by section 1031(a) of this Act, is amended by adding at the end thereof the following new section: *Ante*, p. 943.

**"SEC. 6059. PERIODIC REPORT OF ACTUARY.** 26 USC 6059.

"(a) GENERAL RULE.—The actuarial report described in subsection (b) shall be filed by the plan administrator (as defined in section

Ante, pp. 925, 914.

414(g) of each defined benefit plan to which section 412 applies, for the first plan year for which section 412 applies to the plan and for each third plan year thereafter (or more frequently if the Secretary or his delegate determines that more frequent reports are necessary).

"(b) ACTUARIAL REPORT.—The actuarial report of a plan required by subsection (a) shall be prepared and signed by an enrolled actuary (within the meaning of section 7701(a)(35)) and shall contain—

26 USC 7701.

"(1) a description of the funding method and actuarial assumptions used to determine costs under the plan,

"(2) a certification of the contribution necessary to reduce the accumulated funding deficiency (as defined in section 412(a)) to zero,

"(3) a statement—

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

"(B) the requirements of section 412(c) (relating to reasonable actuarial assumptions) have been complied with,

"(4) such other information as may be necessary to fully and fairly disclose the actuarial position of the plan, and

"(5) such other information regarding the plan as the Secretary or his delegate may by regulations require.

"(c) TIME AND MANNER OF FILING.—The actuarial report and statement required by this section shall be filed at the time and in the manner provided by regulations prescribed by the Secretary or his delegate.

"(d) CROSS REFERENCE.—

**"For coordination between the Department of the Treasury and the Department of Labor with respect to the report required to be filed under this section, see section 3004 of title III of the Employee Retirement Income Security Act of 1974.".**

Ante, p. 946.

(b) ASSESSABLE PENALTIES.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

26 USC 6692.

**"SEC. 6692. FAILURE TO FILE ACTUARIAL REPORT.**

Ante, p. 925.
Ante, p. 914.
Ante, p. 947.

"The plan administrator (as defined in section 414(g)) of each defined benefit plan to which section 412 applies who fails to file the report required by section 6059 at the time and in the manner required by section 6059, shall pay a penalty of $1,000 for each such failure unless it is shown that such failure is due to reasonable cause."

26 USC 6059 note.

(c) CONSOLIDATION OF ACTUARIAL REPORTS.—The Secretary of the Treasury and the Secretary of Labor shall take such steps as may be necessary to assure coordination to the maximum extent feasible between the actuarial reports required by section 6059 of the Internal Revenue Code of 1954 and by section 103(d) of title I of the Employee Retirement Income Security Act of 1974.

Ante, p. 841.

(d) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

**"Sec. 6692. Failure to file actuarial report.".**

26 USC 6057 note.

**SEC. 1034. EFFECTIVE DATES.**

This part shall take effect upon the date of the enactment of this Act; except that—

(1) the requirements of section 6059 of the Internal Revenue Code of 1954 shall apply only with respect to plan years to which part I of this title applies,

Ante, p. 943.

(2) the requirements of section 6057 of such Code shall apply only with respect to plan years beginning after December 31, 1975,

(3) the requirements of section 6058(a) of such Code shall apply only with respect to plan years beginning after the date of the enactment of this Act, and

Ante, p. 945.

(4) the amendments made by section 1032 shall take effect on January 1, 1978.

## PART 4—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

**SEC. 1041. TAX COURT PROCEDURE.**

(a) IN GENERAL.—Subchapter C of chapter 76 (relating to the Tax Court, is amended by adding at the end thereof the following new part:

## "PART IV—DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

"Sec. 7476. Declaratory judgments.

**"SEC. 7476. DECLARATORY JUDGMENTS.**

26 USC 7476.

"(a) CREATION OF REMEDY.—In a case of actual controversy involving—

"(1) a determination by the Secretary or his delegate with respect to the initial qualification or continuing qualification of a retirement plan under subchapter D of chapter 1, or

"(2) a failure by the Secretary or his delegate to make a determination with respect to—

"(A) such initial qualification, or

"(B) such continuing qualification if the controversy arises from a plan amendment or plan termination,

upon the filing of an appropriate pleading, the United States Tax Court may make a declaration with respect to such initial qualification or continuing qualification. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

"(b) LIMITATIONS.—

"(1) PETITIONER.—A pleading may be filed under this section only by a petitioner who is the employer, the plan administrator, an employee who has qualified under regulations prescribed by the Secretary or his delegate as an interested party for purposes of pursuing administrative remedies within the Internal Revenue Service, or the Pension Benefit Guaranty Corporation.

"(2) NOTICE.—For purposes of this section, the filing of a pleading by any petitioner may be held by the Tax Court to be premature, unless the petitioner establishes to the satisfaction of the court that he has complied with the requirements prescribed by regulations of the Secretary or his delegate with respect to notice to other interested parties of the filing of the request for a determination referred to in subsection (a).

"(3) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—The Tax Court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted administrative remedies available to him within the Internal Revenue Service. A petitioner shall not be deemed to have exhausted his administrative remedies with respect to a failure by the Secretary or his delegate to make a determination with respect to initial qualification or continuing qualification of a retirement plan before the expiration of 270 days after the request for such determination was made.

"(4) PLAN PUT INTO EFFECT.—No proceeding may be maintained under this section unless the plan (and, in the case of a controversy involving the continuing qualification of the plan because of an amendment to the plan, the amendment) with respect to which a decision of the Tax Court is sought has been put into effect before the filing of the pleading. A plan or amendment shall not be treated as not being in effect merely because under the plan the funds contributed to the plan may be refunded if the plan (or the plan as so amended) is found to be not qualified.

"(5) TIME FOR BRINGING ACTION.—If the Secretary or his delegate sends by certified or registered mail notice of his determination with respect to the qualification of the plan to the persons referred to in paragraph (1) (or, in the case of employees referred to in paragraph (1), to any individual designated under regulations prescribed by the Secretary or his delegate as a representative of such employee), no proceeding may be initiated under this section by any person unless the pleading is filed before the ninety-first day after the day after such notice is mailed to such person (or to his designated representative, in the case of an employee).

"(c) COMMISSIONERS.—The chief judge of the Tax Court may assign proceedings under this section to be heard by the commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to such proceeding, subject to such conditions and review as the court may by rule provide.

"(d) RETIREMENT PLAN.—For purposes of this section, the term 'retirement plan' means—

26 USC 401. "(1) a pension, profit-sharing, or stock bonus plan described in section 401(a) or a trust which is part of such a plan,

26 USC 403. "(2) an annuity plan described in section 403(a), or

26 USC 405. "(3) a bond purchase plan described in section 405(a).

"(e) CROSS REFERENCE.—

**"For provisions concerning intervention by Pension Benefit Guaranty Corporation and Secretary of Labor in actions brought under this section and right of Pension Benefit Guaranty Corporation to bring action, see section 3001(c) of subtitle A of title III of the Employee Retirement Income Security Act of 1974."**

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

26 USC 7451. (1) FEE FOR FILING PETITION.—Section 7451 (relating to fee for filing petition) is amended by striking out "deficiency" and inserting in lieu thereof "deficiency or for a declaratory judgment under part IV of this subchapter".

26 USC 7459. (2) DATE OF DECISION.—Section 7459(c) (relating to date of decision) is amended by inserting before the period at the end of the first sentence the following: "or, in the case of a declaratory judgment proceeding under part IV of this subchapter, the date of the court's order entering the decision".

(3) VENUE FOR APPEAL OF DECISION.—

26 USC 7482. (A) Section 7482(b)(1) (relating to venue) is amended by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", or" and by inserting after subparagraph (B) the following new subparagraph:

*Ante*, p. 949. "(C) in the case of a person seeking a declaratory decision under section 7476, the principal place of business, or principal office or agency of the employer."

(B) Section 7482(b)(1) is further amended—

(i) by striking out "neither subparagraph (A) nor (B) applies" and inserting in lieu thereof "subparagraph (A), (B), and (C) do not apply"; and

(ii) by inserting before the period at the end of the last sentence thereof the following: "or as of the time the petition seeking a declaratory decision under section 7476 was filed with the Tax Court". *Ante*, p. 949.

(c) CLERICAL AMENDMENT.—The table of parts for subchapter C of chapter 76 (relating to the Tax Court) is amended by adding at the end thereof the following new item:

"PART IV. Declaratory judgments relating to qualification of certain retirement plans.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to pleadings filed more than 1 year after the date of the enactment of this Act. 26 USC 7476 note.

## PART 5—INTERNAL REVENUE SERVICE

**SEC. 1051. ESTABLISHMENT OF OFFICE.**

(a) IN GENERAL.—Section 7802 (relating to Commissioner of Internal Revenue) is amended to read as follows: 26 USC 7802.

**"SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONER (EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS).**

"(a) COMMISSIONER OF INTERNAL REVENUE.—There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary.

"(b) ASSISTANT COMMISSIONER FOR EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS.—There is established within the Internal Revenue Service an office to be known as the 'Office of Employee Plans and Exempt Organizations' to be under the supervision and direction of an Assistant Commissioner of Internal Revenue. As head of the Office, the Assistant Commissioner shall be responsible for carrying out such functions as the Secretary or his delegate may prescribe with respect to organizations exempt from tax under section 501(a) and with respect to plans to which part I of subchapter D of chapter 1 applies (and with respect to organizations designed to be exempt under such section and plans designed to be plans to which such part applies)." Office of Employee Plans and Exempt Organizations, Establishment. 26 USC 501.

(b) SALARIES.—

(1) ASSISTANT COMMISSIONER.—Section 5109 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The position held by the employee appointed under section 7802(b) of the Internal Revenue Code of 1954 is classified at GS-18, and is in addition to the number of positions authorized by section 5108(a) of this title." *Supra*. 5 USC 5108.

(2) CLASSIFICATION OF POSITIONS AT GS-16 AND 17.—Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) In addition to the number of positions authorized by subsection (a), the Commissioner of Internal Revenue is authorized, without regard to any other provision of this section, to place a total of 20 positions in the Internal Revenue Service in GS-16 and 17.".

(c) CLERICAL AMENDMENTS.—The item relating to section 7802 in the table of sections for subchapter A of chapter 80 is amended to read as follows:

"Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 90th day after the date of the enactment of this Act. 26 USC 7802 note.

31 USC 1037.

**SEC. 1052. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated to the Department of the Treasury for the purpose of carrying out all functions of the Office of Employee Plans and Exempt Organizations for each fiscal year beginning after June 30, 1974, an amount equal to the sum of—

26 USC 4940.

(1) so much of the collections from the taxes imposed under section 4940 of such Code (relating to excise tax based on investment income) as would have been collected if the rate of tax under such section was 2 percent during the second preceding fiscal year, and

(2) the greater of—

(A) an amount equal to the amount described in paragraph (1), or

(B) $30,000,000.

# Subtitle B—Other Amendments to the Internal Revenue Code Relating to Retirement Plans

**SEC. 2001. CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES.**

(a) INCREASE IN MAXIMUM AMOUNT DEDUCTIBLE FOR SELF-EMPLOYED INDIVIDUALS.—

26 USC 404.

(1) Paragraph (1) of section 404(e) (relating to special limitations for self-employed individuals) is amended—

(A) by striking out "$2,500, or 10 percent" and inserting in lieu thereof "$7,500, or 15 percent", and

(B) by striking out "subject to the provisions of paragraph (2)" and inserting in lieu thereof "subject to paragraphs (2) and (4)".

(2) Paragraph (2)(A) of section 404(e) is amended by striking out "shall not exceed $2,500, or 10 percent" and inserting in lieu thereof "shall (subject to paragraph (4)) not exceed $7,500, or 15 percent".

(3) Section 404(e) is amended by adding at the end thereof the following new paragraph:

"(4) LIMITATIONS CANNOT BE LOWER THAN $750 OR 100 PERCENT OF EARNED INCOME.—The limitations under paragraphs (1) and (2)(A) for any employee shall not be less than the lesser of—

"(A) $750, or

"(B) 100 percent of the earned income derived by such employee from the trades or businesses taken into account for purposes of paragraph (1) or (2)(A) as the case may be.".

(b) INCREASE IN MAXIMUM AMOUNT DEDUCTIBLE FOR SHAREHOLDER-EMPLOYEES.—Paragraph (1) of section 1379(b) (relating to taxability of shareholder-employees) is amended—

26 USC 1379.

(1) by striking out "10 percent" in subparagraph (A) and inserting in lieu thereof "15 percent", and

(2) by striking out "$2,500" in subparagraph (B) and inserting in lieu thereof "$7,500".

(c) ONLY FIRST $100,000 OF ANNUAL COMPENSATION TO BE TAKEN INTO ACCOUNT.—Subsection (a) of section 401 (relating to requirements for qualification) is amended by inserting after paragraph (16) the following new paragraph:

26 USC 401.

"(17) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), only if the annual compen-

sation of each employee taken into account under the plan does not exceed the first $100,000 of such compensation."

(d) DEFINED BENEFIT PLANS FOR SELF-EMPLOYED INDIVIDUALS.—

(1) Subsection (a) of section 401 is amended by inserting after paragraph (17) the following new paragraph:

Ante, p. 952.

"(18) In the case of a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), only if such plan satisfies the requirements of subsection (j)."

26 USC 1379.

(2) Section 401 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

26 USC 401.

"(j) DEFINED BENEFIT PLANS PROVIDING BENEFITS FOR SELF-EMPLOYED INDIVIDUALS AND SHAREHOLDER-EMPLOYEES.—

"(1) IN GENERAL.—A defined benefit plan satisfies the requirements of this subsection only if the basic benefit accruing under the plan for each plan year of participation by an employee within the meaning of subsection (c)(1) (or a shareholder-employee) is permissible under regulations prescribed by the Secretary or his delegate under this subsection to insure that there will be reasonable comparability (assuming level funding) between the maximum retirement benefits which may be provided with favorable tax treatment under this title for such employees under—

"(A) defined contribution plans,

"(B) defined benefit plans, and

"(C) a combination of defined contribution plans and defined benefit plans.

"(2) GUIDELINES FOR REGULATIONS.—The regulations prescribed under this subsection shall provide that a plan does not satisfy the requirements of this subsection if, under the plan, the basic benefit of any employee within the meaning of subsection (c)(1) (or a shareholder-employee) may exceed the sum of the products for each plan year of participation of—

"(A) his annual compensation (not in excess of $50,000) for such year, and

"(B) the applicable percentage determined under paragraph (3).

"(3) APPLICABLE PERCENTAGE.—

"(A) TABLE.—For purposes of paragraph (2), the applicable percentage for any individual for any plan year shall be based on the percentage shown on the following table opposite his age when his current period of participation in the plan began.

| "Age when participation began: | Applicable percentage |
|---|---|
| 30 or less | 6.5 |
| 35 | 5.4 |
| 40 | 4.4 |
| 45 | 3.6 |
| 50 | 3.0 |
| 55 | 2.5 |
| 60 or over | 2.0 |

"(B) ADDITIONAL REQUIREMENTS.—The regulations prescribed under this subsection shall include provisions—

"(i) for applicable percentages for ages between any two ages shown on the table,

"(ii) for adjusting the applicable percentages in the case of plans providing benefits other than a basic benefit,

"(iii) that any increase in the rate of accrual, and any increase in the compensation base which may be taken into account, shall, with respect only to such increase, begin a new period of participation in the plan, and

"(iv) when appropriate, in the case of periods beginning after December 31, 1977, for adjustments in the applicable percentages based on changes in prevailing interest and mortality rates occurring after 1973.

"(4) CERTAIN CONTRIBUTIONS AND BENEFITS MAY NOT BE TAKEN INTO ACCOUNT.—A defined benefit plan which provides contributions or benefits for owner-employees does not satisfy the requirements of this subsection unless such plan meets the requirements of subsection (a)(4) without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law.

26 USC 1401.
26 USC 3101.
42 USC 401.

"(5) DEFINITIONS.—For purposes of this subsection—

"(A) BASIC BENEFIT.—The term 'basic benefit' means a benefit in the form of a straight life annuity commencing at the later of—

"(i) age 65, or

"(ii) the day 5 years after the day the participant's current period of participation began

under a plan which provides no ancillary benefits and to which employees do not contribute.

"(B) SHAREHOLDER-EMPLOYEE.—The term 'shareholder-employee' has the same meaning as when used in section 1379(d).

26 USC 1379.

"(C) COMPENSATION.—The term 'compensation' means—

"(i) in the case of an employee within the meaning of subsection (c)(1), the earned income of such individual, or

"(ii) in the case of a shareholder-employee, the compensation received or accrued by the individual from the electing small business corporation.

"(6) SPECIAL RULES.—Section 404(e) (relating to special limitations for self-employed individuals) and section 1379(b) (relating to taxability of shareholder-employee beneficiaries) do not apply to a trust to which this subsection applies.".

*Ante*, p. 952.

(e) REPEAL OF EXISTING TAX TREATMENT OF EXCESS CONTRIBUTIONS.—

(1) The last sentence of section 401(d)(5) is amended to read as follows: "Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)."

26 USC 401.

(2) Paragraph (8) of section 401(d) is repealed.

Repeal.

(3) Subsection (e) of section 401 is amended to read as follows:

"(e) CONTRIBUTIONS FOR PREMIUMS ON ANNUITY, ETC., CONTRACTS.—A contribution by the employer on behalf of an owner-employee is described in this subsection if—

"(1) under the plan such contribution is required to be applied (directly or through a trustee) to pay premiums or other consideration for one or more annuity, endowment, or life insurance contracts on the life of such owner-employee issued under the plan,

"(2) the amount of such contribution exceeds the amount deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan, and

"(3) the amount of such contribution does not exceed the average of the amounts which were deductible under section 404 with

respect to contributions made by the employer on behalf of such owner-employee under the plan (or which would have been deductible if such section had been in effect) for the first three taxable years (A) preceding the year in which the last such annuity, endowment, or life insurance contract was issued under the plan, and (B) in which such owner-employee derived earned income from the trade or business with respect to which the plan is established, or for so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom.

In the case of any individual on whose behalf contributions described in paragraph (1) are made under more than one plan as an owner-employee during any taxable year, the preceding sentence does not apply if the amount of such contributions under all such plans for all such years exceeds $7,500. Any contribution which is described in this subsection shall, for purposes of section 4972(b), be taken into account as a contribution made by such owner-employee as an employee to the extent that the amount of such contribution is not deductible under section 404 for the taxable year, but only for the purpose of applying section 4972(b) to other contributions made by such owner-employee as an employee."

*Infra.*

26 USC 404.

(4) Clause (ii) of section 401(a)(10)(A) is amended by striking out "subsection (e)(3)(A)" and inserting in lieu thereof "subsection (e)".

26 USC 401.

(5) Subparagraph (A) of section 72(m)(5)(A) is amended—

26 USC 72.

(A) by inserting "and" at the end of clause (i),

(B) by striking out the comma at the end of clause (ii) and the word "and" following that comma, and inserting in lieu thereof a period, and

(C) by striking out clause (iii).

(f) TAX ON EXCESS CONTRIBUTIONS.—

(1) Chapter 43 (relating to qualified pension, etc., plans) is amended by inserting after section 4971 the following new section:

**"SEC. 4972. TAX ON EXCESS CONTRIBUTIONS FOR SELF-EMPLOYED INDIVIDUALS.**

26 USC 4972.

"(a) TAX IMPOSED.—In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), there is imposed, for each taxable year of the employer who maintains such plan, a tax in an amount equal to 6 percent of the amount of the excess contributions under the plan (determined as of the close of the taxable year). The tax imposed by this subsection shall be paid by the employer who maintains the plan. This section applies only to plans which include a trust described in section 401(a), which are described in section 403(a), or which are described in section 405(a).

26 USC 401, 403, 405.

"(b) EXCESS CONTRIBUTIONS.—

"(1) IN GENERAL.—For purposes of this section, the term 'excess contributions' means the sum of the amounts (if any) determined under paragraphs (2), (3), and (4), reduced by the sum of the correcting distributions (as defined in paragraph (5)) made in all prior taxable years beginning after December 31, 1975. For purposes of this subsection the amount of any contribution which is allocable (determined under regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.

"Excess contributions."

"(2) CONTRIBUTIONS BY OWNER-EMPLOYEES.—The amount determined under this paragraph, in the case of a plan which provides contributions or benefits for employees some or all of whom are

26 USC 401.

owner-employees (within the meaning of section 401(c)(3)), is the sum of—

"(A) the excess (if any) of—

"(i) the amount contributed under the plan by each owner-employee (as an employee) for the taxable year, over

"(ii) the amount permitted to be contributed by each owner-employee (as an employee) for such year, and

"(B) the amount determined under this paragraph for the preceding taxable year of the employer,

reduced by the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

"(3) DEFINED BENEFIT PLANS.—The amount determined under this paragraph, in the case of a defined benefit plan, is the amount contributed under the plan by the employer during the taxable year or any prior taxable year beginning after December 31, 1975, if—

"(A) as of the close of the taxable year, the full funding limitation of the plan (determined under section 412(c)(7)) is zero, and

"(B) such amount has not been deductible for the taxable year or any prior taxable year.

"(4) DEFINED CONTRIBUTION PLANS.—The amount determined under this paragraph, in the case of a plan other than a defined benefit plan, is the portion of the amounts contributed under the plan by the employer during the taxable year and each prior taxable year beginning after December 31, 1975, which has not been deductible for the taxable year or any prior taxable year.

"(5) CORRECTING DISTRIBUTION.—For purposes of this subsection the term 'correcting distribution' means—

"(A) in the case of a contribution made by an owner-employee as an employee, regardless of the type of plan, the amount determined under paragraph (2) distributed to the owner-employee who contributed such amount,

"(B) in the case of a defined benefit plan, the amount determined under paragraph (3) which is distributed from the plan to the employer, and

"(C) in the case of a defined contribution plan, the amount determined under paragraph (4) which is distributed from the plan to the employer or to the employee to the account of whom the amount described was contributed.

"(c) AMOUNT PERMITTED TO BE CONTRIBUTED BY OWNER-EMPLOYEE.—For purposes of subsection (b)(2), the amount permitted to be contributed under a plan by an owner-employee (as an employee) for any taxable year is the smallest of the following:

"(1) $2,500,

"(2) 10 percent of the earned income (as defined in section 401(c)(2)) for such taxable year derived by such owner-employee from the trade or business with respect to which the plan is established, or

"(3) the amount of the contribution which would be contributed by the owner-employee (as an employee) if such contribution were made at the rate of contributions permitted to be made by employees other than owner-employees.

In any case in which there are no employees other than owner-employees, the amount determined under the preceding sentence shall be zero.

"(d) CROSS REFERENCE.—

**"For disallowance of deduction for taxes paid under this section, see section 275.".**

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 is amended by inserting after the item relating to section 4971 the following new item:

**"Sec. 4972. Tax on excess contributions for self-employed individuals.".**

(g) PREMATURE DISTRIBUTIONS TO OWNER-EMPLOYEES.—

(1) IN GENERAL.—Subparagraph (B) of section 72(m)(5) (relating to penalties applicable to certain amounts received by owner-employees) is amended to read as follows: 26 USC 72.

"(B) If a person receives an amount to which this paragraph applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year."

(2) CONFORMING AMENDMENTS.—

(A) Subparagraphs (C), (D), and (E) of section 72(m)(5) are repealed. Repeals.

(B) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3), as each is amended by section 2005(c)(4) of this Act, are each amended by inserting after "tax preferences)," the following: "section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees),". 26 USC 46. 26 USC 50A. *Post*, p. 987. *Supra*.

(C) The third sentence of section 901(a), as amended by section 2005(c)(5) of this Act, is amended by striking out "tax preferences)," and inserting in lieu thereof "tax preferences), against the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees),". 26 USC 901.

(D) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c), as each is amended by section 2005(c)(7) of this Act, are each amended by striking out "402(e)" and inserting in lieu thereof "72(m)(5)(B), 402(e)". 26 USC 56.

(E) Section 404(a)(2) *is amended by striking out* "(16)" and inserting in lieu thereof "(16), (17), (18)". 26 USC 404.

(F) Clause (ii) of section 404(a)(9)(B) is amended to read as follows:

"(ii) without regard to the second sentence of paragraph (3); and".

(h) WITHDRAWAL OF EMPLOYEE CONTRIBUTIONS OF OWNER-EMPLOYEES.—

(1) Section 401(d)(4)(B) (relating to additional requirements for qualification of trusts and plans benefiting owner-employees) is amended by inserting "in excess of contributions made by an owner-employee as an employee" after "benefits". 26 USC 401.

(2) Paragraph (1) of section 72(m) (relating to certain amounts received before annuity starting date) is repealed. Repeal.

(3) Section 72(m)(5)(A)(i) is amended by striking out "(whether or not paid by him)" and inserting in lieu thereof the following: "(other than contributions made by him as an owner-employee)".

(i) EFFECTIVE DATES.— 26 USC 404 note.

(1) The amendments made by subsections (a) and (b) apply to taxable years beginning after December 31, 1973.

26 USC 401 note.

(2) The amendments made by subsection (c) apply to—

(A) taxable years beginning after December 31, 1975, and

(B) any other taxable years beginning after December 31, 1973, for which contributions were made under the plan in excess of the amounts permitted to be made under sections 404(e) and 1379(b) as in effect on the day before the date of the enactment of this Act.

*Ante*, p. 952.
26 USC 1379.

26 USC 401 note.

(3) The amendments made by subsection (d) apply to taxable years beginning after December 31, 1975.

26 USC 401 note.

(4) The amendments made by subsections (e) and (f) apply to contributions made in taxable years beginning after December 31, 1975.

26 USC 72 note.

(5) The amendments made by subsection (g) apply to distributions made in taxable years beginning after December 31, 1975.

26 USC 72 note.

(6) The amendments made by subsection (h) apply to taxable years ending after the date of enactment of this Act.

**SEC. 2002. DEDUCTION FOR RETIREMENT SAVINGS.**

(a) ALLOWANCE OF DEDUCTION.—

26 USC 211.

(1) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 219 as 220 and by inserting after section 218 the following new section:

26 USC 220.

26 USC 219.

**"SEC. 219. RETIREMENT SAVINGS.**

"(a) DEDUCTION ALLOWED.—In the case of an individual, there is allowed as a deduction amounts paid in cash during the taxable year by or on behalf of such individual for his benefit—

26 USC 408.

"(1) to an individual retirement account described in section 408(a),

"(2) for an individual retirement annuity described in section 408(b), or

26 USC 409.

"(3) for a retirement bond described in section 409 (but only if the bond is not redeemed within 12 months of the date of its issuance).

For purposes of this title, any amount paid by an employer to such a retirement account or for such a retirement annuity or retirement bond constitutes payment of compensation to the employee (other than a self-employed individual who is an employee within the meaning of section 401(c)(1) includible in his gross income, whether or not a deduction for such payment is allowable under this section to the employee after the application of subsection (b).

26 USC 401.

"(b) LIMITATIONS AND RESTRICTIONS.—

"(1) MAXIMUM DEDUCTION.—The amount allowable as a deduction under subsection (a) to an individual for any taxable year may not exceed an amount equal to 15 percent of the compensation includible in his gross income for such taxable year, or $1,500, whichever is less.

"(2) COVERED BY CERTAIN OTHER PLANS.—No deduction is allowed under subsection (a) for an individual for the taxable year if for any part of such year—

"(A) he was an active participant in—

26 USC 501.
26 USC 403.

"(i) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

"(ii) an annuity plan described in section 403(a),

26 USC 405.

"(iii) a qualified bond purchase plan described in section 405(a), or

"(iv) a plan established for its employees by the United States, by a State or political division thereof, or

by an agency or instrumentality of any of the foregoing, or

"(B) amounts were contributed by his employer for an annuity contract described in section 403(b) (whether or not his rights in such contract are nonforfeitable). 26 USC 403.

"(3) CONTRIBUTIONS AFTER AGE 70½.—No deduction is allowed under subsection (a) with respect to any payment described in subsection (a) which is made during the taxable year of an individual who has attained age 70½ before the close of such taxable year.

"(4) RECONTRIBUTED AMOUNTS.—No deduction is allowed under this section with respect to a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C). *Post*, pp. 991, 969, 964.

"(5) AMOUNTS CONTRIBUTED UNDER ENDOWMENT CONTRACT.—In the case of an endowment contract described in section 408(b), no deduction is allowed under subsection (a) for that portion of the amounts paid under the contract for the taxable year properly allocable, under regulations prescribed by the Secretary or his delegate, to the cost of life insurance. *Infra.*

"(c) DEFINITIONS AND SPECIAL RULES.—

"(1) COMPENSATION.—For purposes of this section, the term 'compensation' includes earned income as defined in section 401(c)(2). 26 USC 401.

"(2) MARRIED INDIVIDUALS.—The maximum deduction under subsection (b)(1) shall be computed separately for each individual, and this section shall be applied without regard to any community property laws.".

(2) DEDUCTION ALLOWED IN ARRIVING AT ADJUSTED GROSS INCOME.—Section 62 (defining adjusted gross income) is amended by inserting after paragraph (9) the following new paragraph:

"(10) RETIREMENT SAVINGS.—The deduction allowed by section 219 (relating to deduction of certain retirement savings).". *Ante*, p. 958.

(b) INDIVIDUAL RETIREMENT ACCOUNTS.—Subpart A of part I of subchapter D of chapter 1 (relating to retirement plans) is amended by adding at the end thereof the following new section: 26 USC 401.

**"SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.** 26 USC 408.

"(a) INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this section, the term 'individual retirement account' means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

"(1) Except in the case of a rollover contribution described in subsection (d)(3) in section 402(a)(5), 403(a)(4), or 409(b)(3)(C), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year in excess of $1,500 on behalf of any individual.

"(2) The trustee is a bank (as defined in section 401(d)(1)) or such other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

"(3) No part of the trust funds will be invested in life insurance contracts.

"(4) The interest of an individual in the balance in his account is nonforfeitable.

"(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(6) The entire interest of an individual for whose benefit the trust is maintained will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, commencing before the close of such taxable year, in accordance with regulations prescribed by the Secretary or his delegate, over—

"(A) the life of such individual or the lives of such individual and his spouse, or

"(B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse.

"(7) If an individual for whose benefit the trust is maintained dies before his entire interest has been distributed to him, or if distribution has been commenced as provided in paragraph (6) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence does not apply if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (6).

"(b) INDIVIDUAL RETIREMENT ANNUITY.—For purposes of this section, the term 'individual retirement annuity' means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary or his delegate), issued by an insurance company which meets the following requirements:

"(1) The contract is not transferable by the owner.

"(2) The annual premium under the contract will not exceed $1,500 and any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

"(3) The entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, in accordance with regulations prescribed by the Secretary or his delegate, over—

"(A) the life of such owner or the lives of such owner and his spouse, or

"(B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

"(4) If the owner dies before his entire interest has been distributed to him, or if distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such bene-

ficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence shall have no application if distributions over a term certain commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

"(5) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed $1,500.

"(c) ACCOUNTS ESTABLISHED BY EMPLOYERS AND CERTAIN ASSOCIATIONS OF EMPLOYEES.—A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401(c)(1)) for the exclusive benefit of its members or their beneficiaries, shall be treated as an individual retirement account (described in subsection (a)), but only if the written governing instrument creating the trust meets the following requirements: 26 USC 401.

"(1) The trust satisfies the requirements of paragraphs (1) through (7) of subsection (a).

"(2) There is a separate accounting for the interest of each employee or member.

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

"(d) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity shall be included in gross income by the payee or distributee, as the case may be, for the taxable year in which the payment or distribution is received. The basis of any person in such an account or annuity is zero.

"(2) DISTRIBUTIONS OF ANNUITY CONTRACTS.—Paragraph (1) does not apply to any annuity contract which meets the requirements of paragraphs (1), (3), (4), and (5) of subsection (b) and which is distributed from an individual retirement account. Section 72 applies to any such annuity contract, and for purposes of section 72 the investment in such contract is zero. 26 USC 72.

"(3) ROLLOVER CONTRIBUTION.—An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

"(A) IN GENERAL.—Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

"(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) or retirement bond

for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or

"(ii) the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity and no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an employees' trust described in section 401(a) which is exempt from tax under section 501(a) (other than a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan), or an annuity plan described in section 403(a) (other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan) and any earnings on such sums and the entire amount thereof is paid into another such trust (for the benefit of such individual) or annuity plan not later than the 60th day on which he receives the payment or distribution.

26 USC 401, 501.

26 USC 403.

"(B) LIMITATION.—This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 3-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account, individual retirement annuity, or a retirement bond which was not includible in his gross income because of the application of this paragraph.

"(4) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity to the extent that such contribution exceeds the amount allowable as a deduction under section 219 if—

*Ante*, p. 958.

"(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

"(B) no deduction is allowed under section 219 with respect to such excess contribution, and

"(C) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which received.

"(5) TRANSFER OF ACCOUNT INCIDENT TO DIVORCE.—The transfer of an individual's interest in an individual retirement account, individual retirement annuity, or retirement bond to his former spouse under a divorce decree or under a written instrument incident to such divorce is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account, annuity, or bond for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

"(e) TAX TREATMENT OF ACCOUNTS AND ANNUITIES.—

"(1) EXEMPTION FROM TAX.—Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

26 USC 511.

"(2) LOSS OF EXEMPTION OF ACCOUNT WHERE EMPLOYEE ENGAGES IN PROHIBITED TRANSACTION.—

"(A) IN GENERAL.—If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph—

Post, p. 971.

"(i) the individual for whose benefit any account was established is treated as the creator of such account, and

"(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees is treated as a separate individual retirement account.

"(B) ACCOUNT TREATED AS DISTRIBUTING ALL ITS ASSETS.—In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

"(3) EFFECT OF BORROWING ON ANNUITY CONTRACT.—If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

"(4) EFFECT OF PLEDGING ACCOUNT AS SECURITY.—If, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

"(5) PURCHASE OF ENDOWMENT CONTRACT BY INDIVIDUAL RETIREMENT ACCOUNT.—If the assets of an individual retirement account or any part of such assets are used to purchase an endowment contract for the benefit of the individual for whose benefit the account is established—

"(A) to the extent that the amount of the assets involved in the purchase are not attributable to the purchase of life insurance, the purchase is treated as a rollover contribution described in subsection (d)(3), and

"(B) to the extent that the amount of the assets involved in the purchase are attributable to the purchase of life, health, accident, or other insurance, such amounts are treated as distributed to that individual (but the provisions of subsection (f) do not apply).

"(6) COMMINGLING INDIVIDUAL RETIREMENT ACCOUNT AMOUNTS IN CERTAIN COMMON TRUST FUNDS AND COMMON INVESTMENT FUNDS.—Any common trust fund or common investment fund of

individual retirement account assets which is exempt from taxation under this subtitle does not cease to be exempt on account of the participation or inclusion of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a).

26 USC 501, 401.

"(f) ADDITIONAL TAX ON CERTAIN AMOUNTS INCLUDED IN GROSS INCOME BEFORE AGE 59½—

"(1) EARLY DISTRIBUTIONS FROM AN INDIVIDUAL RETIREMENT ACCOUNT, ETC.—If a distribution from an individual retirement account or under an individual retirement annuity to the individual for whose benefit such account or annuity was established is made before such individual attains age 59½, his tax under this chapter for the taxable year in which such distribution is received shall be increased by an amount equal to 10 percent of the amount of the distribution which is includible in his gross income for such taxable year.

"(2) DISQUALIFICATION CASES.—If an amount is includible in gross income for a taxable year under subsection (e) and the taxpayer has not attained age 59½ before the beginning of such taxable year, his tax under this chapter for such taxable year shall be increased by an amount equal to 10 percent of such amount so required to be included in his gross income.

"(3) DISABILITY CASES.—Paragraphs (1) and (2) do not apply if the amount paid or distributed, or the disqualification of the account or annuity under subsection (e), is attributable to the taxpayer becoming disabled within the meaning of section 72(m)(7).

"(g) COMMUNITY PROPERTY LAWS.—This section shall be applied without regard to any community property laws.

"(h) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 401(d)(1)) or another person who demonstrates, to the satisfaction of the Secretary or his delegate, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an individual retirement account described in subsection (a). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

"(i) REPORTS.—The trustee of an individual retirement account and the issuer of an endowment contract described in subsection (b) or an individual retirement annuity shall make such reports regarding such account, contract, or annuity to the Secretary or his delegate and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions, distributions, and such other matters as the Secretary or his delegate may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.

"(j) CROSS REFERENCES.—

**"(1) For tax on excess contributions in individual retirement accounts or annuities, see section 4973.**

**"(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974."**

(c) RETIREMENT BONDS.—Subpart A of part I of subchapter D of chapter 1 (relating to retirement plans) is amended by inserting after section 408 the following new section:

*Ante*, p. 959.

26 USC 409.

**"SEC. 409. RETIREMENT BONDS.**

"(a) RETIREMENT BOND.—For purposes of this section and section 219(a), the term 'retirement bond' means a bond issued under the

*Ante*, p. 958.

Second Liberty Bond Act, as amended, which by its terms, or by regulations prescribed by the Secretary or his delegate under such Act— 31 USC 774.

"(1) provides for payment of interest, or investment yield, only on redemption;

"(2) provides that no interest, or investment yield, is payable if the bond is redeemed within 12 months after the date of its issuance;

"(3) provides that it ceases to bear interest, or provide investment yield on the earlier of—

"(A) the date on which the individual in whose name it is purchased (hereinafter in this section referred to as the 'registered owner') attains age 70½; or

"(B) 5 years after the date on which the registered owner dies, but not later than the date on which he would have attained the age 70½ had he lived;

"(4) provides that, except in the case of a rollover contribution described in subsection (b)(3)(C) or in section 402(a)(5), 403(a)(4), or 408(d)(3) the registered owner may not contribute for the purchase of such bonds in excess of $1,500 in any taxable year; and *Post*, p. 991, *Post*, p. 969, *Ante*, p. 959.

"(5) is not transferable.

"(b) INCOME TAX TREATMENT OF BONDS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, on the redemption of a retirement bond the entire proceeds shall be included in the gross income of the taxpayer entitled to the proceeds on redemption. If the registered owner has not tendered it for redemption before the close of the taxable year in which he attains age 70½, such individual shall include in his gross income for such taxable year the amount of proceeds he would have received if the bond had been redeemed at age 70½. The provisions of section 72 (relating to annuities) and section 1232 (relating to bonds and other evidences of indebtedness) shall not apply to a retirement bond. 26 USC 72.

"(2) BASIS.—The basis of a retirement bond is zero.

"(3) EXCEPTIONS.—

"(A) REDEMPTION WITHIN 12 MONTHS.—If a retirement bond is redeemed within 12 months after the date of its issuance, the proceeds are excluded from gross income if no deduction is allowed under section 219 on account of the purchase of such bond. *Ante*, p. 958.

"(B) REDEMPTION AFTER AGE 70½.—If a retirement bond is redeemed after the close of the taxable year in which the registered owner attains age 70½, the proceeds from the redemption of the bond are excluded from the gross income of the registered owner to the extent that such proceeds were includible in his gross income for such taxable year.

"(C) ROLLOVER INTO AN INDIVIDUAL RETIREMENT ACCOUNT OR ANNUITY OR A QUALIFIED PLAN.—If a retirement bond is redeemed at any time before the close of the taxable year in which the registered owner attains age 70½, and the registered owner transfers the entire amount of the proceeds from the redemption of the bond to an individual retirement account described in section 408(a) or to an individual retirement annuity described in section 408(b) (other than an endowment contract) which is maintained for the benefit of the registered owner of the bond, or to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or an annuity plan described in section 403(a) *Ante*, p. 959. 26 USC 401. 26 USC 501, 403.

for the benefit of the registered owner, on or before the 60th day after the day on which he received the proceeds of such redemption, then the proceeds shall be excluded from gross income and the transfer shall be treated as a rollover contribution described in section 403(d)(3). This subparagraph does not apply in the case of a transfer to such an employees' trust or such an annuity plan unless no part of the value of such proceeds is attributable to any source other than a rollover contribution from such an employees' trust or annuity plan (other than an annuity plan or a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan).

26 USC 403.

26 USC 401.

"(c) ADDITIONAL TAX ON CERTAIN REDEMPTIONS BEFORE AGE 59½.—

"(1) EARLY REDEMPTION OF BOND.—If a retirement bond is redeemed by the registered owner before he attains age 59½, his tax under this chapter for the taxable year in which the bond is redeemed shall be increased by an amount equal to 10 percent of the amount of the proceeds of the redemption includible in his gross income for the taxable year.

"(2) DISABILITY CASES.—Paragraph (1) does not apply for any taxable year during which the retirement bond is redeemed if, for that taxable year, the registered owner is disabled within the meaning of section 72(m)(7).

26 USC 72.

"(3) REDEMPTION WITHIN ONE YEAR.—Paragraph (1) does not apply if the registered owner tenders the bond for redemption within 12 months after the date of its issuance.".

(d) EXCISE TAX ON EXCESS CONTRIBUTIONS.—Chapter 43 (relating to qualified pension, etc., plans) is amended by inserting after section 4972 the following new section:

26 USC 4973.

**"SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO INDIVIDUAL RETIREMENT ACCOUNTS, CERTAIN SECTION 403(b) CONTRACTS, CERTAIN INDIVIDUAL RETIREMENT ANNUITIES, AND CERTAIN RETIREMENT BONDS.**

"(a) TAX IMPOSED.—In the case of—

"(1) an individual retirement account (within the meaning of section 408(a)),

*Ante*, p. 959.

"(2) an individual retirement annuity (within the meaning of section 408(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A) (relating to custodial accounts for regulated investment company stock), or

*Ante*, p. 940.

*Ante*, p. 964.

"(3) a retirement bond (within the meaning of section 409), established for the benefit of any individual, there is imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts, annuities, or bonds (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed 6 percent of the value of the account, annuity, or bond (determined as of the close of the taxable year). In the case of an endowment contract described in section 408(b), the tax imposed by this section does not apply to any amount allocable to life, health, accident, or other insurance under such contract. The tax imposed by this subsection shall be paid by such individual.

"(b) EXCESS CONTRIBUTIONS.—For purposes of this section, in the case of individual retirement accounts, individual retirement annuities, or bonds, the term 'excess contributions' means the sum of—

"(1) the excess (if any) of—

"(A) the amount contributed for the taxable year to the accounts or for the annuities or bonds (other than a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3)), or 409(b)(3)(C), over

Post, pp. 991, 969; Ante, pp. 959, 964.

"(B) the amount allowable as a deduction under section 219 for such contributions, and

"(2) the amount determined under this subsection for the preceding taxable year, reduced by the excess (if any) of the maximum amount allowable as a deduction under section 219 for the taxable year over the amount contributed to the accounts or for the annuities or bonds for the taxable year and reduced by the sum of the distributions out of the account (for all prior taxable years) which were included in the gross income of the payee under section 408(d)(1). For purposes of this paragraph, any contribution which is distributed out of the individual retirement account, individual retirement annuity, or bond in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed.

Ante, p. 958.

"(c) SECTION 403(b) CONTRACTS.—For purposes of this section, in the case of a custodial account referred to in subsection (a)(3), the term 'excess contributions' means the sum of—

"Excess contributions."

"(1) the excess (if any) of the amount contributed for the taxable year to such account, over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and

26 USC 403.

Post, p. 979.

"(2) the amount determined under this subsection for the preceding taxable year, reduced by—

"(A) the excess (if any) of the lesser of (i) the amount excludable from gross income under section 403(b) or (ii) the amount permitted to be contributed under the limitations contained in section 415 over the amount contributed to the account for the taxable year (or under whichever such section is applicable, if only one is applicable), and

"(B) the sum of the distributions out of the account (for all prior taxable years) which are included in gross income under section 72(e)."

26 USC 72.

(e) EXCISE TAX ON EXCESSIVE ACCUMULATIONS.—Chapter 43 is amended by inserting after section 4973 the following new section:

**"SEC. 4974. EXCISE TAX ON CERTAIN ACCUMULATIONS IN INDIVIDUAL RETIREMENT ACCOUNTS OR ANNUITIES.**

26 USC 4974.

"(a) IMPOSITION OF TAX.—If, in the case of an individual retirement account or individual retirement annuity, the amount distributed during the taxable year of the payee is less than the minimum amount required to be distributed under section 408(a)(6) or (7), or 408(b)(3) or (4) during such year, there is imposed a tax equal to 50 percent of the amount by which the minimum amount required to be distributed during such year exceeds the amount actually distributed during the year. The tax imposed by this section shall be paid by such payee.

Ante, p. 959.

"(b) REGULATIONS.—For purposes of this section, the minimum amount required to be distributed during a taxable year under section 408(a)(6) or (7) or 408(b)(3) or (4) shall be determined under regulations prescribed by the Secretary or his delegate.".

(f) PENALTY FOR FAILURE TO PROVIDE REPORTS ON INDIVIDUAL RETIREMENT ACCOUNTS.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

26 USC 6693.

**"SEC. 6693. FAILURE TO PROVIDE REPORTS ON INDIVIDUAL RETIREMENT ACCOUNTS OR ANNUITIES.**

Penalty.
*Ante*, p. 959.

"(a) The person required by section 408(i) to file a report regarding an individual retirement account or individual retirement annuity at the time and in the manner required by section 408(i) shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

26 USC 6211.

"(b) DEFICIENCY PROCEDURES NOT TO APPLY.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) does not apply to the assessment or collection of any penalty imposed by subsection (a).".

26 USC 37.

(g) CONFORMING AMENDMENTS.—

(1) Section 37(c)(1) (defining retirement income) is amended—

(A) by striking out "and" at the end of subparagraph (D),

(B) by adding at the end of subparagraph (E) the following: "retirement bonds described in section 409, and", and

(C) by adding at the end thereof the following new paragraph:

"(F) an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b), or".

26 USC 46, 50A.
*Ante*, p. 952.
*Post*, p. 987.

(2) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3), as each is amended by sections 2001 (g)(2)(B) and 2005(c)(4) of this Act, are each amended by inserting after "owner-employees)," the following: "section 408 (e) (relating to additional tax on income from certain retirement accounts),".

26 USC 901.

(3) The third sentence of section 901(a), as amended by section 2005(c)(5) of this Act, is amended by inserting "against the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts)," before "against the tax imposed by section 531".

26 USC 56.

(4) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c) are each amended by striking out "531" and inserting in lieu thereof "408(f), 531,".

26 USC 402.

(5) Section 402(a) (relating to taxability of beneficiary of exempt trust), as amended by section 2005(c)(2) of this Act, is amended by inserting after paragraph (5) the following new paragraph:

26 USC 401.
26 USC 501.

"(5) ROLLOVER AMOUNTS.—In the case of an employees' trust described in section 401(a) which is exempt from tax under section 501(a), if—

"(A) the balance to the credit of an employee is paid to him on one or more distributions which constitute a lump sum distribution within the meaning of subsection (e)(4)(A) (determined without reference to subsection (e)(4)(B)),

"(B)(i) the employee transfers all the property he receives in such distribution to an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property, to the extent the fair market value of such property exceeds the amount referred to in subsection (e)(4)(D)(i), or

"(ii) the employee transfers all the property he receives in such distribution to an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

or to an annuity plan described in section 403(a) on or before the 60th day after the day on which he received such property, to the extent the fair market value of such property exceeds the amount referred to in subsection (e)(4)(D)(i), and

26 USC 403.

"(C) the amount so transferred consists of the property (other than money) distributed, to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distributions are not includible in gross income for the year in which paid. For purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution as described in section 408(d)(3). Subparagraph (B)(ii) does not apply in the case of a transfer to an employees' trust, or annuity plan if any part of the lump sum distribution described in subparagraph (A) is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan."

*Ante*, p. 959.

(6) Section 403(a) (relating to taxation of employee annuities) is amended by adding after paragraph (3) the following new paragraph:

"(4) ROLLOVER AMOUNTS.—In the case of an employee annuity described in 403(a), if—

"(A) the balance to the credit of an employee is paid to him in one or more distributions which constitute a lump sum distribution within the meaning of section 402(e)(4)(A) determined without reference to section 402(e)(4)(B),

26 USC 402.

"(B)(i) the employee transfers all the property he receives in such distribution to an individual account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), or

*Ante*, p. 964.

"(ii) the employee transfers all the property he receives in such distribution to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or to an annuity plan described in subsection (a) on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e)(4)(D)(i), and

"(C) the amount so transferred consists of the property distributed to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distribution is not includible in gross income for the year in which paid. For purposes of this title, a transfer described in subparagraph (B)(i) shall be treated as a rollover contribution described in section 408(d)(3).

Subparagraph (B)(ii) does not apply in the case of a transfer to an employees' trust, or annuity plan if any part of the lump sum distribution described in subparagraph (A) is attributable to an annuity plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.".

26 USC 3401.

(7) Section 3401(a)(12) (relating to exemption from collection of income tax at source on certain wages) is amended by adding at the end thereof the following new subparagraph:

*Ante*, p. 958.

"(D) for a payment described in section 219(a) if, at the time of such payment, it is reasonable to believe that the employee will be entitled to a deduction under such section for payment; or".

26 USC 6047.

(8) Section 6047 (relating to information relating to certain trusts and annuity and bond purchase plans) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) OTHER PROGRAMS.—To the extent provided by regulations prescribed by the Secretary or his delegate, the provisions of this section apply with respect to any payment described in section 219(a) and to transactions of any trust described in section 408(a) or under an individual retirement annuity described in section 408(b).".

*Ante*, p. 959.

Pension plan reserves.
26 USC 805.

(9) Section 805(d)(i) (relating to definition of pension plan reserves) is amended by striking out "or" at the end of subparagraph (C), by striking out "foregoing." at the end of subparagraph (D) and inserting in lieu thereof "foregoing; or", and by adding at the end thereof the following new subparagraph:

"(E) purchased under contracts entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b)."

26 USC 72.

(10) Section 72 (relating to annuities) is amended—

(A) by inserting after "501(a)" in subsection (m)(4)(A) ", an individual retirement amount described in section 408(a), an individual retirement annuity described in section 408(b)".

(B) by striking out at the end of subsection (m)(6) "401(c)(3)" and inserting in lieu thereof "401(c)(3) and includes an individual for whose benefit an individual retirement account or annuity described in section 408 (a) or (b) is maintained".

26 USC 801.

(11) Section 801(g)(7) (relating to basis of assets held for qualified pension plan contracts) is amended by striking out "or (D)" and inserting in lieu thereof "(D), or (E)".

(h) CLERICAL AMENDMENTS.—

(1) The table of sections for part VII of subchapter B of chapter 1 is amended by striking out the item relating to section 219 and inserting in lieu thereof the following:

"Sec. 219. Retirement savings.
"Sec. 220. Cross references.".

(2) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by adding at the end thereof the following:

"Sec. 408. Individual retirement accounts.
"Sec. 409. Retirement bonds.".

(3) The table of sections for chapter 43 is amended by inserting after the item relating to section 4972 the following new items:

"Sec. 4973. Tax on excess contributions to individual retirement accounts, certain 403(b) contracts, certain individual retirement annuities, and certain retirement bonds.
"Sec. 4974. Tax on certain accumulations in individual retirement accounts.
"Sec. 4975. Tax on prohibited transactions.".

(4) The table of sections for subchapter B of chapter 68 is amended by adding at the end thereof the following new item:

"Sec. 6693. Failure to provide reports on individual retirement accounts or annuities.".

(i) EFFECTIVE DATES.—

(1) The amendments made by subsections (a), (b), and (c) apply to taxable years beginning after December 31, 1974. 26 USC 219 note.

(2) The amendments made by subsections (d) through (h) except subsection (g)(5) and (6) shall take effect on January 1, 1975. 26 USC 4973 note.

(3) The amendments made by subsection (g)(5) and (6) shall apply on and after the date of enactment of this Act with respect to contributions to an employees' trust described in section 401(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code or an annuity plan described in section 403(a) of such Code. 26 USC 402 note.

**SEC. 2003. PROHIBITED TRANSACTIONS.**

(a) EXCISE TAX ON PROHIBITED TRANSACTIONS.—Chapter 43 (relating to qualified pension, etc., plans) is amended by adding after section 4974 the following new section:

**"SEC. 4975. TAX ON PROHIBITED TRANSACTIONS.** 26 USC 4975.

"(a) INITIAL TAXES ON DISQUALIFIED PERSON.—There is hereby imposed a tax on each prohibited transaction. The rate of tax shall be equal to 5 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this subsection shall be paid by any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such).

"(b) ADDITIONAL TAXES ON DISQUALIFIED PERSON.—In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this subsection shall be paid by any disqualified person who participated in the prohibited transaction (other than a fiduciary acting only as such).

"(c) PROHIBITED TRANSACTION.—

"(1) GENERAL RULE.—For purposes of this section, the term 'prohibited transaction' means any direct or indirect—

"(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;

"(B) lending of money or other extension of credit between a plan and a disqualified person;

"(C) furnishing of goods, services, or facilities between a plan and a disqualified person;

"(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;

"(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or

"(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

"(2) SPECIAL EXEMPTION.—The Secretary or his delegate shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any disqualified person or transaction,

orders of disqualified persons or transactions, from all or part of the restrictions imposed by paragraph (1) of this subsection. Action under this subparagraph may be taken only after consultation and coordination with the Secretary of Labor. The Secretary or his delegate may not grant an exemption under this paragraph unless he finds that such exemption is—

Exemption.

"(A) administratively feasible,

"(B) in the interests of the plan and of its participants and beneficiaries, and

"(C) protective of the rights of participants and beneficiaries of the plan.

Notice, publication in Federal Register.

Before granting an exemption under this paragraph, the Secretary or his delegate shall require adequate notice to be given to interested persons and shall publish notice in the Federal Register of the pendency of such exemption and shall afford interested persons an opportunity to present views. No exemption may be granted under this paragraph with respect to a transaction described in subparagraph (E) or (F) of paragraph (1) unless the Secretary or his delegate affords an opportunity for a hearing and makes a determination on the record with respect to the findings required under subparagraphs (A), (B), and (C) of this paragraph, except that in lieu of such hearing the Secretary or his delegate may accept any record made by the Secretary of Labor with respect to an application for exemption under section 408(a) of title I of the Employee Retirement Income Security Act of 1974.

*Ante*, p. 883.

"(3) SPECIAL RULE FOR INDIVIDUAL RETIREMENT ACCOUNTS.—An individual for whose benefit an individual retirement account is established and his beneficiaries shall be exempt for the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be an individual retirement account by reason of the application of section 408(e)(2)(A) or if section 408(e)(4) applies to such account.

"(d) EXEMPTIONS.—The prohibitions provided in subsection (c) shall not apply to—

"(1) any loan made by the plan to a disqualified person who is a participant or beneficiary of the plan if such loan—

"(A) is available to all such participants or beneficiaries on a reasonably equivalent basis,

"(B) is not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees,

"(C) is made in accordance with specific provisions regarding such loans set forth in the plan,

"(D) bears a reasonable rate of interest, and

"(E) is adequately secured;

"(2) any contract, or reasonable arrangement, made with a disqualified person 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) any loan to an employee stock ownership plan (as defined in subsection (e)(7)), if—

"(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

"(B) such loan is at a reasonable rate of interest, and any collateral which is given to a disqualified person by the plan consists only of qualifying employer securities (as defined in subsection (e)(8));

"(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 affiliates 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 disqualified person which is wholly owned (directly or indirectly) by the employer establishing the plan, or by any person which is a disqualified person with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are disqualified persons (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 provision of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such service is provided at not more than reasonable compensation, 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 provision 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 or his delegate after consultation with Federal and State supervisory authority), and under such guidelines the bank or similar financial institution does not provide 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;

"(7) the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary or his delegate, but only if the plan receives no less than adequate consideration pursuant to such conversion;

"(8) any transaction between a plan and a common or collective trust fund or pooled investment fund maintained by a disqualified person which is a bank or trust company supervised by a State or

Federal agency or between a plan and 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 company, or an affiliate thereof) who has authority to manage and control the assets of the plan;

"(9) receipt by a disqualified person of 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;

"(10) receipt by a disqualified person of 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, but 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 fund, except for reimbursement of expenses properly and actually incurred;

"(11) service by a disqualified person as a fiduciary in addition to being an officer, employee, agent, or other representative of a disqualified person;

"(12) the making by a fiduciary of a distribution of the assets of the trust in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of title IV of the Employee Retirement Income Security Act of 1974 (relating to allocation of assets); or

*Post*, p. 1025.

26 USC 406.

*Ante*, p. 959.

"(13) any transaction which is exempt from section 406 of such Act by reason of section 408(e) of such Act (or which would be so exempt if such section 406 applied to such transaction).

The exemptions provided by this subsection (other than paragraphs (9) and (12) shall not apply to any transaction with respect to a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) in which a plan directly or indirectly lends any part of the corpus or income of the plan to, pays any compensation for personal services rendered to the plan to, or acquires for the plan any property from or sells any property to, any such owner-employee, a member of the family (as defined in section 267(c)(4)) 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 the preceding sentence, a shareholder-employee (as defined in section 1379), a participant or beneficiary of an individual retirement account, individual retirement annuity, on an individual retirement bond (as defined in section 408 or 409), and an employer or association of employees which establishes such an account or annuity under section 408(c) shall be deemed to be an owner-employee.

26 USC 267.

26 USC 1379.

"(e) DEFINITIONS.—

"(1) PLAN.—For purposes of this section, the term 'plan' means a trust described in section 401(a) which forms a part of a plan,

or a plan described in section 403(a) or 405(a), which trust or plan is exempt from tax under section 501(a), an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) or a retirement bond described in section 409 (or a trust, plan, account, annuity, or bond which, at any time, has been determined by the Secretary or his delegate to be such a trust, plan, account, or bond).

Ante, p. 969.
26 USC 405.
Ante, p. 959.
Ante, p. 964.

"(2) DISQUALIFIED PERSON.—For purposes of this section, the term 'disqualified person' means a person who is—

"(A) a fiduciary;

"(B) a person providing services to the plan;

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

"(D) an employee organization any of whose members are covered by the 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,

"(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 member of the family (as defined in paragraph (6)) 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 officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G); or

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

The Secretary, after consultation and coordination with the Secretary of Labor or his delegate, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I).

"(3) FIDUCIARY.—For purposes of this section, the term 'fiduciary' means any person who—

"(A) 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,

"(B) 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

"(C) has any discretionary authority or discretionary responsibility in the administration of such plan.

Such term includes any person designated under section 405(c)(1)(B) of the Employee Retirement Income Security Act of 1974.

Ante, p. 878.

"(4) STOCKHOLDINGS.—For purposes of paragraphs (2)(E)(i) and (G)(i) there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

26 USC 267.

"(5) PARTNERSHIPS; TRUSTS.—For purposes of paragraphs (2)(E)(ii) and (iii), (G)(ii) and (iii), and (I) the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

"(6) MEMBER OF FAMILY.—For purposes of paragraph (2)(F), the family of any individual shall include his spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.

"(7) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' means a defined contribution plan—

"(A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a), and which are designed to invest primarily in qualifying employer securities; and

Ante, p. 953.

"(B) which is otherwise defined in regulations prescribed by the Secretary or his delegate.

"(8) QUALIFYING EMPLOYER SECURITY.—The term 'qualifying employer security' means an employer security which is—

"(A) stock or otherwise an equity security, or

"(B) a bond, debenture, note, or certificate or other evidence of indebtedness which is described in paragraphs (1), (2), and (3) of section 503(e).

26 USC 503.

If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company's investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section, except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the investment company, its investment adviser, or its principal underwriter.

15 USC 80a-51.

"(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) JOINT AND SEVERAL LIABILITY.—If more than one person is liable under subsection (a) or (b) with respect to any one prohibited transaction, all such persons shall be jointly and severally liable under such subsection with respect to such transaction.

"(2) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any prohibited transaction, the period beginning with

the date on which the prohibited transaction occurs and ending on the earlier of—

"(A) the date of mailing of a notice of deficiency pursuant to section 6212, with respect to the tax imposed by subsection (a), or

26 USC 6212.

"(B) the date on which correction of the prohibited transaction is completed.

"(3) SALE OR EXCHANGE; ENCUMBERED PROPERTY.—A transfer of real or personal property by a disqualified person 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 disqualified person placed on the property within the 10-year period ending on the date of the transfer.

"(4) AMOUNT INVOLVED.—The term 'amount involved' means, with respect to a prohibited transaction, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in paragraphs (2) and (10) of subsection (d) the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

Fair market value.

"(A) in the case of the tax imposed by subsection (a), shall be determined as of the date on which the prohibited transaction occurs; and

"(B) in the case of the tax imposed by subsection (b), shall be the highest fair market value during the correction period.

"(5) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to a prohibited transaction, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards.

"(6) CORRECTION PERIOD.—The term 'correction period' means, with respect to a prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (b) under section 6212, extended by—

"(A) any period in which a deficiency cannot be assessed under section 6213(a), and

"(B) any other period which the Secretary or his delegate determines is reasonable and necessary to bring about the correction of the prohibited transaction.

"(g) APPLICATION OF SECTION.—This section shall not apply—

"(1) in the case of a plan to which a guaranteed benefit policy (as defined in section 401(b)(2)(B) of the Employee Retirement Income Security Act of 1974) is issued, to any assets of the insurance company, insurance service, or insurance organization merely because of its issuance of such policy;

*Ante*, p. 874.

"(2) to a governmental plan (within the meaning of section 414(d)); or

*Ante*, p. 925.

"(3) to a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

*Ante*, p. 898.

In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, by reason of such investment, be deemed to include any assets of such company.

15 USC 80a-51.

"(h) NOTIFICATION OF SECRETARY OF LABOR.—Before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary or his delegate shall notify the Secretary of Labor and provide him a reasonable opportunity to obtain a correction of the prohibited transaction or to comment on the imposition of such tax.

"(i) CROSS REFERENCE.—

**"For provisions concerning coordination procedures between Secretary of Labor and Secretary of Treasury with respect to application of tax imposed by this section and for authority to waive imposition of the tax imposed by subsection (b), see section 3003 of the Employee Retirement Income Security Act of 1974.".**

26 USC 503.

(b) AMENDMENT OF SECTION 503.—Section 503 (relating to requirements for exemption) is amended—

(1) by striking out "or (18)" in subsection (a)(1)(A),

(2) by amending subsection (a)(1)(B) by inserting "which is referred to in section 4975(g) (2) or (3)" after "described in section 401(a)",

(3) by striking out "or section 401" in subsection (a)(2) and inserting in lieu thereof "or paragraph (1)(B)",

(4) by striking out "or section 401" in subsection (c) and inserting in lieu thereof "or subsection (a)(1)(B)", and

(5) by striking out subsection (g).

26 USC 4975 note.

(c) EFFECTIVE DATE AND SAVINGS PROVISIONS.—

(1)(A) The amendments made by this section shall take effect on January 1, 1975.

(B) If, before the amendments made by this section take effect, an organization described in section 401(a) of the Internal Revenue Code of 1954 is denied exemption under section 501(a) of such Code by reason of section 503 of such Code, the denial of such exemption shall not apply if the disqualified person elects (in such manner and at such time as the Secretary or his delegate shall by regulations prescribe) to pay, with respect to the prohibited transaction (within the meaning of section 503 (b) or (g)) which resulted in such denial of exemption, a tax in the amount and in the manner provided with respect to the tax imposed under section 4975 of such Code. An election made under this subparagraph, once made, shall be irrevocable. The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph.

*Ante*, p. 935.
26 USC 501.

*Ante*, p. 971.
Regulations.

(2) Section 4975 of the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) shall not apply to—

(A) a loan of money or other extension of credit between a plan and a disqualified person under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, 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 such Code or the corresponding provisions of prior law);

(B) a lease or joint use of property involving the plan and a disqualified person pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), until June 30, 1984, 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 such Code) or the corresponding provisions of prior law; 26 USC 503.

(C) the sale, exchange, or other disposition of property described in subparagraph (B) between a plan and a disqualified person before June 30, 1984, if—

(i) in the case of a sale, exchange, or other disposition of the property by the plan to the disqualified person, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(ii) 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;

(D) Until June 30, 1977, the provision of services to which subparagraphs (A), (B), and (C) do not apply between a plan and a disqualified person (i) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or (ii) if the disqualified person 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 the provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of such Code) or the corresponding provisions of prior law; or

(E) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a disqualified person, if such plan is required to dispose of such property in order to comply with the provisions of section 407(a)(2)(A) (relating to the prohibition against holding excess employer securities and employer real property) of the Employee Retirement Income Security Act of 1974, and if the plan receives not less than adequate consideration. *Ante*, p. 880.

For the purposes of this paragraph, the term "disqualified person" has the meaning provided by section 4975(e)(2) of the Internal Revenue Code of 1954. *Ante*, p. 971.

**SEC. 2004. LIMITATIONS ON BENEFITS AND CONTRIBUTIONS.**

(a) PLAN REQUIREMENTS.—

(1) Section 401(a) (relating to requirements for qualification) is amended by inserting after paragraph (15) the following new paragraph: *Ante*, p. 938.

"(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415." *Infra*.

(2) Subpart B of part I of subchapter D of chapter 1 is amended by inserting after section 414 the following new section:

**"SEC. 415. LIMITATIONS ON BENEFITS AND CONTRIBUTION UNDER QUALIFIED PLANS.** 26 USC 415.

"(a) GENERAL RULE.—

"(1) TRUSTS.—A trust which is a part of a pension, profit-sharing, or stock bonus plan shall not constitute a qualified trust under section 401(a) if— *Ante*, p. 935.

"(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b),

"(B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any

participant for any taxable year exceed the limitation of subsection (c), or

"(C) in any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the employer, the trust has been disqualified under subsection (g).

"(2) SECTION APPLIES TO CERTAIN ANNUITIES AND ACCOUNTS.—in the case of—

"(A) an employee annuity plan described in section 403 (a),

Ante, p. 969.

26 USC 403.

"(B) an annuity contract described in section 403(b),

"(C) an individual retirement account described in section 408(a),

Ante, p. 959.

"(D) an individual retirement annuity described in section 408(b),

26 USC 405.

"(E) a plan described in section 405(a), or

Ante, p. 964.

"(F) a retirement bond described in section 409,

such contract, annuity plan, account, annuity, plan, or bond shall not be considered to be described in section 403(a), 403(b), 405(a), 408(a), 408(b), or 409, as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate, and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403 (b)(2).

Ante, p. 959.

"(b) LIMITATION FOR DEFINED BENEFIT PLANS.—

"(1) IN GENERAL.—Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—

"(A) $75,000, or

"(B) 100 percent of the participant's average compensation for his high 3 years.

"(2) ANNUAL BENEFIT.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'annual benefit' means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402 (a)(5), 403(a)(4), 408(d)(3), and 409(b)(3)(C) are made.

Ante, pp. 968, 969.

"(B) ADJUSTMENT FOR CERTAIN OTHER FORMS OF BENEFIT.—If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(a)(5), 403(a)(4), 408(d)(3) and 409 (b)(3)(C)), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary or his delegate, by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and

survivor annuity (as defined in section 401(a)(11)(H)(iii)) shall not be taken into account. Ante, p. 935.

"(C) ADJUSTMENT TO $75,000 LIMIT WHERE BENEFIT BEGINS BEFORE AGE 55.—If the retirement income benefit under the plan begins before age 55, the determination as to whether the $75,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary or his delegate, by adjusting such benefit so that it is equivalent to such a benefit beginning at age 55.

"(3) AVERAGE COMPENSATION FOR HIGH 3 YEARS.—For purposes of paragraph (1), a participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant both was an active participant in the plan and had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401(c)(1), the preceding sentence shall be applied by substituting for 'compensation from the employer' the following: 'the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)'. 26 USC 401. 26 USC 911.

"(4) TOTAL ANNUAL BENEFITS NOT IN EXCESS OF $10,000.—Notwithstanding the preceding provisions of this subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitation of this subsection if—

"(A) the retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed $10,000 for the plan year, or for any prior plan year, and

"(B) the employer has not at any time maintained a defined contribution plan in which the participant participated.

"(5) REDUCTION FOR SERVICE LESS THAN 10 YEARS.—In the case of an employee who has less than 10 years of service with the employer, the limitation referred to in paragraph (1), and the limitation referred to in paragraph (4), shall be the limitation determined under such paragraph (without regard to this paragraph), multiplied by a fraction, the numerator of which is the number of years (or part thereof) of service with the employer and the denominator of which is 10.

"(6) COMPUTATION OF BENEFITS AND CONTRIBUTIONS.—The computation of—

"(A) benefits under a defined contribution plan, for purposes of section 401(a)(4), Ante, p. 938.

"(B) contributions made on behalf of a participant in a defined benefit plan, for purposes of section 401(a)(4), and

"(C) contributions and benefits provided for a participant in a plan described in section 414(k), for purposes of this section Ante, p. 925.

shall not be made on a basis inconsistent with regulations prescribed by the Secretary or his delegate.

"(c) LIMITATION FOR DEFINED CONTRIBUTION PLANS.—

"(1) IN GENERAL.—Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of

paragraph (2)) to the participant's account, such annual addition is greater than the lesser of—

"(A) $25,000, or

"(B) 25 percent of the participant's compensation.

"(2) ANNUAL ADDITION.—For purposes of paragraph (1), the term 'annual addition' means the sum for any year of—

"(A) employer contributions,

"(B) the lesser of—

"(i) the amount of the employee contributions in excess of 6 percent of his compensation, or

"(ii) one-half of the employee contributions, and

"(C) forfeitures.

For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(a)(5), 403(a)(4), 408(d)(3), and 409(b)(3)(C)).

*Ante*, pp. 968, 969, 959, 964.

"(3) PARTICIPANT'S COMPENSATION.—For purposes of paragraph (1), the term 'participant's compensation' means the compensation of the participant from the employer for the year. In the case of an employee within the meaning of section 401(c)(1), the preceding sentence shall be applied by substituting for 'compensation of the participant from the employer' the following: 'the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)'.

26 USC 401.

"(4) SPECIAL ELECTION FOR SECTION 403(b) CONTRACTS PURCHASED BY EDUCATIONAL INSTITUTIONS, HOSPITALS, AND HOME HEALTH SERVICE AGENCIES.—

"(A) In the case of amounts contributed for an annuity contract described in section 403(b) for the year in which occurs a participant's separation from the service with an educational institution, a hospital, or a home health service agency, at the election of the participant there is substituted for the amount specified in paragraph (1)(B) the amount of the exclusion allowance which would be determined under section 403(b)(2) (without regard to this section) for the participant's taxable year in which such separation occurs if the participant's years of service were computed only by taking into account his service for the employer during the period of years (not exceeding ten) ending on the date of such separation.

26 USC 403.

*Post*, p. 986.

"(B) In the case of amounts contributed for an annuity contract described in section 403(b) for any year in the case of a participant who is an employee of an educational institution, a hospital, or a home health service agency, at the election of the participant there is substituted for the amount specified in paragraph (1)(B) the least of—

"(i) 25 percent of the participant's includible compensation (as defined in section 403(b)(3)) plus $4,000,

"(ii) the amount of the exclusion allowance determined for the year under section 403(b)(2), or

"(iii) $15,000.

"(C) In the case of amounts contributed for an annuity contract described in section 403(b) for any year for a participant who is an employee of an educational institution, a hospital, or a home health service agency, at the election of the participant the provisions of section 403(b)(2)(A) shall not apply.

"(D)(i) The provisions of this paragraph apply only if the participant elects its application at the time and in the manner provided under regulations prescribed by the Secretary or his delegate. Not more than one election may be made under subparagraph (A) by any participant. A participant who elects to have the provisions of subparagraph (A), (B), or (C) of this paragraph apply to him may not elect to have any other subparagraph of this paragraph apply to him. Any election made under this paragraph is irrevocable.

"(ii) For purposes of this paragraph the term 'educational institution' means an educational institution as defined in section 151(e)(4). "Educational institution." 26 USC 151.

"(iii) For purposes of this paragraph the term 'home health service agency' means an organization described in subsection 501(c)(3) which is exempt from tax under section 501(a) and which has been determined by the Secretary of Health, Education, and Welfare to be a home health agency (as defined in section 1861(o) of the Social Security Act). "Home health service agency." 26 USC 501. 42 USC 1395x.

"(d) COST-OF-LIVING ADJUSTMENTS.—

"(1) IN GENERAL.—The Secretary or his delegate shall adjust annually—

"(A) the $75,000 amount in subsection (b)(1)(A),

"(B) the $25,000 amount in subsection (c)(1)(A), and

"(C) in the case of a participant who is separated from service, the amount taken into account under subsection (b)(1)(B),

for increases in the cost of living in accordance with regulations prescribed by the Secretary or his delegate. Such regulations shall provide for adjustment procedures which are similar to the procedures used to adjust primary insurance amounts under section 215(i)(2)(A) of the Social Security Act. 42 USC 415.

"(2) BASE PERIODS.—The base period taken into account—

"(A) for purposes of subparagraphs (A) and (B) of paragraph (1) is the calendar quarter beginning October 1, 1974, and

"(B) for purposes of subparagraph (C) of paragraph (1) is the last calendar quarter of the calendar year before the calendar year in which the participant is separated from service.

"(e) LIMITATION IN CASE OF DEFINED BENEFIT PLAN AND DEFINED CONTRIBUTION PLAN FOR SAME EMPLOYEE.—

"(1) IN GENERAL.—In any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the same employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any year may not exceed 1.4.

"(2) DEFINED BENEFIT PLAN FRACTION.—For purposes of this subsection, the defined benefit plan fraction for any year is a fraction—

"(A) the numerator of which is the projected annual benefit of the participant under the plan (determined as of the close of the year), and

"(B) the denominator of which is the projected annual benefit of the participant under the plan (determined as of the close of the year) if the plan provided the maximum benefit allowable under subsection (b).

"(3) DEFINED CONTRIBUTION PLAN FRACTION.—For purposes of this subsection, the defined contribution plan fraction for any year is a fraction—

"(A) the numerator of which is the sum of the annual additions to the participant's account as of the close of the year, and

"(B) the denominator of which is the sum of the maximum amount of annual additions to such account which could have been made under subsection (c) for such year and for each prior year of service with the employer.

"(4) SPECIAL TRANSITION RULES FOR DEFINED CONTRIBUTION FRACTION.—In applying paragraph (3) with respect to years beginning before January 1, 1976—

"(A) the aggregate amount taken into account under paragraph (3)(A) may not exceed the aggregate amount taken into account under paragraph (3)(B), and

"(B) the amount taken into account under subsection (c)(2)(B)(i) for any year concerned is an amount equal to—

"(i) the excess of the aggregate amount of employee contributions for all years beginning before January 1, 1976, during which the employee was an active participant of the plan, over 10 percent of the employee's aggregate compensation for all such years, multiplied by

"(ii) a fraction the numerator of which is 1 and the denominator of which is the number of years beginning before January 1, 1976, during which the employee was an active participant in the plan.

Employee contributions made on or after October 2, 1973, shall be taken into account under subparagraph (B) of the preceding sentence only to the extent that the amount of such contributions does not exceed the maximum amount of contributions permissible under the plan as in effect on October 2, 1973.

26 USC 403.
*Ante*, p. 959.

"(5) SPECIAL RULES FOR SECTIONS 403(b) and 408.—For purposes of this subsection, any annuity contract described in section 403(b) (except in the case of a participant who has elected under subsection (c)(4)(D) to have the provisions of subsection (c)(4)(C) apply), any individual retirement account described in section 408(a), any individual retirement annuity described in section 408(b), and any retirement bond described in section 409, for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). In the case of any annuity contract described in section 403(b), the amount of the contribution disqualified by reason of subsection (g) shall reduce the exclusion allowance as provided in section 403(b)(2).

*Ante*, p. 925.

"(f) COMBINING OF PLANS.—

"(1) IN GENERAL.—For purposes of applying the limitations of subsections (b), (c), and (e)—

"(A) all defined benefit plans (whether or not terminated) of an employer are to be treated as one defined benefit plan, and

"(B) all defined contribution plans (whether or not terminated) of an employer are to be treated as one defined contribution plan.

"(2) ANNUAL COMPENSATION TAKEN INTO ACCOUNT FOR DEFINED BENEFIT PLANS.—If the employer has more than one defined benefit plan—

"(A) subsection (b)(1)(B) shall be applied separately with respect to each such plan, but

"(B) in applying subsection (b)(1)(B) to the aggregate of such defined benefit plans for purposes of this subsection, the high 3 years of compensation taken into account shall be the period of consecutive calendar years (not more than 3) during which the individual had the greatest aggregate compensation from the employer.

"(g) AGGREGATION OF PLANS.—The Secretary or his delegate, in applying the provisions of this section to benefits or contributions under more than one plan maintained by the same employer, and to any trusts, contracts, accounts, or bonds referred to in subsection (a)(2), with respect to which the participant has the control required under section 414(b) or (c), as modified by subsection (h), shall, under regulations prescribed by the Secretary or his delegate, disqualify one or more trusts, plans, contracts, accounts, or bonds, or any combination thereof until such benefits or contributions do not exceed the limitations contained in this section. In addition to taking into account such other factors as may be necessary to carry out the purposes of subsections (e) and (f), the regulations prescribed under this paragraph shall provide that no plan which has been terminated shall be disqualified until all other trusts, plans, contracts, accounts, or bonds have been disqualified. *Ante*, p. 925.

"(h) 50 PERCENT CONTROL.—For purposes of applying subsections (b) and (c) of section 414 to this section, the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in section 1563(a)(1). 26 USC 1563.

"(i) RECORDS NOT AVAILABLE FOR PAST PERIODS.—Where for the period before January 1, 1976, or (if later) the first day of the first plan year of the plan, the records necessary for the application of this section are not available, the Secretary or his delegate may by regulations prescribe alternative methods for determining the amounts to be taken into account for such period.

"(j) REGULATIONS; DEFINITION OF YEAR.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section, including, but not limited to, regulations defining the term 'year' for purposes of any provision of this section.

"(k) SPECIAL RULES.—

"(1) DEFINED BENEFIT PLAN AND DEFINED CONTRIBUTION PLAN.—For purposes of this title, the term 'defined contribution plan' or 'defined benefit plan' means a defined contribution plan (within the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is—

"(A) a plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a), 26 USC 401. 26 USC 501.

"(B) an annuity plan described in section 403(a), 26 USC 403.

"(C) a qualified bond purchase plan described in section 405(a), 26 USC 405.

"(D) an annuity a contract described in section 403(b),

"(E) an individual retirement account described in section 408(a), *Ante*, p. 959.

"(F) an individual retirement annuity described in section 408(b), or

"(G) an individual retirement bond described in section 409.". *Ante*, p. 964.

(3) SPECIAL RULE FOR CERTAIN PLANS IN EFFECT ON DATE OF ENACTMENT.—In any case in which, on the date of enactment of this Act, an individual is a participant in both a defined benefit 26 USC 415 note.

plan and a defined contribution plan maintained by the same employer, and the sum of the defined benefit plan fraction and the defined contribution plan fraction for the year during which such date occurs exceeds 1.4, the sum of such fractions may continue to exceed 1.4 if—

(A) the defined benefit plan fraction is not increased, by amendment of the plan or otherwise, after the date of enactment of this Act, and

(B) no contributions are made under the defined contribution plan after such date.

A trust which is part of a pension, profit-sharing, or stock bonus plan described in the preceding sentence shall not be treated as not constituting a qualified trust under section 401(a) of the Internal Revenue Code of 1954 on account of the provisions of section 415(e) of such Code, as long as it is described in the preceding sentence of this subsection.

26 USC 401.

*Ante*, p. 979.

(b) LIMIT ON EMPLOYER DEDUCTIONS.—The second sentence of section 404(a)(3)(A) (relating to limits on deductible contributions) is amended by striking out "beneficiaries under the plan." and inserting in lieu thereof "beneficiaries under the plan, but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan.".

26 USC 404.

(c) CERTAIN ANNUITY AND BOND PURCHASE PLANS.—

(1) Section 404(a)(2) (relating to the general rule for deduction for employee annuities) is amended by striking out "(15)" and inserting in lieu thereof "(15), (16), and (19)" and by striking out "(a)(9) and (10)" and inserting in lieu thereof "(a)(9), (10), (17), and (18)".

(2) Section 405(a)(1) (relating to requirements for qualified bond purchase plans) is amended by striking out "and (8)," and inserting in lieu thereof "(8), (16), and (19)".

(3) Section 805(d)(1)(C) (relating to pension plan reserves) is amended by striking out "and (15)" and inserting in lieu thereof "(15), (16), and (19)".

26 USC 805.

(4) Section 403(b)(2) (relating to exclusion allowance) is amended to read as follows:

26 USC 403.

"(2) EXCLUSION ALLOWANCE.—

"(A) IN GENERAL.—For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

"(i) the amount determined by multiplying 20 percent of his includible compensation by the number of years of service, over

"(ii) the aggregate of the amounts contributed by the employer for annuity contracts and excludible from the gross income of the employee for any prior taxable year.

"(B) ELECTION TO HAVE ALLOWANCE DETERMINED UNDER SECTION 415 RULES.—In the case of an employee who makes an election under section 415(c)(4)(D) to have the provisions of section 415(c)(4)(C) (relating to special rule for section 403(b) contracts purchased by educational institutions, hospitals, and home health service agencies) apply, the exclusion allowance for any such employee for the taxable year is the amount which could be contributed (under section 415) by his employer under a plan described in section 403(a) if the

annuity contract for the benefit of such employee were treated as a defined contribution plan maintained by the employer.".

(d) EFFECTIVE DATE.— 26 USC 415 note.

(1) GENERAL RULE.—The amendments made by this section shall apply to years beginning after December 31, 1975. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph.

(2) TRANSITION RULE FOR DEFINED BENEFIT PLANS.—In the case of an individual who was an active participant in a defined benefit plan before October 3, 1973, if—

(A) the annual benefit (within the meaning of section 415(b)(2) of the Internal Revenue Code of 1954) payable to such participant on retirement does not exceed 100 percent of his annual rate of compensation on the earlier of (i) October 2, 1973, or (ii) the date on which he separated from the service of the employer, *Ante*, p. 979.

(B) such annual benefit is no greater than the annual benefit which would have been payable to such participant on retirement if (i) all the terms and conditions of such plan in existence on such date had remained in existence until such retirement, and (ii) his compensation taken into account for any period after October 2, 1973, had not exceeded his annual rate of compensation on such date, and

(C) in the case of a participant who separated from the service of the employer prior to October 2, 1973, such annual benefit is no greater than his vested accrued benefit as of the date he separated from the service,

then such annual benefit shall be treated as not exceeding the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1954.

**SEC. 2005. TAXATION OF CERTAIN LUMP SUM DISTRIBUTIONS.**

(a) TREATMENT OF TOTAL DISTRIBUTIONS.—Section 402(e) (relating to certain plan terminations) is amended to read as follows: 26 USC 402.

"(e) TAX ON LUMP SUM DISTRIBUTIONS.—

(1) IMPOSITION OF SEPARATE TAX ON LUMP SUM DISTRIBUTIONS.—

"(A) SEPARATE TAX.—There is hereby imposed a tax (in the amount determined under subparagraph (B)) on the ordinary income portion of a lump sum distribution.

"(B) AMOUNT OF TAX.—The amount of tax imposed by subparagraph (A) for any taxable year shall be an amount equal to the amount of the initial separate tax for such taxable year multiplied by a fraction, the numerator of which is the ordinary income portion of the lump sum distribution for the taxable year and the denominator of which is the total taxable amount of such distribution for such year.

"(C) INITIAL SEPARATE TAX.—The initial separate tax for any taxable year is an amount equal to 10 times the tax which would be imposed by subsection (c) of section 1 if the recipient were an individual referred to in such subsection and the taxable income were an amount equal to one-tenth of the excess of—

"(i) the total taxable amount of the lump sum distribution for the taxable year, over

"(ii) the minimum distribution allowance.

"(D) MINIMUM DISTRIBUTION ALLOWANCE.—For purposes of this paragraph, the minimum distribution allowance for the taxable year is an amount equal to—

"(i) the lesser of $10,000 or one-half of the total taxable amount of the lump sum distribution for the taxable year, reduced (but not below zero) by

"(ii) 20 percent of the amount (if any) by which such total taxable amount exceeds $20,000.

"(E) LIABILITY FOR TAX.—The recipient shall be liable for the tax imposed by this paragraph.

"(2) MULTIPLE DISTRIBUTIONS AND DISTRIBUTIONS OF ANNUITY CONTRACTS.—In the case of any recipient of a lump sum distribution for the taxable year with respect to whom during the 6-taxable-year period ending on the last day of the taxable year there has been one or more other lump sum distributions after December 31, 1973, or if the distribution (or any part thereof) is an annuity contract, in computing the tax imposed by paragraph (1)(A), the total taxable amounts of all such distributions during such 6-taxable-year period shall be aggregated, but the amount of tax so computed shall be reduced (but not below zero) by the sum of—

"(A) the amount of the tax imposed by paragraph (1)(A) paid with respect to such other distributions, plus

"(B) that portion of the tax on the aggregated total taxable amounts which is attributable to annuity contracts.

For purposes of this paragraph, a beneficiary of a trust to which a lump sum distribution is made shall be treated as the recipient of such distribution if the beneficiary is an employee (including an employee within the meaning of section 401(c)(1)) with respect to the plan under which the distribution is made or if the beneficiary is treated as the owner of such trust for purposes of subpart E of part I of subchapter J. In the case of the distribution of an annuity contract, the taxable amount of such distribution shall be deemed to be the current actuarial value of the contract, determined on the date of such distribution. In the case of a lump sum distribution with respect to any individual which is made only to two or more trusts, the tax imposed by paragraph (1)(A) shall be computed as if such distribution was made to a single trust, but the liability for such tax shall be apportioned among such trusts according to the relative amounts received by each. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph.

26 USC 401.

26 USC 671.

Regulations.

"(3) ALLOWANCE OF DEDUCTION.—The ordinary income portion of a lump sum distribution for the taxable year shall be allowed as a deduction from gross income for such taxable year, but only to the extent included in the taxpayer's gross income for such taxable year.

"(4) DEFINITIONS AND SPECIAL RULES.—

"(A) LUMP SUM DISTRIBUTION.—For purposes of this section and section 403, the term 'lump sum distribution' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

26 USC 403.

"(i) on account of the employee's death,

"(ii) after the employee attains age 59½,

"(iii) on account of the employee's separation from the service, or

"(iv) after the employee has become disabled (within the meaning of section 72(m)(7)) 26 USC 72.

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Clause (iii) of this subparagraph shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and clause (iv) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this subparagraph, a distribution of an annuity contract from a trust or annuity plan referred to in the first sentence of this subparagraph shall be treated as a lump sum distribution. For purposes of this subparagraph, a distribution to two or more trusts shall be treated as a distribution to one recipient. 26 USC 401, 501. 26 USC 403.

"(B) ELECTION OF LUMP SUM TREATMENT.—For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distribution under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary or his delegate. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to two or more trusts, the election under this subparagraph shall be made by the personal representative of the employee.

"(C) AGGREGATION OF CERTAIN TRUSTS AND PLANS.—For purposes of determining the balance to the credit of an employee under subparagraph (A)—

"(i) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

"(ii) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account. 26 USC 404.

"(D) TOTAL TAXABLE AMOUNT.—For purposes of this section and section 403, the term 'total taxable amount' means, with respect to a lump sum distribution, the amount of such distribution which exceeds the sum of—

"(i) the amounts considered contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includible in gross income, and

"(ii) the net unrealized appreciation attributable to that part of the distribution which consists of the securities of the employer corporation so distributed.

"(E) ORDINARY INCOME PORTION.—For purposes of this section, the term 'ordinary income portion' means, with

respect to a lump sum distribution, so much of the total taxable amount of such distribution as is equal to the product of such total taxable amount multiplied by a fraction—

"(i) the numerator of which is the number of calendar years of active participation by the employee in such plan after December 31, 1973, and

"(ii) the denominator of which is the number of calendar years of active participation by the employee in such plan.

"(F) EMPLOYEE.—For purposes of this subsection and subsection (a)(2), except as otherwise provided in subparagraph (A), the term 'employee' includes an individual who is an employee within the meaning of section 401(c)(1) and the employer of such individual is the person treated as his employer under section 401(c)(4).

26 USC 401.

"(G) COMMUNITY PROPERTY LAWS.—The provisions of this subsection, other than paragraph (3), shall be applied without regard to community property laws.

"(H) MINIMUM PERIOD OF SERVICE.—For purposes of this subsection (but not for purposes of subsection (a)(2) or section 403(a)(2)(A)), no amount distributed to an employee from or under a plan may be treated as a lump sum distributed under subparagraph (A) unless he has been a participant in the plan for 5 or more taxable years before the taxable year in which such amounts are distributed.

26 USC 403.

"(I) AMOUNTS SUBJECT TO PENALTY.—This subsection shall not apply to amounts described in clause (ii) of subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

"(J) UNREALIZED APPRECIATION OF EMPLOYER SECURITIES.—In the case of any distribution including securities of the employer corporation which, without regard to the requirement of subparagraph (H), would be treated as a lump sum distribution under subparagraph (A), there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation so distributed. In the case of any such distribution or any lump sum distribution including securities of the employer corporation, the amount of net unrealized appreciation of such securities and the resulting adjustments to the basis of such securities shall be determined under regulations prescribed by the Secretary or his delegate.

"(K) SECURITIES.—For purposes of this subsection, the terms 'securities' and 'securities of the employer corporation' have the respective meanings provided by subsection (a)(3)."

(b) PHASEOUT OF CAPITAL GAINS TREATMENT.—

26 USC 402.

(1) IN GENERAL.—Section 402(a)(2) (relating to capital gains treatment for certain distributions) is amended to read as follows:

"(2) CAPITAL GAINS TREATMENT FOR PORTION OF LUMP SUM DISTRIBUTIONS.—In the case of an employee trust described in section 401(a), which is exempt from tax under section 501(a), so much of the total taxable amount (as defined in subparagraph (D) of subsection (e)(4)) of a lump sum distribution as is equal to the product of such total taxable amount multiplied by a fraction—

26 USC 401, 501.

*Ante*, p. 987.

"(A) the numerator of which is the number of calendar years of active participation by the employee in such plan before January 1, 1974, and

"(B) the denominator of which is the number of calendar years of active participation by the employee in such plan, shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of computing the fraction described in this paragraph and the fraction under subsection (e)(4)(E), the Secretary or his delegate may prescribe regulations under which plan years may be used in lieu of calendar years. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B), but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph."

Regulations.

*Ante*, p. 987.

26 USC 401.

(2) AMENDMENT OF SECTION 403.—That part of paragraph (2) of section 403(a) which follows clause (ii) of subparagraph (A) thereof is amended to read as follows:

26 USC 403.

"(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

*Ante*, p. 987.

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

*Ante*, p. 990.

"(B) CROSS REFERENCE.—

**"For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).".**

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 402(a)(3) is repealed.

Repeals. 26 USC 402.

(2) Paragraph (5) (as in effect on December 31, 1973) of section 402(a) is repealed.

(3) Section 72 is amended by striking out subsection (n) thereof and by redesignating subsections (o) and (p) as (n) and (o), respectively.

26 USC 72.

(4) The second sentence of section 46(a)(3) and the second sentence of section 50A(a)(3) are each amended by inserting after "tax preferences)," the following: "section 402(e) (relating to tax on lump sum distributions),".

26 USC 46.
26 USC 50.

(5) The third sentence of section 901(a) is amended by inserting "against the tax imposed by section 402(e) (relating to tax on lump sum distributions)," before "against the tax imposed by section 531".

26 USC 901.
26 USC 531.

(6) Subsection 1304(b)(2) (relating to special rules) is amended by striking out paragraph (2) and by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively.

26 USC 1304.

(7) Subparagraph (A) of section 56(a)(2) and paragraph (1) of section 56(c) are each amended by inserting before "531" the following: "402(e),".

26 USC 56.

26 USC 871, 877.
*Ante*, p. 987.
*Ante*, p. 959.

(8) Sections 871(b)(1) and 877(b) are each amended by inserting ", 402(e)(1)," after "section 1".

(9) Section 62 (defining adjusted gross income), is amended by inserting after paragraph (10) the following new paragraph:

"(11) CERTAIN PORTION OF LUMP-SUM DISTRIBUTIONS FROM PENSION PLANS TAXED UNDER SECTION 402(e).—The deduction allowed by section 402(e)(3)."

26 USC 122.

(10) Section 122(b)(2) (relating to consideration for the contract) is amended by striking out "72(o)" and inserting "72(n)".

26 USC 405.

(11) Section 405(e) (relating to capital gains treatment and limitation of tax not to apply to bonds distributed by trusts) is amended by striking out "Section 72(n) and section 402(a)(2)" and inserting "Subsections (a)(2) and (e) of section 402".

26 USC 406.

(12) Section 406(c) (relating to termination of status as deemed employee, etc.) is amended by striking out "section 72(n), section 402(a)(2)" and inserting "subsections (a)(2) and (e) of section 402".

26 USC 407.

(13) Section 407(c) (relating to termination of status as deemed employee, etc.) is amended by striking out "section 72(n), section 402(a)(2)" and inserting "subsections (a)(2) and (e) of section 402".

26 USC 1348.

(14) Section 1348(b)(1) (relating to earned income) is amended by striking out "72(n), 402(a)(2)" and inserting "402(a)(2), 402(e)".

26 USC 101.

(15) Section 101(b)(2)(B) is amended by striking out "total distributions payable (as defined in section 402(a)(3)) which are paid to a distributee within one taxable year of the distributee by reason of the employee's death" and inserting in lieu thereof "a lump sum distribution (as defined in section 402(e)(4))".

26 USC 402 note.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply only with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.

26 USC 401 note.

**SEC. 2006. SALARY REDUCTION REGULATIONS.**

(a) INCLUSION OF CERTAIN CONTRIBUTIONS IN INCOME.—Except in the case of plans or arrangements in existence on June 27, 1974, a contribution made before January 1, 1977, to an employees' trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code, or under an arrangement which, but for the fact that it was not in existence on June 27, 1974, would be an arrangement described in subsection (b)(2) of this section, shall be treated as a contribution made by an employee if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation.

26 USC 401, 403, 405.
26 USC 501.

(b) ADMINISTRATION IN THE CASE OF CERTAIN QUALIFIED PENSION OR PROFIT-SHARING PLANS, ETC., IN EXISTENCE ON JUNE 27, 1974.—No salary reduction regulations may be issued by the Secretary of the Treasury in final form before January 1, 1977, with respect to an arrangement which was in existence on June 27, 1974, and which, on that date—

(1) provided for contributions to an employees' trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code, or

(2) was maintained as part of an arrangement under which an

employee was permitted to elect to receive part of his compensation in one or more alternative forms if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1954.

26 USC 1 *et seq.*

(c) ADMINISTRATION OF LAW WITH RESPECT TO CERTAIN PLANS.—

(1) ADMINISTRATION IN THE CASE OF PLANS DESCRIBED IN SUBSECTION (b).—Until salary reduction regulations have been issued in final form, the law with respect to plans or arrangements described in subsection (b) shall be administered—

(A) without regard to the proposed salary reduction regulations (37 FR 25938) and without regard to any other proposed salary reduction regulations, and

(B) in the manner in which such law was administered before January 1, 1972.

(2) ADMINISTRATION IN THE CASE OF QUALIFIED PROFIT-SHARING PLANS.—In the case of plans or arrangements described in subsection (b), in applying this section to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with—

(A) Revenue Ruling 56-497 (1956—2 C.B. 284),

(B) Revenue Ruling 63-180 (1963—2 C.B. 189), and

(C) Revenue Ruling 68-89 (1968—1 C.B. 402).

(d) LIMITATION ON RETROACTIVITY OF FINAL REGULATIONS.—In the case of any salary reduction regulations which become final after December 31, 1976—

(1) for purposes of chapter 1 of the Internal Revenue Code of 1954 (relating to normal taxes and surtaxes), such regulations shall not apply before January 1, 1977; and

26 USC 1.

(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for purposes of chapter 24 of such Code (relating to collection of income tax at source on wages), such regulations shall not apply before the day on which such regulations are issued in final form.

26 USC 3101.
26 USC 3401.

(e) SALARY REDUCTION REGULATIONS DEFINED.—For purposes of this section, the term "salary reduction regulations" means regulations dealing with the includibility in gross income (at the time of contribution) of amounts contributed to a plan which includes a trust that qualifies under section 401(a), or a plan described in section 403(a) or 405(a), including plans or arrangements described in subsection (b)(2), if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation, or under an arrangement under which the employee is permitted to elect to receive part of his compensation in one or more alternative forms (if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1954).

26 USC 401, 403.
26 USC 405.

**SEC. 2008. CERTAIN ARMED FORCES SURVIVOR ANNUITIES.**

(a) TREATMENT OF CERTAIN PARTICIPANTS IN THE PLAN.—Section 404(c) (relating to certain negotiated plans) is amended by inserting after the first sentence the following new sentences: "For purposes of this chapter and subtitle B, in the case of any individual who before July 1, 1974, was a participant in a plan described in the preceding sentence—

26 USC 404.

26 USC 401.

"(A) such individual, if he is or was an employee within the meaning of section 401(c)(1), shall be treated (with respect to service covered by the plan) as being an employee other than an employee within the meaning of section 401(c)(1) and as being an employee of a participating employer under the plan,

"(B) earnings derived from service covered by the plan shall be treated as not being earned income within the meaning of section 401(c)(2), and

"(C) such individual shall be treated as an employee of a participating employer under the plan with respect to service before July 1, 1975, covered by the plan.

26 USC 277.

Section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in this subsection.".

26 USC 404.

(b) OTHER AMENDMENTS TO SECTION 404(c)(1).—

(1) Paragraph (1) of the first sentence of section 404(c) is amended by striking out "and pensions" and inserting in lieu thereof "or pensions".

(2) The last sentence of section 404(c) is amended by striking out "This subsection" and inserting in lieu thereof "The first and third sentences of this subsection".

26 USC 404 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after June 30, 1972.

**SEC. 2007. RULES FOR CERTAIN NEGOTIATED PLANS.**

26 USC 122.

(a) IN GENERAL.—Section 122(a) (relating to certain reduced uniformed services retired pay) is amended to read as follows:

"(a) GENERAL RULE.—In the case of a member or former member of the uniformed services of the United States, gross income does not include the amount of any reduction in his retired or retainer pay pursuant to the provisions of chapter 73 of title 10, United States Code.".

10 USC 1431.

(b) TECHNICAL AMENDMENTS.—

(1) Section 122(b)(2) is amended by striking out "section 1438" in subparagraph (B) and inserting in lieu thereof "section 1438 or 1452(d)".

*Ante*, p. 991.

(2) Section 72(o) is amended by inserting after "Plan" in the heading of such section "or Survivor Benefit Plan".

26 USC 101.

(3) Section 101(b)(2)(D) is amended by striking out "if the individual who made the election under such chapter" and inserting in lieu thereof "if the member or former member of the uniformed services by reason of whose death such annuity is payable".

26 USC 2039.

(4) Section 2039(c) is amended by striking out "section 1438" in the last sentence and inserting in lieu thereof "section 1438 or 1452(d)".

26 USC 122 note.

(c) EFFECTIVE DATES.—The amendments made by this section apply to taxable years ending on or after September 21, 1972. The amendments made by paragraphs (3) and (4) of subsection (b) apply with respect to individuals dying on or after such date.

# TITLE III—JURISDICTION, ADMINISTRATION, ENFORCEMENT; JOINT PENSION TASK FORCE, ETC.

## Subtitle A—Jurisdiction, Administration, and Enforcement

PROCEDURES IN CONNECTION WITH THE ISSUANCE OF CERTAIN DETERMINATION LETTERS BY THE SECRETARY OF THE TREASURY

SEC. 3001. (a) 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 the Internal Revenue Code of 1954, the Secretary of the Treasury shall require the person applying for the determination 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 title I of this Act for the administration of that title. 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 such Code (relating to declaratory judgments in connection with the qualification of certain retirement plans)) of the application for a determination.

29 USC 1201.

26 USC 401.

*Ante*, p. 832.

*Ante*, p. 949.

(b)(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 the Internal Revenue Code of 1954, 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).

(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). 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, United States Code)).

(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) The Pension Benefit Guaranty Corporation and, upon petition of a group of employees referred to in subsection (b)(2), the Secretary of Labor, may intervene in any action brought for declaratory judgment under section 7476 of the Internal Revenue Code of 1954 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.

*Ante*, p. 949.

(d) 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 the Internal Revenue Code of 1954 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 title I of this Act. 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 title I of this Act. 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.

26 USC 401.

*Ante*, p. 832.

*Ante*, pp. 852, 868, 874.

(e) 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 the Internal Revenue Code of 1954 applies to the plan, or on which such section will apply if the plan is determined by the Secretary to be a qualified plan.

*Ante*, p. 898.

PROCEDURES WITH RESPECT TO CONTINUED COMPLIANCE WITH REQUIREMENTS RELATING TO PARTICIPATION, VESTING, AND FUNDING STANDARDS

29 USC 1202.

SEC. 3002. (a) In carrying out the provisions of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 with respect to whether a plan or a trust meets the requirements of section 410 (a) or 411 of such Code (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 1954 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

*Ante*, p. 901.

26 USC 1 *et seq.*

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 Act, the Secretary of Labor shall not generally apply part 2 of title I of this Act to any plan or trust subject to sections 410(a) and 411 of such Code, 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.)

*Ante*, p. 852.

*Ante*, pp. 898, 901.

Notice of deficiency.

(b) 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 the Internal Revenue Code of 1954 (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 such Code 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 such Code 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 the Internal Revenue Code of 1954 (relating to minimum funding standards) and with respect to the funding standards applicable under title I of this Act in order to coordinate the rules applicable under such standards.

*Ante*, p. 920.

Waiver.

*Ante*, p. 914.

(c) Regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, and 412 of the Internal Revenue Code of 1954 (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 title I of this Act. Except as otherwise expressly provided in this Act, 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 the Internal Revenue Code of 1954 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 such Code.

*Ante*, pp. 852, 868.

Review of briefs.

(d) 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 title I of this Act, 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.

*Ante*, p. 832.

PROCEDURES IN CONNECTION WITH PROHIBITED TRANSACTIONS

29 USC 1203.

SEC. 3003. (a) 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 the Internal Revenue Code of 1954 (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 such Code should be applied to any person referred to in the request.

*Ante*, p. 971.

(b) 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 the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) and with respect to the provisions of title I of this Act relating to prohibited transactions and exemptions therefrom in order to coordinate the rules applicable under such standards.

*Ante*, p. 832.

(c) Whenever the Secretary of Labor obtains information indicating that a party-in-interest or disqualified person is violating section 406 of this Act, he shall transmit such information to the Secretary of the Treasury.

*Ante*, p. 879.

COORDINATION BETWEEN THE DEPARTMENT OF THE TREASURY AND THE DEPARTMENT OF LABOR

29 USC 1204.

SEC. 3004. (a) Whenever in this Act or in any provision of law amended by this Act 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 Act, and the functions of any such agency 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 Act. 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 Act as may be found to warrant consideration for criminal prosecution under the provisions of this title or other Federal law.

# Subtitle B—Joint Pension Task Force; Studies

## PART 1—JOINT PENSION TASK FORCE

### ESTABLISHMENT

SEC. 3021. 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 Internal Revenue Taxation, and the Committee on Finance and the Committee on Labor and Public Welfare of the Senate shall carry out the duties assigned under this title to the Joint Pension Task Force. By agreement among the chairmen of such Committees, the Joint Pension Task Force shall be furnished with office space, clerical personnel, and such supplies and equipment as may be necessary for the Joint Pension Task Force to carry out its duties under this title. 29 USC 1221.

### DUTIES

SEC. 3022. (a) The Joint Pension Task Force shall, within 24 months after the date of enactment of this Act, make a full study and review of— 29 USC 1222.

(1) the effect of the requirements of section 411 of the Internal Revenue Code of 1954 and of section 203 of this Act to determine the extent of discrimination, if any, among employees in various age groups resulting from the application of such requirements; *Ante*, pp. 901, 854.

(2) means of providing for the portability of pension rights among different pension plans;

(3) the appropriate treatment under title IV of this Act (relating to termination insurance) of plans established and maintained by small employers; *Post*, p. 1003.

(4) the effects and desirability of the Federal preemption of State and local law with respect to matters relating to pension and similar plans; and

(5) such other matter as any of the committees referred to in section 3021 may refer to it. *Supra*.

(b) The Joint Pension Task Force shall report the results of its study and review to each of the committees referred to in section 3021.

## PART 2—OTHER STUDIES

### CONGRESSIONAL STUDY

SEC. 3031. (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 Public Welfare of the Senate shall study retirement plans established and maintained or financed (directly or indirectly) by the Government of 29 USC 1231.

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.

Report to House and Senate.

(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 Public Welfare 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.

PROTECTION FOR EMPLOYEES UNDER FEDERAL PROCUREMENT, CONSTRUCTION, AND RESEARCH CONTRACTS AND GRANTS

29 USC 1232.

SEC. 3032. (a) The Secretary of Labor shall, during the 2-year period beginning on the date of the enactment of this Act, 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 the date of the enactment of this Act. 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.

Report to Congress.

(b) In the course of conducting the study and investigation described in subsection (a), and in developing the regulations referred to in subsection (c), 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.

Regulations.

(c) Within 1 year after the date on which he submits his report to the Congress under subsection (a), 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).

(d) (1) Any regulations developed pursuant to subsection (c) shall take effect if, and only if—

(A) the Secretary of Labor, not later than the day which is 3 years after the date of the enactment of this Act, 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.

"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 Public Welfare.

(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.

Appeals.

(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.

Regulations to House and Senate.

(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.

## Subtitle C—Enrollment of Actuaries

ESTABLISHMENT OF JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

29 USC 1241.

SEC. 3041. The Secretary of Labor and the Secretary of the Treasury shall, not later than the last day of the first calendar month beginning after the date of the enactment of this Act, establish a Joint Board for the Enrollment of Actuaries (hereinafter in this part referred to as the "Joint Board").

ENROLLMENT BY JOINT BOARD

Standards and qualifications. 29 USC 1242.

SEC. 3042. (a) The Joint Board shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services with respect to plans in which this Act 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 end-

ing on 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— Enrollment termination.

(1) has failed to discharge his duties under this Act, 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 Act or who does not satisfy the interim enrollment standards. Notice and hearing.

AMENDMENT OF INTERNAL REVENUE CODE

SEC. 3043. Section 7701(a) of the Internal Revenue Code of 1954 (relating to definitions) is amended by adding at the end thereof the following new paragraph: 26 USC 7701.

"(35) ENROLLED ACTUARY.—The term 'enrolled actuary' means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under subtitle C of the title III of the Employee Retirement Income Security Act of 1974." *Ante*, p. 1002.

# TITLE IV—PLAN TERMINATION INSURANCE

## Subtitle A—Pension Benefit Guaranty Corporation

DEFINITIONS

SEC. 4001. (a) For purposes of this title, the term— 29 USC 1301.

(1) "administrator" means the person or persons described in paragraph (16) of section 3 of this Act; *Ante*, p. 833.

(2) "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Internal Revenue Code of 1954, determined without regard to section 1563(a)(4) and (e)(3)(C) of such Code, as one employer) who has made contributions to or under a plan under which more than one employer makes contributions for each of— 26 USC 1563.

(A) the two immediately preceding plan years, or

(B) the second and third preceding plan years,

equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year;

(3) "multiemployer plan" means a multiemployer plan as defined in section 414(f) of the Internal Revenue Code of 1954 (as added by this Act but without regard to whether such section is in effect on the date of enactment of this Act); *Ante*, p. 925.

(4) "corporation", except where the context clearly requires otherwise, means the Pension Benefit Guaranty Corporation established under section 4002; *Post*, p. 1004.

(5) "fund" means the appropriate fund established under section 4005; *Post*, p. 1009.

(6) "basic benefits" means benefits guaranteed under section 4022 other than under section 4022(c); and *Post*, p. 1016.

(7) "non-basic benefits" means benefits guaranteed under section 4022(c).

Post, p. 1016.

(b) 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 the Internal Revenue Code of 1954. For purposes of this title, 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 the Internal Revenue Code of 1954.

26 USC 401.

Ante, p. 925.

PENSION BENEFIT GUARANTY CORPORATION

Establishment.
29 USC 1302.

SEC. 4002. (a) 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 title, the corporation shall be administered by the chairman of the board of directors in accordance with policies established by the board. The purposes of this title, 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 title applies, and

(3) to maintain premiums established by the corporation under section 4006 at the lowest level consistent with carrying out its obligations under this title.

Post, p. 1010.

Functions.

(b) To carry out the purposes of this title, the corporation has the powers conferred on a nonprofit corporation under the District of Columbia Nonprofit Corporation Act and, in addition to any specific power granted to the corporation elsewhere in this title or under that Act, the corporation has the power—

D.C. Code 29-1001.

(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, bylaws, rules, and regulations relating to the conduct of its business and the exercise of all other rights and powers granted to it by this Act;

(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 Act 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, United States Code;

(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 other 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 Act.

(c) Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) In addition to the number of positions authorized by subsection (a), the Pension Benefit Guaranty Corporation is authorized, without regard to any other provision of this section, to place one position in the corporation at GS-18 and a total of 10 positions in the corporation at GS-16 and 17.".

Membership.

(d) 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) The board of directors shall meet at the call of its chairman, or as otherwise provided by the bylaws of the corporation.

Bylaws and rules.

(f) As soon as practicable, but not later than 180 days after the date of enactment of this Act, 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.

Publication in Federal Register.

Tax exemption.

(g) (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 4005), shall be exempt from all taxation now or hereafter imposed 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 not be included in the totals of the budget of the United States Government and shall be exempt from any general limitations imposed by statute on budget outlays of the United States. Except as explicitly provided in this title, the United States is not liable for any obligation or liability incurred by the corporation.

(3) Section 101 of the Government Corporation Control Act (31 U.S.C. 846) is amended by inserting before the period a semicolon and the following: "and Pension Benefit Guaranty Corporation".

Advisory committee.
Establishment.

(h) (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.

Membership.

(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.

Terms.

(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.

Compensation.

(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, United States Code. 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, United States Code.

5 USC 5332 note.

5 USC app. I.

(8) The Federal Advisory Committee Act does not apply to the advisory committee established by this subsection.

INVESTIGATORY AUTHORITY; COOPERATION WITH OTHER AGENCIES; CIVIL ACTIONS

29 USC 1303.

SEC. 4003. (a) The corporation may make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this title 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.

(b) For the purpose of any such investigation, or any other proceeding under this title, 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) In 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) 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 title 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 title. 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 title as may be found to warrant consideration for criminal prosecution under the provisions of this or any other Federal law.

(e)(1) Civil actions may be brought by the corporation for appropriate relief, legal or equitable or both, to redress violations of the provisions of this title.

(2) Except as otherwise provided in this title, 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 title without regard to the amount in controversy in any such action. Jurisdiction.

(4) Upon application by the corporation to a court of the United States for expedited handling of any case in which the corporation is a party, it is 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.

(5) In any action brought under this title, whether to collect premiums, penalties, and interest under section 4007 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.

(f) 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 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 4041 or 4042 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.

*Post*, pp. 1020, 1021.

TEMPORARY AUTHORITY FOR INITIAL PERIOD

29 USC 1304.

SEC. 4004. (a) Notwithstanding anything to the contrary in this title, the corporation may, upon receipt of notice that a plan is to be terminated or upon making a determination described in section 4042, appoint a receiver whose powers shall take effect immediately. The receiver shall assume control of such plan and its assets, protecting the interests of all interested persons during subsequent proceedings.

(b)(1) Within a reasonable time, not exceeding 20 days, after the appointment of a receiver under subsection (a), the corporation shall apply to an appropriate United States district court for a decree approving such appointment. The court to which application is made shall issue a decree approving such appointment unless it determines that such approval would not be in the best interests of the participants and beneficiaries of the plan.

(2) If the court to which application is made under paragraph (1) dismisses the application with prejudice, or if the corporation fails to apply for a decree under paragraph (1) within 20 days after the appointment of the receiver, the receiver 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 the 20 day period. The receiver shall not be liable to the plan or to any other person for his acts as receiver other than for willful misconduct, or for conduct in violation of the provisions of part 4 of subpart B of title I of this Act (except to the extent that the provisions of section 4042(d)(1)(A) provide otherwise).

*Ante*, p. 874.

(c) The corporation is authorized, as an alternative to appointing a receiver under subsection (a), to direct a plan administrator to apply to a district court of the United States for the appointment of a receiver to assume control of the plan and its assets for the purpose of protecting the interests of all interested persons until the plan can be terminated under the provisions of this title.

(d) A receiver appointed under this section has the powers of a trustee under section 4042(d)(1) (A) and (B), and shall report to the corporation and the court on the plan from time to time as required by either the corporation or the court. As soon as practicable after his appointment, a receiver appointed under this section shall determine whether the assets of the plan are sufficient to discharge when due all obligations of the plan with respect to benefits guaranteed under this title in accordance with the requirements of section 4044. If the determination of the receiver is approved by the corporation and the court, the receiver shall proceed as if he were a trustee appointed under section 4042.

*Post*, p. 1025.

(e) A receiver may not be appointed under this section more than 270 days after the date of enactment of this Act.

(f) In addition to its other powers under this title, for only the first 270 days after the date of enactment of this Act the corporation may—

(1) contract for printing without regard to the provisions of chapter 5 of title 44, United States Code, 44 USC 501.

(2) waive any notice required under this title if the corporation finds that a waiver is necessary or appropriate,

(3) extend the 90-day period referred to in section 4041(a) for an additional 90 days without the agreement of the plan administrator and without application to a court as required under section 4041(d), and *Post*, p. 1020.

(4) waive the application of the provisions of sections 4062, 4063, and 4064 to, or reduce the liability imposed under such sections on, any employer with respect to a plan terminating during that 270 day period if the corporation determines that such waiver or reduction is necessary to avoid unreasonable hardship in any case in which the employer was not able, as a practical matter, to continue the plan. *Post*, pp. 1029, 1030, 1031.

ESTABLISHMENT OF PENSION BENEFIT GUARANTY FUNDS

SEC. 4005. (a) There are established on the books of the Treasury of the United States four revolving funds to be used by the corporation in carrying out its duties under this title. One of the funds shall be used in connection with benefits guaranteed under sections 4022 and 4023 (but not non-basic benefits) with respect to plans other than multiemployer plans, one of the funds shall be used with respect to such benefits guaranteed under such sections (other than non-basic benefits) for multiemployer plans, one of the funds shall be used with respect to non-basic benefits, if any are guaranteed by the corporation under section 4022, for plans which are not multiemployer plans, and the remaining fund shall be used with respect to non-basic benefits, if any are guaranteed by the corporation under section 4022, for multiemployer plans. Whenever in this title reference is made to the term "fund" the reference shall be considered to refer to the appropriate fund established under this subsection. 29 USC 1305.

(b)(1) Each fund established under this section shall be credited with the appropriate portion of—

(A) funds borrowed under subsection (c),

(B) premiums, penalties, interest, and charges collected under this title,

(C) the value of the assets of a plan administered under section 4042 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, 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, and

(F) receipts from any other operations under this title.

(2) Subject to the provisions of subsection (a), each fund shall be available—

(A) for making such payments as the corporation determines are necessary to pay benefits guaranteed under section 4022,

(B) for making such payments as the corporation determines are necessary under section 4023,

(C) to purchase assets from a plan being terminated by the corporation when the corporation determines such purchase will best protect the interests of the corporation, participants in the plan being terminated, and other insured plans,

(D) to repay to the Secretary of the Treasury such sums as may be borrowed (together with interest thereon) under subsection (c), and

(E) 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.

(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) 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) 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 the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, 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.

31 USC 774.

PREMIUM RATES

29 USC 1306.

SEC. 4006. (a)(1) The corporation shall prescribe such insurance premium rates and such coverage schedules 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 title. 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 4022, and shall be uniform for all multiemployer plans with respect to basic benefits guaranteed by it under such section. The premium rates charged by the corporation for any period for non-basic benefits guaranteed by it shall be uniform by category of non-basic benefit guaranteed, shall be based on the risk insured in each category, and shall reflect the experience of the corporation (including reasonably anticipated experience) in guaranteeing such benefits.

(2) The corporation shall maintain separate coverage schedules for—

(A) basic benefits guaranteed by it under section 4022 for—

(i) plans which are multiemployer plans, and

(ii) plans which are not multiemployer plans,

(B) employers insured under section 4023 against liability under subtitle D of this title, and

(C) non-basic benefits.

Except as provided in paragraph (3), the corporation may revise such schedules whenever it determines that revised rates are necessary, but a revised schedule described in subparagraph (A) shall apply only to plan years beginning more than 30 days after the date on which the Congress approves such revised schedule by a concurrent resolution.

(3) Except as provided in paragraph (4), the rate for all plans for benefits guaranteed under section 4022 (other than non-basic benefits) with respect to plan years ending no more than 35 months after the effective date of this title is—

(A) in the case of each plan which is not a multiemployer plan, an amount equal to one dollar for each individual who is a participant in such plan at any time during the plan year; and

(B) in the case of a multiemployer plan, an amount equal to fifty cents for each individual who is a participant in such plan at any time during such plan year.

The rate applicable under this paragraph to any plan the plan year of which does not begin on the date of enactment of this Act is a fraction of the rate described in the preceding sentence, the numerator of which is the number of months which end before the date on which the new plan year commences and the denominator of which is 12. The corporation is authorized to prescribe regulations under which the rate described in subparagraph (B) will not apply to the same participant in any multiemployer plan more than once for any plan year.

(4) Upon notification filed with the corporation not less than 60 days after the date on which the corporation publishes the rates applicable under paragraph (5), at the election of a plan the rate applicable to that plan with respect to the second full plan year to which this section applies beginning after the date of enactment of this Act shall be the greater of—

(A) an alternative rate determined under paragraph (5), or

(B) one-half of the rate applicable to the plan under paragraph (3).

In the case of a multiemployer plan, the rate prescribed by this paragraph (at the election of a plan) for the second full plan year is also the applicable rate for plan years succeeding the second full plan year and ending before the full plan year first commencing after December 31, 1977.

(5) In carrying out its authority under paragraph (1) to establish premium rates and bases for basic benefits guaranteed under section 4022 the corporation shall establish such rates and bases in coverage schedules for plan years beginning 24 months or more after the date of enactment of this Act in accordance with the provisions of this paragraph. The corporation shall publish the rate schedules first applicable under this paragraph in the Federal Register not later than 270 days after the date of enactment of this Act.

Publication in Federal Register.

(A) The corporation may establish annual premiums composed of—

(i) 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 for plans which are not multiemployer plans and not in excess of 0.025 percent for multiemployer plans, and

(ii) an additional charge based on the rate applicable to the present value of the basic benefits of the plan which are guaranteed, determined separately for multiemployer plans and for plans which are not multiemployer plans.

The rate for the additional charge referred to in clause (ii) shall be set by the corporation for every year at a level (determined separately for multiemployer plans and for plans which are not multiemployer plans) which the corporation estimates will yield total revenue approximately equal to the total revenue to be derived by the corporation from the premiums referred to in clause (i) of this subparagraph.

(B) The corporation may establish annual premiums 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 title, but such premium rates shall not exceed the limitations applicable under subparagraph (A)(i), or

(iii) total guaranteed basic benefits, but such premium rates may not exceed the rates determined under subparagraph (A)(ii).

If the corporation uses 2 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.

Regulations.

(6) The corporation shall by regulation define the terms "value of the assets" and "present value of the benefits of the plan which are guaranteed" in a manner consistent with the purposes of this title and the provisions of this section.

Report to congressional committees.

(b)(1) In order to place a revised coverage schedule (other than a schedule described in subsection (a)(2) (B) or (C) 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 Public Welfare 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.

"Resolution."

(3) For the purpose of the succeeding paragraphs of this subsection, "resolution" means only a concurrent resolution, the matter after the resolving clause of which is as follows: "That the Congress favors the proposed revised coverage schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on ———.", 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 Public Welfare 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.

PAYMENT OF PREMIUMS

SEC. 4007. (a) The plan administrator of each plan shall pay the premiums imposed by the corporation under this title with respect to that plan when they are due. Any employer obtaining contingent liability coverage under section 4023 shall pay the premiums imposed by the corporation under that section when due. Premiums under this title are payable at the time, and on an estimated, advance, or other basis, as determined by the corporation. Premiums imposed by this title on the date of enactment (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 title on the first plan year commencing after the date of enactment of this Act 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 4042, whichever is earlier. 29 USC 1307.

(b) 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 plan administrator 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 plan administrator, but the corporation may not grant a waiver if it appears that the plan administrator 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 the Internal Revenue Code of 1954 (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.

26 USC 6601.

(c) If any plan administrator 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 corporation without regard to the amount in controversy.

(d) The corporation shall not cease to guarantee basic benefits on account of the failure of a plan administrator to pay any premium when due.

REPORT BY THE CORPORATION

29 USC 1308.

SEC. 4008. 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 title 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 4005 for the next five years (including a detailed statement of the actuarial assumptions and methods used in making such evaluation).

PORTABILITY ASSISTANCE

29 USC 1309.

SEC. 4009. 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 the Internal Revenue Code of 1954 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.

*Ante*, p. 958.

## Subtitle B—Coverage

PLANS COVERED

29 USC 1321.

SEC. 4021. (a) Except as provided in subsection (b), this section 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 3 of this Act) established or maintained—

*Ante*, p. 833.

(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 the Internal Revenue Code of 1954 (as in effect for the preceding 5 plan years of the plan) applicable to plans described in paragraph (2) for the preceding 5 plan years; or

26 USC 401.

(2) is, or has been determined by the Secretary of the Treasury to be, a plan described in section 401(a) of the Internal Revenue Code of 1954, or which meets, or has been determined by the Secretary of the Treasury to meet, the requirements of section 404(a)(2) of such Code.

For purposes of this title, a successor plan is considered to be a continuation of a predecessor plan. For this purpose, 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) This section does not apply to any plan—

(1) which is an individual account plan, as defined in paragraph (34) of section 3 of this Act,

*Ante*, p. 833.

(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 applies and which is financed by contributions required under that Act,

45 USC 215-228 notes, 228a-228s-2.

(3) which is a church plan as defined in section 414(e) of the Internal Revenue Code of 1954, unless that plan has made an election under section 410(d) of such Code, 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,

*Ante*, p. 925.
*Ante*, p. 898.

(4)(A) established and maintained by a society, order, or association described in section 501(c)(8) or (9) of the Internal Revenue Code of 1954, if no part of the contributions to or under the plan is made by employers of participants in the plan, or

26 USC 501.

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

(5) which has not at any time after the date of enactment of this Act 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 the Internal Revenue Code of 1954 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 title, as a separate plan which is an excess benefit plan;

*Ante*, p. 979.

(9) which is established and maintained exclusively for substantial owners as defined in section 4022(b)(6);

22 USC 288 note.

(10) of an international organization which is exempt from taxation under the International Organizations Immunities Act;

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

*Ante*, p. 833.

(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 3 of this Act; or

(13) established and maintained by a professional service employer which does not at any time after the date of enactment of this Act have more than 25 active participants in the plan.

"Individual account plan."

(c)(1) For purposes of subsection (b)(1), 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)—

"Professional service employer."

(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

"Professional individuals."

(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) if, at any time after the date of enactment of this Act the plan has more than 25 active participants.

BENEFITS GUARANTEED

29 USC 1322.

SEC. 4022. (a) Subject to the limitations contained in subsection (b), the corporation shall guarantee the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under the terms of a plan which terminates at a time when section 4021 applies to it.

(b)(1) Except to the extent provided in paragraph (8)—

(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 4021(a)) has been in effect includes the time a previously established plan (within the meaning of section 4021(a)) was in effect. For purposes of determining what benefits are guaranteed under this section in the case of a plan to which section 4021 does not apply on the day after the date of enactment of this Act, 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) 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) 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.

42 USC 1305.

The provisions of this paragraph do not apply to non-basic benefits.

(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 the Internal Revenue Code of 1954 (determined without regard to any community property laws),

26 USC 911.

(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) Notwithstanding paragraph (3), no person shall receive from the corporation for basic benefits with respect to a participant an amount, or amounts, with an actuarial value which exceeds a monthly benefit in the form of a life annuity commencing at age 65 equal to the amount determined under paragraph (3)(B) at the time of the last plan termination.

(6)(A) For purposes of this title, the term "substantial owner" means an individual who—

"Substantial owner."

(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 the Internal Revenue Code of 1954 shall apply (determined without regard to section 1563(e)(3)(C)). For purposes of this title 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.

26 USC 1563.

(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) (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 guaranteed 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.

(7)(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 the Internal Revenue Code of 1954, or that the plan does not meet the requirements of section 404(a)(2) of such Code, 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 such Code or that the plan meets the requirements of section 404(a)(2) of such Code 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.

26 USC 401.
26 USC 404.

(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 the Internal Revenue Code of 1954 or that the plan has ceased to meet the requirements of section 404(a)(2) of such Code, 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.

(8) 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 following 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 title.

(c) 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.

CONTINGENT LIABILITY COVERAGE

SEC. 4023. (a) The corporation shall insure any employer who maintains or contributes to or under a plan to which section 4021 applies against the payment of any liability imposed on him under subtitle D of this title in the event of a termination of that plan. The corporation may develop arrangements with persons engaged in the business of providing insurance under which the insurance coverage described in the preceding sentence could be provided in whole or in part by such private insurers. In developing such arrangements the corporation shall devise a system under which risks are equitably distributed between the corporation and private insurers with respect to the classes of employers insured by each.

29 USC 1323.

*Post*, p. 1029.

(b) The corporation is authorized to prescribe and collect in such manner as it determines to be appropriate premiums for insurance offered under subsection (a). If the corporation requires all employers to which this title applies to purchase coverage under this section, the provisions of section 4007 (b) and (c) apply to the collection of premiums under this section. The premiums shall be determined by the corporation and revised by it from time to time as may be necessary, and shall be chargeable at a rate sufficient to fund any payment by the corporation becoming necessary under such coverage.

(c) If the corporation is, in its determination, able to develop a satisfactory arrangement with private insurers, within 36 months after the date of enactment of this Act, to carry out the program of insurance authorized by this section in whole or in part, the corporation is authorized to require employers to elect coverage by such private insurance or by the corporation at such times and in such manner as the corporation determines necessary.

(d) No payment may be made by the corporation under any insurance provided by it under this section unless the premiums on such insurance have been paid by the employer and the insurance has been in effect (with respect to any benefit) for more than 60 months. The corporation is authorized to prescribe conditions under which no payment will be made by it under any insurance offered under this section without regard to whether premiums for such insurance have been paid.

(e) Nothing in this section precludes the purchase by the employer of insurance from any other person, or limits the circumstances under which that insurance is payable, or in any way limits the terms and conditions of such insurance, except that the corporation may prescribe as a condition precedent to the purchase of such insurance the payment of a reinsurance premium or other reasonable fee under this section determined by the corporation to be necessary to assure the liquidity and adequacy of any fund or funds established to carry out the provisions of this section.

(f) In carrying out its duties under subsection (a) to develop arrangements with private insurers the corporation shall consider as an alternative or as a supplement to private insurance the feasibility of using private industry guarantees, indemnities, or letters of credit.

# Subtitle C—Terminations

TERMINATION BY PLAN ADMINISTRATOR

29 USC 1341.

SEC. 4041. (a) Before the effective date of the termination of a plan, the plan administrator shall file a notice with the corporation that the plan is to be terminated on a proposed date (which may not be earlier than 10 days after the filing of the notice), and for a period of 90 days after the proposed termination date the plan administrator shall pay no amount pursuant to the termination procedure of the plan unless, before the expiration of such period, he receives a notice of sufficiency under subsection (b). Upon receiving such a notice, the plan administrator may proceed with the termination of the plan in a manner consistent with this subtitle.

(b) If the corporation determines that, after application of section 4044, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to basic benefits, it shall notify the plan administrator of such determination as soon as practicable.

(c) If, within such 90-day period, the corporation finds that it is unable to determine that, if the assets of the plan are allocated in accordance with the provisions of section 4044, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to basic benefits, it shall notify the plan administrator within such 90-day period of that finding. When the corporation issues a notice under this subsection, it shall commence proceedings in accordance with the provisions of section 4042. Upon receiving a notice under this subsection, the plan administrator shall refrain from taking any action under the proposed termination.

(d) The corporation and the plan administrator may agree to extend the 90-day period provided by this section by a written agreement signed by the corporation and the plan administrator before the expiration of the 90-day period, or the corporation may apply to an appropriate court (as defined in section 4042(g)) for an order extending the 90-day period provided by this section. The 90-day period shall be extended as provided in the agreement or in any court order obtained by the corporation. The 90-day period 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 90-day period, or by subsequent order of the court. 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 or as specified in the court order.

(e) If, after the plan administrator has begun to terminate the plan as authorized by this section, the corporation or the plan administrator finds that the plan is unable, or will be unable, to pay basic benefits when due, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation makes such a finding or concurs with the finding of the plan administrator, it shall institute appropriate proceedings under section 4042. The plan administrator terminating a plan shall furnish such reports to the corporation as it may require for purposes of its duties under this section.

(f) For purposes of subsection (a), a plan with respect to which basic benefits are guaranteed shall be treated as terminated upon the adoption of an amendment to such plan, if, after giving effect to such amendment, the plan is a plan described in section 4021(b)(1).

(g) Notwithstanding any other provision of this title, a plan administrator or the corporation may petition the appropriate court for the appointment of a trustee in accordance with the provisions of section 4042 if the interests of the participants and beneficiaries would be better served by the appointment of the trustee.

TERMINATION BY CORPORATION

SEC. 4042. (a) The corporation may institute proceedings under this section to terminate a plan whenever it determines that— 29 USC 1342.

(1) the plan has not met the minimum funding standard required under section 412 of the Internal Revenue Code of 1954, or has been notified by the Secretary of the Treasury that a notice of deficiency under section 6212 of such Code has been mailed with respect to the tax imposed under section 4971(a) of such Code, *Ante*, p. 914. 26 USC 6212. *Ante*, p. 920.

(2) the plan is unable to pay benefits when due,

(3) the reportable event described in section 4043(b)(7) has occurred, or *Post*, p. 1024.

(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 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)). The corporation is authorized to pool the assets of such small 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 title, as it determines to be required for the efficient administration of this title.

(b) Whenever the corporation makes a determination under subsection (a) with respect to a plan 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) 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.

(c) If the corporation has issued a notice under this section to a plan administrator and (whether or not a trustee has been appointed under subsection (b)) 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 and to avoid any further deterioration of the financial condition of the plan or any further increase in the liability of the fund. If the trustee appointed under subsection (b) 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) (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) 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). Whenever a trustee appointed under this title 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.

(d)(1)(A) A trustee appointed under subsection (b) shall have the power—

(i) to do any act authorized by the plan or this title 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; and

(v) 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.

If the court to which application is made under subsection (c) dismisses the application with prejudice, or if the corporation fails to apply for a decree under subsection (c) within 30 days after the date on which the trustee is appointed under subsection (b), 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 title I of this Act (except as provided in subsection (d)(1)(A)(v)). 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.

*Ante*, p. 874.

(B) If the court to which an application is made under subsection (c) 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 allocation requirements of section 4044;

*Post*, p. 1025.

(ii) to collect for the plan any amounts due the plan;

(iii) to receive any payment made by the corporation to the plan under this title;

(iv) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan, except to the extent that the corporation is an adverse party in a suit or proceeding;

(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 4045(a); and

(viii) to do such other acts as may be necessary to comply with this title 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 title 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— "Interested party."

(A) the plan administrator,

(B) each participant in the plan and each beneficiary of a deceased participant, and

(C) each employer who may be subject to liability under section 4062, 4063, or 4064.

(3) Except to the extent inconsistent with the provisions of this Act, or as may be otherwise ordered by the court, a trustee appointed under this section shall be subject to the same duties as a trustee appointed under section 47 of the Bankruptcy Act, and shall be, with respect to the plan, a fiduciary within the meaning of paragraph (21) of section 3 of this Act and under section 4975(e) of the Internal Revenue Code of 1954 (except to the extent that the provisions of this title are inconsistent with the requirements applicable under part 4 of subtitle B of title I of this Act and of such section 4975). 11 USC 75. *Ante*, p. 833. *Ante*, p. 971. *Ante*, p. 874.

(e) 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) 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 bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act. Pending an adjudication under subsection (c) 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 bankruptcy, 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. 11 USC 501.

(g) 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)(1) The amount of compensation paid to each trustee appointed under the provisions of this title shall require the prior approval of the corporation, and, in the case of a trustee appointed by a court, the consent of that court. Compensation, approval.

(2) Trustees shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel in accordance with regulations prescribed by the corporation.

REPORTABLE EVENTS

29 USC 1343.

SEC. 4043. (a) Within 30 days after the plan administrator knows or has reason to know that a reportable event described in subsection (b) has occurred, he shall notify the corporation that such event has occurred. 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. Whenever an employer making contributions under a plan to which section 4021 applies knows or has reason to know that a reportable event has occurred he shall notify the plan administrator immediately.

(b) 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 4021(a)(2), or when the Secretary of Labor determines the plan is not in compliance with title I of this Act;

*Ante*, p. 832.

(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 the Internal Revenue Code of 1954, but the occurrence of such a termination or partial termination does not, by itself, constitute or require a termination of a plan under this title;

*Ante*, p. 901.

(5) when the plan fails to meet the minimum funding standards under section 412 of such Code (without regard to whether the plan is a plan described in section 4021(a)(2) of this Act) or under section 302 of this Act;

*Ante*, p. 914.
*Ante*, p. 1014.
*Ante*, p. 869.

(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 4022(b)(6) 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 208 of this Act, or when an alternative method of compliance is prescribed by the Secretary of Labor under section 110 of this Act; or

*Ante*, p. 865.
*Ante*, p. 851.

(9) when any other event occurs which the corporation determines may be indicative of a need to terminate the plan.

For purposes of paragraph (7), all distributions to a participant within any 24-month period are treated as a single distribution.

(c) The Secretary of the Treasury shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (4), or (5) of subsection (b) occurs, or

(2) whenever any other event occurs which the Secretary of the Treasury believes indicates that the plan may not be sound.

(d) The Secretary of Labor shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (5), or (8) of subsection (b) occurs, or

(2) whenever any other event occurs which the Secretary of Labor believes indicates that the plan may not be sound.

ALLOCATION OF ASSETS

SEC. 4044. (a) In the case of the termination of a defined benefit 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: 29 USC 1344.

(1) First, to that portion of each individual's accured 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 described 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 title (determined without regard to section 4022(b)(5)), and

(B) to the additional benefits (if any) which would be determined under subparagraph (A) if section 4022(b)(6) did not apply.

For purposes of this paragraph, section 4021 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) For purposes of subsection (a)—

(1) The amount allocated under any paragraph of subsection (a) 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).

(2) If the assets available for allocation under any paragraph of subsection (a) (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) 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 the Internal Revenue Code of 1954 then, if required to prevent the disqualification of the plan (or any trust under the plan) under section 401(a), 403(a), or 405(a) of such Code, the assets allocated under subsections (a)(4)(B), (a)(5), and (a)(6) shall be reallocated to the extent necessary to avoid such discrimination.

*Ante*, p. 938.

26 USC 403, 405.

"Mandatory contributions."

(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) in accordance with regulations prescribed by the corporation.

(c) Any increase or decrease in the value of the assets of a plan occurring during the period beginning on the later of (1) the date a trustee is appointed under section 4042(b) 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 plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the corporation.

*Ante*, p. 1021.

(d)(1) Any residual assets of a 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) 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.

RECAPTURE OF CERTAIN PAYMENTS

SEC. 4045. (a) Except as provided in subsection (c), the trustee is authorized to recover for the benefit of a plan from a participant the recoverable amount (as defined in subsection (b)) of all payments from the plan to him which commenced within the 3-year period immediately preceding the time the plan is terminated. 29 USC 1345.

(b) For purposes of subsection (a) 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 title 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)(1) In the event of a distribution described in section 4043(b)(7) the 3-year period referred to in subsection (b) 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 the Internal Revenue Code of 1954). 26 USC 72.

Waiver.

(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.

REPORTS TO TRUSTEE

29 USC 1346.

SEC. 4046. 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 benefits guaranteed under section 4022 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 benefits payable under section 4022 (determined without regard to section 4022(b)(5)),

(4) the fair market value of the assets of the plan at the time of termination,

(5) the computations under section 4044, 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.

RESTORATION OF PLANS

29 USC 1347.

SEC. 4047. Whenever the corporation determines that a plan which is to be terminated, or which is in the process of being terminated, under this subtitle should not be terminated 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. In the case of a plan which has been terminated under section 4042 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 title, 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.

DATE OF TERMINATION

29 USC 1348.

SEC. 4048. For purposes of this title the date of termination is—

(1) in the case of a plan terminated in accordance with the provisions of section 4041, the date established by the plan administrator and agreed to by the corporation,

(2) in the case of a plan terminated in accordance with the provisions of section 4042, the date established by the corporation and agreed to by the plan administrator, or

(3) in the case of a plan terminated in accordance with the provisions of either section 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.

# Subtitle D—Liability

AMOUNTS PAYABLE BY THE CORPORATION

SEC. 4061. The corporation shall pay benefits under a plan terminated under this title subject to the limitations and requirements of subtitle B of this title. Amounts guaranteed by the corporation under section 4022 shall be paid by the corporation out of the appropriate fund.

29 USC 1361.

*Ante*, p. 1014.
*Ante*, p. 1016.

LIABILITY OF EMPLOYER

SEC. 4062. (a) This section applies to any employer who maintained a plan (other than a multiemployer plan) at the time it was terminated, but does not apply—

29 USC 1362.

(1) to an employer who maintained a plan with respect to which he paid the annual premium described in section 4006(a)(2)(B) for each of the 5 plan years immediately preceding the plan year during which the plan terminated unless the conditions imposed by the corporation on the payment of coverage under section 4023 do not permit such coverage to apply under the circumstances, or

*Ante*, p. 1010.

(2) to the extent of any liability arising out of the insolvency of an insurance company with respect to an insurance contract.

(b) Any employer to which this section applies shall be liable to the corporation, in an amount equal to the lesser of—

(1) the excess of—

(A) the current value of the plan's benefits guaranteed under this title on the date of termination over

(B) the current value of the plan's assets allocable to such benefits on the date of termination, or

(2) 30 percent of the net worth of the employer determined as of a day, chosen by the corporation but not more than 120 days prior to the date of termination, computed without regard to any liability under this section.

(c) For purposes of subsection (b)(2) the net worth of an employer is—

(1) determined on whatever basis best reflects, in the determination of the corporation, the current status of the employer's operations and prospects at the time chosen for determining the net worth of the employer, and

(2) increased by the amount of any transfers of assets made by the employer determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under the Bankruptcy Act if the employer were the subject of a proceeding under that Act.

11 USC 1 note.

(d) For purposes of this section the following rules apply in the case of certain corporate reorganizations:

(1) If an employer 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 employer to whom this section applies.

(2) If an employer ceases to exist by reason of a liquidation into a parent corporation, the parent corporation shall be treated as the employer to whom this section applies.

(3) If an employer ceases to exist by reason of a merger, consolidation, or division, the successor corporation or corporations shall be treated as the employer to whom this section applies.

(e) 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 4063, 4064, and 4065 shall apply.

LIABILITY OF SUBSTANTIAL EMPLOYER FOR WITHDRAWAL

29 USC 1363.

SEC. 4063. (a) Except as provided in subsection (d), the plan administrator of a plan under which more than one employer makes contributions—

(1) shall notify the corporation of the withdrawal of a substantial employer from the plan, within 60 days after such withdrawal, and

(2) request that the corporation determine the liability of such employer under this subtitle with respect to such withdrawal.

The corporation shall, as soon as practicable thereafter, determine whether such employer is liable for any amount under this subtitle with respect to the withdrawal and notify such employer of such liability.

*Ante*, p. 1014.

(b) Except as provided in subsection (c), an employer who withdraws from a plan to which section 4021 applies, during a plan year for which he was a substantial employer, and who is notified by the corporation as provided by subsection (a), shall be liable to the corporation in accordance with the provisions of section 4062 and this section. The amount of such employer's liability shall be computed on the basis of an amount determined by the corporation to be the amount described in section 4062 for the entire plan, as if the plan had been terminated by the corporation on the date of the employer's withdrawal, multiplied by a fraction—

(1) the numerator of which is the total amount required to be contributed to the plan by such employer 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 employers for such last 5 years.

In addition to and in lieu of the manner prescribed in the preceding sentence, the corporation may also determine the liability of each such employer 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).

(c)(1) In lieu of payment of his liability under this section the employer 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 6 through 13 of title 6, United States Code. 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 within the 5-year period commencing on the day of withdrawal, the liability of such employer is abated and any payment held in escrow shall be refunded without interest to the employer (or his bond cancelled) in accordance with bylaws or rules prescribed by the corporation.

(3) If the plan terminates 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 employer which is not required to meet any obligation of the corporation with respect to the plan.

(d) The provisions of this subsection apply in the case of a withdrawal described in subsection (a), and the provisions of subsections (b) and (c) 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 4064 and is more appropriate in the particular case. Upon a showing by the plan administrator of a plan that the withdrawal from the plan by any employer or employers has resulted, or will result, in a significant reduction in the amount of aggregate contributions to or under the plan by employers, the corporation may—

(1) require the plan fund to be equitably allocated between those participants no longer working in covered service under the plan as a result of their employer's withdrawal, and those participants 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 termination; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a separate plan.

(e) The corporation is authorized to waive the application of the provisions of subsections (b), (c), and (d) of this section to any employer or plan administrator whenever it determines that there is an indemnity agreement in effect among all other employers under the plan which is adequate to satisfy the purposes of this section and of section 4064. Waiver.

LIABILITY OF EMPLOYERS ON TERMINATION OF PLAN MAINTAINED BY MORE THAN ONE EMPLOYER

SEC. 4064. (a) This section applies to all employers who maintain a plan under which more than one employer makes contributions at the time such plan is terminated, or who, at any time within the 5 plan years preceding the date of termination, made contributions under the plan. 29 USC 1364.

(b) The corporation shall determine the liability of each such employer in a manner consistent with section 4062 except that the amount of the liability determined under section 4062(b)(1) with respect to the entire plan shall be allocated to each employer by multiplying such amounts by a fraction—

(1) the numerator of which is the amount required to be contributed to the plan by each employer for the last 5 plan years ending prior to the termination, and

(2) the denominator of which is the total amount required to be contributed to the plan by all such employers for such last 5 years,

and the limitation described in section 4062(b)(2) shall be applied separately to each employer. The corporation may also determine the liability of each such employer on any other equitable basis prescribed by the corporation in regulations.

ANNUAL REPORT OF PLAN ADMINISTRATOR

29 USC 1365.

SEC. 4065. For each plan year for which section 4021 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 4063 with respect to such year, and

(2) a statement disclosing whether any reportable event (described in section 4043(b)) occurred during the plan year.

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.

ANNUAL NOTIFICATION TO SUBSTANTIAL EMPLOYERS

29 USC 1366.

SEC. 4066. The plan administrator of each plan under which contributions are made by more than one employer shall notify, within 6 months after the close of each plan year, any employer making contributions under that plan who is described in section 4001(a)(2) that he is a substantial employer for that year.

*Ante*, p. 1003.

RECOVERY OF EMPLOYER LIABILITY FOR PLAN TERMINATION

29 USC 1367.

SEC. 4067. The corporation is authorized to make arrangements with employers who are liable under section 4062, 4063, or 4064 for payment of their liability, including arrangements for deferred payment on such terms and for such periods as the corporation deems equitable and appropriate.

LIEN FOR LIABILITY OF EMPLOYER

29 USC 1368.

SEC. 4068. (a) If any employer or employers liable to the corporation under section 4062, 4063, or 4064 neglect or refuse to pay, after demand, the amount of such liability (including interest), there shall be a lien in favor of the corporation upon all property and rights to property, whether real or personal, belonging to such employer or employers.

(b) The lien imposed by subsection (a) arises on the date of termination of a plan, and continues until the liability imposed under section 4062, 4063, or 4064 is satisfied or becomes unenforceable by reason of lapse of time.

(c)(1) Except as otherwise provided under this section, the priority of the lien imposed under subsection (a) shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954. 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

26 USC 6323.

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. 26 USC 6332.

(2) In the case of bankruptcy or insolvency proceedings, the lien imposed under subsection (a) shall be treated in the same manner as a tax due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191). 11 USC 1 note.

(3) For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under subsection (a) 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. 26 USC 6323.

(4) For purposes of this subsection, notice of the lien imposed by subsection (a) shall be filed in the same manner as under section 6323 (f) and (g) of the Internal Revenue Code of 1954.

(d)(1) In any case where there has been a refusal or neglect to pay the liability imposed under section 4062, 4063, or 4064, 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 employer, or in which he has any right, title, or interest to the payment of such liability. *Ante*, pp. 1029-1031.

(2) The liability imposed by section 4062, 4063, or 4064 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 employer 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 employer 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 employer is outside the United States if such period of absence is for a continuous period of at least 6 months.

(e) If the corporation determines, with the consent of the board of directors, that release of the lien or subordination of the lien to any other creditor of the employer or employers would not adversely affect the collection of the liability imposed under section 4062, 4063, or 4064, 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.

# Subtitle E—Amendments to Internal Revenue Code of 1954; Effective Dates

AMENDMENTS TO INTERNAL REVENUE CODE OF 1954

SEC. 4081. (a) Section 404 of the Internal Revenue Code of 1954 (relating to deduction for contributions of an employer to employees' trust or annuity plan in compensation under a deferred-payment plan) is amended by adding at the end thereof the following new subsection: 26 USC 404.

"(g) CERTAIN EMPLOYER LIABILITY PAYMENTS CONSIDERED AS CONTRIBUTIONS.—For purposes of this section any amount paid by an employer under section 4062, 4063, or 4064 of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which this section applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.".

*Ante*, pp. 1029-1031.

(b) Section 6511(d) of the Internal Revenue Code of 1954 (relating to special rules applicable to income taxes) is amended by adding at the end thereof the following new paragraph:

26 USC 6511.

"(8) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO AMOUNTS INCLUDED IN INCOME SUBSEQUENTLY RECAPTURED UNDER QUALIFIED PLAN TERMINATION.—If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of the recapture, under section 4045 of the Employee Retirement Income Security Act of 1974, of amounts included in income for a prior taxable year, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund of the amount of the recapture, until the date which occurs one year after the date on which such recaptured amount is paid by the taxpayer.".

*Ante*, p. 1027.

EFFECTIVE DATE; SPECIAL RULES

29 USC 1381.

SEC. 4082. (a) The provisions of this title take effect on the date of enactment of this Act.

(b) Notwithstanding the provisions of subsection (a), the corporation shall pay benefits guaranteed under this title with respect to any plan—

(1) which is not a multiemployer plan,

(2) which terminates after June 30, 1974, and before the date of enactment of this Act,

(3) to which section 4021 would apply if that section were effective beginning on July 1, 1974, and

*Ante*, p. 1014.

(4) with respect to which a notice is filed with the Secretary of Labor and received by him not later than 10 days after the date of enactment of this Act, 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 title 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 title or for the purpose of avoiding the liability which might be imposed under subtitle D if the plan terminated on or after the date of enactment of this Act. The provisions of subtitle D do not apply in the case of such a plan which terminates before the date of enactment of this Act. For purposes of determining whether a plan is a plan described in paragraph (2), the provisions of section 4048 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.

*Ante*, p. 1029.

(c)(1) Except as provided in paragraphs (2), (3), and (4), the corporation shall not pay benefits guaranteed under this title with respect to a multiemployer plan which terminates before January 1,

1978. 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 Public Welfare and the Committee on Finance of the Senate.

Notice to congressional committees.

(2) The corporation may, in its discretion, pay benefits guaranteed under this title with respect to a multiemployer plan which terminates after the date of enactment of this Act and before January 1, 1978, 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 title 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 title with respect to multiemployer plans which terminate after December 31, 1977.

(3) Notwithstanding any provision of section 4021 or 4022 which would prevent such payments, the corporation, in carrying out its authority under paragraph (2), may pay benefits guaranteed under this title with respect to a multiemployer plan described in paragraph (2) in any case in which those benefits would otherwise not be payable if—

*Ante*, pp. 1014, 1016.

(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 title with respect to a multiemployer plan which terminates before January 1, 1978, 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 title, 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 title in connection with such a plan which are derived, directly or indirectly, from amounts borrowed under section 4005(c), and

*Ante*, p. 1009.

**(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 title in connection with multiemployer plans which terminate after December 31, 1977, without increasing premium rates for such plans.**

Approved September 2, 1974.