

preceding plan year of a plan maintained by the contributing sponsor or any member of its controlled group is less than 80 percent;

(2) the conditions for imposition of a lien described in section 1083(k)(1)(A) and (B) of this title or section 430(k)(1)(A) and (B) of title 26 have been met with respect to any plan maintained by the contributing sponsor or any member of its controlled group; or

(3) minimum funding waivers in excess of \$1,000,000 have been granted with respect to any plan maintained by the contributing sponsor or any member of its controlled group, and any portion thereof is still outstanding.

(c) Information exempt from disclosure requirements

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

(d) Additional information required

(1) In general

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

(A) the amount of benefit liabilities under the plan determined using the assumptions used by the corporation in determining liabilities;

(B) the funding target of the plan determined as if the plan has been in at-risk status for at least 5 plan years; and

(C) the funding target attainment percentage of the plan.

(2) Definitions

For purposes of this subsection:

(A) Funding target

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

(B) Funding target attainment percentage

The term “funding target attainment percentage” has the meaning provided under section 1083(d)(2) of this title.

(C) At-risk status

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

(e) Notice to Congress

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

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

946; Pub. L. 110-458, title I, § 105(d), Dec. 23, 2008, 122 Stat. 5105.)

AMENDMENTS

2008—Subsec. (d)(2)(B). Pub. L. 110-458 substituted “section 1083(d)(2)” for “section 1082(d)(2)”.

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

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

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

CHANGE OF NAME

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

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2006 AMENDMENT

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

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

EFFECTIVE DATE

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

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109-280

For special rules on applicability of amendments by subtitles A (§§ 101-107) and B (§§ 111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of Title 26, Internal Revenue Code.

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

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

EFFECTIVE DATE OF REPEAL

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

SUBTITLE B—COVERAGE

§ 1321. Coverage

(a) Plans covered

Except as provided in subsection (b) of this section, this subchapter applies to any plan (in-

cluding a successor plan) which, for a plan year—

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

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

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

(C) by both,

which has, in practice, met the requirements of part I of subchapter D of chapter 1 of title 26 (as in effect for the preceding 5 plan years of the plan) applicable to the plans described in paragraph (2) for the preceding 5 plan years; or

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

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

(b) Plans not covered

This section does not apply to any plan—

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

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

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

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

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

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

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

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

(8) which is maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of title 26 on plans to which that section applies, without regard to whether the plan is funded, and, to the extent that a separable part of a plan (as determined by the corporation) maintained by an employer is maintained for such purpose, that part shall be treated for purposes of this subchapter, as a separate plan which is an excess benefit plan;

(9) which is established and maintained exclusively for substantial owners;

(10) of an international organization which is exempt from taxation under the International Organizations Immunities Act [22 U.S.C. 288 et seq.];

(11) maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(12) which is a defined benefit plan, to the extent that it is treated as an individual account plan under paragraph (35)(B) of section 1002 of this title; or

(13) established and maintained by a professional service employer which does not at any time after September 2, 1974, have more than 25 active participants in the plan.

(c) Definitions

(1) For purposes of subsection (b)(1) of this section, the term "individual account plan" does not include a plan under which a fixed benefit is promised if the employer or his representative participated in the determination of that benefit.

(2) For purposes of this paragraph and for purposes of subsection (b)(13) of this section—

(A) the term "professional service employer" means any proprietorship, partnership, corporation, or other association or organization (i) owned or controlled by professional individuals or by executors or administrators of professional individuals, (ii) the principal business of which is the performance of professional services, and

(B) the term "professional individuals" includes but is not limited to, physicians, dentists, chiropractors, osteopaths, optometrists, other licensed practitioners of the healing arts, attorneys at law, public accountants, public engineers, architects, draftsmen, actuaries, psychologists, social or physical scientists, and performing artists.

(3) In the case of a plan established and maintained by more than one professional service employer, the plan shall not be treated as a plan described in subsection (b)(13) of this section if, at any time after September 2, 1974, the plan has more than 25 active participants.

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

² So in original. A semicolon probably should appear.

(d) Substantial owner defined

For purposes of subsection (b)(9), the term “substantial owner” means an individual who, at any time during the 60-month period ending on the date the determination is being made—

(1) owns the entire interest in an unincorporated trade or business,

(2) 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

(3) 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 paragraph (3), the constructive ownership rules of section 1563(e) of title 26 (other than paragraph (3)(C) thereof) shall apply, including the application of such rules under section 414(c) of title 26.

(Pub. L. 93-406, title IV, §4021, Sept. 2, 1974, 88 Stat. 1014; Pub. L. 96-364, title IV, §402(a)(4), Sept. 26, 1980, 94 Stat. 1298; Pub. L. 101-239, title VII, §§7891(a)(1), 7894(g)(3)(A), Dec. 19, 1989, 103 Stat. 2445, 2451; Pub. L. 109-280, title IV, §407(c)(1), title IX, §906(a)(2)(B), (b)(2), Aug. 17, 2006, 120 Stat. 930, 1051, 1052; Pub. L. 110-458, title I, §109(d)(2), Dec. 23, 2008, 122 Stat. 5112.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1935 or 1937, referred to in subsec. (b)(2), means act Aug. 29, 1935, ch. 812, 49 Stat. 967, known as the Railroad Retirement Act of 1935. The Railroad Retirement Act of 1935 was amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and was known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93-445, title I, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

The International Organizations Immunities Act, referred to in subsec. (b)(10), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

AMENDMENTS

2008—Subsec. (b)(14). Pub. L. 110-458 struck out par. (14) which read as follows: “established and maintained by an Indian tribal government (as defined in section 7701(a)(40) of title 26), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of title 26), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).”

2006—Subsec. (b)(2). Pub. L. 109-280, §906(a)(2)(B), inserted “or which is described in the last sentence of section 1002(32) of this title” at end.

Subsec. (b)(9). Pub. L. 109-280, §407(c)(1)(A), struck out “as defined in section 1322(b)(6) of this title” before semicolon at end.

Subsec. (b)(14). Pub. L. 109-280, §906(b)(2), added par. (14).

Subsec. (d). Pub. L. 109-280, §407(c)(1)(B), added subsec. (d).

1989—Subsec. (a). Pub. L. 101-239, §7894(g)(3)(A), substituted “this subchapter applies” for “this section applies” in introductory provisions.

Subsecs. (a)(1), (2), (b)(3), (4)(A), (8). Pub. L. 101-239, §7891(a)(1), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1980—Subsec. (a). Pub. L. 96-364 inserted “unless otherwise specifically indicated in this subchapter,” after “For this purpose.”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title IV, §407(d), Aug. 17, 2006, 120 Stat. 931, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1322, 1343, and 1344 of this title] shall apply to plan terminations—

“(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2)) after December 31, 2005, and

“(B) under section 4042 of such Act (29 U.S.C. 1342) with respect to which notices of determination are provided under such section after such date.

“(2) CONFORMING AMENDMENTS.—The amendments made by subsection (c) [amending this section and section 1343 of this title] shall take effect on January 1, 2006.”

Amendment by section 906(a)(2)(B), (b)(2) of Pub. L. 109-280 applicable to any year beginning on or after Aug. 17, 2006, see section 906(c) of Pub. L. 109-280, set out as a note under section 414 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

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

Amendment by section 7894(g)(3)(A) of Pub. L. 101-239 effective, except as otherwise provided, as if originally included in the provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, to which such amendment relates, see section 7894(i) of Pub. L. 101-239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

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

§ 1322. Single-employer plan benefits guaranteed**(a) Nonforfeitable benefits**

Subject to the limitations contained in subsection (b) of this section, the corporation shall guarantee, in accordance with this section, the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under a single-employer plan which terminates at a time when this subchapter applies to it.

(b) Exceptions

(1) Except to the extent provided in paragraph (7)—