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SUBCHAPTER I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SUBTITLE A—GENERAL PROVISIONS

§ 1001. Congressional findings and declaration of policy

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

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

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

It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

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

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

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

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENTS; TRANSITIONAL RULES

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

"SEC. 302. GENERAL EFFECTIVE DATES.

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

"(b) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act [Aug. 23, 1984], except as provided in subsection (d) or section 303, the amendments made by this Act shall not apply to plan years beginning before the earlier of—

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

"(2) July 1, 1988.

For purposes of paragraph (1), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by title I or II [of Pub. L. 98-397] shall not be treated as a termination of such collective bargaining agreement.

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

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

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

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

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

"(B) successor agreements to 1 or more collective bargaining agreements which terminate after July 30, 1984, and before January 1, 1985, the amendments made by section 301 shall not apply to plan amendments adopted before April 1, 1985, pursuant to such successor agreements (without regard to any modification or reopening after December 31, 1984).

"SEC. 303. TRANSITIONAL RULES.

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

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

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

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

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

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

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

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

“(1) REQUIREMENT THAT PARTICIPANT HAVE AT LEAST 1 HOUR OF SERVICE OR PAID LEAVE ON OR AFTER DATE OF ENACTMENT.—The amendments made by sections 103 and 203 [amending section 1055 of this title and section 401 of Title 26 and enacting section 417 of Title 26] shall apply only in the case of participants who have at least 1 hour of service under the plan on or after the date of the enactment of this Act [Aug. 23, 1984] or have at least 1 hour of paid leave on or after such date of enactment.

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

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

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

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

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

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

“(4) ELIMINATION OF DOUBLE DEATH BENEFITS.—

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

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

“(d) AMENDMENTS RELATING TO ASSIGNMENTS IN DIVORCE, ETC., PROCEEDINGS.—The amendments made by sections 104 and 204 [amending sections 1056 and 1144 of

this title and sections 72, 401, 402 and 414 of Title 26] shall take effect on January 1, 1985, except that in the case of a domestic relations order entered before such date, the plan administrator—

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

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

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

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

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

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

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

“(D) as of the date of the enactment of this Act [Aug. 23, 1984], the participant's annuity starting date has not occurred and the participant is alive, then such participant may elect to have section 205 of the Employee Retirement Income Security Act of 1974 [section 1055 of this title] and section 401(a)(11) of the Internal Revenue Code of 1986 [section 401(a)(11) of Title 26] (as in effect on the day before the date of the enactment of this Act) apply.

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

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

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

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

“(D) as of the date of the enactment of this Act [Aug. 23, 1984], such participant's annuity starting date has not occurred and such participant is alive, then such participant may elect to have the qualified preretirement survivor annuity requirements of the amendments made by sections 103 and 203 apply.

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

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

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

“(4) REQUIREMENT OF NOTICE.—

“(A) IN GENERAL.—

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

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

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

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

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

“(2) occurred on November 30, 1984.”

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

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

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113-235, div. O, §1, Dec. 16, 2014, 128 Stat. 2773, provided that: “This division [see Tables for classification] may be cited as the ‘Multiemployer Pension Reform Act of 2014’.”

Pub. L. 113-97, §1(a), Apr. 7, 2014, 128 Stat. 1101, provided that: “This Act [see Tables for classification] may be cited as the ‘Cooperative and Small Employer Charity Pension Flexibility Act’.”

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111-192, §1, June 25, 2010, 124 Stat. 1280, provided that: “This Act [amending sections 1021, 1023, 1053, 1054, 1056, 1057, 1083, 1084, 1103, 1108, 1301, 1303, 1310, 1362, 1371, and 1423 of this title, sections 430, 431, 436, and 6103 of Title 26, Internal Revenue Code, and sections 1395w-4, 1395cc, and 1395ww of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 401, 430, 431, and 436 of Title 26 and section 1395ww of Title 42, amending provisions set out as notes under this section and section 1021 of this title and section 401 of Title 26, and amending Reorg. Plan No. 4 of 1978, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under this section] may be cited as the ‘Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010’.”

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110-458, §1(a), Dec. 23, 2008, 122 Stat. 5092, provided that: “This Act [see Tables for classification] may be cited as the ‘Worker, Retiree, and Employer Recovery Act of 2008’.”

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109-280, §1(a), Aug. 17, 2006, 120 Stat. 780, provided that: “This Act [see Tables for classification] may be cited as the ‘Pension Protection Act of 2006’.”

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-218, §1, Apr. 10, 2004, 118 Stat. 596, provided that: “This Act [see Tables for classification] may be cited as the ‘Pension Funding Equity Act of 2004’.”

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105-92, §1, Nov. 19, 1997, 111 Stat. 2139, provided that: “This Act [enacting sections 1146 and 1147 of this title and provisions set out as a note under section 1146 of this title] may be cited as the ‘Savings Are Vital to Everyone’s Retirement Act of 1997’.”

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-401, §1, Oct. 22, 1994, 108 Stat. 4172, provided that: “This Act [amending section 1132 of this

title and enacting provisions set out as notes under section 1132 of this title] may be cited as the ‘Pension Annuity Protection Act of 1994’.”

SHORT TITLE OF 1991 AMENDMENT

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

SHORT TITLE OF 1986 AMENDMENT

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

SHORT TITLE OF 1984 AMENDMENT

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

SHORT TITLE OF 1980 AMENDMENT

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

SHORT TITLE

Pub. L. 93-406, §1, Sept. 2, 1974, 88 Stat. 829, provided that: “This Act [enacting this chapter, sections 408 to 415, 4971 to 4975, 6057 to 6059, 6692, and 6693 of Title 26, Internal Revenue Code, section 1037 of former Title 31, Money and Finance, and section 1320b-1 of Title 42, The Public Health and Welfare, amending section 441 of this title, sections 5108 and 5109 of Title 5, Government Organization and Employees, sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, sections 37, 46, 56, 62, 72, 101, 122, 219, 220, 275, 401, 402, 403, 404, 405, 406, 407, 503, 801, 805, 871, 901, 1304, 1348, 1379, 2039, 3401, 6033, 6047, 6051, 6103, 6104, 6161, 6201, 6204, 6211, 6212, 6213, 6214, 6344, 6501, 6503, 6511, 6512, 6601, 6652, 6653, 6659, 6676, 6677, 6679, 6682, 6688, 6690, 6861, 6862, 7422, 7451, 7459, 7482, 7701, and 7802, of Title 26, and section 846 of former Title 31, repealing sections 301 to 309 of this title, and enacting provisions set out as notes under sections 72, 122, 219, 401, 402, 403, 404, 410, 411, 412, 415, 501, 4973, 4975, 6057, 6059, 6103, 6104, 7476, and 7802 of Title 26] may be cited as the ‘Employee Retirement Income Security Act of 1974’.”

CONGRESSIONAL FINDINGS AND DECLARATIONS OF POLICY

Pub. L. 113-97, §2, Apr. 7, 2014, 128 Stat. 1101, provided that: “Congress finds as follows:

“(1) Defined benefit pension plans are a cost-effective way for cooperative associations and charities to provide their employees with economic security in retirement.

“(2) Many cooperative associations and charitable organizations are only able to provide their employees with defined benefit pension plans because those organizations are able to pool their resources using the multiple employer plan structure.

“(3) The pension funding rules should encourage cooperative associations and charities to continue to provide their employees with pension benefits.”

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

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

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

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

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

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

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

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

Executive Documents

REORGANIZATION PLAN NO. 4 OF 1978

43 F.R. 47713, 92 Stat. 3790, as amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 109-280, title I, §108(c), formerly §107(c), Aug. 17, 2006, 120 Stat. 820, renumbered §108(c), Pub. L. 111-192, title II, §202(a), June 25, 2010, 124 Stat. 1297

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

¹ As amended September 20, 1978.

EMPLOYEE RETIREMENT INCOME SECURITY ACT TRANSFERS

SECTION 101. TRANSFER TO THE SECRETARY OF THE TREASURY

Except as otherwise provided in Sections 104 and 106 of this Plan, all authority of the Secretary of Labor to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of the Treasury:

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

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

(b) such regulations, rulings, and opinions which are granted to the Secretary of Labor under Sections 404, 410, 411, 412, and 413 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 404, 410, 411, 412, and 413], (hereinafter referred to as the “Code”).

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

(c) regulations, rulings, and opinions under subsections 3(19), 3(22), 3(23), 3(24), 3(25), 3(27), 3(28), 3(29), 3(30), and 3(31) of Subtitle A of Title I of ERISA [29 U.S.C. 1002(19), (22), (23), (24), (25), (27), (28), (29), (30), and (31)]. [As amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.]

SEC. 102. TRANSFER TO THE SECRETARY OF LABOR

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

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

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

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

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

SEC. 103. COORDINATION CONCERNING CERTAIN FIDUCIARY ACTIONS

In the case of fiduciary actions which are subject to Part 4 of Subtitle B of Title I of ERISA [29 U.S.C. 1101 et seq.], the Secretary of the Treasury shall notify the Secretary of Labor prior to the time of commencing any proceeding to determine whether the action violates the exclusive benefit rule of subsection 401(a) of the Code [26 U.S.C. 401(a)], but not later than prior to issuing a preliminary notice of intent to disqualify under that rule, and the Secretary of the Treasury shall not issue a determination that a plan or trust does not satisfy the requirements of subsection 401(a)

by reason of the exclusive benefit rule of subsection 401(a), unless within 90 days after the date on which the Secretary of the Treasury notifies the Secretary of Labor of pending action, the Secretary of Labor certifies that he has no objection to the disqualification or the Secretary of Labor fails to respond to the Secretary of the Treasury. The requirements of this paragraph do not apply in the case of any termination or jeopardy assessment under sections 6851 or 6861 of the Code [26 U.S.C. 6851 or 6861] that has been approved in advance by the Commissioner of Internal Revenue, or, as delegated, the Assistant Commissioner for Employee Plans and Exempt Organizations.

SEC. 104. ENFORCEMENT BY THE SECRETARY OF LABOR

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

SEC. 105. ENFORCEMENT BY THE SECRETARY OF THE TREASURY

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

SEC. 106. COORDINATION FOR SECTION 101 TRANSFER

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

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

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

(ii) regulations issued pursuant to subsections 204(b)(3)(D), 302(d)(2), and 304(d)(1), (d)(2), and (e)(2)(A) of ERISA [29 U.S.C. 1054(b)(3)(D), 1082(d)(2), and 1084(d)(1), (d)(2), and (e)(2)(A)], and subsections 411(b)(3)(D), [former] 412(c)(2) and 431(d)(1), (d)(2), and (e)(2)(A) of the Code [26 U.S.C. 411(b)(3)(D), [former] 412(c)(2) and 431(d)(1), (d)(2), and (e)(2)(A)]; and [As amended Pub. L. 109-280, title I, §108(c), formerly §107(c), Aug. 17, 2006, 120 Stat. 820; renumbered §108(c), Pub. L. 111-192, title II, §202(a), June 25, 2010, 124 Stat. 1297.]

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

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

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

SEC. 107. EVALUATION

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

SEC. 108. INCIDENTAL TRANSFERS

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

SEC. 109. EFFECTIVE DATE

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

[Amendment by section 108(c) of Pub. L. 109-280 applicable to plan years beginning after 2007, see section 108(e) of Pub. L. 109-280, set out as a note under section 1021 of this title.]

[For special rules on applicability of amendments by subtitles A (§§101-108) 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.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JIMMY CARTER.

THE WHITE HOUSE, August 10, 1978.

EXECUTIVE ORDER NO. 12071

Ex. Ord. No. 12071, July 12, 1978, 43 F.R. 30259, which established the President's Commission on Pension Policy and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, §1, Aug. 17, 1982, 47 F.R. 36099, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees.

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

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

JIMMY CARTER.

EXECUTIVE ORDER NO. 12262

Ex. Ord. No. 12262, Jan. 7, 1981, 46 F.R. 2313, which established the Interagency Employee Benefit Council and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, §9, Aug. 17, 1982, 47 F.R. 36099, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees.

EX. ORD. NO. 13847. STRENGTHENING RETIREMENT SECURITY IN AMERICA

Ex. Ord. No. 13847, Aug. 31, 2018, 83 F.R. 45321, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* It shall be the policy of the Federal Government to expand access to workplace retirement plans for American workers. According to the Bureau of Labor Statistics, 23 percent of all private-sector, full-time workers lack access to a workplace retirement plan. That percentage increases to 34 percent when part-time workers are taken into account. Small businesses are less likely to offer retirement benefits. In 2017, approximately 89 percent of workers at private-sector establishments with 500 or more workers were offered a retirement plan compared to only 53 percent for workers at private-sector establishments with fewer than 100 workers. Enhancing workplace retirement plan coverage is critical to ensuring that American workers will be financially prepared to retire.

Regulatory burdens and complexity can be costly and discourage employers, especially small businesses, from offering workplace retirement plans to their employees. Businesses are sensitive to the overall expense of setting up such plans. A recent survey by the Pew Charitable Trusts found that 71 percent of small- and medium-sized businesses that do not offer retirement plans were deterred from doing so by high costs; 37 per-

cent cited high costs as their main reason for not offering such a plan. Federal agencies should revise or eliminate rules and regulations that impose unnecessary costs and burdens on businesses, especially small businesses, and that hinder formation of workplace retirement plans.

Expanding access to multiple employer plans (MEPs), under which employees of different private-sector employers may participate in a single retirement plan, is an efficient way to reduce administrative costs of retirement plan establishment and maintenance and would encourage more plan formation and broader availability of workplace retirement plans, especially among small employers.

Similarly, reducing the number and complexity of employee benefit plan notices and disclosures currently required would ease regulatory burdens. The costs and potential liabilities for employers and plan fiduciaries of complying with existing disclosure requirements may discourage plan formation or maintenance. Improving the effectiveness of required notices and disclosures and reducing their cost to employers promote retirement security by expanding access to workplace retirement plans.

Outdated distribution mandates may also reduce plan effectiveness by forcing retirees to make excessively large withdrawals from their accounts—potentially leaving them with insufficient savings in their later years.

In light of the foregoing it shall, therefore, be the policy of the Federal Government to address these problems and promote retirement security for America's workers.

SEC. 2. Improving Retirement Security. (a) *Expanding access to Multiple Employer Plans and Other Retirement Plan Options.*

(i) The Secretary of Labor shall examine policies that would:

(1) clarify and expand the circumstances under which United States employers, especially small and mid-sized businesses, may sponsor or adopt a MEP as a workplace retirement option for their employees, subject to appropriate safeguards; and

(2) increase retirement security for part-time workers, sole proprietors, working owners, and other entrepreneurial workers with non-traditional employer-employee relationships by expanding their access to workplace retirement plans, including MEPs.

(ii) Within 180 days of the date of this order [Aug. 31, 2018], the Secretary of Labor shall consider, consistent with applicable law and the policy set forth in section 1 of this order, whether to issue a notice of proposed rulemaking, other guidance, or both, that would clarify when a group or association of employers or other appropriate business or organization could be an “employer” within the meaning of section 3(5) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1002(5).

(b) *Qualification Requirements for Multiple Employer Plans.* Within 180 days of the date of this order, the Secretary of the Treasury shall consider proposing amendments to regulations or other guidance, consistent with applicable law and the policy set forth in section 1 of this order, regarding the circumstances under which a MEP may satisfy the tax qualification requirements set forth in the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], including the consequences if one or more employers that sponsored or adopted the plan fails to take one or more actions necessary to meet those requirements. The Secretary of the Treasury shall consult with the Secretary of Labor in advance of issuing any such proposed guidance, and the Secretary of Labor shall take steps to facilitate the implementation of any guidance, as appropriate and consistent with applicable law.

(c) *Improving the Effectiveness of and Reducing the Cost of Furnishing Required Notices and Disclosures.* Within 1 year of the date of this order, the Secretary of Labor shall, in consultation with the Secretary of the Treasury, complete a review of actions that could be taken

through regulation or guidance, or both, to make retirement plan disclosures required under ERISA [Pub. L. 93-406, 29 U.S.C. 1001 et seq.] and the Internal Revenue Code of 1986 more understandable and useful for participants and beneficiaries, while also reducing the costs and burdens they impose on employers and other plan fiduciaries responsible for their production and distribution. This review shall include an exploration of the potential for broader use of electronic delivery as a way to improve the effectiveness of disclosures and to reduce their associated costs and burdens. If the Secretary of Labor finds that action should be taken, the Secretary shall, in consultation with the Secretary of the Treasury, consider proposing appropriate regulations or guidance, consistent with applicable law and the policy set forth in section 1 of this order.

(d) *Updating Life Expectancy and Distribution Period Tables for Purposes of Required Minimum Distribution Rules.* Within 180 days of the date of this order, the Secretary of the Treasury shall, consistent with applicable law and the policy set forth in section 1 of this order, examine the life expectancy and distribution period tables in the regulations on required minimum distributions from retirement plans (67 Fed. Reg. 18988) and determine whether they should be updated to reflect current mortality data and whether such updates should be made annually or on another periodic basis.

SEC. 3. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§ 1001a. Additional Congressional findings and declaration of policy

(a) Effects of multiemployer pension plans

The Congress finds that—

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

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

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

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

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

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

The Congress further finds that—