

mine the facts relative to such investigation, if he has reasonable cause to believe there may exist a violation of this subchapter or any rule or regulation issued thereunder or if the entry is pursuant to an agreement with the plan.

The Secretary may make available to any person actually affected by any matter which is the subject of an investigation under this section, and to any department or agency of the United States, information concerning any matter which may be the subject of such investigation; except that any information obtained by the Secretary pursuant to section 6103(g) of title 26 shall be made available only in accordance with regulations prescribed by the Secretary of the Treasury.

(b) Frequency of submission of books and records

The Secretary may not under the authority of this section require any plan to submit to the Secretary any books or records of the plan more than once in any 12 month period, unless the Secretary has reasonable cause to believe there may exist a violation of this subchapter or any regulation or order thereunder.

(c) Other provisions applicable relating to attendance of witnesses and production of books, records, etc.

For the purposes of any investigation provided for in this subchapter, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, records, and documents) are hereby made applicable (without regard to any limitation in such sections respecting persons, partnerships, banks, or common carriers) to the jurisdiction, powers, and duties of the Secretary or any officers designated by him. To the extent he considers appropriate, the Secretary may delegate his investigative functions under this section with respect to insured banks acting as fiduciaries of employee benefit plans to the appropriate Federal banking agency (as defined in section 1813(q) of title 12).

(d) Evidentiary privilege; confidentiality of communications

The Secretary may promulgate a regulation that provides an evidentiary privilege for, and provides for the confidentiality of communications between or among, any of the following entities or their agents, consultants, or employees:

- (1) A State insurance department.
- (2) A State attorney general.
- (3) The National Association of Insurance Commissioners.
- (4) The Department of Labor.
- (5) The Department of the Treasury.
- (6) The Department of Justice.
- (7) The Department of Health and Human Services.

(8) Any other Federal or State authority that the Secretary determines is appropriate for the purposes of enforcing the provisions of this subchapter.

(e) Application of privilege

The privilege established under subsection (d) shall apply to communications related to any

investigation, audit, examination, or inquiry conducted or coordinated by any of the agencies. A communication that is privileged under subsection (d) shall not waive any privilege otherwise available to the communicating agency or to any person who provided the information that is communicated.

(Pub. L. 93-406, title I, § 504, Sept. 2, 1974, 88 Stat. 893; Pub. L. 101-239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445; Pub. L. 111-148, title VI, § 6607, Mar. 23, 2010, 124 Stat. 781.)

Editorial Notes

AMENDMENTS

2010—Subsecs. (d), (e). Pub. L. 111-148 added subsecs. (d) and (e).

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1989 AMENDMENT

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

REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1135. Regulations

Subject to subchapter II and section 1029 of this title, the Secretary may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this subchapter. Among other things, such regulations may define accounting, technical and trade terms used in such provisions; may prescribe forms; and may provide for the keeping of books and records, and for the inspection of such books and records (subject to section 1134(a) and (b) of this title).

(Pub. L. 93-406, title I, § 505, Sept. 2, 1974, 88 Stat. 894.)

Statutory Notes and Related Subsidiaries

REGULATIONS

Pub. L. 99-272, title XI, § 11018, Apr. 7, 1986, 100 Stat. 277, provided that:

“(a) REGULATORY TREATMENT OF ASSETS OF REAL ESTATE ENTITIES.—

“(1) IN GENERAL.—Except as a defense, no rule or regulation adopted pursuant to the Secretary’s proposed regulation defining ‘plan assets’ for purposes of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] (50 Fed. Reg. 961, January 8, 1985, as modified by 50 Fed. Reg. 6361, February 15, 1985), or any reproposal thereof prior to the adoption of the regulations required to be issued in accordance with subsection (d), shall apply to any asset of a real estate entity in which a plan, account, or arrangement subject to such Act invests if—

“(A) any interest in the entity is first offered to a plan, account, or arrangement subject to such Act investing in the entity (hereinafter in this section

referred to as a 'plan investor') on or before the date which is 120 days after the date of publication of such rule or regulation as a final rule or regulation;

"(B) no plan investor acquires an interest in the entity from an issuer or underwriter at any time on or after the date which is 270 days after the date of publication of such rule or regulation as a final rule or regulation (except pursuant to a contract or subscription binding on the plan investor and entered into, or tendered, before the expiration of such 270-day period, or pursuant to the exercise, on or before December 31, 1990, of a warrant which was the subject of an effective registration under the Securities Act of 1933 (15 U.S.C. 77q et seq.) [15 U.S.C. 77a et seq.] prior to the date of the enactment of this section [Apr. 7, 1986]); and

"(C) every interest in the entity acquired by a plan investor (or contracted for or subscribed to by a plan investor) before the expiration of such 270-day period is a security—

"(i) which is part of an issue or class of securities which upon such acquisition or at any time during the offering period is held by 100 or more persons;

"(ii) the economic rights of ownership in respect of which are freely transferable;

"(iii) which is registered under the Securities Act of 1933; and

"(iv) which is part of an issue or class of securities which is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) (or is so registered within three years of the effective date of the registration statement of such securities for purposes of the Securities Act of 1933: *Provided*, That the issuer provides plan investors with such reports with respect to the offering period as are required with respect to such period by the Securities and Exchange Commission under such Acts and the rules and regulations promulgated thereunder).

In the case of partnerships organized prior to enactment of this section, the requirements of subparagraphs (iii) and (iv) shall not apply to initial limited partnership interests in an entity otherwise described above: *Provided*, That such entity was the subject of an effective registration under the Securities Act of 1933 prior to the date of the enactment of this section, such interests were issued solely for partnership organizational purposes in compliance with State limited partnership laws, and such interest has a value as of the date of issue of less than \$20,000 and represents less than one percent of the total interests outstanding as of the completion of the offering period.

"(2) MAINTENANCE OF CURRENT REGULATORY TREATMENT.—No asset of any real estate entity described in paragraph (1) shall be treated as an asset of any plan investor for any purpose of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] if the assets of such entity would not have been assets of such plan investor under the provisions of—

"(A) Interpretive Bulletin 75-2 (29 CFR 2509.750-2); or

"(B) the regulations proposed by the Secretary of Labor and published—

"(i) on August 28, 1979, at 44 Fed. Reg. 50363;

"(ii) on June 6, 1980, at 45 Fed. Reg. 38084;

"(iii) on January 8, 1985, at 50 Fed. Reg. 961; or

"(iv) on February 15, 1985, at 50 Fed. Reg. 6361, without regard to any limitation of any effective date proposed therein.

"(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) The term 'real estate entity' means an entity which, at any time within two years after the closing of its offering period has invested or has contracted to invest at least 75 percent of the value of its net assets available for investment in direct or indirect ownership of 'real estate assets' or 'interests in real property'.

"(2) The term 'real estate asset' means real property (including an interest in real property) and any share of stock or beneficial interest, partnership interest, depository receipt, or any other interest in any other real estate entity.

"(3) The term 'interest in real property' includes, directly or indirectly, the following:

"(A) the ownership or co-ownership of land or improvements thereon;

"(B) any mortgage (including an interest in or co-ownership of any mortgage, leasehold mortgage, pool of mortgages, deed of trust, or similar instrument) on land or improvements thereon,

"(C) any leasehold of land or improvements thereon; and

"(D) any option to acquire any of the foregoing, but does not include any mineral, oil, or gas royalty interest.

"(4) Whether the economic rights of ownership with respect to a security are 'freely transferable' shall be determined based upon all the facts and circumstances, but ordinarily none of the following, alone or in any combination, shall cause the economic rights of ownership to be considered not freely transferable—

"(A) any requirement that not less than a minimum number of shares or units of such security be transferred or assigned by any investor: *Provided*, That such requirement does not prevent transfer of all of the then remaining shares or units held by an investor;

"(B) any prohibition against transfer or assignment of such security or rights in respect thereof to an ineligible or unsuitable investor;

"(C) any restriction on or prohibition against any transfer or assignment which would either result in a termination or reclassification of the entity for Federal or State tax purposes or which would violate any State or Federal statute, regulation, court order, judicial decree, or rule of law;

"(D) any requirement that reasonable transfer or administrative fees be paid in connection with a transfer or assignment;

"(E) any requirement that advance notice of a transfer or assignment be given to the entity and any requirement regarding execution of documentation evidencing such transfer or assignment (including documentation setting forth representations from either or both of the transferor or transferee as to compliance with any restriction or requirement described in this section or requiring compliance with the entity's governing instruments);

"(F) any restriction on substitution of an assignee as a limited partner of a partnership, including a general partner consent requirement: *Provided*, That the economic benefits of ownership of the assignor may be transferred or assigned without regard to such restriction or consent (other than compliance with any other restriction described in this section);

"(G) any administrative procedure which establishes an effective date, or an event such as the completion of the offering, prior to which a transfer or assignment will not be effective; and

"(H) any limitation or restriction on transfer or assignment which is not created or imposed by the issuer or any person acting for or on behalf of such issuer.

"(c) NO EFFECT ON SECRETARY'S AUTHORITY OTHER THAN AS PROVIDED.—Except as provided in subsection (a), nothing in this section shall limit the authority of the Secretary of Labor to issue regulations or otherwise interpret section 3(21) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(21)].

"(d) TIME LIMIT FOR FINAL REGULATIONS.—The Secretary of Labor shall adopt final regulations defining 'plan assets' by December 31, 1986.

"(e) EFFECTIVE DATE.—The preceding provisions of this section shall take effect on the date of the enactment of this Act [Apr. 7, 1986]."

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

§ 1136. Coordination and responsibility of agencies enforcing this subchapter and related Federal laws

(a) Coordination with other agencies and departments

In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this subchapter and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize, on a reimbursable or other basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this subchapter. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this subchapter as may be found to warrant consideration for criminal prosecution under the provisions of this subchapter or other Federal law.

(b) Responsibility for detecting and investigating civil and criminal violations of this subchapter and related Federal laws

The Secretary shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of this subchapter and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of title 18. Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this subchapter and other related Federal laws.

(c) Coordination of enforcement with States with respect to certain arrangements

A State may enter into an agreement with the Secretary for delegation to the State of some or all of the Secretary's authority under sections 1132 and 1134 of this title to enforce the requirements under part 7 in connection with multiple employer welfare arrangements, providing medical care (within the meaning of section 1191b(a)(2) of this title), which are not group health plans.

(Pub. L. 93-406, title I, § 506, Sept. 2, 1974, 88 Stat. 894; Pub. L. 98-473, title II, § 805, Oct. 12, 1984, 98 Stat. 2134; Pub. L. 104-191, title I, § 101(e)(3), Aug. 21, 1996, 110 Stat. 1953; Pub. L. 104-204, title VI, § 603(b)(3)(F), Sept. 26, 1996, 110 Stat. 2938.)

Editorial Notes

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-204 made technical amendment to reference in original act which appears in text as reference to section 1191b of this title.

Pub. L. 104-191 added subsec. (c).

1984—Pub. L. 98-473 designated existing provisions as subsec. (a), added subsec. (b), and amended section catchline.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104-204 applicable with respect to group health plans for plan years beginning on or after Jan. 1, 1998, see section 603(c) of Pub. L. 104-204 set out as a note under section 1003 of this title.

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

REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

RELATION OF SUBTITLE E OF TITLE II OF PUB. L. 104-191 TO ERISA AUTHORITY

Pub. L. 104-191, title II, § 250, Aug. 21, 1996, 110 Stat. 2021, provided that: "Nothing in this subtitle [subtitle E (§§ 241-250) of title II of Pub. L. 104-191, enacting sections 24, 669, 1035, 1347, 1518, and 3486 of Title 18, Crimes and Criminal Procedure, amending sections 982, 1345, 1510, and 1956 of Title 18, and enacting provisions set out as notes under section 1395i of Title 42, The Public Health and Welfare] shall be construed as affecting the authority of the Secretary of Labor under section 506(b) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1136(b)], including the Secretary's authority with respect to violations of title 18, United States Code (as amended by this subtitle)."

§ 1137. Administration

(a) Subchapter II of chapter 5, and chapter 7, of title 5 (relating to administrative procedure), shall be applicable to this subchapter.

(b) Omitted.

(c) No employee of the Department of Labor or the Department of the Treasury shall administer or enforce this subchapter or title 26 with respect to any employee benefit plan under which he is a participant or beneficiary, any employee organization of which he is a member, or any employer organization in which he has an interest. This subsection does not apply to an employee benefit plan which covers only employees of the United States.

(Pub. L. 93-406, title I, § 507, Sept. 2, 1974, 88 Stat. 894; Pub. L. 101-239, title VII, § 7891(a), Dec. 19, 1989, 103 Stat. 2445.)

Editorial Notes

CODIFICATION

Subsec. (b) of this section amended section 5108 of Title 5, Government Organization and Employees.

AMENDMENTS

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