

(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)).

(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) Intervention by Pension Benefit Guaranty Corporation or Secretary of Labor into declaratory judgment action under section 7476 of title 26, action by Corporation authorized

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 title 26 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.

(d) Notification and information by Secretary of the Treasury to Secretary of Labor upon issuance by Secretary of the Treasury of a determination letter to applicant

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 title 26 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 subchapter I of this chapter. 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 subchapter I of this chapter. The determination of the Secretary of the Treasury shall not be prima facie evidence on issues relating solely to part 4 of subtitle B of subchapter I. 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.

(e) Effective date

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 title 26 applies to the plan, or on which such section will apply if the plan is determined by the Secretary to be a qualified plan.

(Pub. L. 93-406, title III, §3001, Sept. 2, 1974, 88 Stat. 995; Pub. L. 100-203, title IX, §9343(b), Dec. 22, 1987, 101 Stat. 1330-372; Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

Editorial Notes

AMENDMENTS

1989—Subsecs. (a), (b)(1), (c) to (e). 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.

1987—Subsec. (d). Pub. L. 100-203 inserted after second sentence “The determination of the Secretary of the Treasury shall not be prima facie evidence on issues relating solely to part 4 of subtitle B of subchapter I.”

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.

§ 1202. Procedures with respect to continued compliance with Internal Revenue requirements relating to participation, vesting, and funding standards

(a) Notification by Secretary of the Treasury to Secretary of Labor of issuance of a preliminary notice of intent to disqualify or of commencement of proceedings to determine satisfaction of requirements

In carrying out the provisions of part I of subchapter D of chapter 1 of title 26 with respect to whether a plan or a trust meets the requirements of section 410(a) or 411 of title 26 (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 title 26 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 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 chapter, the Secretary of Labor shall not generally apply part 2 of subtitle B of subchapter I of this chapter to any plan or trust subject to sections 410(a) and 411 of title 26, 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.)

(b) Notification to Secretary of Labor before Secretary of the Treasury sends notice of deficiency under section 4971 of title 26; waiver of imposition of tax; requests for investigation; consultation

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 title 26 (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 title 26 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 title 26 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 title 26 (relating to minimum funding standards) and with respect to the funding standards applicable under subchapter I of this chapter in order to coordinate the rules applicable under such standards.

(c) Extended application of regulations prescribed by Secretary of the Treasury relating to minimum participation standards, minimum vesting standards, and minimum funding standards

Regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, and 412 of title 26 (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 subchapter I of this chap-

ter. Except as otherwise expressly provided in this chapter, 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 title 26 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 title 26.

(d) Opportunity afforded Secretary of the Treasury to intervene in cases involving construction or application of minimum standards; review of briefs filed by Pension Benefit Guaranty Corporation or Secretary of Labor

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 subchapter I of this chapter 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.

(e) Consultative requirements respecting promulgation of proposed or final regulations

The Secretary of the Treasury shall consult with the Pension Benefit Guaranty Corporation with respect to any proposed or final regulation authorized by subpart C of part I of subchapter D of chapter 1 of title 26, or by sections 1421 through 1426¹ of this title, before publishing any such proposed or final regulation.

(Pub. L. 93-406, title III, §3002, Sept. 2, 1974, 88 Stat. 996; Pub. L. 96-364, title IV, §402(b)(3), Sept. 26, 1980, 94 Stat. 1299; Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (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 under section 1001 of this title and Tables.

Subpart C of part I of subchapter D of chapter 1 of title 26, referred to in subsec. (e), commences with former section 418 of Title 26, Internal Revenue Code. Section 418 was repealed by Pub. L. 113-235, div. O, title I, §108(b)(1), Dec. 16, 2014, 128 Stat. 2787.

Sections 1421 through 1425 of this title, referred to in subsec. (e), were repealed by Pub. L. 113-235, div. O, title I, §108(a)(1), Dec. 16, 2014, 128 Stat. 2786.

AMENDMENTS

1989—Subsecs. (a) to (c), (e). Pub. L. 101-239 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing, which for purposes of codification was translated as "title 26".

1980—Subsec. (e). Pub. L. 96-364 added subsec. (e).

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

¹ See References in Text note below.

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.

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.

§ 1202a. Employee plans compliance resolution system

(a) In general

The Secretary of the Treasury shall have full authority to establish and implement the Employee Plans Compliance Resolution System (or any successor program) and any other employee plans correction policies, including the authority to waive income, excise, or other taxes to ensure that any tax, penalty, or sanction is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

(b) Improvements

The Secretary of the Treasury shall continue to update and improve the Employee Plans Compliance Resolution System (or any successor program), giving special attention to—

- (1) increasing the awareness and knowledge of small employers concerning the availability and use of the program;
- (2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures;
- (3) extending the duration of the self-correction period under the Self-Correction Program for significant compliance failures;
- (4) expanding the availability to correct insignificant compliance failures under the Self-Correction Program during audit; and
- (5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

(Pub. L. 109-280, title XI, § 1101, Aug. 17, 2006, 120 Stat. 1055.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Pension Protection Act of 2006, and not as part of the Employee Retirement Income Security Act of 1974 which comprises this chapter.

§ 1203. Procedures in connection with prohibited transactions

(a) Notification to Secretary of Labor; opportunity to comment on imposition of tax under section 4975 of title 26; waiver; requests for investigations

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 title 26 (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 title 26 should be applied to any person referred to in the request.

(b) Consultation

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 title 26 (relating to tax on prohibited transactions) and with respect to the provisions of subchapter I of this chapter relating to prohibited transactions and exemptions therefrom in order to coordinate the rules applicable under such standards.

(c) Transmission of information to Secretary of the Treasury

Whenever the Secretary of Labor obtains information indicating that a party-in-interest or disqualified person is violating section 1106 of this title, he shall transmit such information to the Secretary of the Treasury.

(Pub. L. 93-406, title III, § 3003, Sept. 2, 1974, 88 Stat. 998; Pub. L. 101-239, title VII, § 7891(a)(1), Dec. 19, 1989, 103 Stat. 2445.)

Editorial Notes

AMENDMENTS

1989—Subsecs. (a), (b). 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.

§ 1204. Coordination between the Department of the Treasury and the Department of Labor

(a) Whenever in this chapter or in any provision of law amended by this chapter 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