

## POLICIES AND PROCEDURES RELATING TO THE POLICY, RESEARCH, AND ANALYSIS DEPARTMENT

Pub. L. 112-141, div. D, title II, § 40233(b), July 6, 2012, 126 Stat. 858, provided that: “The Pension Benefit Guaranty Corporation shall—

“(1) develop written quality review policies and procedures for all modeling and actuarial work performed by the Corporation’s Policy, Research, and Analysis Department; and

“(2) conduct a record management review of such Department to determine what records must be retained as Federal records.”

## TRANSITION

Pub. L. 109-280, title IV, § 411(d), Aug. 17, 2006, 120 Stat. 936, provided that: “The term of the individual serving as Executive Director of the Pension Benefit Guaranty Corporation on the date of enactment of this Act [Aug. 17, 2006] shall expire on such date of enactment. Such individual, or any other individual, may serve as interim Director of such Corporation until an individual is appointed as Director of such Corporation under section 4002 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302) (as amended by this Act).”

## REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

**§ 1303. Operation of corporation****(a) Investigatory authority; audit of statistically significant number of terminating plans**

The corporation may make such investigations as it deems necessary to enforce any provision of this subchapter or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the corporation shall determine, as to all the facts and circumstances concerning the matter to be investigated. The corporation shall annually audit a statistically significant number of plans terminating under section 1341(b) of this title to determine whether participants and beneficiaries have received their benefit commitments and whether section 1350(a) of this title has been satisfied. Each audit shall include a statistically significant number of participants and beneficiaries.

**(b) Discovery powers vested in board members or officers designated by the chairman**

For the purpose of any such investigation, or any other proceeding under this subchapter, the Director, any member of the board of directors of the corporation, or any officer designated by the Director or chairman, may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the corporation deems relevant or material to the inquiry.

**(c) Contempt**

In the case of contumacy by, or refusal to obey a subpena issued to, any person, the corporation may invoke the aid of any court of the United

States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. The court may issue an order requiring such person to appear before the corporation, or member or officer designated by the corporation, and to produce records or to give testimony related to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district in which such person is an inhabitant or may be found.

**(d) Cooperation with other governmental agencies**

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

**(e) Civil actions by corporation; jurisdiction; process; expeditious handling of case; costs; limitation on actions**

(1) Civil actions may be brought by the corporation for appropriate relief, legal or equitable or both, to enforce (A) the provisions of this subchapter, and (B) in the case of a plan which is covered under this subchapter (other than a multiemployer plan) and for which the conditions for imposition of a lien described in section 1083(k)(1)(A) and (B) or 1085a(g)(1)(A) and (B) of this title or section 430(k)(1)(A) and (B) or 433(g)(1)(A) and (B) of title 26 have been met, section 1082 of this title and section 412 of title 26.

(2) Except as otherwise provided in this subchapter, where such an action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(3) The district courts of the United States shall have jurisdiction of actions brought by the corporation under this subchapter without re-

gard to the amount in controversy in any such action.

(4) Repealed. Pub. L. 98-620, title IV, § 402(33), Nov. 8, 1984, 98 Stat. 3360.

(5) In any action brought under this subchapter, whether to collect premiums, penalties, and interest under section 1307 of this title or for any other purpose, the court may award to the corporation all or a portion of the costs of litigation incurred by the corporation in connection with such action.

(6)(A) Except as provided in subparagraph (C), an action under this subsection may not be brought after the later of—

(i) 6 years after the date on which the cause of action arose, or

(ii) 3 years after the applicable date specified in subparagraph (B).

(B)(i) Except as provided in clause (ii), the applicable date specified in this subparagraph is the earliest date on which the corporation acquired or should have acquired actual knowledge of the existence of such cause of action.

(ii) If the corporation brings the action as a trustee, the applicable date specified in this subparagraph is the date on which the corporation became a trustee with respect to the plan if such date is later than the date described in clause (i).

(C) In the case of fraud or concealment, the period described in subparagraph (A)(ii) shall be extended to 6 years after the applicable date specified in subparagraph (B).

**(f) Civil actions against corporation; appropriate court; award of costs and expenses; limitation on actions; jurisdiction; removal of actions**

(1) Except with respect to withdrawal liability disputes under part 1 of subtitle E, any person who is a plan sponsor, fiduciary, employer, contributing sponsor, member of a contributing sponsor's controlled group, participant, or beneficiary, and is adversely affected by any action of the corporation with respect to a plan in which such person has an interest, or who is an employee organization representing such a participant or beneficiary so adversely affected for purposes of collective bargaining with respect to such plan, may bring an action against the corporation for appropriate equitable relief in the appropriate court.

(2) For purposes of this subsection, the term "appropriate court" means—

(A) the United States district court before which proceedings under section 1341 or 1342 of this title are being conducted,

(B) if no such proceedings are being conducted, the United States district court for the judicial district in which the plan has its principal office, or

(C) the United States District Court for the District of Columbia.

(3) In any action brought under this subsection, the court may award all or a portion of the costs and expenses incurred in connection with such action to any party who prevails or substantially prevails in such action.

(4) This subsection shall be the exclusive means for bringing actions against the corpora-

tion under this subchapter, including actions against the corporation in its capacity as a trustee under section 1342 or 1349<sup>1</sup> of this title.

(5)(A) Except as provided in subparagraph (C), an action under this subsection may not be brought after the later of—

(i) 6 years after the date on which the cause of action arose, or

(ii) 3 years after the applicable date specified in subparagraph (B).

(B)(i) Except as provided in clause (ii), the applicable date specified in this subparagraph is the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

(ii) In the case of a plaintiff who is a fiduciary bringing the action in the exercise of fiduciary duties, the applicable date specified in this subparagraph is the date on which the plaintiff became a fiduciary with respect to the plan if such date is later than the date specified in clause (i).

(C) In the case of fraud or concealment, the period described in subparagraph (A)(ii) shall be extended to 6 years after the applicable date specified in subparagraph (B).

(6) The district courts of the United States have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

(7) In any suit, action, or proceeding in which the corporation is a party, or intervenes under section 1451 of this title, in any State court, the corporation may, without bond or security, remove such suit, action, or proceeding from the State court to the United States district court for the district or division in which such suit, action, or proceeding is pending by following any procedure for removal now or hereafter in effect.

(Pub. L. 93-406, title IV, § 4003, Sept. 2, 1974, 88 Stat. 1006; Pub. L. 96-364, title IV, §§ 402(a)(2), 403(k), Sept. 26, 1980, 94 Stat. 1297, 1302; Pub. L. 98-620, title IV, § 402(33), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 99-272, title XI, §§ 11014(b)(1), (2), 11016(c)(5), Apr. 7, 1986, 100 Stat. 262, 264, 274; Pub. L. 103-465, title VII, §§ 773(a), 776(b)(1), Dec. 8, 1994, 108 Stat. 5044, 5048; Pub. L. 109-280, title I, § 108(b)(2), formerly § 107(b)(2), title IV, § 411(a)(2), Aug. 17, 2006, 120 Stat. 819, 935, renumbered Pub. L. 111-192, title II, § 202(a), June 25, 2010, 124 Stat. 1297; Pub. L. 113-97, title I, § 102(b)(7), Apr. 7, 2014, 128 Stat. 1117; Pub. L. 113-235, div. O, title II, § 201(a)(7)(C), Dec. 16, 2014, 128 Stat. 2810.)

**Editorial Notes**

**REFERENCES IN TEXT**

Section 1349 of this title, referred to in subsec. (f)(4), was repealed by Pub. L. 100-203, title IX, § 9312(a), Dec. 22, 1987, 101 Stat. 1330-361.

**AMENDMENTS**

2014—Subsec. (e)(1)(B). Pub. L. 113-97 substituted “section 1083(k)(1)(A) and (B) or 1085a(g)(1)(A) and (B) of this title or section 430(k)(1)(A) and (B) or 433(g)(1)(A) and (B) of title 26” for “section 1083(k)(1)(A) and (B) of this title or section 430(k)(1)(A) and (B) of title 26”.

Subsec. (f)(1). Pub. L. 113-235 inserted “plan sponsor,” before “fiduciary”.

<sup>1</sup> See References in Text note below.

2006—Subsec. (b). Pub. L. 109-280, §411(a)(2), substituted “under this subchapter, the Director, any member” for “under this subchapter, any member” and “designated by the Director or chairman” for “designated by the chairman”.

Subsec. (e)(1). Pub. L. 109-280, §108(b)(2), formerly §107(b)(2), as renumbered by Pub. L. 111-192, 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)”.

1994—Subsec. (a). Pub. L. 103-465, §776(b)(1), inserted “and whether section 1350(a) of this title has been satisfied” before period at end of second sentence.

Subsec. (e)(1). Pub. L. 103-465, §773(a), inserted “(A)”, after “enforce” and substituted “, and” and cl. (B) for period at end.

1986—Subsec. (a). Pub. L. 99-272, §11016(c)(5), inserted provisions directing the corporation to audit annually a statistically significant number of plans terminating under section 1341(b) of this title to determine whether participants and beneficiaries have received their benefit commitments and to include a statistically significant number of participants and beneficiaries in each audit.

Subsec. (e)(6). Pub. L. 99-272, §11014(b)(2), added par. (6).

Subsec. (f). Pub. L. 99-272, §11014(b)(1), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “Except as provided in section 1451(a)(2) of this title, any participant, beneficiary, plan administrator, or employee adversely affected by any action of the corporation, or by a receiver or trustee appointed by the corporation, with respect to a plan in which such participant, beneficiary, plan administrator or employer has an interest, may bring an action against the corporation, receiver, or trustee in the appropriate court. For purposes of this subsection the term ‘appropriate court’ means the United States district court before which proceedings under section 1341 or 1342 of this title are being conducted, or if no such proceedings are being conducted the United States district court for the district in which the plan has its principal office, or the United States district court for the District of Columbia. The district courts of the United States have jurisdiction of actions brought under this subsection without regard to the amount in controversy. In any suit, action, or proceeding in which the corporation is a party, or intervenes under section 1451 of this title, in any State court, the corporation may, without bond or security, remove such suit, action, or proceeding from the State court to the United States District Court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect.”

1984—Subsec. (e)(4). Pub. L. 98-620 struck out par. (4) which provided that upon application by the corporation to a court of the United States for expedited handling of any case in which the corporation was a party, it was the duty of that court to assign such case for hearing at the earliest practical date and to cause such case to be in every way expedited.

1980—Subsec. (a). Pub. L. 96-364, §402(a)(2)(A), substituted “enforce” for “determine whether any person has violated or is about to violate”.

Subsec. (e)(1). Pub. L. 96-364, §402(a)(2)(B), substituted “enforce” for “redress violations of”.

Subsec. (f). Pub. L. 96-364, §§402(a)(2)(C), 403(k), substituted “Except as provided in section 1451(a)(2) of the title, any” for “Any” and inserted provisions relating to removal of actions.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113-97, set out as a note under section 401 of Title 26, Internal Revenue Code.

##### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 108(b)(2) 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.

##### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-465, title VII, §773(b), Dec. 8, 1994, 108 Stat. 5045, provided that: “The amendments made by this section [amending this section] shall be effective for installments and other payments required under section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082] or section 412 of the Internal Revenue Code of 1986 [26 U.S.C. 412] that become due on or after the date of the enactment of this Act [Dec. 8, 1994].”

Amendment by section 776(b)(1) of Pub. L. 103-465 effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103-465, set out as a note under section 1056 of this title.

##### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-272, title XI, §11014(b)(3), Apr. 7, 1986, 100 Stat. 264, provided that: “The amendments made by this subsection [amending this section] shall apply with respect to actions filed after the date of the enactment of this Act [Apr. 7, 1986].”

Amendment by section 11016(c)(5) of Pub. L. 99-272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99-272, set out as a note under section 1341 of this title.

##### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

##### 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.

#### 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 (§§101-108) 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.

#### § 1304. Participant and Plan Sponsor Advocate

##### (a) In general

The board of directors of the corporation shall select a Participant and Plan Sponsor Advocate from the candidates nominated by the advisory committee to the corporation under section 1302(h)(1) of this title and without regard to the provisions of title 5 relating to appointments in the competitive service or Senior Executive Service.

##### (b) Duties

The Participant and Plan Sponsor Advocate shall—

(1) act as a liaison between the corporation, sponsors of defined benefit pension plans insured by the corporation, and participants in pension plans trustee by the corporation;

(2) advocate for the full attainment of the rights of participants in plans trustee by the corporation;

(3) assist pension plan sponsors and participants in resolving disputes with the corporation;