TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
GENERAL PROVISIONS

29 USCS § 1001

§ 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 is 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 Act 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 Act 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.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
GENERAL PROVISIONS

29 USCS § 1001a

§ 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--
(1) it is desirable to modify the current multiemployer plan termination insurance provisions in order to increase the likelihood of protecting plan participants against benefit losses; and
(2) it is desirable to replace the termination insurance program for multiemployer pension plans with an insolvency-based benefit protection program that will enhance the financial soundness of such plans, place primary emphasis on plan continuation, and contain program costs within reasonable limits.

(c) Policy. It is hereby declared to be the policy of this Act--
(1) to foster and facilitate interstate commerce,
(2) to alleviate certain problems which tend to discourage the maintenance and growth of multiemployer pension plans,
(3) to provide reasonable protection for the interests of participants and beneficiaries of financially distressed multiemployer pension plans, and
(4) to provide a financially self-sufficient program for the guarantee of employee benefits under multiemployer plans.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
GENERAL PROVISIONS

29 USCS § 1001b

§ 1001b. Findings and declaration of policy

(a) Findings. The Congress finds that--
(1) single-employer defined benefit pension plans have a substantial impact on interstate commerce and are affected with a national interest;
(2) the continued well-being and retirement income security of millions of workers, retirees, and their dependents are directly affected by such plans;
(3) the existence of a sound termination insurance system is fundamental to the retirement income security of participants and beneficiaries of such plans; and
(4) the current termination insurance system in some instances encourages employers to terminate pension plans, evade their obligations to pay benefits, and shift unfunded pension liabilities onto the termination insurance system and the other premium-payers.

(b) Additional findings. The Congress further finds that modification of the current termination insurance system and an increase in the insurance premium for single-employer defined benefit pension plans--
(1) is desirable to increase the likelihood that full benefits will be paid to participants and beneficiaries of such plans;
(2) is desirable to provide for the transfer of liabilities to the termination insurance system only in cases of severe hardship;
(3) is necessary to maintain the premium costs of such system at a reasonable level; and
(4) is necessary to finance properly current funding deficiencies and future obligations of the single-employer pension plan termination insurance system.

(c) Declaration of policy. It is hereby declared to be the policy of this title--
(1) to foster and facilitate interstate commerce;
(2) to encourage the maintenance and growth of single-employer defined benefit pension plans;
(3) to increase the likelihood that participants and beneficiaries under single-employer defined benefit pension plans will receive their full benefits;
(4) to provide for the transfer of unfunded pension liabilities onto the single-employer pension plan termination insurance system only in cases of severe hardship;
(5) to maintain the premium costs of such system at a reasonable level; and
(6) to assure the prudent financing of current funding deficiencies and future obligations of the single-employer pension plan termination insurance system by increasing termination insurance premiums.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
GENERAL PROVISIONS

29 USCS § 1002

§ 1002. Definitions

For purposes of this title:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 [*29 USCS § 186(c)*] (other than pensions on retirement or death, and insurance to provide such pensions).

(2) (A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program--

(i) provided retirement income to employees, or

(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan. A distribution from a plan, fund, or program shall not be treated as made in a form other than retirement income or as a distribution prior to termination of covered employment solely because such distribution is made to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

(B) The Secretary may by regulation prescribe rules consistent with the standards and purposes of this Act providing one or more exempt categories under which--

(i) severance pay arrangements, and

(ii) supplemental retirement income payments, under which the pension benefits of retirees or their beneficiaries are supplemented to take into account some portion or all of the increases in the cost of living (as determined by the Secretary of Labor) since retirement,

shall, for purposes of this title, be treated as welfare plans rather than pension plans. In the case of any arrangement or payment a principal effect of which is the evasion of the standards or purposes of this Act applicable to pension plans, such arrangement or payment shall be treated as a pension plan. An applicable voluntary early retirement incentive plan (as defined in *section 457(e)(11)(D)(ii) of the Internal Revenue Code of 1986* [*26 USCS § 457(e)(11)(D)(ii)*]) making payments or supplements described in section 457(e)(11)(D)(i) [*26 USCS § 457(e)(11)(D)(i)*] of such Code, and an applicable employment retention plan (as defined in section 457(f)(4)(C) of such Code [*26 USCS § 457(f)(4)(C)*]) making payments of benefits described in section 457(f)(4)(A) of such Code [*26 USCS § 457(f)(4)(A)*], shall, for purposes of this title, be treated as a welfare plan (and not a pension plan) with respect to such payments and supplements.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

(4) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

(5) The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

(6) The term "employee" means any individual employed by an employer.

(7) The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

(8) The term "beneficiary" means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

(9) The term "person" means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

(10) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone. The term "United States" when used in the geographic sense means the States and the Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (*43 U.S.C. 1331-1343*).

(11) The term "commerce" means trade, traffic, commerce, transportation, or communication between any State and any place outside thereof.

(12) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, or the Railway Labor Act.

(13) The term "Secretary" means the Secretary of Labor.

(14) The term "party in interest" means, as to an employee benefit plan--

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50 percent or more of--

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation.[,]

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a relative (as defined in paragraph (15)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of--

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E), or (G), or of the employee benefit plan; or

(I) a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of the Treasury, may by regulation prescribe a percentage lower than 50 percent for subparagraph (E) and (G) and lower than 10 percent for subparagraph (H) or (I). The Secretary may prescribe regulations for determining the ownership (direct or indirect) of profits and beneficial interests, and the manner in which indirect stockholdings are taken into account. Any person who is a party in interest with respect to a plan to which a trust described in *section 501(c)(22) of the Internal Revenue Code of 1986* [*26 USCS § 501(c)(22)*] is permitted to make payments under section 4223 [*29 USCS § 1403*] shall be treated as a party in interest with respect to such trust.

(15) The term "relative" means a spouse, ancestor, lineal descendant, or spouse of a lineal descendant.

(16) (A) The term "administrator" means--

(i) the person specifically so designated by the terms of the instrument under which the plan is operated;

(ii) if an administrator is not so designated, the plan sponsor; or

(iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

(B) The term "plan sponsor" means (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(17) The term "separate account" means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(18) The term "adequate consideration" when used in part 4 of subtitle B [*29 USCS §§ 1101* et seq.] means (A) in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934 [*15 USCS § 78f*], or (ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and (B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary.

(19) The term "nonforfeitable" when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan. For purposes of this paragraph, a right to an accrued benefit derived from employer contributions shall not be treated as forfeitable merely because the plan contains a provision described in section 203(a)(3) [*29 USCS § 1053(a)(3)*].

(20) The term "security" has the same meaning as such term has under section 2(1) of the Securities Act of 1933 (*15 U.S.C. 77b(1)*).

(21) (A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 405(c)(1)(B) [*29 USCS § 1105(c)(1)(B)*].

(B) If any money or other property of an employee benefit plan is invested in securities issued by an investment company registered under the Investment Company Act of 1940, such investment shall not by itself cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a fiduciary or a party in interest as those terms are defined in this title, except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter. Nothing contained in this subparagraph shall limit the duties imposed on such investment company, investment adviser, or principal underwriter by any other law.

(22) The term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to--

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefit under the plan which the Secretary of the Treasury finds to be a benefit described in section 204(b)(1)(G) [*29 USCS § 1054(b)(1)(G)*].

(23) The term "accrued benefit" means--

(A) in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and, except as provided in section 204(c)(3) [*29 USCS § 1054(c)(3)*], expressed in the form of an annual benefit commencing at normal retirement age, or

(B) in the case of a plan which is an individual account plan, the balance of the individual's account.

The accrued benefit of an employee shall not be less than the amount determined under section 204(c)(2)(B) [*29 USCS § 1054(c)(2)(B)*] with respect to the employee's accumulated contribution.

(24) The term "normal retirement age" means the earlier of--

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of--

(i) the time a plan participant attains age 65, or

(ii) the 5th anniversary of the time a plan participant commenced participation in the plan.

(25) The term "vested liabilities" means the present value of the immediate or deferred benefits available at normal retirement age for participants and their beneficiaries which are nonforfeitable.

(26) The term "current value" means fair market value where available and otherwise the fair value as determined in good faith by a trustee or a named fiduciary (as defined in section 402(a)(2) [*29 USCS § 1102(a)(2)*]) pursuant to the terms of the plan and in accordance with regulations of the Secretary, assuming an orderly liquidation at the time of such determination.

(27) The term "present value", with respect to a liability, means the value adjusted to reflect anticipated events. Such adjustments shall conform to such regulations as the Secretary of the Treasury may prescribe.

(28) The term "normal service cost" or "normal cost" means the annual cost of future pension benefits and administrative expenses assigned, under an actuarial cost method, to years subsequent to a particular valuation date of a pension plan. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(29) The term "accrued liability" means the excess of the present value, as of a particular valuation date of a pension plan, of the projected future benefit costs and administrative expenses for all plan participants and beneficiaries over the present value of future contributions for the normal cost of all applicable plan participants and beneficiaries. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(30) The term "unfunded accrued liability" means the excess of the accrued liability, under an actuarial cost method which so provided, over the present value of the assets of a pension plan. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(31) The term "advance funding actuarial cost method" or "actuarial cost method" means a recognized actuarial technique utilized for establishing the amount and incidence of the annual actuarial cost of pension plan benefits and expenses. Acceptable actuarial cost methods shall include the accrued benefit cost method (unit credit method), the entry age normal cost method, the individual level premium cost method, the aggregate cost method, the attained age normal cost method, and the frozen initial liability cost method. The terminal funding cost method and the current funding (pay-as-you-go) cost method are not acceptable actuarial cost methods. The Secretary of the Treasury shall issue regulations to further define acceptable actuarial cost methods.

(32) The term "governmental plan" means a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies, and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation under the provisions of the International Organizations Immunities Act (59 Stat. 669). The term "governmental plan" includes a plan which is established and maintained by an Indian tribal government (as defined in *section 7701(a)(40) of the Internal Revenue Code of 1986* [*26 USCS § 7701(a)(40)*]), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code [*26 USCS § 7871(d)*]), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function)[.]

(33) (A) The term "church plan" means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under *section 501 of the Internal Revenue Code of 1986* [*26 USCS § 501*].

(B) The term "church plan" does not include a plan--

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of *section 513 of the Internal Revenue Code of 1986* [*26 USCS § 513*]), or

(ii) if less than substantially all of the individuals included in the plan are individuals described in subparagraph (A) or in clause (ii) of subparagraph (C) (or their beneficiaries).

(C) For purposes of this paragraph--

(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(ii) The term employee of a church or a convention or association of churches includes--

(I) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under *section 501 of the Internal Revenue Code of 1986* [*26 USCS § 501*] and which is controlled by or associated with a church or a convention or association of churches; and

(III) an individual described in clause (v).

(iii) A church or a convention or association of churches which is exempt from tax under *section 501 of the Internal Revenue Code of 1986* [*26 USCS § 501*] shall be deemed the employer of any individual included as an employee under clause (ii).

(iv) An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

(v) If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization, whether a civil law corporation or otherwise, which is exempt from tax under *section 501 of the Internal Revenue Code of 1986* [*26 USCS § 501*] and which is controlled by or associated with a church or a convention or association of churches, the church plan shall not fail to meet the requirements of this paragraph merely because the plan--

(I) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan; or

(II) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of *section 72(m)(7) of the Internal Revenue Code of 1986* [*26 USCS § 72(m)(7)*] at the time of such separation from service.

(D) (i) If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under *section 501 of the Internal Revenue Code of 1986* [*26 USCS § 501*] fails to meet one or more of the requirements of this paragraph and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this paragraph for the year in which the correction was made and for all prior years.

(ii) If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this paragraph beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

(iii) For purposes of this subparagraph, the term "correction period" means--

(I) the period ending 270 days after the date of mailing by the Secretary of the Treasury of a notice of default with respect to the plan's failure to meet one or more of the requirements of this paragraph; or

(II) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary of the Treasury on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

(III) any additional period which the Secretary of the Treasury determines is reasonable or necessary for the correction of the default,

whichever has the latest ending date.

(34) The term "individual account plan" or "defined contribution plan" means a pension plan which provided for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(35) The term "defined benefit plan" means a pension plan other than an individual account plan; except that a pension plan which is not an individual account plan and which provided a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant--

(A) for the purposes of section 202 [*29 USCS § 1052*], shall be treated as an individual account plan, and

(B) for the purposes of paragraph (23) of this section and section 204 [*29 USCS § 1054*], shall be treated as an individual account plan to the extent benefits are based upon the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan.

(36) The term "excess benefit plan" means a plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by *section 415 of the Internal Revenue Code of 1986* [*26 USCS § 415*] on plans to which that section applies, without regard to whether the plan is funded. To the extent that a separable part of a plan (as determined by the Secretary of Labor) maintained by an employer is maintained for such purpose, that part shall be treated as a separate plan which is an excess benefit plan.

(37) (A) The term "multiemployer plan" means a plan--

(i) to which more than one employer is required to contribute,

(ii) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

(iii) which satisfies such other requirements as the Secretary may prescribe by regulation.

(B) For purposes of this paragraph, all trades or businesses (whether or not incorporated) which are under common control within the meaning of section 4001(b)(1) [*29 USCS § 1301(b)(1)*] are considered a single employer.

(C) Notwithstanding subparagraph (A), a plan is a multiemployer plan on and after its termination date if the plan was a multiemployer plan under this paragraph for the plan year preceding its termination date.

(D) For purposes of this title, notwithstanding the preceding provisions of this paragraph, for any plan year which began before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980 [enacted Sept. 26, 1980], the term "multiemployer plan" means a plan described in section 3(37) of this Act [para. (37) of this section] as in effect immediately before such date.

(E) Within one year after the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980 [enacted Sept. 26, 1980], a multiemployer plan may irrevocably elect, pursuant to procedures established by the corporation and subject to the provisions of sections 4403 [4303](b) and (c) [*29 USCS § 1453(b)* and (c)], that the plan shall not be treated as a multiemployer plan for all purposes under this Act or the Internal Revenue Code of 1954 [*26 USCS §§ 1* et seq.] if for each of the last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980--

(i) the plan was not a multiemployer plan because the plan was not a plan described in section 3(37)(A)(iii) of this Act [para. (37)(A)(iii) of this section] and *section 414(f)(1)(C) of the Internal Revenue Code of 1954* [*26 USCS § 414(f)(1)(C)*] (as such provisions were in effect on the day before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980 [enacted Sept. 26, 1980]); and

(ii) the plan had been identified as a plan that was not a multiemployer plan in substantially all its filings with the corporation, the Secretary of Labor and the Secretary of the Treasury.

(F) (i) For purposes of this title a qualified football coaches plan--

(I) shall be treated as a multiemployer plan to the extent not inconsistent with the purposes of this subparagraph; and

(II) notwithstanding *section 401(k)(4)(B) of the Internal Revenue Code of 1986* [*26 USCS § 401(k)(4)(B)*], may include a qualified cash and deferred arrangement.

(ii) For purposes of this subparagraph, the term "qualified football coaches plan" means any defined contribution plan which is established and maintained by an organization--

(I) which is described in section 501(c) of such Code [*26 USCS § 501(c)*];

(II) the membership of which consists entirely of individuals who primarily coach football as full-time employees of 4-year colleges or universities described in section 170(b)(1)(A)(ii) of such Code [*26 USCS § 170(b)(1)(A)(ii)*]; and

(III) which was in existence on September 18, 1986.

(G) (i) Within 1 year after the enactment of the Pension Protection Act of 2006 [enacted Aug. 17, 2006]--

(I) an election under subparagraph (E) may be revoked, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, if, for each of the 3 plan years prior to the date of the enactment of that Act [enacted Aug. 17, 2006], the plan would have been a multiemployer plan but for the election under subparagraph (E), and

(II) a plan that meets the criteria in clauses (i) and (ii) of subparagraph (A) of this paragraph or that is described in clause (vi) may, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, elect to be a multiemployer plan, if--

(aa) for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan, the plan has met those criteria or is so described,

(bb) substantially all of the plan's employer contributions for each of those plan years were made or required to be made by organizations that were exempt from tax under *section 501 of the Internal Revenue Code of 1986* [*26 USCS § 501*], and

(cc) the plan was established prior to September 2, 1974.

(ii) An election under this subparagraph shall be effective for all purposes under this Act and under the Internal Revenue Code of 1986 [*26 USCS §§ 1* et seq.], starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under clause (i)(II).

(iii) Once made, an election under this subparagraph shall be irrevocable, except that a plan described in clause (i)(II) shall cease to be a multiemployer plan as of the plan year beginning immediately after the first plan year for which the majority of its employer contributions were made or required to be made by organizations that were not exempt from tax under *section 501 of the Internal Revenue Code of 1986* [*26 USCS § 501*].

(iv) The fact that a plan makes an election under clause (i)(II) does not imply that the plan was not a multiemployer plan prior to the date of the election or would not be a multiemployer plan without regard to the election.

(v) (I) No later than 30 days before an election is made under this subparagraph, the plan administrator shall provide notice of the pending election to each plan participant and beneficiary, each labor organization representing such participants or beneficiaries, and each employer that has an obligation to contribute to the plan, describing the principal differences between the guarantee programs under title IV [*29 USCS §§ 1101* et seq.] and the benefit restrictions under this title for single employer and multiemployer plans, along with such other information as the plan administrator chooses to include.

(II) Within 180 days after the date of enactment of the Pension Protection Act of 2006 [enacted Aug. 17, 2006], the Secretary shall prescribe a model notice under this clause.

(III) A plan administrator's failure to provide the notice required under this subparagraph shall be treated for purposes of section 502(c)(2) [*29 USCS § 1132(c)(2)*] as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(1) [*29 USCS § 1021(b)(1)*].

(vi) A plan is described in this clause if it is a plan sponsored by an organization which is described in *section 501(c)(5) of the Internal Revenue Code of 1986* [*26 USCS § 501(c)(5)*] and exempt from tax under section 501(a) of such Code [*26 USCS § 501(a)*] and which was established in Chicago, Illinois, on August 12, 1881.

(vii) For purposes of this Act and the Internal Revenue Code of 1986 [*26 USCS §§ 1* et seq.], a plan making an election under this subparagraph shall be treated as maintained pursuant to a collective bargaining agreement if a collective bargaining agreement, expressly or otherwise, provides for or permits employer contributions to the plan by one or more employers that are signatory to such agreement, or participation in the plan by one or more employees of an employer that is signatory to such agreement, regardless of whether the plan was created, established, or maintained for such employees by virtue of another document that is not a collective bargaining agreement.

(38) The term "investment manager" means any fiduciary (other than a trustee or named fiduciary, as defined in section 402(a)(2) [*29 USCS § 1102(a)(2)*])--

(A) who has the power to manage, acquire, or dispose of any asset of a plan;

(B) who (i) is registered as an investment adviser under the Investment Advisers Act of 1940 [*15 USCS §§ 80b-1* et seq.]; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act [*15 USCS § 80b-3a(a)(1)*], is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary; (iii) is a bank, as defined in that Act [*15 USCS §§ 80b-1* et seq.]; or (iv) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and

(C) has acknowledged in writing that he is a fiduciary with respect to the plan.

(39) The terms "plan year" and "fiscal year of the plan" mean, with respect to a plan, the calendar, policy, or fiscal year on which the records of the plan are kept.

(40) (A) The term "multiple employer welfare arrangement" means an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) to the employees of two or more employers (including one or

more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained--

(i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements,

(ii) by a rural electric cooperative, or

(iii) by a rural telephone cooperative association.

(B) For purposes of this paragraph--

(i) two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group,

(ii) the term "control group" means a group of trades or businesses under common control,

(iii) the determination of whether a trade or business is under "common control" with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b) [*29 USCS § 1301(b)*], except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent,

(iv) the term "rural electric cooperative" means--

(I) any organization which is exempt from tax under *section 501(a) of the Internal Revenue Code of 1986* [*26 USCS § 501(a)*] and which is engaged primarily in providing electric service on a mutual or cooperative basis, and

(II) any organization described in paragraph (4) or (6) of *section 501(c) of the Internal Revenue Code of 1986* [*26 USCS § 501(c)(4)* or (6)] which is exempt from tax under section 501(a) of such Code [*26 USCS § 501(a)*] and at least 80 percent of the members of which are organizations described in subclause (I), and

(v) the term "rural telephone cooperative association" means an organization described in paragraph (4) or (6) of *section 501(c) of the Internal Revenue Code of 1986* [*26 USCS § 501(c)(4)* or (6)] which is exempt from tax under section 501(a) of such Code [*26 USCS § 501(a)*] and at least 80 percent of the members of which are organizations engaged primarily in providing telephone service to rural areas of the United States on a mutual, cooperative, or other basis.

(41) Single-employer plan. The term "single-employer plan" means an employee benefit plan other than a multiemployer plan.

[(42)](41) The term "single-employer plan" means a plan which is not a multiemployer plan.

[(43)](42) the term "plan assets" means plan assets as defined by such regulations as the Secretary may prescribe, except that under such regulations the assets of any entity shall not be treated as plan assets if, immediately after the most recent acquisition of any equity interest in the entity, less than 25 percent of the total value of each class of equity interest in the entity is held by benefit plan investors. For purposes of determinations pursuant to this paragraph, the value of any equity interest held by a person (other than such a benefit plan investor) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded for purposes of calculating the 25 percent threshold. An entity shall be considered to hold plan assets only to the extent of the percentage of the equity interest held by benefit plan investors. For purposes of this paragraph, the term "benefit plan investor" means an employee benefit plan subject to part 4 [*29 USCS §§ 1101* et seq.], any plan to which *section 4975 of the Internal Revenue Code of 1986* [*26 USCS § 4975*] applies, and any entity whose underlying assets include plan assets by reason of a plan's investment in such entity.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
GENERAL PROVISIONS

29 USCS § 1003

§ 1003. Coverage

(a) In general. Except as provided in subsection (b) or (c) and in sections 201, 301, and 401 [*29 USCS §§ 1051*, *1081*, and *1101*], this title shall apply to any employee benefit plan if it is established or maintained--

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) Exceptions for certain plans. The provisions of this title shall not apply to any employee benefit plan if--

(1) such plan is a governmental plan (as defined in section 3(32) [*29 USCS § 1002(32)*]);

(2) such plan is a church plan (as defined in section 3(33) [*29 USCS § 1002(33)*]) with respect to which no election has been made under *section 410(d) of the Internal Revenue Code of 1986* [*26 USCS § 410(d)*];

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

(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 3(36) [*29 USCS § 1002(36)*]) and is unfunded.

The provisions of part 7 of subtitle B [*29 USCS §§ 1181* et seq.] shall not apply to a health insurance issuer (as defined in section 733(b)(2) [*29 USCS § 1191b(b)(2)*]) solely by reason of health insurance coverage (as defined in section 733(b)(1) [*29 USCS § 1191b(b)(1)*]) provided by such issuer in connection with a group health plan (as defined in section 733(a)(1) [*29 USCS § 1191b(a)(1)*]) if the provisions of this title do not apply to such group health plan.

(c) Voluntary employee contributions to accounts and annuities. If a pension plan allows an employee to elect to make voluntary employee contributions to accounts and annuities as provided in *section 408(q) of the Internal Revenue Code of 1986* [*26 USCS § 408(q)*], such accounts and annuities (and contributions thereto) shall not be treated as part of such plan (or as a separate pension plan) for purposes of any provision of this title other than section 403(c), 404, or 405 [*29 USCS § 1103(c)*, *1104*, or *1105*] (relating to exclusive benefit, and fiduciary and co-fiduciary responsibilities) and part 5 (relating to administration and enforcement). Such provisions shall apply to such accounts and annuities in a manner similar to their application to a simplified employee pension under *section 408(k) of the Internal Revenue Code of 1986* [*26 USCS § 408(k)*].

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
REPORTING AND DISCLOSURE

29 USCS prec § 1021

Preceding § 1021

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
REPORTING AND DISCLOSURE

29 USCS § 1021

§ 1021. Duty of disclosure and reporting

(a) Summary plan description and information to be furnished to participants and beneficiaries. The administrator of each employee benefit plan shall cause to be furnished in accordance with section 104(b) [*29 USCS § 1024(b)*] to each participant covered under the plan and to each beneficiary who is receiving benefits under the plan--
(1) a summary plan description described in section 102(a)(1) [*29 USCS § 1022(a)(1)*]; and
(2) the information described in subsection (f) and sections 104(b)(3) and 105(a) and (c) [*29 USCS §§ 1024(b)(3), 1025(a)* and (c)].

(b) Reports to be filed with Secretary of Labor. The administrator shall, in accordance with section 104(a) [*29 USCS § 1024(a)*], file with the Secretary--
(1) the annual report containing the information required by section 103 [*29 USCS § 1023*]; and
(2) terminal and supplementary reports as required by subsection (c) of this section.

(c) Terminal and supplementary reports.
(1) Each administrator of an employee pension benefit plan which is winding up its affairs (without regard to the number of participants remaining in the plan) shall, in accordance with regulations prescribed by the Secretary, file such terminal reports as the Secretary may consider necessary. A copy of such report shall also be filed with the Pension Benefit Guaranty Corporation.
(2) The Secretary may require terminal reports to be filed with regard to any employee welfare benefit plan which is winding up its affairs in accordance with regulations promulgated by the Secretary.
(3) The Secretary may require that a plan described in paragraph (1) or (2) file a supplementary or terminal report with the annual report in the year such plan is terminated and that a copy of such supplementary or terminal report in the case of a plan described in paragraph (1) be also filed with the Pension Benefit Guaranty Corporation.

(d) Notice of failure to meet minimum funding standards.
(1) In general. If an employer maintaining a plan other than a multiemployer plan fails to make a required installment or other payment required to meet the minimum funding standard under section 302 [*29 USCS § 1082*] to a plan before the 60th day following the due date for such installment or other payment, the employer shall notify each participant and beneficiary (including an alternate payee as defined in section 206(d)(3)(K) [*29 USCS § 1056(d)(3)(K)*]) of such plan of such failure. Such notice shall be made at such time and in such manner as the Secretary may prescribe.
(2) Subsection not to apply if waiver pending. This subsection shall not apply to any failure if the employer has filed a waiver request under section 303 [*29 USCS § 1083*] with respect to the plan year to which the required installment relates, except that if the waiver request is denied, notice under paragraph (1) shall be provided within 60 days after the date of such denial.
(3) Definitions. For purposes of this subsection, the terms "required installment" and "due date" have the same meanings given such terms by section 303(j) [*29 USCS § 1083(j)*].

(e) Notice of transfer of excess pension assets to health benefits accounts.
(1) Notice to participants. Not later than 60 days before the date of a qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the administrator of the plan shall notify (in such manner as the Secretary may prescribe) each participant and beneficiary under the plan of such transfer. Such notice shall include information with respect to the amount of excess pension assets, the portion to be transferred, the amount of health benefits liabilities expected to be provided with the assets transferred, and the amount of pension benefits of the participant which will be nonforfeitable immediately after the transfer.
(2) Notice to Secretaries, administrator, and employee organizations.

(A) In general. Not later than 60 days before the date of any qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the employer maintaining the plan from which the transfer is made shall provide the Secretary, the Secretary of the Treasury, the administrator, and each employee organization representing participants in the plan a written notice of such transfer. A copy of any such notice shall be available for inspection in the principal office of the administrator.

(B) Information relating to transfer. Such notice shall identify the plan from which the transfer is made, the amount of the transfer, a detailed accounting of assets projected to be held by the plan immediately before and immediately after the transfer, and the current liabilities under the plan at the time of the transfer.

(C) Authority for additional reporting requirements. The Secretary may prescribe such additional reporting requirements as may be necessary to carry out the purposes of this section.

(3) Definitions. For purposes of paragraph (1), any term used in such paragraph which is also used in *section 420 of the Internal Revenue Code of 1986* [*26 USCS § 420*] (as in effect on the date of the enactment of the Pension Protection Act of 2006 [enacted Aug. 17, 2006]) shall have the same meaning as when used in such section.

(f) Defined benefit plan funding notices.

(1) In general. The administrator of a defined benefit plan to which title IV applies shall for each plan year provide a plan funding notice to the Pension Benefit Guaranty Corporation, to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, and, in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan.

(2) Information contained in notices.

(A) Identifying information. Each notice required under paragraph (1) shall contain identifying information, including the name of the plan, the address and phone number of the plan administrator and the plan's principal administrative officer, each plan sponsor's employer identification number, and the plan number of the plan.

(B) Specific information. A plan funding notice under paragraph (1) shall include--

(i) (I) in the case of a single-employer plan, a statement as to whether the plan's funding target attainment percentage (as defined in section 303(d)(2) [*29 USCS § 1083(d)(2)*]) for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages), or

(II) in the case of a multiemployer plan, a statement as to whether the plan's funded percentage (as defined in section 305(i) [*29 USCS § 1085(i)*]) for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages),

(ii) (I) in the case of a single-employer plan, a statement of--

(aa) the total assets (separately stating the prefunding balance and the funding standard carryover balance) and liabilities of the plan, determined in the same manner as under section 303 [*29 USCS § 1083*], for the plan year to which the notice relates and for the 2 preceding plan years, as reported in the annual report for each such plan year, and

(bb) the value of the plan's assets and liabilities for the plan year to which the notice relates as of the last day of the plan year to which the notice relates determined using the asset valuation under subclause (II) of section 4006(a)(3)(E)(iii) [*29 USCS § 1306(a)(3)(E)(iii)*] and the interest rate under section 4006(a)(3)(E)(iv) [*29 USCS § 1306(a)(3)(E)(iv)*], and

(II) in the case of a multiemployer plan, a statement, for the plan year to which the notice relates and the preceding 2 plan years, of the value of the plan assets (determined both in the same manner as under section 304 [*29 USCS § 1084*] and under the rules of subclause (I)(bb)) and the value of the plan liabilities (determined in the same manner as under section 304 [*29 USCS § 1084*] except that the method specified in section 305(i)(8) [*29 USCS § 1085(i)(8)*] shall be used),

(iii) a statement of the number of participants who are--

(I) retired or separated from service and are receiving benefits,

(II) retired or separated participants entitled to future benefits, and

(III) active participants under the plan,

(iv) a statement setting forth the funding policy of the plan and the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the plan year to which the notice relates,

(v) in the case of a multiemployer plan, whether the plan was in critical or endangered status under section 305 [*29 USCS § 1085*] for such plan year and, if so--

(I) a statement describing how a person may obtain a copy of the plan's funding improvement or rehabilitation plan, as appropriate, adopted under section 305 [*29 USCS § 1085*] and the actuarial and financial data that demonstrate any action taken by the plan toward fiscal improvement, and

(II) a summary of any funding improvement plan, rehabilitation plan, or modification thereof adopted under section 305 [*29 USCS § 1085*] during the plan year to which the notice relates,

(vi) in the case of any plan amendment, scheduled benefit increase or reduction, or other known event taking effect in the current plan year and having a material effect on plan liabilities or assets for the year (as defined in regulations by the Secretary), an explanation of the amendment, schedule increase or reduction, or event, and a projection to the end of such plan year of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities,

(vii) (I) in the case of a single-employer plan, a summary of the rules governing termination of single-employer plans under subtitle C of title IV *[29 USCS §§ 4041* et seq.], or

(II) in the case of a multiemployer plan, a summary of the rules governing reorganization or insolvency, including the limitations on benefit payments,

(viii) a general description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation, along with an explanation of the limitations on the guarantee and the circumstances under which such limitations apply,

(ix) a statement that a person may obtain a copy of the annual report of the plan filed under section 104(a) [*29 USCS § 1024(a)*] upon request, through the Internet website of the Department of Labor, or through an Intranet website maintained by the applicable plan sponsor (or plan administrator on behalf of the plan sponsor), and

(x) if applicable, a statement that each contributing sponsor, and each member of the contributing sponsor's controlled group, of the single-employer plan was required to provide the information under section 4010 [*29 USCS § 1310*] for the plan year to which the notice relates.

(C) Other information. Each notice under paragraph (1) shall include--

(i) in the case of a multiemployer plan, a statement that the plan administrator shall provide, upon written request, to any labor organization representing plan participants and beneficiaries and any employer that has an obligation to contribute to the plan, a copy of the annual report filed with the Secretary under section 104(a) [*29 USCS § 1024(a)*], and

(ii) any additional information which the plan administrator elects to include to the extent not inconsistent with regulations prescribed by the Secretary.

(3) Time for providing notice.

(A) In general. Any notice under paragraph (1) shall be provided not later than 120 days after the end of the plan year to which the notice relates.

(B) Exception for small plans. In the case of a small plan (as such term is used under section 303(g)(2)(B) [*29 USCS § 1083(g)(2)(B)*]) any notice under paragraph (1) shall be provided upon filing of the annual report under section 104(a) [*29 USCS § 1024(a)*].

(4) Form and manner. Any notice under paragraph (1)--

(A) shall be provided in a form and manner prescribed in regulations of the Secretary,

(B) shall be written in a manner so as to be understood by the average plan participant, and

(C) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

(g) Reporting by certain arrangements. The Secretary may, by regulation, require multiple employer welfare arrangements providing benefits consisting of medical care (within the meaning of section 733(a)(2) [*29 USCS § 1191b(a)(2)*]) which are not group health plans to report, not more frequently than annually, in such form and such manner as the Secretary may require for the purpose of determining the extent to which the requirements of part 7 [*29 USCS §§ 1181* et seq.] are being carried out in connection with such benefits.

(h) Simple retirement accounts.

(1) No employer reports. Except as provided in this subsection, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under *section 408(p) of the Internal Revenue Code of 1986* [*26 USCS § 408(p)*].

(2) Summary description. The trustee of any simple retirement account established pursuant to a qualified salary reduction arrangement under section 408(p) of such Code [*26 USCS § 408(p)*] shall provide to the employer maintaining the arrangement each year a description containing the following information:

(A) The name and address of the employer and the trustee.

(B) The requirements for eligibility for participation.

(C) The benefits provided with respect to the arrangement.

(D) The time and method of making elections with respect to the arrangement.

(E) The procedures for, and effects of, withdrawals (including rollovers) from the arrangement.

(3) Employee notification. The employer shall notify each employee immediately before the period for which an election described in section 408(p)(5)(C) of such Code [*26 USCS § 408(p)(5)(C)*] may be made of the employee's opportunity to make such election. Such notice shall include a copy of the description described in paragraph (2).

(i) Notice of blackout periods to participant or beneficiary under individual account plan.

(1) Duties of plan administrator. In advance of the commencement of any blackout period with respect to an individual account plan, the plan administrator shall notify the plan participants and beneficiaries who are affected by such action in accordance with this subsection.

(2) Notice requirements.

(A) In general. The notices described in paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall include--

(i) the reasons for the blackout period,

(ii) an identification of the investments and other rights affected,

(iii) the expected beginning date and length of the blackout period,

(iv) in the case of investments affected, a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets credited to their accounts during the blackout period, and

(v) such other matters as the Secretary may require by regulation.

(B) Notice to participants and beneficiaries. Except as otherwise provided in this subsection, notices described in paragraph (1) shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies at least 30 days in advance of the blackout period.

(C) Exception to 30-day notice requirement. In any case in which--

(i) a deferral of the blackout period would violate the requirements of subparagraph (A) or (B) of section 404(a)(1) [*29 USCS § 1104(a)(1)*], and a fiduciary of the plan reasonably so determines in writing, or

(ii) the inability to provide the 30-day advance notice is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan reasonably so determines in writing,

subparagraph (B) shall not apply, and the notice shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies as soon as reasonably possible under the circumstances unless such a notice in advance of the termination of the blackout period is impracticable.

(D) Written notice. The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.

(E) Notice to issuers of employer securities subject to blackout period. In the case of any blackout period in connection with an individual account plan, the plan administrator shall provide timely notice of such blackout period to the issuer of any employer securities subject to such blackout period.

(3) Exception for blackout periods with limited applicability. In any case in which the blackout period applies only to 1 or more participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be a participant or beneficiary under the plan by reason of such merger, acquisition, divestiture, or transaction, the requirement of this subsection that the notice be provided to all participants and beneficiaries shall be treated as met if the notice required under paragraph (1) is provided to such participants or beneficiaries to whom the blackout period applies as soon as reasonably practicable.

(4) Changes in length of blackout period. If, following the furnishing of the notice pursuant to this subsection, there is a change in the beginning date or length of the blackout period (specified in such notice pursuant to paragraph (2)(A)(iii)), the administrator shall provide affected participants and beneficiaries notice of the change as soon as reasonably practicable. In relation to the extended blackout period, such notice shall meet the requirements of paragraph (2)(D) and shall specify any material change in the matters referred to in clauses (i) through (v) of paragraph (2)(A).

(5) Regulatory exceptions. The Secretary may provide by regulation for additional exceptions to the requirements of this subsection which the Secretary determines are in the interests of participants and beneficiaries.

(6) Guidance and model notices. The Secretary shall issue guidance and model notices which meet the requirements of this subsection.

(7) Blackout period. For purposes of this subsection--

(A) In general. The term "blackout period" means, in connection with an individual account plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain distributions from

the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any period of more than 3 consecutive business days.

(B) Exclusions. The term "blackout period" does not include a suspension, limitation, or restriction--

(i) which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 [*15 USCS § 78c(a)(47)*]),

(ii) which is a change to the plan which provides for a regularly scheduled suspension, limitation, or restriction which is disclosed to participants or beneficiaries through any summary of material modifications, any materials describing specific investment alternatives under the plan, or any changes thereto, or

(iii) which applies only to 1 or more individuals, each of whom is the participant, an alternate payee (as defined in section 206(d)(3)(K) [*29 USCS § 1056(d)(3)(K)*]), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 206(d)(3)(B)(i) [*29 USCS § 1056(d)(3)(B)(i)*]).

(8) Individual account plan.

(A) In general. For purposes of this subsection, the term "individual account plan" shall have the meaning provided such term in section 3(34) [*29 USCS § 1002(34)*], except that such term shall not include a one-participant retirement plan.

(B) One-participant retirement plan. For purposes of subparagraph (A), the term "one-participant retirement plan" means a retirement plan that on the first day of the plan year--

(i) covered only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or

(ii) covered only one or more partners (or partners and their spouses) in the plan sponsor.

(j) Notice of funding-based limitation on certain forms of distribution. The plan administrator of a single-employer plan shall provide a written notice to plan participants and beneficiaries within 30 days--

(1) after the plan has become subject to a restriction described in paragraph (1) or (3) of section 206(g) [*29 USCS § 1056(g)*]),

(2) in the case of a plan to which section 206(g)(4) [*29 USCS § 1056(g)(4)*] applies, after the valuation date for the plan year described in section 206(g)(4)(A) [*29 USCS § 1056(g)(4)(A)*] for which the plan's adjusted funding target attainment percentage for the plan year is less than 60 percent (or, if earlier, the date such percentage is deemed to be less than 60 percent under section 206(g)(7) [*29 USCS § 1056(g)(7)*]), and

(3) at such other time as may be determined by the Secretary of the Treasury.

The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient. The Secretary of the Treasury, in consultation with the Secretary, shall have the authority to prescribe rules applicable to the notices required under this subsection.

(k) Multiemployer plan information made available on request.

(1) In general. Each administrator of a multiemployer plan shall, upon written request, furnish to any plan participant or beneficiary, employee representative, or any employer that has an obligation to contribute to the plan--

(A) a copy of any periodic actuarial report (including any sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days,

(B) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary which has been in the plan's possession for at least 30 days, and

(C) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of this Act [*29 USCS § 1084*] or *section 431(d)* of the Internal Revenue Code of 1986 [*26 USCS § 431(d)*] and the determination of such Secretary pursuant to such application.

(2) Compliance. Information required to be provided under paragraph (1)--

(A) shall be provided to the requesting participant, beneficiary, or employer within 30 days after the request in a form and manner prescribed in regulations of the Secretary,

(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the information is required to be provided, and

(C) shall not--

(i) include any individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer, or

(ii) reveal any proprietary information regarding the plan, any contributing employer, or entity providing services to the plan.

Subparagraph (C)(i) shall not apply to individually identifiable information with respect to any plan investment manager or adviser, or with respect to any other person (other than an employee of the plan) preparing a financial report required to be included under paragraph (1)(B).

(3) Limitations. In no case shall a participant, beneficiary, or employer be entitled under this subsection to receive more than one copy of any report or application described in paragraph (1) during any one 12-month period. The administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(l) Notice of potential withdrawal liability.

(1) In general. The plan sponsor or administrator of a multiemployer plan shall, upon written request, furnish to any employer who has an obligation to contribute to the plan a notice of--

(A) the estimated amount which would be the amount of such employer's withdrawal liability under part 1 of subtitle E of title IV [*29 USCS §§ 1381* et seq.] if such employer withdrew on the last day of the plan year preceding the date of the request, and

(B) an explanation of how such estimated liability amount was determined, including the actuarial assumptions and methods used to determine the value of the plan liabilities and assets, the data regarding employer contributions, unfunded vested benefits, annual changes in the plan's unfunded vested benefits, and the application of any relevant limitations on the estimated withdrawal liability.

For purposes of subparagraph (B), the term "employer contribution" means, in connection with a participant, a contribution made by an employer as an employer of such participant.

(2) Compliance. Any notice required to be provided under paragraph (1)--

(A) shall be provided in a form and manner prescribed in regulations of the Secretary to the requesting employer within--

(i) 180 days after the request, or

(ii) subject to regulations of the Secretary, such longer time as may be necessary in the case of a plan that determines withdrawal liability based on any method described under paragraph (4) or (5) of section 4211(c) [*29 USCS § 1391(c)*]; and

(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to employers to whom the information is required to be provided.

(3) Limitations. In no case shall an employer be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(m) Notice of right to divest. Not later than 30 days before the first date on which an applicable individual of an applicable individual account plan is eligible to exercise the right under section 204(j) [*29 USCS § 1054(j)*] to direct the proceeds from the divestment of employer securities with respect to any type of contribution, the administrator shall provide to such individual a notice--

(1) setting forth such right under such section, and

(2) describing the importance of diversifying the investment of retirement account assets.

The notice required by this subsection shall be written in a manner calculated to be understood by the average plan participant and may be delivered in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to the recipient.

(n) Cross reference. For regulations relating to coordination of reports to the Secretaries of Labor and the Treasury, see section 3004 [*29 USCS § 1204*].

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
REPORTING AND DISCLOSURE

29 USCS § 1022

§ 1022. Summary plan description

(a) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 104(b) [*29 USCS § 1024(b)*]. The summary plan description shall include the information described in subsection (b), shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 104(b)(1) [*29 USCS § 1024(b)(1)*].

(b) The summary plan description shall contain the following information: The name and type of administration of the plan; in the case of a group health plan (as defined in section 733(a)(1) [*29 USCS § 1191b(a)(1)*]), whether a health insurance issuer (as defined in section 733(b)(2) [*29 USCS § 1191b(b)(2)*]) is responsible for the financing or administration (including payment of claims) of the plan and (if so) the name and address of such issuer; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names, titles and addresses of any trustee or trustees (if they are persons different from the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan including the office at the Department of Labor through which participants and beneficiaries may seek assistance or information regarding their rights under this Act and the Health Insurance Portability and Accountability Act of 1996 with respect to health benefits that are offered through a group health plan (as defined in section 733(a)(1) [*29 USCS § 1191b(a)(1)*]), the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 503 of this Act [*29 USCS § 1133*]), and if the employer so elects for purposes of complying with section 701(f)(3)(B)(i) [*29 USCS § 1181(f)(3)(B)(i)*], the model notice applicable to the State in which the participants and beneficiaries reside.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
REPORTING AND DISCLOSURE

29 USCS § 1023

§ 1023. Annual reports

(a) Publication and filing.

(1) (A) An annual report shall be published with respect to every employee benefit plan to which this part applies. Such report shall be filed with the Secretary in accordance with section 104(a) [*29 USCS § 1024(a)*], and shall be made available and furnished to participants in accordance with section 104(b) [*29 USCS § 1024(b)*].

(B) The annual report shall include the information described in subsections (b) and (c) and where applicable subsections (d), (e), and (f) and shall also include--

(i) a financial statement and opinion, as required by paragraph (3) of this subsection, and

(ii) an actuarial statement and opinion, as required by paragraph (4) of this subsection.

(2) If some or all of the information necessary to enable the administrator to comply with the requirements of this title is maintained by--

(A) an insurance carrier or other organization which provides some or all of the benefits under the plan, or holds assets of the plan in a separate account,

(B) a bank or similar institution which holds some or all of the assets of the plan in a common or collective trust or a separate trust, or custodial account, or

(C) a plan sponsor as defined in section 3(16)(B) [*29 USCS § 1002(16)(B)*],

such carrier, organization, bank, institution, or plan sponsor shall transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year (or such other date as may be prescribed under regulations of the Secretary).

(3) (A) Except as provided in subparagraph (C), the administrator of an employee benefit plan shall engage, on behalf of all plan participants, an independent qualified public accountant, who shall conduct such an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant. The independent qualified public accountant shall also offer his opinion as to whether the separate schedules specified in subsection (b)(3) of this section and the summary material required under section 104(b)(3) [*29 USCS § 1024(b)(3)*] present fairly, and in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountant shall be made a part of the annual report. In a case where a plan is not required to file an annual report, the requirements of this paragraph shall not apply. In a case where by reason of section 104(a)(2) [*29 USCS § 1024(a)(2)*] a plan is required only to file a simplified annual report, the Secretary may waive the requirements of this paragraph.

(B) In offering his opinion under this section the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary, if he so states his reliance.

(C) The opinion required by subparagraph (A) need not be expressed as to any statements required by subsection (b)(3)(G) prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

(D) For purposes of this title, the term "qualified public accountant" means--

(i) a person who is a certified public accountant, certified by a regulatory authority of a State;

(ii) a person who is a licensed public accountant, licensed by a regulatory authority of a State; or

(iii) a person certified by the Secretary as a qualified public accountant in accordance with regulations published by him for a person who practices in States where there is no certification or licensing procedure for accountants.

(4) (A) The administrator of an employee pension benefit plan subject to the reporting requirement of subsection (d) of this section shall engage, on behalf of all plan participants, an enrolled actuary who shall be responsible for the preparation of the materials comprising the actuarial statement required under subsection (d) of this section. In a case where a plan is not required to file an annual report, the requirement of this paragraph shall not apply, and, in a case where by reason of section 104(a)(2) [*29 USCS § 1024(a)(2)*], a plan is required only to file a simplified report, the Secretary may waive the requirement of this paragraph.

(B) The enrolled actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under subsection (d) of this section--

(i) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

(ii) represent his best estimate of anticipated experience under the plan.

The opinion by the enrolled actuary shall be made with respect to, and shall be made a part of, each annual report.

(C) For purposes of this title, the term "enrolled actuary" means an actuary enrolled under subtitle C of title III of this Act [*26 USCS § 7701*; *29 USCS §§ 1241*, *1242*].

(D) In making a certification under this section the enrolled actuary may rely on the correctness of any accounting matter under section 103(b) [*29 USCS § 1023(b)*] as to which any qualified public accountant has expressed an opinion, if he so states his reliance.

(b) Financial statement. An annual report under this section shall include a financial statement containing the following information:

(1) With respect to an employee welfare benefit plan: a statement of assets and liabilities; a statement of changes in fund balance; and a statement of changes in financial position. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of the plan.

(2) With respect to an employee pension benefit plan: a statement of assets and liabilities, and a statement of changes in net assets available for plan benefits which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; the funding policy (including policy with respect to prior service cost), and any changes in such policies during the year; a description of any significant changes in plan benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of such pension plan.

(3) With respect to all employee benefit plans, the statement required under paragraph (1) or (2) shall have attached the following information in separate schedules:

(A) a statement of the assets and liabilities of the plan aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year of the plan;

(B) a statement of receipts and disbursements during the preceding twelve-month period aggregated by general sources and applications;

(C) a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower, or lessor, or similar party to the transaction (including a notation as to whether such party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value;

(D) a schedule of each transaction involving a person known to be party in interest, the identity of such party in interest and his relationship or that of any other party in interest to the plan, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction;

(E) a schedule of all loans or fixed income obligations which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule (including a notation as to whether parties involved are known to be parties in interest): the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the iden-

tity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof;

(F) a list of all leases which were in default or were classified during the year as uncollectable; and the following information with respect to each lease on such schedule (including a notation as to whether parties involved are known to be parties in interest): the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(G) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by a bank as trustee, the report shall include the most recent annual statement of assets and liabilities of such common or collective trust, and in the case of a separate account or a separate trust, such other information as is required by the administrator in order to comply with this subsection; and

(H) a schedule of each reportable transaction, the name of each party to the transaction (except that, in the case of an acquisition or sale of a security on the market, the report need not identify the person from whom the security was acquired or to whom it was sold) and a description of each asset to which the transaction applies; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction. For purposes of the preceding sentence, the term "reportable transaction" means a transaction to which the plan is a party if such transaction is--

(i) a transaction involving an amount in excess of 3 percent of the current value of the assets of the plan;

(ii) any transaction (other than a transaction respecting a security) which is part of a series of transactions with or in conjunction with a person in a plan year, if the aggregate amount of such transactions exceeds 3 percent of the current value of the assets of the plan;

(iii) a transaction which is part of a series of transactions respecting one or more securities of the same issuer, if the aggregate amount of such transactions in the plan year exceeds 3 percent of the current value of the assets of the plan; or

(iv) a transaction with or in conjunction with a person respecting a security, if any other transaction with or in conjunction with such person in the plan year respecting a security is required to be reported by reason of clause (i).

(4) The Secretary may, by regulation, relieve any plan from filing a copy of a statement of assets and liabilities (or other information) described in paragraph (3)(G) if such statement and other information is filed with the Secretary by the bank or insurance carrier which maintains the common or collective trust or separate account.

(c) Information to be furnished by administrator. The administrator shall furnish as a part of a report under this section the following information:

(1) The number of employees covered by the plan.

(2) The name and address of each fiduciary.

(3) Except in the case of a person whose compensation is minimal (determined under regulations of the Secretary) and who performs solely ministerial duties (determined under such regulations), the name of each person (including but not limited to, any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment manager, or custodian who rendered services to the plan or who had transactions with the plan) who received directly or indirectly compensation from the plan during the preceding year for services rendered to the plan or its participants, the amount of such compensation, the nature of his services to the plan or its participants, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest.

(4) An explanation of the reason for any change in appointment of trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager, or custodian.

(5) Such financial and actuarial information including but not limited to the material described in subsections (b) and (d) of this section as the Secretary may find necessary or appropriate.

(d) Actuarial statement. With respect to an employee pension benefit plan (other than (A) a profit sharing, savings, or other plan, which is an individual account plan, (B) a plan described in section 301(b) [*29 USCS § 1081(b)*], or (C) a plan described both in section 4021(b) [*29 USCS § 1321(b)*] and in paragraph (1), (2), (3), (4), (5), (6), or (7) of section 301(a) [*29 USCS § 1081(a)(1)*, (2), (3), (4), (5), (6), or (7)]) an annual report under this section for a plan year shall include a complete actuarial statement applicable to the plan year which shall include the following:

(1) The date of the plan year, and the date of the actuarial valuation applicable to the plan year for which the report is filed.

(2) The date and amount of the contribution (or contributions) received by the plan for the plan year for which the report is filed and contributions for prior plan years not previously reported.

(3) The following information applicable to the plan year for which the report is filed: the normal costs or target normal costs, the accrued liabilities or funding target, an identification of benefits not included in the calculation; a statement of the other facts and actuarial assumptions and methods used to determine costs, and a justification for any change in actuarial assumptions or cost methods; and the minimum contribution required under section 302 [*29 USCS § 1082*].

(4) The number of participants and beneficiaries, both retired and nonretired, covered by the plan.

(5) The current value of the assets accumulated in the plan, and the present value of the assets of the plan used by the actuary in any computation of the amount of contributions to the plan required under section 302 [*29 USCS § 1082*] and a statement explaining the basis of such valuation of present value of assets.

(6) Information required in regulations of the Pension Benefit Guaranty Corporation with respect to:

(A) the current value of the assets of the plan,

(B) the present value of all nonforfeitable benefits for participants and beneficiaries receiving payments under the plan,

(C) the present value of all nonforfeitable benefits for all other participants and beneficiaries,

(D) the present value of all accrued benefits which are not nonforfeitable (including a separate accounting of such benefits which are benefit commitments, as defined in section 4001(a)(16) [*29 USCS § 1301(a)(16)*]), and

(E) the actuarial assumptions and techniques used in determining the values described in subparagraphs (A) through (D).

(7) A certification of the contribution necessary to reduce the minimum required contribution determined under section 303 [*29 USCS § 1083*], or the accumulated funding deficiency determined under section 304 [*29 USCS § 1084*], to zero.

(8) A statement by the enrolled actuary--

(A) that to the best of his knowledge the report is complete and accurate, and

(B) the applicable requirements of sections 303(h) and 304(c)(3) [*29 USCS §§ 1083(h)* and *1084(c)(3)*] (relating to reasonable actuarial assumptions and methods) have been complied with.

(9) A copy of the opinion required by subsection (a)(4).

(10) A statement by the actuary which discloses--

(A) any event which the actuary has not taken into account, and

(B) any trend which, for purposes of the actuarial assumptions used, was not assumed to continue in the future,

but only if, to the best of the actuary's knowledge, such event or trend may require a material increase in plan costs or required contribution rates.

(11) If the current value of the assets of the plan is less than 70 percent of--

(A) in the case of a single-employer plan, the funding target (as defined in section 303(d)(1) [*29 USCS § 1083(d)(1)*]) of the plan, or

(B) in the case of a multiemployer plan, the current liability (as defined in section 304(c)(6)(D) [*29 USCS § 1084(c)(6)(D)*]) under the plan,

the percentage which such value is of the amount described in subparagraph (A) or (B).

(12) A statement explaining the actuarial assumptions and methods used in projecting future retirements and forms of benefit distributions under the plan.

(13) Such other information regarding the plan as the Secretary may by regulation require.

(14) Such other information as may be necessary to fully and fairly disclose the actuarial position of the plan.

Such actuary shall make an actuarial valuation of the plan for every third plan year, unless he determines that a more frequent valuation is necessary to support his opinion under subsection (a)(4) of this section.

(e) Statement from insurance company, insurance service, or other similar organizations which sell or guarantee plan benefits. If some or all of the benefits under the plan are purchased from and guaranteed by an insurance company, insurance service, or other similar organization, a report under this section shall include a statement from such insurance company, service, or other similar organization covering the plan year and enumerating--

(1) the premium rate or subscription charge and the total premium or subscription charges paid to each such carrier, insurance service, or other similar organization and the approximate number of persons covered by each class of such benefits; and

(2) the total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service, or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs paid by such company, service, or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose. If any such company, service, or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the company, service, or other organization and (B) if such company, service, or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

(f) Additional information with respect to defined benefit plans.

(1) Liabilities under 2 or more plans.

(A) In general. In any case in which any liabilities to participants or their beneficiaries under a defined benefit plan as of the end of a plan year consist (in whole or in part) of liabilities to such participants and beneficiaries under 2 or more pension plans as of immediately before such plan year, an annual report under this section for such plan year shall include the funded percentage of each of such 2 or more pension plans as of the last day of such plan year and the funded percentage of the plan with respect to which the annual report is filed as of the last day of such plan year.

(B) Funded percentage. For purposes of this paragraph, the term "funded percentage"--

(i) in the case of a single-employer plan, means the funding target attainment percentage, as defined in section 303(d)(2) [*29 USCS § 1083(d)(2)*], and

(ii) in the case of a multiemployer plan, has the meaning given such term in section 305(i)(2) [*29 USCS § 1085(i)(2)*].

(2) Additional information for multiemployer plans. With respect to any defined benefit plan which is a multiemployer plan, an annual report under this section for a plan year shall include, in addition to the information required under paragraph (1), the following, as of the end of the plan year to which the report relates:

(A) The number of employers obligated to contribute to the plan.

(B) A list of the employers that contributed more than 5 percent of the total contributions to the plan during such plan year.

(C) The number of participants under the plan on whose behalf no contributions were made by an employer as an employer of the participant for such plan year and for each of the 2 preceding plan years.

(D) The ratios of--

(i) the number of participants under the plan on whose behalf no employer had an obligation to make an employer contribution during the plan year, to

(ii) the number of participants under the plan on whose behalf no employer had an obligation to make an employer contribution during each of the 2 preceding plan years.

(E) Whether the plan received an amortization extension under section 304(d) of this Act [*29 USCS § 1084(d)*] or *section 431(d)* of the Internal Revenue Code of 1986 [*26 USCS § 431(d)*] for such plan year and, if so, the amount of the difference between the minimum required contribution for the year and the minimum required contribution which would have been required without regard to the extension, and the period of such extension.

(F) Whether the plan used the shortfall funding method (as such term is used in section 305 [*29 USCS § 1085*]) for such plan year and, if so, the amount of the difference between the minimum required contribution for the year and the minimum required contribution which would have been required without regard to the use of such method, and the period of use of such method.

(G) Whether the plan was in critical or endangered status under section 305 [*29 USCS § 1085*] for such plan year, and if so, a summary of any funding improvement or rehabilitation plan (or modification thereto) adopted during the plan year, and the funded percentage of the plan.

(H) The number of employers that withdrew from the plan during the preceding plan year and the aggregate amount of withdrawal liability assessed, or estimated to be assessed, against such withdrawn employers.

(I) In the case of a multiemployer plan that has merged with another plan or to which assets and liabilities have been transferred, the actuarial valuation of the assets and liabilities of each affected plan during the year preceding the effective date of the merger or transfer, based upon the most recent data available as of the day before the first day of the plan year, or other valuation method performed under standards and procedures as the Secretary may prescribe by regulation.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
REPORTING AND DISCLOSURE

29 USCS § 1024

§ 1024. Filing and furnishing of information

(a) Filing of annual report with Secretary.

(1) The administrator of any employee benefit plan subject to this part shall file with the Secretary the annual report for a plan year within 210 days after the close of such year (or within such time as may be required by regulations promulgated by the Secretary in order to reduce duplicative filing). The Secretary shall make copies of such annual reports available for inspection in the public document room of the Department of Labor.

(2) (A) With respect to annual reports required to be filed with the Secretary under this part, he may by regulation prescribe simplified annual reports for any pension plan which covers less than 100 participants.

(B) Nothing contained in this paragraph shall preclude the Secretary from requiring any information or data from any such plan to which this part applies where he finds such data or information is necessary to carry out the purposes of this title nor shall the Secretary be precluded from revoking provisions for simplified reports for any such plan if he finds it necessary to do so in order to carry out the objectives of this title.

(3) The Secretary may by regulation exempt any welfare benefit plan from all or part of the reporting and disclosure requirements of this title, or may provide for simplified reporting and disclosure if he finds that such requirements are inappropriate as applied to welfare benefit plans.

(4) The Secretary may reject any filing under this section--

(A) if he determines that such filing is incomplete for purposes of this part; or

(B) if he determines that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to section 103(a)(3)(A) or section 103(a)(4)(B) [*29 USCS § 1023(a)(3)(A)* or (4)(B)].

(5) If the Secretary rejects a filing of a report under paragraph (4) and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the Secretary makes his determination under paragraph (4) to reject the filing, and if the Secretary deems it in the best interest of the participants, he may take any one or more of the following actions--

(A) retain an independent qualified public accountant (as defined in section 103(a)(3)(D) [*29 USCS § 1023(a)(3)(D)*]) on behalf of the participants to perform an audit,

(B) retain an enrolled actuary (as defined in section 103(a)(4)(C) of this Act [*29 USCS § 1023(a)(4)(C)*]) on behalf of the plan participants, to prepare an actuarial statement,

(C) bring a civil action for such legal or equitable relief as may be appropriate to enforce the provisions of this part, or

(D) take any other action authorized by this title.

The administrator shall permit such accountant or actuary to inspect whatever books and records of the plan are necessary for such audit. The plan shall be liable to the Secretary for the expenses for such audit or report, and the Secretary may bring an action against the plan in any court of competent jurisdiction to recover such expenses.

(6) The administrator of any employee benefit plan subject to this part shall furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to, the latest summary plan description (including any summaries of plan changes not contained in the summary plan description), and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.

(b) Publication of summary plan description and annual report to participants and certain employers and beneficiaries of plan. Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, a copy of the summary plan description, and all modifications and changes referred to in section 102(a) [*29 USCS § 1022(a)*]--

(A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or

(B) if later, within 120 days after the plan becomes subject to this part.

The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, every fifth year after the plan becomes subject to this part an updated summary plan description described in section 102 [*29 USCS § 1022*] which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period this sentence shall not apply. Notwithstanding the foregoing, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, the summary plan description described in section 102 [*29 USCS § 1022*] every tenth year after the plan becomes subject to this part. If there is a modification or change described in section 102(a) [*29 USCS § 1022(a)*] (other than a material reduction in covered services or benefits provided in the case of a group health plan (as defined in section 733(a)(1) [*29 USCS § 1191b(a)(1)*])), a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan. If there is a modification or change described in section 102(a) [*29 USCS § 1022(a)*] that is a material reduction in covered services or benefits provided under a group health plan (as defined in section 733(a)(1) [*29 USCS § 1191b(a)(1)*]), a summary description of such modification or change shall be furnished to participants and beneficiaries not later than 60 days after the date of the adoption of the modification or change. In the alternative, the plan sponsors may provide such description at regular intervals of not more than 90 days. The Secretary shall issue regulations within 180 days after the date of enactment of the Health Insurance Portability and Accountability Act of 1996 [enacted Aug. 21, 1996], providing alternative mechanisms to delivery by mail through which group health plans (as so defined) may notify participants and beneficiaries of material reductions in covered services or benefits.

(2) The administrator shall make copies of the latest updated summary plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Secretary may prescribe by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrator (other than an administrator of a defined benefit plan to which the requirements of section 101(f) [*29 USCS § 1021(f)*] applies) shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 103(b)(3) [*29 USCS § 1023(b)(3)(A)*, (B)] and such other material (including the percentage determined under section 103(d)(11) [*29 USCS § 1023(d)(11)*]) as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description,[,] and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(5) Identification and basic plan information and actuarial information included in the annual report for any plan year shall be filed with the Secretary in an electronic format which accommodates display on the Internet, in accordance with regulations which shall be prescribed by the Secretary. The Secretary shall provide for display of such information included in the annual report, within 90 days after the date of the filing of the annual report, on an Internet website maintained by the Secretary and other appropriate media. Such information shall also be displayed on any Intranet website maintained by the plan sponsor (or by the plan administrator on behalf of the plan sponsor) for the purpose of communicating with employees and not the public, in accordance with regulations which shall be prescribed by the Secretary.

(c) Statement of rights. The Secretary may by regulation require that the administrator of any employee benefit plan furnish to each participant and to each beneficiary receiving benefits under the plan a statement of the rights of participants and beneficiaries under this title.

(d) Furnishing summary plan information to employers and employee representatives of multiemployer plans.

(1) In general. With respect to a multiemployer plan subject to this section, within 30 days after the due date under subsection (a)(1) for the filing of the annual report for the fiscal year of the plan, the administrators shall furnish to each employee organization and to each employer with an obligation to contribute to the plan a report that contains--

(A) a description of the contribution schedules and benefit formulas under the plan, and any modification to such schedules and formulas, during such plan year;

(B) the number of employers obligated to contribute to the plan;

(C) a list of the employers that contributed more than 5 percent of the total contributions to the plan during such plan year;

(D) the number of participants under the plan on whose behalf no contributions were made by an employer as an employer of the participant for such plan year and for each of the 2 preceding plan years;

(E) whether the plan was in critical or endangered status under section 305 [*29 USCS § 1085*] for such plan year and, if so, include--

(i) a list of the actions taken by the plan to improve its funding status; and

(ii) a statement describing how a person may obtain a copy of the plan's funding improvement or rehabilitation plan, as applicable, adopted under section 305 [*29 USCS § 1085*] and the actuarial and financial data that demonstrate any action taken by the plan toward fiscal improvement;

(F) the number of employers that withdrew from the plan during the preceding plan year and the aggregate amount of withdrawal liability assessed, or estimated to be assessed, against such withdrawn employers, as reported on the annual report for the plan year to which the report under this subsection relates;

(G) in the case of a multiemployer plan that has merged with another plan or to which assets and liabilities have been transferred, the actuarial valuation of the assets and liabilities of each affected plan during the year preceding the effective date of the merger or transfer, based upon the most recent data available as of the day before the first day of the plan year, or other valuation method performed under standards and procedures as the Secretary may prescribe by regulation;

(H) a description as to whether the plan--

(i) sought or received an amortization extension under section 304(d) of this Act [*29 USCS § 1084(d)*] or *section 431(d)* of the Internal Revenue Code of 1986 [*26 USCS § 431(d)*] for such plan year; or

(ii) used the shortfall funding method (as such term is used in section 305 [*29 USCS § 1085*]) for such plan year; and

(I) notification of the right under this section of the recipient to a copy of the annual report filed with the Secretary under subsection (a), summary plan description, summary of any material modification of the plan, upon written request, but that--

(i) in no case shall a recipient be entitled to receive more than one copy of any such document described during any one 12-month period; and

(ii) the administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to this subparagraph.

(2) Effect of subsection. Nothing in this subsection waives any other provision under this title requiring plan administrators to provide, upon request, information to employers that have an obligation to contribute under the plan.

(e) Cross references For regulations respecting coordination of reports to the Secretaries of Labor and the Treasury, see section 3004 [*29 USCS § 1204*].

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
REPORTING AND DISCLOSURE

29 USCS § 1025

§ 1025. Reporting of participant's benefit rights

(a) Requirements to provide pension benefit statements.

(1) Requirements.

(A) Individual account plan. The administrator of an individual account plan (other than a one-participant retirement plan described in section 101(i)(8)(B) [*29 USCS § 1021(i)(8)(B)*]) shall furnish a pension benefit statement--

(i) at least once each calendar quarter to a participant or beneficiary who has the right to direct the investment of assets in his or her account under the plan,

(ii) at least once each calendar year to a participant or beneficiary who has his or her own account under the plan but does not have the right to direct the investment of assets in that account, and

(iii) upon written request to a plan beneficiary not described in clause (i) or (ii).

(B) Defined benefit plan. he administrator of a defined benefit plan (other than a one-participant retirement plan described in section 101(i)(8)(B) [*29 USCS § 1021(i)(8)(B)*]) shall furnish a pension benefit statement--

(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit and who is employed by the employer maintaining the plan at the time the statement is to be furnished, and

(ii) to a participant or beneficiary of the plan upon written request.

Information furnished under clause (i) to a participant may be based on reasonable estimates determined under regulations prescribed by the Secretary, in consultation with the Pension Benefit Guaranty Corporation.

(2) Statements.

(A) In general. A pension benefit statement under paragraph (1)--

(i) shall indicate, on the basis of the latest available information--

(I) the total benefits accrued, and

(II) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

(ii) shall include an explanation of any permitted disparity under *section 401(l) of the Internal Revenue Code of 1986* [*26 USCS § 401(l)*] or any floor-offset arrangement that may be applied in determining any accrued benefits described in clause (i),

(iii) shall be written in a manner calculated to be understood by the average plan participant, and

(iv) may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant or beneficiary.

(B) Additional information. In the case of an individual account plan, any pension benefit statement under clause (i) or (ii) of paragraph (1)(A) shall include--

(i) the value of each investment to which assets in the individual account have been allocated, determined as of the most recent valuation date under the plan, including the value of any assets held in the form of employer securities, without regard to whether such securities were contributed by the plan sponsor or acquired at the direction of the plan or of the participant or beneficiary, and

(ii) in the case of a pension benefit statement under paragraph (1)(A)(i)--

(I) an explanation of any limitations or restrictions on any right of the participant or beneficiary under the plan to direct an investment,

(II) an explanation, written in a manner calculated to be understood by the average plan participant, of the importance, for the long-term retirement security of participants and beneficiaries, of a well-balanced and diversified investment portfolio, including a statement of the risk that holding more than 20 percent of a portfolio in the security of one entity (such as employer securities) may not be adequately diversified, and

(III) a notice directing the participant or beneficiary to the Internet website of the Department of Labor for sources of information on individual investing and diversification.

(C) Alternative notice. The requirements of subparagraph (A)(i)(II) are met if, at least annually and in accordance with requirements of the Secretary, the plan--

(i) updates the information described in such paragraph which is provided in the pension benefit statement, or

(ii) provides in a separate statement such information as is necessary to enable a participant or beneficiary to determine their nonforfeitable vested benefits.

(3) Defined benefit plans.

(A) Alternative notice. In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if at least once each year the administrator provides to the participant notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant.

(B) Years in which no benefits accrue. The Secretary may provide that years in which no employee or former employee benefits (within the meaning of *section 410(b) of the Internal Revenue Code of 1986* [*26 USCS § 410(b)*]) under the plan need not be taken into account in determining the 3-year period under paragraph (1)(B)(i).

(b) Limitation on number of statements. In no case shall a participant or beneficiary of a plan be entitled to more than 1 statement described in subparagraph (A)(iii) or (B)(ii) of subsection (a)(1), whichever is applicable, in any 12-month period.

(c) Individual statement furnished by administrator to participants setting forth information in administrator's Internal Revenue registration statement and notification of forfeitable benefits. Each administrator required to register under *section 6057 of the Internal Revenue Code of 1986* [*26 USCS § 6057*] shall, before the expiration of the time prescribed for such registration, furnish to each participant described in subsection (a)(2)(C) of such section [*26 USCS § 6057(a)(2)(C)*], an individual statement setting forth the information with respect to such participant required to be contained in the registration statement required by section 6057(a)(2) of such Code [*26 USCS § 6057(a)(2)*]. Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.

(d) [Deleted]

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
REPORTING AND DISCLOSURE

29 USCS § 1026

§ 1026. Reports made public information

(a) Except as provided in subsection (b), the contents of the annual reports, statements, and other documents filed with the Secretary pursuant to this part shall be public information and the Secretary shall make any such information and data available for inspection in the public document room of the Department of Labor. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) Information described in sections 105(a) and 105(c) [*29 USCS § 1025(a)* and (c)] with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under title II of the Social Security Act [*42 USCS §§ 401* et seq.] may be disclosed under such Act [*42 USCS §§ 301* et seq.].

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
REPORTING AND DISCLOSURE

29 USCS § 1027

§ 1027. Retention of records

Every person subject to a requirement to file any report or to certify any information therefor under this title or who would be subject to such a requirement but for an exemption or simplified reporting requirement under section 104(a)(2) or (3) of this *title [29 USCS § 1024(a)(2)* or (3)] shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based on the information which they contain, or six years after the date on which such documents would have been filed but for an exemption or simplified reporting requirement under section 104(a)(2) or (3) [*29 USCS § 1024(a)(2)* or (3)].

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
REPORTING AND DISCLOSURE

29 USCS § 1028

§ 1028. Reliance on administrative interpretations

In any criminal proceeding under section 501 [*29 USCS § 1131*] based on any act or omission in alleged violation of this part or section 412 [*29 USCS § 1112*], no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with this part or section 412 [*29 USCS § 1112*], if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any regulation or written ruling of the Secretary, or (2) publish and file any information required by any provision of this part if he pleads and proves that he published and filed such information in good faith, and in conformity with any regulation or written ruling of the Secretary issued under this part regarding the filing of such reports. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the annual reports and other reports required by this title, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this part.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
REPORTING AND DISCLOSURE

29 USCS § 1029

§ 1029. Forms

(a) Information required on forms. Except as provided in subsection (b) of this section, the Secretary may require that any information required under this title to be submitted to him, including but not limited to the information required to be filed by the administrator pursuant to section 103(b)(3) and (c) [*29 USCS § 1023(b)(3)* and (c)], must be submitted on such forms as he may prescribe.

(b) Information not required on forms. The financial statement and opinion required to be prepared by an independent qualified public accountant pursuant to section 103(a)(3)(A) [*29 USCS § 1023(a)(3)(A)*], the actuarial statement required to be prepared by an enrolled actuary pursuant to section 103(a)(4)(A) [*29 USCS § 1023(a)(4)(A)*] and the summary plan description required by section 102(a) [*29 USCS § 1022(a)*] shall not be required to be submitted on forms.

(c) Format and content of summary plan description, annual report, etc., required to be furnished to plan participants and beneficiaries. The Secretary may prescribe the format and content of the summary plan description, the summary of the annual report described in section 104(b)(3) [*29 USCS § 1024(b)(3)*] and any other report, statements or documents (other than the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated), which are required to be furnished or made available to plan participants and beneficiaries receiving benefits under the plan.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
REPORTING AND DISCLOSURE

29 USCS § 1030

§ 1030. Alternative methods of compliance

(a) The Secretary on his own motion or after having received the petition of an administrator may prescribe an alternative method for satisfying any requirement of this part with respect to any pension plan, or class of pension plans, subject to such requirement if he determines--

(1) that the use of such alternative method is consistent with the purposes of this title and that it provides adequate disclosure to the participants and beneficiaries in the plan, and adequate reporting to the Secretary,

(2) that the application of such requirement of this part would--

(A) increase the costs to the plan, or

(B) impose unreasonable administrative burdens with respect to the operation of the plan, having regard to the particular characteristics of the plan or the type of plan involved; and

(3) that the application of this part would be adverse to the interests of plan participants in the aggregate.

(b) An alternative method may be prescribed under subsection (a) by regulation or otherwise. If an alternative method is prescribed other than by regulation, the Secretary shall provide notice and an opportunity for interested persons to present their views, and shall publish in the Federal Register the provisions of such alternative method.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
REPORTING AND DISCLOSURE

29 USCS § 1031

§ 1031. Repeal and effective date

(a) (1) The Welfare and Pension Plans Disclosure Act is repealed except that such Act shall continue to apply to any conduct and events which occurred before the effective date of this part.

(2) (A) *Section 664 of title 18, United States Code*, is amended by striking out "any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "any employee benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974".

(B) (i) Section 1027 of such title 18 is amended by striking out "Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "title I of the Employee Retirement Income Security Act of 1974", and by striking out "Act" each place it appears and inserting in lieu thereof "title".

(ii) The heading for such section is amended by striking out "welfare and pension plans disclosure act" and inserting in lieu thereof "employee retirement income security act of 1974".

(iii) The table of sections of chapter 47 of such title 18 [18 prec. § 1001] is amended by striking out "Welfare and Pension Plans Disclosure Act" in the item relating to section 1027 [*18 USCS § 1027*] and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

(C) Section 1954 of such title 18 is amended by striking out "any plan subject to the provisions of the Welfare and Pension Plans Disclosure Act as amended" and inserting in lieu thereof "any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974"; and by striking out "sections 3(3) and 5(b)(1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended" and inserting in lieu thereof "sections 3(4) and (3)(16) [3(16)] of the Employee Retirement Income Security Act of 1974".

(D) Section 211 of the Labor-Management Reporting and Disclosure Act of 1959 (*29 U.S.C. 441*) is amended by striking out "Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

(b) (1) Except as provided in paragraph (2), this part (including the amendments and repeals made by subsection (a)) shall take effect on January 1, 1975.

(2) In the case of a plan which has a plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary may postpone by regulation the effective date of the repeal of any provision of the Welfare and Pension Plans Disclosure Act (and of any amendment made by subsection (a)(2)) and the effective date of any provision of this part, until the beginning of the first plan year of such plan which begins after January 1, 1975.

(c) The provisions of this title authorizing the Secretary to promulgate regulations shall take effect on the date of enactment of this Act [enacted Sept. 2, 1974].

(d) Subsections (b) and (c) shall not apply with respect to amendments made to this part in provisions enacted after the date of the enactment of this Act [enacted Sept. 2, 1974].

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
PARTICIPATION AND VESTING

29 USCS prec § 1051

Preceding § 1051

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
PARTICIPATION AND VESTING

29 USCS § 1051

§ 1051. Coverage

This part [*29 USCS §§ 1051* et seq.] shall apply to any employee benefit plan described in section 4(a) [*29 USCS § 1003(a)*] (and not exempted under section 4(b) [*29 USCS § 1003(b)*]) other than--

(1) an employee welfare benefit plan;

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

(3) (A) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) of the Internal Revenue Code of 1986 [*26 USCS § 501(c)(8)* or (9)], if no part of the contributions to or under such plan are made by employers of participants in such plan, or

(B) a trust described in section 501(c)(18) of such Code [*26 USCS § 501(c)(18)*];

(4) a plan which is established and maintained by a labor organization described in *section 501(c)(5) of the Internal Revenue Code of 1986* [*26 USCS § 501(c)(5)*] and which does not at any time after the date of enactment of this Act [enacted Sept. 2, 1974] provide for employer contributions;

(5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in *section 736 of the Internal Revenue Code of 1986* [*26 USCS § 736*];

(6) an individual retirement account or annuity described in *section 408 of the Internal Revenue Code of 1986* [*26 USCS § 408*], or a retirement bond described in *section 409 of the Internal Revenue Code of 1954* (as effective for obligations issued before January 1, 1984);

(7) an excess benefit plan;

(8) any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this Act.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
PARTICIPATION AND VESTING

29 USCS § 1052

§ 1052. Minimum participation standards

(a) (1) (A) No pension plan may require, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates--

(i) the date on which the employee attains the age of 21; or

(ii) the date on which he completes 1 year of service.

(B) (i) In the case of any plan which provides that after not more than 2 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting "2 years of service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational organization (as defined in *section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986* [*26 USCS § 170(b)(1)(A)(ii)*]) by an employer which is exempt from tax under section 501(a) of such Code [*26 USCS § 501(a)*], which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting "26" for "21". This clause shall not apply to any plan to which clause (i) applies.

(2) No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age.

(3) (A) For purposes of this section, the term "year of service" means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, in accordance with regulations prescribed by the Secretary, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

(B) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary.

(C) For purposes of this section, the term "hour of service" means a time of service determined under regulations prescribed by the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(4) A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of--

(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(b) (1) Except as otherwise provided in paragraphs (2), (3), and (4), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of subsection (a)(1).

(2) In the case of any employee who has any 1-year break in service (as defined in section 203(b)(3)(A) [*29 USCS § 1053(b)(3)(A)*]) under a plan to which the service requirements of clause (i) of subsection (a)(1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(3) In computing an employee's period of service for purposes of subsection (a)(1) in the case of any participant who has any 1-year break in service (as defined in section 203(b)(3)(A) [*29 USCS § 1053(b)(3)(A)*]), service before such

break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in subsection (a)(3)) after his return.

(4) (A) For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account in computing the period of service if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of--

(i) 5, or

(ii) the aggregate number of years of service before such period.

(B) If any years of service are not required to be taken into account by reason of a period of breaks in service to which subparagraph (A) applies, such years of service shall not be taken into account in applying subparagraph (A) to a subsequent period of breaks in service.

(C) For purposes of subparagraph (A), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(5) (A) In the case of each individual who is absent from work for any period--

(i) by reason of the pregnancy of the individual,

(ii) by reason of the birth of a child of the individual,

(iii) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(iv) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service solely for purposes of determining under this subsection whether a 1-year break in service (as defined in section 203(b)(3)(A) [*29 USCS § 1053(b)(3)(A)*]) has occurred, the hours described in subparagraph (B).

(B) The hours described in this subparagraph are--

(i) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(ii) in any case in which the plan is unable to determine the hours described in clause (i), 8 hours of service per day of such absence,

except that the total number of hours treated as hours of service under this subparagraph by reason of any such pregnancy or placement shall not exceed 501 hours.

(C) The hours described in subparagraph (B) shall be treated as hours of service as provided in this paragraph--

(i) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in subparagraph (A); or

(ii) in any other case, in the immediately following year.

(D) For purposes of this paragraph, the term "year" means the period used in computations pursuant to section 202(a)(3)(A) [subsec. (a)(3)(A) of this section].

(E) A plan may provide that no credit will be given pursuant to this paragraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish--

(i) that the absence from work is for reasons referred to in subparagraph (A), and

(ii) the number of days for which there was such an absence.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
PARTICIPATION AND VESTING

29 USCS § 1053

§ 1053. Minimum vesting standards

(a) Nonforfeitability requirements. Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) (A) (i) In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

(ii) A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(iii) A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

(B)

(i) In the case of an individual account plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

(ii) A plan satisfies the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(iii) A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

"Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.

(3)

(A) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 205 [*29 USCS § 1055*]).

(B) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits--

(i) in the case of a plan other than a multiemployer plan, by an employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed".

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 302(d)(2) [*29 USCS § 1082(d)(2)*].

(D)

(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in the last sentence of section 204(c)(2)(C) [*29 USCS § 1054(c)(2)(C)*]) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of section 204(c)(2)(C) [*29 USCS § 1054(c)(2)(C)*] (if such subsection applies) on the date of such repayment (computed annually from the date of such withdrawal). The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before the date of the enactment of this Act [enacted Sept. 2, 1974], a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions, made by such participant before the date of the enactment of this Act [enacted Sept. 2, 1974] if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after the date of the enactment of this Act [enacted Sept. 2, 1974]. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) Cross reference. For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 206(c) [*29 USCS § 1056(c)*].

(E) (i) A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because the plan provides that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contribute under the plan may not be payable if the employer ceases contributions to the multiemployer plan.

(ii) A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because--

(I) the plan is amended to reduce benefits under section 4244A or 4281 [*29 USCS § 1425* or *1441*], or

(II) benefit payments under the plan may be suspended under section 4245 or 4281 [*29 USCS § 1426* or *1441*].

(F) A matching contribution (within the meaning of *section 401(m) of the Internal Revenue Code of 1986* [*26 USCS § 401(m)*]) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B) of such Code [*26 USCS § 401(k)(8)(B)*], an excess deferral under section 402(g)(2)(A) of such Code [*26 USCS § 401(g)(2)(A)*], an erroneous automatic contribution under section 414(w) of such Code [*26 USCS § 414(w)*], or an excess aggregate contribution under section 401(m)(6)(B) of such Code [*26 USCS § 401(m)(6)(B)*].

(4) [Deleted]

(b) Computation of period of service.

(1) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 18,[;]

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions,[;]

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan, defined by the Secretary of the Treasury;

(D) service not required to be taken into account under paragraph (3);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

(F) years of service before this part [*29 USCS §§ 1051* et seq.] first applies to the plan if such service would have been disregarded under the rules of the plan with regard to breaks in service, as in effect on the applicable date; and

(G) in the case of a multiemployer plan, years of service--

(i) with an employer after--

(I) a complete withdrawal of such employer from the plan (within the meaning of section 4203 [*29 USCS § 1383*]), or

(II) to the extent permitted by regulations prescribed by the Secretary of the Treasury, a partial withdrawal described in section 4205(b)(2)(A)(i) [*29 USCS § 1385(b)(2)(A)(i)*] in connection with the decertification of the collective bargaining representative; and

(ii) with any employer under the plan after the termination date of the plan under section 4048 [*29 USCS § 1348*].

(2) (A) For purposes of this section, except as provided in subparagraph (C), the term "year of service" means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has completed 1,000 hours of service.

(B) For purposes of this section, the term "hour of service" has the meaning provided by section 202(a)(3)(C) [*29 USCS § 1052(a)(3)(C)*].

(C) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as determined under regulations of the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(3) (A) For purposes of this paragraph, the term "1-year break in service" means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has not completed more than 500 hours of service.

(B) For purposes of paragraph (1), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) For purposes of paragraph (1), in the case of any participant in an individual account plan or an insured defined benefit plan which satisfies the requirements of subsection 204(b)(1)(F) [*29 USCS § 1054(b)(1)(F)*] who has 5 consecutive 1-year breaks in service, years of service after such 5-year period shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such 5-year period.

(D) (i) For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of--

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) For purposes of clause (i), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E) (i) In the case of each individual who is absent from work for any period--

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service has occurred, the hours described in clause (ii).

(ii) The hours described in this clause are--

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of absence,

except that the total number of hours treated as hours of service under this clause by reason of such pregnancy or placement shall not exceed 501 hours.

(iii) The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph--

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) For purposes of this subparagraph, the term "year" means the period used in computations pursuant to paragraph (2).

(v) A plan may provide that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish--

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

(4) Cross references.

(A) For definitions of "accrued benefit" and "normal retirement age", see sections 3(23) and (24) [*29 USCS § 1002(23)* and (24)].

(B) For effect of certain cash out distributions, see section 204(d)(1) [*29 USCS § 1054(d)(1)*].

(c) Plan amendments altering vesting schedule.

(1) (A) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) unless each participant having not less than 3 years of service is permitted to elect, within a reasonable period after adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(2) Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary of the Treasury to preclude the discrimination prohibited by *section 401(a)(4) of the Internal Revenue Code of 1986* [*26 USCS § 401(a)(4)*].

(3) (A) The requirements of subsection (a)(2) shall be treated as satisfied in the case of a class-year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on the employee's behalf with respect to any plan year is nonforfeitable not later than when such participant was performing services for the employer as of the close of each of 5 plan years (whether or not consecutive) after the plan year for which the contributions were made.

(B) For purposes of subparagraph (A) if--

(i) any contributions are made on behalf of a participant with respect to any plan year, and

(ii) before such participant meets the requirements of subparagraph (A), such participant was not performing services for the employer as of the close of each of any 5 consecutive plan years after such plan year,

then the plan may provide that the participant forfeits any right to or derived from the contributions made with respect to such plan year.

(C) For purposes of this part, the term "class year plan" means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.

(d) Nonforfeitable benefits after lesser period and in greater amounts than required. A pension plan may allow for nonforfeitable benefits after a lesser period and in greater amounts than are required by this part [*29 USCS §§ 1051* et seq.].

(e) Consent for distribution; present value; covered distributions.

(1) If the present value of any nonforfeitable benefit with respect to a participant in a plan exceeds $ 5,000, the plan shall provide that such benefit may not be immediately distributed without the consent of the participant.

(2) For purposes of paragraph (1), the present value shall be calculated in accordance with section 205(g)(3) [*29 USCS § 1055(g)(3)*].

(3) This subsection shall not apply to any distribution of dividends to which *section 404(k) of the Internal Revenue Code of 1986* [*26 USCS § 404(k)*] applies.

(4) A plan shall not fail to meet the requirements of this subsection if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term "rollover contributions" means any rollover contribution under *sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii),* and *457(e)(16) of the Internal Revenue Code of 1986* [*26 USCS §§ 402(c), 403(a)(4),* (b)(8), 408(d)(3)(A)(ii), and 457(e)(16)].

(f) Special rules for plans computing accrued benefits by reference to hypothetical account balance or equivalent amounts.

(1) In general. An applicable defined benefit plan shall not be treated as failing to meet--

(A) subject to paragraph (2), the requirements of subsection (a)(2), or

(B) the requirements of section 204(c) or 205(g) [*29 USCS § 1054(c)* or *1055(g)*], or the requirements of subsection (e), with respect to accrued benefits derived from employer contributions,

solely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in the hypothetical account described in paragraph (3) or as an accumulated percentage of the participant's final average compensation.

(2) 3-year vesting. In the case of an applicable defined benefit plan, such plan shall be treated as meeting the requirements of subsection (a)(2) only if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(3) Applicable defined benefit plan and related rules. For purposes of this subsection--

(A) In general. The term "applicable defined benefit plan" means a defined benefit plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation.

(B) Regulations to include similar plans. The Secretary of the Treasury shall issue regulations which include in the definition of an applicable defined benefit plan any defined benefit plan (or any portion of such a plan) which has an effect similar to an applicable defined benefit plan.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
PARTICIPATION AND VESTING

29 USCS § 1054

§ 1054. Benefit accrual requirements

(a) Satisfaction of requirements by pension plans. Each pension plan shall satisfy the requirements of subsection (b)(3), and--

(1) in the case of a defined benefit plan, shall satisfy the requirements of subsection (b)(1); and

(2) in the case of a defined contribution plan, shall satisfy the requirements of subsection (b)(2).

(b) Enumeration of plan requirements.

(1)

(A) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than--

(i) 3 percent of the normal retirement benefit to which he would be entitled at the normal retirement age if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33 1/3) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) A defined benefit plan satisfies the requirements of this paragraph of a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133 1/3 percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph--

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of--

(i) his accrued benefit determined under the plan, as in effect from time to time prior to the date of the enactment of this Act [enacted Sept. 2, 1974], or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "year of service" has the meaning provided by section 202(a)(3)(A) [*29 USCS § 1052(a)(3)(A)*].

(F) Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan--

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of paragraphs (2) and (3) of section 301(b) [*29 USCS § 1081(b)(2)* and (3)] (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 301(b) [*29 USCS § 1081(b)(4)*, (5), and (6)] were satisfied.

(G) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before benefits payable under title II of the Social Security Act [*42 USCS §§ 401* et seq.] which benefits under the plan--

(i) do not exceed social security benefits, and

(ii) terminate when such social security benefits commence.

(H) (i) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age.

(ii) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(iii) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan--

(I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 206(a)(3) [*29 USCS § 1056(a)(3)*], and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 203(a)(3)(B) [*29 USCS § 1053(a)(3)(B)*], then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The preceding provisions of this clause shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee, with respect to any period of time within a plan year.

(iv) Clause (i) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of *section 414(q) of the Internal Revenue Code of 1986* [*26 USCS § 414(q)*]) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of the Internal Revenue Code of 1986 [*26 USCS §§ 401* et seq.].

(v) A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(vi) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of *section 411(b)(1)(H) of the Internal Revenue Code of 1986* [*26 USCS § 411(b)(1)(H)(v)*] shall apply with respect to the requirements of this subparagraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(1)(H).

(2) (A) A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

(B) A plan shall not be treated as failing to meet the requirements of subparagraph (A) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(C) Any regulations prescribed by the Secretary of the Treasury pursuant to subparagraphs (B) and (C) of *section 411(b)(2) of the Internal Revenue Code of 1986* [*26 USCS § 411(b)(2)(B)*, (C)] shall apply with respect to the requirements of this paragraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(2) [*26 USCS § 411(b)(2)*].

(3) A plan satisfies the requirements of this paragraph if--

(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

(4) (A) For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 202(b) [*29 USCS § 1052(b)*], determined without regard to section 202(b)(5) [*29 USCS § 1052(b)(5)*]) as determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

(B) For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis merely because such service is not taken into account.

(D) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of participation" shall be such period as determined under regulations prescribed by the Secretary.

(E) For purposes of this subsection in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(5) Special rules relating to age.

(A) Comparison to similarly situated younger individual.

(i) In general. A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.

(ii) Similarly situated. For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(iii) Disregard of subsidized early retirement benefits. In determining the accrued benefit as of any date for purposes of this subparagraph, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

(iv) Accrued benefit. For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.

(B) Applicable defined benefit plans.

(i) Interest credits.

(I) In general. An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return.

(II) Preservation of capital. An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the plan provides that an interest credit (or equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

(III) Market rate of return. The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I).

(ii) Special rule for plan conversions. If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

(iii) Rate of benefit accrual. Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of--

(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

(II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

(iv) Special rules for early retirement subsidies. For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

(v) Applicable plan amendment. For purposes of this subparagraph--

(I) In general. The term "applicable plan amendment" means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

(II) Special rule for coordinated benefits. If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

(III) Multiple amendments. The Secretary of the Treasury shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

(IV) Applicable defined benefit plan. For purposes of this subparagraph, the term "applicable defined benefit plan" has the meaning given such term by section 203(f)(3) [*29 USCS § 1053(f)(3)*].

(vi) Termination requirements. An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan--

(I) if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and

(II) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

(C) Certain offsets permitted. A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) solely because the plan provides offsets against benefits under the plan to the extent such offsets are otherwise allowable in applying the requirements of *section 401(a) of the Internal Revenue Code of 1986* [*26 USCS § 401(a)*].

(D) Permitted disparities in plan contributions or benefits. A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of *section 401(l) of the Internal Revenue Code of 1986* [*26 USCS § 401(l)*] are met.

(E) Indexing permitted.

(i) In general. A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides for indexing of accrued benefits under the plan.

(ii) Protection against loss. Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

(iii) Indexing. For purposes of this subparagraph, the term "indexing" means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

(F) Early retirement benefit or retirement-type subsidy. For purposes of this paragraph, the terms "early retirement benefit" and "retirement-type subsidy" have the meaning given such terms in subsection (g)(2)(A).

(G) Benefit accrued to date. For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

(c) Employee's accrued benefits derived from employer and employee contributions.

(1) For purposes of this section and section 203 [*29 USCS § 1053*] an employee's accrued benefit derived from employer contributions as of any applicable date is the excess (if any) of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2) (A) In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is--

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B) Defined benefit plans. In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 205(g)(3) [*29 USCS § 1055(g)(3)*] (as of the determination date).

(C) For purposes of this subsection, the term "accumulated contributions" means the total of--

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which section 203(a)(2) [*29 USCS § 1053(a)(2)*] does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually--

(I) at the rate of 120 percent of the Federal midterm rate (as in effect under *section 1274 of the Internal Revenue Code of 1986* [*26 USCS § 1274*] for the 1st month of a plan year for the period beginning with the 1st plan year to which subsection (a)(2) applies by reason of the applicable effective date) and ending with the date on which the determination is being made, and

(II) at the interest rate which would be used under the plan under section 205(g)(3) [*29 USCS § 1055(g)(3)*] (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age.

For purposes of this subparagraph, the term "mandatory contributions" means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) The Secretary of the Treasury is authorized to adjust by regulation the conversion factor described in subparagraph (B) from time to time as he may deem necessary. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(3) For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(4) In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

(d) Employee service which may be disregarded in determining employee's accrued benefits under plan. Notwithstanding section 203(b)(1) [*29 USCS § 1053(b)(1)*], for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received--

(1) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than the dollar limit under section the dollar limit under section 203(e)(1) [*29 USCS § 1053(e)(1)*]) permitted under regulations prescribed by the Secretary of the Treasury, or

(2) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Paragraph (1) shall apply only if such distribution was made on termination of the employee's participation in the plan. Paragraph (2) shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary of the Treasury.

(e) Opportunity to repay full amount of distributions which have been reduced through disregarded employee service. For purposes of determining the employee's accrued benefit, the plan shall not disregard service as provided in subsection (d) unless the plan provides an opportunity for the participant to repay the full amount of a distribution described in subsection (d) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subsection shall apply only in the case of a participant who--

(1) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

(2) resumes employment covered under the plan, and

(3) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

The plan provision required under this subsection may provide that such repayment must be made (A) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently reemployed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (B) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(f) Employer treated as maintaining a plan. For the purposes of this part [*29 USCS §§ 1051* et seq.], an employer shall be treated as maintaining a plan if any employee of such employer accrues benefits under such plan by reason of service with such employer.

(g) Decrease of accrued benefits through amendment of plan.

(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 302(d)(2) or 4281 [*29 USCS § 1082(d)(2)* or *1441*].

(2) For purposes of paragraph (1), a plan amendment which has the effect of--

(A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(B) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary of the Treasury shall by regulations provide that this paragraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner. The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

(3) For purposes of this subsection, any--

(A) tax credit employee stock ownership plan (as defined in *section 409(a) of the Internal Revenue Code of 1986* [*26 USCS § 409(a)*]), or

(B) employee stock ownership plan (as defined in section 4975(e)(7) of such Code [*26 USCS § 4975(e)(7)*]),

shall not be treated as failing to meet the requirements of this subsection merely because it modifies distribution options in a nondiscriminatory manner.

(4) (A) A defined contribution plan (in this subparagraph referred to as the "transferee plan") shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the "transferor plan") to the extent that--

(i) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan;

(ii) the terms of both the transferor plan and the transferee plan authorize the transfer described in clause (i);

(iii) the transfer described in clause (i) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan;

(iv) the election described in clause (iii) was made after the participant or beneficiary received a notice describing the consequences of making the election; and

(v) the transferee plan allows the participant or beneficiary described in clause (iii) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

(B) Subparagraph (A) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

(5) Except to the extent provided in regulations promulgated by the Secretary of the Treasury, a defined contribution plan shall not be treated as failing to meet the requirements of this subsection merely because of the elimination of a form of distribution previously available thereunder. This paragraph shall not apply to the elimination of a form of distribution with respect to any participant unless--

(A) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated; and

(B) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.

(h) Notice of significant reduction in benefit accruals.

(1) An applicable pension plan may not be amended so as to provide for a significant reduction in the rate of future benefit accrual unless the plan administrator provides the notice described in paragraph (2) to each applicable individual (and to each employee organization representing applicable individuals) and to each employer who has an obligation to contribute to the plan.

(2) The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary of the Treasury) to allow applicable individuals to understand the effect of the plan amendment. The Secretary of the Treasury may provide a simplified form of notice for, or exempt from any notice requirement, a plan--

(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

(3) Except as provided in regulations prescribed by the Secretary of the Treasury, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

(4) Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

(5) A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

(6) (A) In the case of any egregious failure to meet any requirement of this subsection with respect to any plan amendment, the provisions of the applicable pension plan shall be applied as if such plan amendment entitled all applicable individuals to the greater of--

(i) the benefits to which they would have been entitled without regard to such amendment, or

(ii) the benefits under the plan with regard to such amendment.

(B) For purposes of subparagraph (A), there is an egregious failure to meet the requirements of this subsection if such failure is within the control of the plan sponsor and is--

(i) an intentional failure (including any failure to promptly provide the required notice or information after the plan administrator discovers an unintentional failure to meet the requirements of this subsection),

(ii) a failure to provide most of the individuals with most of the information they are entitled to receive under this subsection, or

(iii) a failure which is determined to be egregious under regulations prescribed by the Secretary of the Treasury.

(7) The Secretary of the Treasury may by regulations allow any notice under this subsection to be provided by using new technologies.

(8) For purposes of this subsection--

(A) The term "applicable individual" means, with respect to any plan amendment--

(i) each participant in the plan; and

(ii) any beneficiary who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

(B) The term "applicable pension plan" means--

(i) any defined benefit plan; or

(ii) an individual account plan which is subject to the funding standards of *section 412 of the Internal Revenue Code of 1986* [*26 USCS § 412*].

(9) For purposes of this subsection, a plan amendment which eliminates or reduces any early retirement benefit or retirement-type subsidy (within the meaning of subsection (g)(2)(A)) shall be treated as having the effect of reducing the rate of future benefit accrual.

(i) Prohibition on benefit increases where plan sponsor is in bankruptcy.

(1) In the case of a plan described in paragraph (3) which is maintained by an employer that is a debtor in a case under title 11, United States Code, or similar Federal or State law, no amendment of the plan which increases the liabilities of the plan by reason of--

(A) any increase in benefits,

(B) any change in the accrual of benefits, or

(C) any change in the rate at which benefits become nonforfeitable under the plan,

with respect to employees of the debtor, shall be effective prior to the effective date of such employer's plan of reorganization.

(2) Paragraph (1) shall not apply to any plan amendment that--

(A) the Secretary of the Treasury determines to be reasonable and that provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(B) only repeals an amendment described in section 302(d)(2) [*29 USCS § 1082(d)(2)*],

(C) is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 [*26 USCS §§ 401* et seq.], or

(D) was adopted prior to, or pursuant to a collective bargaining agreement entered into prior to, the date on which the employer became a debtor in a case under title 11, United States Code, or similar Federal or State law.

(3) This subsection shall apply only to plans (other than multiemployer plans) covered under section 4021 of this Act [*29 USCS § 1321*] for which the funding target attainment percentage (as defined in section 303(d)(2)) [*29 USCS § 1083(d)(2)*] is less than 100 percent after taking into account the effect of the amendment.

(4) For purposes of this subsection, the term "employer" has the meaning set forth in section 302(b)(1) [*29 USCS § 1082(b)(1)*], without regard to section 302(b)(2) [*29 USCS § 1082(b)(2)*].

(j) Diversification requirements for certain individual account plans.

(1) In general. An applicable individual account plan shall meet the diversification requirements of paragraphs (2), (3), and (4).

(2) Employee contributions and elective deferrals invested in employer securities. In the case of the portion of an applicable individual's account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if the applicable individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of paragraph (4).

(3) Employer contributions invested in employer securities. In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if each applicable individual who--

(A) is a participant who has completed at least 3 years of service, or

(B) is a beneficiary of a participant described in subparagraph (A) or of a deceased participant,

may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of paragraph (4).

(4) Investment options.

(A) In general. The requirements of this paragraph are met if the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this subsection, each of which is diversified and has materially different risk and return characteristics.

(B) Treatment of certain restrictions and conditions.

(i) Time for making investment choices. A plan shall not be treated as failing to meet the requirements of this paragraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

(ii) Certain restrictions and conditions not allowed. Except as provided in regulations, a plan shall not meet the requirements of this paragraph if the plan imposes restrictions or conditions with respect to the investment of employer securities which are not imposed on the investment of other assets of the plan.

This subparagraph shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

(5) Applicable individual account plan. For purposes of this subsection--

(A) In general. The term "applicable individual account plan" means any individual account plan (as defined in section 3(34) [*29 USCS § 1002(34)*]) which holds any publicly traded employer securities.

(B) Exception for certain ESOPs. Such term does not include an employee stock ownership plan if--

(i) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m) of *section 401 of the Internal Revenue Code of 1986* [*26 USCS § 401*], and

(ii) such plan is a separate plan (for purposes of section 414(l) of such Code [*26 USCS § 414(l)*]) with respect to any other defined benefit plan or individual account plan maintained by the same employer or employers.

(C) Exception for one participant plans. Such term shall not include a one-participant retirement plan (as defined in section 101(i)(8)(B) [*29 USCS § 1021(i)(8)(B)*]).

(D) Certain plans treated as holding publicly traded employer securities.

(i) In general. Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

(ii) Exception for certain controlled groups with publicly traded securities. Clause (i) shall not apply to a plan if--

(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and

(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

(iii) Definitions. For purposes of this subparagraph, the term--

(I) "controlled group of corporations" has the meaning given such term by *section 1563(a) of the Internal Revenue Code of 1986* [*26 USCS § 1563(a)*], except that "50 percent" shall be substituted for "80 percent" each place it appears,

(II) "employer corporation" means a corporation which is an employer maintaining the plan, and

(III) "parent corporation" has the meaning given such term by section 424(e) of such Code [*26 USCS § 424(e)*].

(6) Other definitions. For purposes of this paragraph--

(A) Applicable individual. The term "applicable individual" means--

(i) any participant in the plan, and

(ii) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

(B) Elective deferral. The term "elective deferral" means an employer contribution described in *section 402(g)(3)(A) of the Internal Revenue Code of 1986* [*26 USCS § 402(g)(3)(A)*].

(C) Employer security. The term "employer security" has the meaning given such term by section 407(d)(1) [*29 USCS § 1107(d)(1)*].

(D) Employee stock ownership plan. The term "employee stock ownership plan" has the meaning given such term by section 4975(e)(7) of such Code [*26 USCS § 4975(e)(7)*].

(E) Publicly traded employer securities. The term "publicly traded employer securities" means employer securities which are readily tradable on an established securities market.

(F) Year of service. The term "year of service" has the meaning given such term by section 203(b)(2) [*29 USCS § 1053(b)(2)*].

(7) Transition rule for securities attributable to employer contributions.

(A) Rules phased in over 3 years.

(i) In general. In the case of the portion of an account to which paragraph (3) applies and which consists of employer securities acquired in a plan year beginning before January 1, 2007, paragraph (3) shall only apply to the applicable percentage of such securities. This subparagraph shall be applied separately with respect to each class of securities.

(ii) Exception for certain participants aged 55 or over. Clause (i) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

(B) Applicable percentage. For purposes of subparagraph (A), the applicable percentage shall be determined as follows:

Plan year to which paragraph (3) applies:	The applicable percentage is:
1st	33
2nd	66
3d	100.

(k) Cross reference. For special rules relating to plan provisions adopted to preclude discrimination, see section 203(c)(2) [*29 USCS § 1053(c)(2)*].

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
PARTICIPATION AND VESTING

29 USCS § 1055

§ 1055. Requirement of joint and survivor annuity and preretirement survivor annuity

(a) Required contents for applicable plans. Each pension plan to which this section applies shall provide that--
(1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and
(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

(b) Applicable plans.
(1) This section shall apply to--
(A) any defined benefit plan,
(B) any individual account plan which is subject to the funding standards of section 302 [*29 USCS § 1082*], and
(C) any participant under any other individual account plan unless--
(i) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under subsection (c)(2), to a designated beneficiary),
(ii) such participant does not elect the payment of benefits in the form of a life annuity, and
(iii) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in subparagraph (A) or (B) or to which this clause applied with respect to the participant.
Clause (iii) of subparagraph (C) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.
(2) (A) In the case of--
(i) a tax credit employee stock ownership plan (as defined in *section 409(a) of the Internal Revenue Code of 1986* [*26 USCS § 409(a)*], or
(ii) an employee stock ownership plan (as defined in section 4975(e)(7) of such Code [*26 USCS § 4975(e)(7)*]),
subsection (a) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) of such Code [*26 USCS § 409(h)*] apply.
(B) Subparagraph (A) shall not apply with respect to any participant unless the requirements of clause [clauses] (i), (ii), and (iii) of paragraph (1)(C) are met with respect to such participant.
[(3)](4) This section shall not apply to a plan which the Secretary of the Treasury or his delegate has determined is a plan described in *section 404(c) of the Internal Revenue Code of 1986* (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.
(4) A plan shall not be treated as failing to meet the requirements of paragraph (1)(C) or (2) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(c) Plans meeting requirements of section.
(1) A plan meets the requirements of this section only if--
(A) under the plan, each participant--
(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both),
(ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and

(iii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4).

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless--

(A) (i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3) (A) Each plan shall provide to each participant within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary of the Treasury may prescribe) a written explanation of--

(i) the terms and conditions of the qualified joint and survivor annuity and of the qualified optional survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2), and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B)

(i) Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(ii) For purposes of clause (i), the term "applicable period" means, with respect to a participant, whichever of the following periods ends last:

(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

(II) A reasonable period after the individual becomes a participant.

(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

(IV) A reasonable period ending after section 205 [this section] applies to the participant.

In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.

(4) Each plan shall provide that, if this section applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless--

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

(5) (A) The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if such benefit may not be waived (or another beneficiary selected) and if the plan fully subsidizes the costs of such benefit.

(B) For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(6) If a plan fiduciary acts in accordance with part 4 of this subtitle [*29 USCS §§ 1101* et seq.] in--

(A) relying on a consent or revocation referred to in paragraph (1)(A), or

(B) making a determination under paragraph (2),

then such consent, revocation, or determination shall be treated as valid for purposes of discharging the plan from liability to the extent of payments made pursuant to such Act.

(7) For purposes of this subsection, the term "applicable election period" means--

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 180-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(8) Notwithstanding any other provision of this subsection--

(A) (i) A plan may provide the written explanation described in paragraph (3)(A) after the annuity starting date. In any case to which this subparagraph applies, the applicable election period under paragraph (7) shall not end before the 30th day after the date on which such explanation is provided.

(ii) The Secretary of the Treasury may by regulations limit the application of clause (i), except that such regulations may not limit the period of time by which the annuity starting date precedes the provision of the written explanation other than by providing that the annuity starting date may not be earlier than termination of employment.

(B) A plan may permit a participant to elect (with any applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the annuity starting date (or to waive the 30-day requirement under subparagraph (A)) if the distribution commences more than 7 days after such explanation is provided.

(d) "Qualified joint and survivor annuity" defined.

(1) For purposes of this section, the term "qualified joint and survivor annuity" means an annuity--

(A) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(B) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(2) (A) For purposes of this section, the term "qualified optional survivor annuity" means an annuity--

(i) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(ii) which is the actuarial equivalent of a single annuity for the life of the participant.Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(B) (i) For purposes of subparagraph (A), if the survivor annuity percentage--

(I) is less than 75 percent, the applicable percentage is 75 percent, and

(II) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

(ii) For purposes of clause (i), the term "survivor annuity percentage" means the percentage which the survivor annuity under the plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.

(e) "Qualified preretirement survivor annuity" defined. For purposes of this section--

(1) Except as provided in paragraph (2), the term "qualified preretirement survivor annuity" means a survivor annuity for the life of the surviving spouse of the participant if--

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if--

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had--

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.

(2) In the case of any individual account plan or participant described in subparagraph (B) or (C) of subsection (b)(1), the term "qualified preretirement survivor annuity" means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 203 [*29 USCS § 1053*]).

(3) For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

(f) Marriage requirements for plan.

(1) Except as provided in paragraph (2), a plan may provide that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of --

(A) the participant's annuity starting date, or

(B) the date of the participant's death.

(2) For purposes of paragraph (1), if--

(A) A participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(g) Distribution of present value of annuity; written consent; determination of present value.

(1) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed the amount that can be distributed without the participant's consent under section 203(e) [*29 USCS § 1053(e)*]. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

(2) If--

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 203(e) [*29 USCS § 1053(e)*], and

(B) the participant and the spouse of the participant (or where the participant has dies, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3) (A) For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(B) For purposes of subparagraph (A)--

(i) The term "applicable mortality table" means a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under subparagraph (A) of section 303(h)(3) [*29 USCS § 1083(h)(3)*] (without regard to subparagraph (C) or (D) of such section).

(ii) The term "applicable interest rate" means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 303(h)(2)(C) [*29 USCS § 1083(h)(2)(C)*] for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

(iii) For purposes of clause (ii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 303(h)(2)(C) [*29 USCS § 1083(h)(2)(C)*] if--

(I) section 303(h)(2)(D) [*29 USCS § 1083(h)(2)(D)*] were applied by substituting the average yields for the month described in clause (ii) for the average yields for the 24-month period described in such section,

(II) section 303(h)(2)(G)(i)(II) [*29 USCS § 1083(h)(2)(G)(i)(II)*] were applied by substituting "section 205(g)(3)(A)(ii)(II) [subsec. (g)(3)(A)(ii)(II) of this section]" for "section 302(b)(5)(B)(ii)(II) [*29 USCS § 1082(b)(5)(B)(ii)(II)*]", and

(III) the applicable percentage under section 303(h)(2)(G) [*29 USCS § 1083(h)(2)(G)*] were determined in accordance with the following table:

In the case of plan years beginning in:	The applicable percentage is:
2008	20 percent
2009	40 percent
2010	60 percent
2011	80 percent.

(h) Definitions. For purposes of this section--

(1) The term "vested participant" means any participant who has a nonforfeitable right (within the meaning of section 3(19) [*29 USCS § 1002(19)*]) to any portion of such participant's accrued benefit.

(2) (A) The term "annuity starting date" means--

(i) the first day of the first period for which an amount is payable as an annuity, or

(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

(B) For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

(3) The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(i) Increased costs from providing annuity. A plan may take into account in any equitable manner (as determined by the Secretary of the Treasury) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(j) Use of participant's accrued benefit as security for loan as not preventing distribution. If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (c)(4), nothing in this section shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(k) Spousal consent. No consent of a spouse shall be effective for purposes of subsection (g)(1) or (g)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (c)(1)(A) are met.

(l) Regulations; consultation of Secretary of the Treasury with Secretary of Labor. In prescribing regulations under this section, the Secretary of the Treasury shall consult with the Secretary of Labor.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
PARTICIPATION AND VESTING

29 USCS § 1056

§ 1056. Form and payment of benefits

(a) Commencement date for payment of benefits. Each pension plan shall provide that unless the participant otherwise elects, the payment of benefits under the plan to the participant shall begin not later than the 60th day after the latest of the close of the plan year in which--

(1) occurs the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(3) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, such plan shall provide that a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially reduced under regulations prescribed by the Secretary of the Treasury.

(b) Decrease in plan benefits by reason of increases in benefit levels under Social Security Act or Railroad Retirement Act of 1937. If--

(1) a participant or beneficiary is receiving benefits under a pension plan, or

(2) a participant is separated from the service and has nonforfeitable rights to benefits,

a plan may not decrease benefits of such a participant by reason of any increase in the benefit levels payable under title II of the Social Security Act [*42 USCS §§ 401* et seq.] or the Railroad Retirement Act of 1937, or any increase in the wage base under such title II [*42 USCS §§ 401* et seq.], if such increase takes place after the date of the enactment of this Act [enacted Sept. 2, 1974] or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation.

(c) Forfeitures of accrued benefits derived from employer contributions. No pension plan may provide that any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable) is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply (1) to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit, or (2) to the extent that an accrued benefit is permitted to be forfeited in accordance with section 203(a)(3)(D)(iii) [*29 USCS § 1053(a)(3)(D)(iii)*].

(d) Assignment or alienation of plan benefits.

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before the date of enactment of this Act [enacted Sept. 2, 1974]. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by *section 4975 of the Internal Revenue Code of 1986* [*26 USCS § 4975*] (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of such Code [*26 USCS § 4975(d)(1)*].

(3) (A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph--

(i) the term "qualified domestic relations order" means a domestic relations order--

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which--

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies--

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined.

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order--

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(E) (i) A domestic relations order shall not be treated as failing to meet the requirements of clause (i) of subparagraph (D) solely because such order requires that payment of benefits be made to an alternate payee--

(I) on or in the case of any payment before a participant has separated from service, after the date on which the participant attains (or would have attained) the earliest retirement age,

(II) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(III) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of subclause (II), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(ii) For purposes of this subparagraph, the term "earliest retirement age" means the earlier of--

(I) the date on which the participant is entitled to a distribution under the plan, or

(II) the later of the date of the participant attains age 50 or the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(F) To the extent provided in any qualified domestic relations order--

(i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of section 205 [*29 USCS § 1055*] (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(ii) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 205(f) [*29 USCS § 1055(f)*].

(G) (i) In the case of any domestic relations order received by a plan--

(I) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures--

(I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

(H) (i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this subparagraph referred to as the "segregated amounts") which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(ii) If within the 18-month period described in clause (v) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(iii) If within the 18-month period described in clause (v)--

(I) it is determined that the order is not a qualified domestic relations order, or

(II) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(iv) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in clause (v) shall be applied prospectively only.

(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(I) If a plan fiduciary acts in accordance with part 4 of this subtitle [*29 USCS §§ 1101* et seq.] in--

(i) treating a domestic relations order as being (or not being) a qualified domestic relations order, or

(ii) taking action under subparagraph (H),

then the plan's obligation to the participant and each alternate payee shall be discharged to the extent of any payment made pursuant to such Act.

(J) A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this Act a beneficiary under the plan. Nothing in the preceding sentence shall permit a requirement under section 4001 [*29 USCS § 1301*] of the payment of more than 1 premium with respect to a participant for any period.

(K) The term "alternate payee" means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(L) This paragraph shall not apply to any plan to which paragraph (1) does not apply.

(M) Payment of benefits by a pension plan in accordance with the applicable requirements of a qualified domestic relations order shall not be treated as garnishment for purposes of section 303(a) of the Consumer Credit Protection Act [*15 USCS § 1673(a)*].

(N) In prescribing regulations under this paragraph, the Secretary shall consult with the Secretary of the Treasury.

(4) Paragraph (1) shall not apply to any offset of a participant's benefits provided under an employee pension benefit plan against an amount that the participant is ordered or required to pay to the plan if--

(A) the order or requirement to pay arises--

(i) under a judgment of conviction for a crime involving such plan,

(ii) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of this subtitle [*29 USCS §§ 1101* et seq.], or

(iii) pursuant to a settlement agreement between the Secretary and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of this subtitle [*29 USCS §§ 1101* et seq.] by a fiduciary or any other person,

(B) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan, and

(C) in a case in which the survivor annuity requirements of section 205 [*29 USCS § 1055*] apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made--

(i) either--

(I) such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 205(c)(2)(B) [*29 USCS § 1055(c)(2)(B)*]), or

(II) an election to waive the right of the spouse to a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 205(c) [*29 USCS § 1055(c)*],

(ii) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of this subtitle [*29 USCS §§ 1101* et seq.], or

(iii) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 205(a)(1) [*29 USCS § 1055(a)(1)*] and under a qualified preretirement survivor annuity provided pursuant to section 205(a)(2) [*29 USCS § 1055(a)(2)*], determined in accordance with paragraph (5).

A plan shall not be treated as failing to meet the requirements of section 205 [*29 USCS § 1055*] solely by reason of an offset under this paragraph.

(5) (A) The survivor annuity described in paragraph (4)(C)(iii) shall be determined as if--

(i) the participant terminated employment on the date of the offset,

(ii) there was no offset,

(iii) the plan permitted commencement of benefits only on or after normal retirement age,

(iv) the plan provided only the minimum-required qualified joint and survivor annuity, and

(v) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

(B) For purposes of this paragraph, the term "minimum-required qualified joint and survivor annuity" means the qualified joint and survivor annuity which is the actuarial equivalent of the participant's accrued benefit (within the meaning of section 3(23) [*29 USCS § 1002(23)*]) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

(e) Limitation on distributions other than life annuities paid by plan.

(1) In general. Notwithstanding any other provision of this part, the fiduciary of a pension plan that is subject to the additional funding requirements of section 303(j)(4) [*29 USCS § 1083(j)(4)*] shall not permit a prohibited payment to be made from a plan during a period in which such plan has a liquidity shortfall (as defined in section 303(j)(4)(E)(i) [*29 USCS § 1083(j)(4)(E)(i)*]).

(2) Prohibited payment. For purposes of paragraph (1), the term "prohibited payment" means--

(A) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 204(b)(1)(G) [*29 USCS § 1054(b)(1)(G)*]), to a participant or beneficiary whose annuity starting date (as defined in section 205(h)(2) [*29 USCS § 1055(h)(2)*]), that occurs during the period referred to in paragraph (1),

(B) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(C) any other payment specified by the Secretary of the Treasury by regulations.

(3) Period of shortfall. For purposes of this subsection, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under section 303(j)(3) [*29 USCS § 1083(j)(3)*] by reason of section 303(j)(4)(A) [*29 USCS § 1083(j)(4)(A)*].

(4) Coordination with other provisions. Compliance with this subsection shall not constitute a violation of any other provision of this Act.

(f) Missing participants in terminated plans. In the case of a plan covered by section 4050 [*29 USCS § 1350*], upon termination of the plan, benefits of missing participants shall be treated in accordance with section 4050 [*29 USCS § 1350*].

(g) Funding-based limits on benefits and benefit accruals under single-employer plans.

(1) Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans.

(A) In general. If a participant of a defined benefit plan which is a single-employer plan is entitled to an unpredictable contingent event benefit payable with respect to any event occurring during any plan year, the plan shall provide that such benefit may not be provided if the adjusted funding target attainment percentage for such plan year--

(i) is less than 60 percent, or

(ii) would be less than 60 percent taking into account such occurrence.

(B) Exemption. Subparagraph (A) shall cease to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 303 [*29 USCS § 1083*]) equal to--

(i) in the case of subparagraph (A)(i), the amount of the increase in the funding target of the plan (under section 303 [*29 USCS § 1083*]) for the plan year attributable to the occurrence referred to in subparagraph (A), and

(ii) in the case of subparagraph (A)(ii), the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

(C) Unpredictable contingent event benefit. For purposes of this paragraph, the term "unpredictable contingent event benefit" means any benefit payable solely by reason of--

(i) a plant shutdown (or similar event, as determined by the Secretary of the Treasury), or

(ii) an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

(2) Limitations on plan amendments increasing liability for benefits.

(A) In general. No amendment to a defined benefit plan which is a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any plan year if the adjusted funding target attainment percentage for such plan year is--

(i) less than 80 percent, or

(ii) would be less than 80 percent taking into account such amendment.

(B) Exemption. Subparagraph (A) shall cease to apply with respect to any plan year, effective as of the first day of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 303 [*29 USCS § 1083*]) equal to--

(i) in the case of subparagraph (A)(i), the amount of the increase in the funding target of the plan (under section 303 [*29 USCS § 1083*]) for the plan year attributable to the amendment, and

(ii) in the case of subparagraph (A)(ii), the amount sufficient to result in an adjusted funding target attainment percentage of 80 percent.

(C) Exception for certain benefit increases. Subparagraph (A) shall not apply to any amendment which provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment.

(3) Limitations on accelerated benefit distributions.

(A) Funding percentage less than 60 percent. A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, the plan may not pay any prohibited payment after the valuation date for the plan year.

(B) Bankruptcy. A defined benefit plan which is a single-employer plan shall provide that, during any period in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, the plan may not pay any prohibited payment. The preceding sentence shall not apply on or after the date on which the enrolled actuary of the plan certifies that the adjusted funding target attainment percentage of such plan is not less than 100 percent.

(C) Limited payment if percentage at least 60 percent but less than 80 percent.

(i) In general. A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is 60 percent or greater but less than 80 percent, the plan may not pay any prohibited payment after the valuation date for the plan year to the extent the amount of the payment exceeds the lesser of--

(I) 50 percent of the amount of the payment which could be made without regard to this subsection, or

(II) the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under section 205(g) [*29 USCS § 1055(g)*]) of the maximum guarantee with respect to the participant under section 4022 [*29 USCS § 1322*].

(ii) One-time application.

(I) In general. The plan shall also provide that only 1 prohibited payment meeting the requirements of clause (i) may be made with respect to any participant during any period of consecutive plan years to which the limitations under either subparagraph (A) or (B) or this subparagraph applies.

(II) Treatment of beneficiaries. For purposes of this clause, a participant and any beneficiary on his behalf (including an alternate payee, as defined in section 206(d)(3)(K) [subsec. (d)(3)(K) of this section]) shall be treated as 1 participant. If the accrued benefit of a participant is allocated to such an alternate payee and 1 or more other persons, the

amount under clause (i) shall be allocated among such persons in the same manner as the accrued benefit is allocated unless the qualified domestic relations order (as defined in section 206(d)(3)(B)(i) [subsec. (d)(3)(B)(i) of this section]) provides otherwise.

(D) Exception. This paragraph shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on September 1, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

(E) Prohibited payment. For purpose of this paragraph, the term "prohibited payment" means--

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 204(b)(1)(G) [*29 USCS § 1054(b)(1)(G)*]), to a participant or beneficiary whose annuity starting date (as defined in section 205(h)(2) [*29 USCS § 1055(h)(2)*]) occurs during any period a limitation under subparagraph (A) or (B) is in effect,

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary of the Treasury by regulations.

Such term shall not include the payment of a benefit which under section 203(e) [*29 USCS § 1053(e)*] may be immediately distributed without the consent of the participant.

(4) Limitation on benefit accruals for plans with severe funding shortfalls.

(A) In general. A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, benefit accruals under the plan shall cease as of the valuation date for the plan year.

(B) Exemption. Subparagraph (A) shall cease to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 303 [*29 USCS § 1083*]) equal to the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

(5) Rules relating to contributions required to avoid benefit limitations.

(A) Security may be provided.

(i) In general. For purposes of this subsection, the adjusted funding target attainment percentage shall be determined by treating as an asset of the plan any security provided by a plan sponsor in a form meeting the requirements of clause (ii).

(ii) Form of security. The security required under clause (i) shall consist of--

(I) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of this Act [*29 USCS § 1112*],

(II) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

(III) such other form of security as is satisfactory to the Secretary of the Treasury and the parties involved.

(iii) Enforcement. Any security provided under clause (i) may be perfected and enforced at any time after the earlier of--

(I) the date on which the plan terminates,

(II) if there is a failure to make a payment of the minimum required contribution for any plan year beginning after the security is provided, the due date for the payment under section 303(j) [*29 USCS § 1083(j)*], or

(III) if the adjusted funding target attainment percentage is less than 60 percent for a consecutive period of 7 years, the valuation date for the last year in the period.

(iv) Release of security. The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at such time as the Secretary of the Treasury may prescribe in regulations, including regulations for partial releases of the security by reason of increases in the adjusted funding target attainment percentage.

(B) Prefunding balance or funding standard carryover balance may not be used. No prefunding balance or funding standard carryover balance under section 303(f) [*29 USCS § 1083(f)*] may be used under paragraph (1), (2), or (4) to satisfy any payment an employer may make under any such paragraph to avoid or terminate the application of any limitation under such paragraph.

(C) Deemed reduction of funding balances.

(i) In general. Subject to clause (iii), in any case in which a benefit limitation under paragraph (1), (2), (3), or (4) would (but for this subparagraph and determined without regard to paragraph (1)(B), (2)(B), or (4)(B)) apply to such plan for the plan year, the plan sponsor of such plan shall be treated for purposes of this Act as having made an election under section 303(f) [*29 USCS § 1083(f)*]to reduce the prefunding balance or funding standard carryover balance by such amount as is necessary for such benefit limitation to not apply to the plan for such plan year.

(ii) Exception for insufficient funding balances. Clause (i) shall not apply with respect to a benefit limitation for any plan year if the application of clause (i) would not result in the benefit limitation not applying for such plan year.

(iii) Restrictions of certain rules to collectively bargained plans. With respect to any benefit limitation under paragraph (1), (2), or (4), clause (i) shall only apply in the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers.

(6) New plans. Paragraphs (1), (2), and (4) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this paragraph, the reference in this paragraph to a plan shall include a reference to any predecessor plan.

(7) Presumed underfunding for purposes of benefit limitations.

(A) Presumption of continued underfunding. In any case in which a benefit limitation under paragraph (1), (2), (3), or (4) has been applied to a plan with respect to the plan year preceding the current plan year, the adjusted funding target attainment percentage of the plan for the current plan year shall be presumed to be equal to the adjusted funding target attainment percentage of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual adjusted funding target attainment percentage of the plan for the current plan year.

(B) Presumption of underfunding after 10th month. In any case in which no certification of the adjusted funding target attainment percentage for the current plan year is made with respect to the plan before the first day of the 10th month of such year, for purposes of paragraphs (1), (2), (3), and (4), such first day shall be deemed, for purposes of such paragraph, to be the valuation date of the plan for the current plan year and the plan's adjusted funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of such first day.

(C) Presumption of underfunding after 4th month for nearly underfunded plans. In any case in which--

(i) a benefit limitation under paragraph (1), (2), (3), or (4) did not apply to a plan with respect to the plan year preceding the current plan year, but the adjusted funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such paragraph to apply to the plan with respect to such preceding plan year, and

(ii) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual adjusted funding target attainment percentage of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such paragraph, to be the valuation date of the plan for the current plan year and the adjusted funding target attainment percentage of the plan as of such first day shall, for purposes of such paragraph, be presumed to be equal to 10 percentage points less than the adjusted funding target attainment percentage of the plan for such preceding plan year.

(8) Treatment of plan as of close of prohibited or cessation period. For purposes of applying this part--

(A) Operation of plan after period. Unless the plan provides otherwise, payments and accruals will resume effective as of the day following the close of the period for which any limitation of payment or accrual of benefits under paragraph (3) or (4) applies.

(B) Treatment of affected benefits. Nothing in this paragraph shall be construed as affecting the plan's treatment of benefits which would have been paid or accrued but for this subsection.

(9) Terms relating to funding target attainment percentage. For purposes of this subsection--

(A) In general. The term "funding target attainment percentage" has the same meaning given such term by section 303(d)(2) [*29 USCS § 1083(d)(2)*].

(B) Adjusted funding target attainment percentage. The term "adjusted funding target attainment percentage" means the funding target attainment percentage which is determined under subparagraph (A) by increasing each of the amounts under subparagraphs (A) and (B) of section 303(d)(2) [*29 USCS § 1083(d)(2)*] by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in *section 414(q) of the Internal Revenue Code of 1986* [*26 USCS § 414(q)*]) which were made by the plan during the preceding 2 plan years.

(C) Application to plans which are fully funded without regard to reductions for funding balances.

(i) In general. In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to the reduction in the value of assets under section 303(f)(4) [*29 USCS § 1083(f)(4)*]), the funding target attainment percentage for purposes of subparagraphs (A) and (B) shall be determined without regard to such reduction.

(ii) Transition rule. Clause (i) shall be applied to plan years beginning after 2007 and before 2011 by substituting for "100 percent" the applicable percentage determined in accordance with the following table:

In the case of a plan year beginning in calendar year:	The applicable percentage is
2008	92
2009	94

(iii) Limitation. Clause (ii) shall not apply with respect to any plan year beginning after 2008 unless the funding target attainment percentage (determined without regard to the reduction in the value of assets under section 303(f)(4) [*29 USCS § 1083(f)(4)*]) of the plan for each preceding plan year beginning after 2007 was not less than the applicable percentage with respect to such preceding plan year determined under clause (ii).

(10) Secretarial authority for plans with alternate valuation date. In the case of a plan which has designated a valuation date other than the first day of the plan year, the Secretary of the Treasury may prescribe rules for the application of this subsection which are necessary to reflect the alternate valuation date.

(11) Special rule for 2008. For purposes of this subsection, in the case of plan years beginning in 2008, the funding target attainment percentage for the preceding plan year may be determined using such methods of estimation as the Secretary of the Treasury may provide.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
PARTICIPATION AND VESTING

29 USCS § 1057

[§ 1057. Repealed]

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
PARTICIPATION AND VESTING

29 USCS § 1058

§ 1058. Mergers and consolidations of plans or transfers of plan assets

A pension plan may not merge or consolidate with, or transfer its assets or liabilities to, any other plan after the date of the enactment of this Act [enacted Sept. 2, 1974], unless each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence shall not apply to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of this Act applies.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
PARTICIPATION AND VESTING

29 USCS § 1059

§ 1059. Recordkeeping and reporting requirements

(a) (1) Except as provided by paragraph (2) every employer shall, in accordance with such regulations as the Secretary may prescribe, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees. The plan administrator shall make a report, in such manner and at such time as may be provided in regulations prescribed by the Secretary, to each employee who is a participant under the plan and who--

(A) requests such report, in such manner and at such time as may be provided in such regulations,

(B) terminates his service with the employer, or

(C) has a 1-year break in service (as defined in section 203(b)(3)(A) [*29 USCS § 1053(b)(3)(A)*]).

The employer shall furnish to the plan administrator the information necessary for the administrator to make the reports required by the preceding sentence. Not more than one report shall be required under subparagraph (A) in any 12-month period. Not more than one report shall be required under subparagraph (C) with respect to consecutive 1-year breaks in service. The report required under this paragraph shall be in the same form, and contain the same information, as periodic benefit statements under section 105(a) [*29 USCS § 1025(a)*].

(2) If more than one employer adopts a plan, each such employer shall furnish to the plan administrator the information necessary for the administrator to maintain the records, and make the reports, required by paragraph (1). Such administrator shall maintain the records, and make the reports, required by paragraph (1).

(b) If any person who is required, under subsection (a), to furnish information or maintain records for any plan year fails to comply with such requirement, he shall pay to the Secretary a civil penalty of $ 10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
PARTICIPATION AND VESTING

29 USCS § 1060

§ 1060. Multiple employer plans and other special rules

(a) Plan maintained by more than one employer. Notwithstanding any other provision of this part [*29 USCS §§ 1051* et seq.] or part 3 [*29 USCS §§ 1081* et seq.], the following provisions of this subsection shall apply to a plan maintained by more than one employer:

(1) Section 202 [*29 USCS § 1052*] shall be applied as if all employees of each of the employers were employed by a single employer.

(2) Sections 203 and 204 [*29 USCS §§ 1053* and *1054*] shall be applied as if all such employers constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary.

(3) The minimum funding standard provided by section 302 [*29 USCS § 1082*] shall be determined as if all participants in the plan were employed by a single employer.

(b) Maintenance of plan of predecessor employer. For purposes of this part [*29 USCS §§ 1051* et seq.] and part 3 [*29 USCS §§ 1081* et seq.]--

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary of the Treasury, be treated as service for the employer.

(c) Plan maintained by controlled group of corporations. For purposes of sections 202, 203, and 204 [*29 USCS §§ 1052-1054*], all employees of all corporations which are members of a controlled group of corporations (within the meaning of *section 1563(a) of the Internal Revenue Code of 1986* [*26 USCS § 1563(a)*], determined without regard to section 1563(a)(4) and (e)(3)(C) of such Code [*26 USCS § 1563(a)(4)* and (e)(3)(C)]) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 302 [*29 USCS § 1082*] shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary of the Treasury.

(d) Plan of trades or businesses under common control. For purposes of sections 202, 203, and 204 [*29 USCS §§ 1052-1054*], under regulations prescribed by the Secretary of the Treasury, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (c).

(e) Special rules for eligible combined defined benefit plans and qualified cash or deferred

(1) General rule. Except as provided in this subsection, this Act shall be applied to any defined benefit plan or applicable individual account plan which are part of an eligible combined plan in the same manner as if each such plan were not a part of the eligible combined plan. In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately.

(2) Eligible combined plan. For purposes of this subsection--

(A) In general. The term "eligible combined plan" means a plan--

(i) which is maintained by an employer which, at the time the plan is established, is a small employer,

(ii) which consists of a defined benefit plan and an applicable individual account plan each of which qualifies under *section 401(a) of the Internal Revenue Code of 1986* [*26 USCS § 401(a)*],

(iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable individual account plan to the extent necessary for the separate application of this Act under paragraph (1), and

(iv) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

For purposes of this subparagraph, the term "small employer" has the meaning given such term by *section 4980D(d)(2) of the Internal Revenue Code of 1986* [*26 USCS § 4980D(d)(2)*], except that such section shall be applied by substituting "500" for "50" each place it appears.

(B) Benefit requirements.

(i) In general. The benefit requirements of this subparagraph are met with respect to the defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

(ii) Applicable percentage. For purposes of clause (i), the applicable percentage is the lesser of--

(I) 1 percent multiplied by the number of years of service with the employer, or

(II) 20 percent.

(iii) Special rule for applicable defined benefit plans. If the defined benefit plan under clause (i) is an applicable defined benefit plan as defined in section 203(f)(3)(B) [*29 USCS § 1053(f)(3)(B)*] which meets the interest credit requirements of section 204(b)(5)(B)(i) [*29 USCS § 1054(b)(5)(B)(i)*], the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives pay credit for the year which is not less than the percentage of compensation determined in accordance with the following table:

If the participant's age as of the beginning of the year is--	The percentage is--
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

(iv) Years of service. For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (1), (2), and (3) of section 203(b) [*29 USCS § 1053(b)*], except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

(C) Contribution requirements.

(i) In general. The contribution requirements of this subparagraph with respect to any applicable individual account plan forming part of an eligible combined plan are met if--

(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation. Rules similar to the rules of clauses (ii) and (iii) of *section 401(k)(12)(B) of the Internal Revenue Code of 1986* [*26 USCS § 401(k)(12)(B)*] shall apply for purposes of this clause.

(ii) Nonelective contributions. An applicable individual account plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

(D) Vesting requirements. The vesting requirements of this subparagraph are met if--

(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

(ii) in the case of an applicable individual account plan forming part of eligible combined plan--

(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived under the arrangement from nonelective contributions of the employer. For purposes of this subparagraph, the rules of section 203 [*29 USCS § 1053*] shall apply to the extent not inconsistent with this subparagraph.

(E) Uniform provision of contributions and benefits. In the case of a defined benefit plan or applicable individual account plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all contributions and benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

(F) Requirements must be met without taking into account social security and similar contributions and benefits or other plans.

(i) In general. The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) Social security and similar contributions. The requirements of this clause are met if--

(I) the requirements of subparagraphs (B) and (C) are met without regard to *section 401(l) of the Internal Revenue Code of 1986* [*26 USCS § 401(l)*], and

(II) the requirements of *sections 401(a)(4)* and *410(b) of the Internal Revenue Code of 1986* [*26 USCS §§ 401(a)(4)* and *410(b)*] are met with respect to both the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan without regard to *section 401(l) of the Internal Revenue Code of 1986* [*26 USCS § 410(l)*].

(iii) Other plans and arrangements. The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of *sections 401(a)(4)* and *410(b) of the Internal Revenue Code of 1986* [*26 USCS §§ 401(a)(4)* and *410(b)*] without being combined with any other plan.

(3) Automatic contribution arrangement. For purposes of this subsection--

(A) In general. A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement--

(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

(ii) meets the notice requirements under subparagraph (B).

(B) Notice requirements.

(i) In general. The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) Reasonable period to make election. The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies--

(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions made at a different rate, and

(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

(iii) Annual notice of rights and obligations. The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of this subparagraph shall not be treated as met unless the requirements of clauses (i) and (ii) of *section 401(k)(12)(D) of the Internal Revenue Code of 1986* [*26 USCS § 401(k)(12)(D)*] are met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

(4) Coordination with other requirements.

(A) Treatment of separate plans. The except clause in section 3(35) [*29 USCS § 1002(35)*]shall not apply to an eligible combined plan.

(B) Reporting. An eligible combined plan shall be treated as a single plan for purposes of section 103 [*29 USCS § 1023*].

(5) Applicable individual account plan. For purposes of this subsection--

(A) In general. The term "applicable individual account plan" means an individual account plan which includes a qualified cash or deferred arrangement.

(B) Qualified cash or deferred arrangement. The term "qualified cash or deferred arrangement" has the meaning given such term by *section 401(k)(2) of the Internal Revenue Code of 1986* [*26 USCS § 401(k)(2)*].

(6) [Redesignated]

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
PARTICIPATION AND VESTING

29 USCS § 1061

§ 1061. Effective dates

(a) Except as otherwise provided in this section, this part [*29 USCS §§ 1051* et seq.] shall apply in the case of plan years beginning after the date of the enactment of this Act [enacted Sept. 2, 1974].

(b) (1) Except as otherwise provided in subsection (d), sections 205, 206(d), and 208 [*29 USCS §§ 1055, 1056(d),* and *1058*] shall apply with respect to plan years beginning after December 31, 1975.

(2) Except as otherwise provided in subsections (c) and (d) in the case of a plan in existence on January 1, 1974, this part [*29 USCS §§ 1051* et seq.] shall apply in the case of plan years beginning after December 31, 1975.

(c) (1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee organizations and one or more employers, no plan shall be treated as not meeting the requirements of sections 204 and 205 [*29 USCS §§ 1054, 1055*] solely by reason of a supplementary or special plan provision (within the meaning of paragraph (2)) for any plan year before the year which begins after the earlier of--

(A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [enacted Sept. 2, 1974]), or

(B) December 31, 1980.

For purposes of subparagraph (A) and section 307(c) [*29 USCS § 1086(c)*], any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act or the Internal Revenue Code of 1986 [*26 USCS §§ 1* et seq.] shall not be treated as a termination of such collective bargaining agreement. This paragraph shall not apply unless the Secretary determines that the participation and vesting rules in effect on the date of enactment of this Act [enacted Sept. 2, 1974] are not less favorable to participants, in the aggregate, than the rules provided under sections 202, 203, and 204 [*29 USCS §§ 1052-1054*].

(2) For purposes of paragraph (1), the term "supplementary or special plan provision" means any plan provision which--

(A) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant, or

(B) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(3) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part [*29 USCS §§ 1051* et seq.] than the effective date required by subsection (b).

(d) If the administrator of a plan elects under section 1017(d) of this Act [*26 USCS § 410* note] to make applicable to a plan year and to all subsequent plan years the provisions of the Internal Revenue Code of 1986 [*26 USCS §§ 1* et seq.] relating to participation, vesting, funding, and form of benefit, this part [*29 USCS §§ 1051* et seq.] shall apply to the first plan year to which such election applies and to all subsequent plan years.

(e) (1) No pension plan to which section 202 [*29 USCS § 1052*] applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 202 [*29 USCS § 1052*] first becomes effective with respect to such plan) which provides that any employee's participation in the plan would commence at any date later than the later of--

(A) the date on which his participation would commence under the break in service rules of section 202(b) [*29 USCS § 1052(b)*], or

(B) the date on which his participation would commence under the plan as in effect on January 1, 1974.

(2) No pension plan to which section 203 [*29 USCS § 1053*] applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 203 [*29 USCS § 1053*] first becomes effective with respect to such plan) if such amendment provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under--

(A) the break in service rules of section 202(b)(3) [*29 USCS § 1052(b)(3)*], or

(B) the plan as in effect on January 1, 1974.

Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

(f) The preceding provisions of this section shall not apply with respect to amendments made to this part [*29 USCS §§ 1051* et seq.] in provisions enacted after the date of the enactment of this Act [enacted Sept. 2, 1974]

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FUNDING

29 USCS prec § 1081

Preceding § 1081

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FUNDING

29 USCS § 1081

§ 1081. Coverage

(a) Plans excepted from applicability of this part. This part [*29 USCS §§ 1081* et seq.] shall apply to any employee pension benefit plan described in section 4(a) [*29 USCS § 1003(a)*], (and not exempted under section 4(b) [*29 USCS § 1003(b)*]), other than--

(1) an employee welfare benefit plan;

(2) an insurance contract plan described in subsection (b);

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

(4) (A) a plan which is established and maintained by a society, order, or association described in section 501(c)(8) or (9) of the Internal Revenue Code of 1986 [*26 USCS § 501(c)(8)* or (9)], if no part of the contributions to or under such plan are made by employers of participants in such plan; or

(B) a trust described in section 501(c)(18) of such Code [*26 USCS § 501(c)(18)*];

(5) a plan which has not at any time after the date of enactment of this Act [enacted Sept. 2, 1974] provided for employer contributions;

(6) an agreement providing payments to a retired partner [or] deceased partner or a deceased partner's successor in interest as described in *section 736 of the Internal Revenue Code of 1986* [*26 USCS § 736*];

(7) an individual retirement account or annuity as described in *section 408(a) of the Internal Revenue Code of 1954* [*26 USCS § 408(a)*], or a retirement bond described in *section 409 of the Internal Revenue Code of 1954* [*26 USCS § 409*] (as effective for obligations issued before January 1, 1984);

(8) an individual account plan (other than a money purchase plan) and a defined benefit plan to the extent it is treated as an individual account plan (other than a money purchase plan) under section 3(35)(B) of this *title [29 USCS § 1002(35)(B)*];

(9) an excess benefit plan; or

(10) any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this Act.

(b) "Insurance contract plan" defined. For the purposes of paragraph (2) of subsection (a) a plan is an "insurance contract plan" if--

(1) the plan is funded exclusively by the purchase of individual insurance contracts,

(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

(4) premiums payable for the plan year, and all prior plan years under such contracts have been paid before lapse or there is reinstatement of the policy,

(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(6) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary of the Treasury to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection.

(c) Applicability of this part to terminated multiemployer plans. This part [*29 USCS §§ 1081* et seq.] applies, with respect to a terminated multiemployer plan to which section 4021 [*29 USCS § 1321*] applies, until the last day of the plan year in which the plan terminates, within the meaning of section 4041A(a)(2) [*29 USCS § 1341a(a)(2)*].

(d) Financial assistance from Pension Benefit Guaranty Corporation. Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section in such manner as determined by the Secretary of the Treasury.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FUNDING

29 USCS § 1082

§ 1082. Minimum funding standards

(a) Requirement to meet minimum funding standard.

(1) In general. A plan to which this part [*29 USCS §§ 1081* et seq.] applies shall satisfy the minimum funding standard applicable to the plan for any plan year.

(2) Minimum funding standard. For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if--

(A) in the case of a defined benefit plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 303 [*29 USCS § 1083*] for the plan for the plan year,

(B) in the case of a money purchase plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan, and

(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 304 [*29 USCS § 1084*] as of the end of the plan year.

(b) Liability for contributions.

(1) In general. Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 303(j) [*29 USCS § 1083(j)*]) shall be paid by the employer responsible for making contributions to or under the plan.

(2) Joint and several liability where employer member of controlled group. If the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

(3) Multiemployer plans in critical status. Paragraph (1) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 305 [*29 USCS § 1085*]. This paragraph shall only apply if the plan sponsor adopts a rehabilitation plan in accordance with section 305(e) [*29 USCS § 1085(e)*] and complies with the terms of such rehabilitation plan (and any updates or modifications of the plan).

(c) Variance from minimum funding standards.

(1) Waiver in case of business hardship.

(A) In general. If--

(i) an employer is (or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan are) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan), and

(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary of the Treasury may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

(B) Effects of waiver. If a waiver is granted under subparagraph (A) for any plan year--

(i) in the case of a single-employer plan, the minimum required contribution under section 303 [*29 USCS § 1083*] for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 303(e) [*29 USCS § 1083(e)*], and

(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 304(b)(3)(C) [*29 USCS § 1084(b)(3)(C)*] with the amount of the waived funding deficiency and such amount shall be amortized as required under section 304(b)(2)(C) [*29 USCS § 1084(b)(2)(C)*].

(C) Waiver of amortized portion not allowed. The Secretary of the Treasury may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any waived funding deficiency for any preceding plan year.

(2) Determination of business hardship. For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not--

(A) the employer is operating at an economic loss,

(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

(C) the sales and profits of the industry concerned are depressed or declining, and

(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(3) Waived funding deficiency. For purposes of this part [*29 USCS §§ 1081* et seq.], the term "waived funding deficiency" means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

(4) Security for waivers for single-employer plans, consultations.

(A) Security may be required.

(i) In general. Except as provided in subparagraph (C), the Secretary of the Treasury may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) [*29 USCS § 1301(a)(15)*]) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

(ii) Special rules. Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) [*29 USCS § 1301(a)(13)*]), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14) [*29 USCS § 1301(a)(14)*]).

(B) Consultation with the pension benefit guaranty corporation. Except as provided in subparagraph (C), the Secretary of the Treasury shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)--

(i) provide the Pension Benefit Guaranty Corporation with--

(I) notice of the completed application for any waiver or modification, and

(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

(ii) consider--

(I) any comments of the Corporation under clause (i)(II), and

(II) any views of any employee organization (within the meaning of section 3(4) [*29 USCS § 1002(4)*]) representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of *section 6103(p) of the Internal Revenue Code of 1986* [*26 USCS § 6103(p)*].

(C) Exception for certain waivers.

(i) In general. The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of--

(I) the aggregate unpaid minimum required contributions for the plan year and all preceding plan years, and

(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 303(e)(2) [*29 USCS § 1083(e)(2)*],

is less than $ 1,000,000.

(ii) Treatment of waivers for which applications are pending. The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under this subsection which are pending with respect to such plan were denied.

(iii) Unpaid minimum required contribution. For purposes of this subparagraph--

(I) In general. The term "unpaid minimum required contribution" means, with respect to any plan year, any minimum required contribution under section 303 [*29 USCS § 1083*] for the plan year which is not paid on or before the due date (as determined under section 303(j)(1) [*29 USCS § 1083(j)(1)*]) for the plan year.

(II) Ordering rule. For purposes of subclause (I), any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 303 [*29 USCS § 1083*] for the plan year.

(5) Special rules for single-employer plans.

(A) Application must be submitted before date 2 1/2 months after close of year. In the case of a single-employer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year.

(B) Special rule if employer is member of controlled group. In the case of a single-employer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met--

(i) with respect to such employer, and

(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if such Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

(6) Advance notice.

(A) In general. The Secretary of the Treasury shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 4001(a)(21)) *[29 USCS § 4301*(a)(21)]. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

(B) Consideration of relevant information. The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

(7) Restriction on plan amendments.

(A) In general. No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 304(d) [*29 USCS § 1084(d)*] is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) which reduces the accrued benefit of any participant has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(B) Exception. Subparagraph (A) shall not apply to any plan amendment which--

(i) the Secretary of the Treasury determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

(ii) only repeals an amendment described in subsection (d)(2), or

(iii) is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 [*26 USCS §§ 401* et seq.].

(8) Cross reference. For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1986 [*26 USCS §§ 1* et seq.], see section 412(c) of such Code [*26 USCS § 412(c)*].

(d) Miscellaneous rules.

(1) Change in method or year. If the funding method or a plan year for a plan is changed, the change shall take effect only if approved by the Secretary of the Treasury.

(2) Certain retroactive plan amendments. For purposes of this section, any amendment applying to a plan year which--

(A) is adopted after the close of such plan year but no later than 2 1/2 months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary of the Treasury notifying him of such amendment and such Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of the Treasury unless such Secretary determines that such amendment is necessary because of a temporary substantial business hardship (as determined under subsection (c)(2)) or a substantial business hardship (as so determined) in the case of a multiemployer

plan and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 304(d) [*29 USCS § 1084(d)*]) is unavailable or inadequate.

(3) Controlled group. For purposes of this section, the term "controlled group" means any group treated as a single employer under subsection (b), (c), (m), or (o) of *section 414 of the Internal Revenue Code of 1986* [*26 USCS § 414*].

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FUNDING

29 USCS § 1083

§ 1083. Minimum funding standards for single-employer defined benefit pension plans.

(a) Minimum required contribution. For purposes of this section and section 302(a)(2)(A) [*29 USCS § 1082(a)(2)(A)*], except as provided in subsection (f), the term "minimum required contribution" means, with respect to any plan year of a single-employer plan--

(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) is less than the funding target of the plan for the plan year, the sum of--

(A) the target normal cost of the plan for the plan year,

(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e); or

(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) equals or exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced (but not below zero) by such excess.

(b) Target normal cost. For purposes of this section:

(1) In general. Except as provided in subsection (i)(2) with respect to plans in at-risk status, the term "target normal cost" means, for any plan year, the excess of--

(A) the sum of--

(i) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year, plus

(ii) the amount of plan-related expenses expected to be paid from plan assets during the plan year, over

(B) the amount of mandatory employee contributions expected to be made during the plan year.

(2) Special rule for increase in compensation. For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

(c) Shortfall amortization charge.

(1) In general. For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total (not less than zero) of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

(2) Shortfall amortization installment. For purposes of paragraph (1)--

(A) Determination. The shortfall amortization installments are the amounts necessary to amortize the shortfall amortization base of the plan for any plan year in level annual installments over the 7-plan-year period beginning with such plan year.

(B) Shortfall installment. The shortfall amortization installment for any plan year in the 7-plan-year period under subparagraph (A) with respect to any shortfall amortization base is the annual installment determined under subparagraph (A) for that year for that base.

(C) Segment rates. In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

(3) Shortfall amortization base. For purposes of this section, the shortfall amortization base of a plan for a plan year is--

(A) the funding shortfall of such plan for such plan year, minus

(B) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments and waiver amortization installments which have been determined for such plan year and any

succeeding plan year with respect to the shortfall amortization bases and waiver amortization bases of the plan for any plan year preceding such plan year.

(4) Funding shortfall. For purposes of this section, the funding shortfall of a plan for any plan year is the excess (if any) of--

(A) the funding target of the plan for the plan year, over

(B) the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) for the plan year which are held by the plan on the valuation date.

(5) Exemption from new shortfall amortization base.

(A) In general. In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

(B) Transition rule.

(i) In general. Except as provided in clause (iii), in the case of plan years beginning after 2007 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for purposes of paragraph (3)(A) and subparagraph (A).

(ii) Applicable percentage. For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

In the case of a plan year beginning in calendar year:	The applicable percentage is
2008	92
2009	94
2010	96.

(iii) Transition relief not available for new or deficit reduction plans. Clause (i) shall not apply to a plan--

(I) which was not in effect for a plan year beginning in 2007, or

(II) which was in effect for a plan year beginning in 2007 and which was subject to section 302(d) [*29 USCS § 1082(d)*] (as in effect for plan years beginning in 2007) for such year, determined after the application of paragraphs (6) and (9) thereof.

(iv) [Redesignated]

(6) Early deemed amortization upon attainment of funding target. In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

(d) Rules relating to funding target. For purposes of this section--

(1) Funding target. Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

(2) Funding target attainment percentage. The "funding target attainment percentage" of a plan for a plan year is the ratio (expressed as a percentage) which--

(A) the value of plan assets for the plan year (as reduced under subsection (f)(4)(B)), bears to

(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

(e) Waiver amortization charge.

(1) Determination of waiver amortization charge. The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

(2) Waiver amortization installment. For purposes of paragraph (1)--

(A) Determination. The waiver amortization installments are the amounts necessary to amortize the waiver amortization base of the plan for any plan year in level annual installments over a period of 5 plan years beginning with the succeeding plan year.

(B) Waiver installment. The waiver amortization installment for any plan year in the 5-year period under subparagraph (A) with respect to any waiver amortization base is the annual installment determined under subparagraph (A) for that year for that base.

(3) Interest rate. In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

(4) Waiver amortization base. The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 302(c) [*29 USCS § 1082(c)*].

(5) Early deemed amortization upon attainment of funding target. In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization bases for all preceding plan years (and all waiver amortization installments determined with respect to such bases) shall be reduced to zero.

(f) Reduction of minimum required contribution by prefunding balance and funding standard carryover balance.

(1) Election to maintain balances.

(A) Prefunding balance. The plan sponsor of a single-employer plan may elect to maintain a prefunding balance.

(B) Funding standard carryover balance.

(i) In general. In the case of a single-employer plan described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

(ii) Plans maintaining funding standard account in 2007. A plan is described in this clause if the plan--

(I) was in effect for a plan year beginning in 2007, and

(II) had a positive balance in the funding standard account under section 302(b) [*29 USCS § 1082(b)*] as in effect for such plan year and determined as of the end of such plan year.

(2) Application of balances. A prefunding balance and a funding standard carryover balance maintained pursuant to this paragraph--

(A) shall be available for crediting against the minimum required contribution, pursuant to an election under paragraph (3),

(B) shall be applied as a reduction in the amount treated as the value of plan assets for purposes of this section, to the extent provided in paragraph (4), and

(C) may be reduced at any time, pursuant to an election under paragraph (5).

(3) Election to apply balances against minimum required contribution.

(A) In general. Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the prefunding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced as of the first day of the plan year by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 302(c) [*29 USCS § 1082(c)*].

(B) Coordination with funding standard carryover balance. To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the prefunding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

(C) Limitation for underfunded plans. The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which--

(i) the value of plan assets for the preceding plan year (as reduced under paragraph (4)(C)), bears to

(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent. In the case of plan years beginning in 2008, the ratio under this subparagraph may be determined using such methods of estimation as the Secretary of the Treasury may prescribe.

(4) Effect of balances on amounts treated as value of plan assets. In the case of any plan maintaining a prefunding balance or a funding standard carryover balance pursuant to this subsection, the amount treated as the value of plan assets shall be deemed to be such amount, reduced as provided in the following subparagraphs:

(A) Applicability of shortfall amortization base. For purposes of subsection (c)(5), the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance, but only if an election under paragraph (3) applying any portion of the prefunding balance in reducing the minimum required contribution is in effect for the plan year.

(B) Determination of excess assets, funding shortfall, and funding target attainment percentage.

(i) In general. For purposes of subsections (a), (c)(4)(B), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance and the funding standard carryover balance.

(ii) Special rule for certain binding agreements with PBGC. For purposes of subsection (c)(4)(B), the value of plan assets shall not be deemed to be reduced for a plan year by the amount of the specified balance if, with respect to such balance, there is in effect for a plan year a binding written agreement with the Pension Benefit Guaranty Corporation

which provides that such balance is not available to reduce the minimum required contribution for the plan year. For purposes of the preceding sentence, the term "specified balance" means the prefunding balance or the funding standard carryover balance, as the case may be.

(C) Availability of balances in plan year for crediting against minimum required contribution. For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance.

(5) Election to reduce balance prior to determinations of value of plan assets and crediting against minimum required contribution.

(A) In general. The plan sponsor may elect to reduce by any amount the balance of the prefunding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

(B) Coordination between prefunding balance and funding standard carryover balance. To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the prefunding balance.

(6) Prefunding balance.

(A) In general. A prefunding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).

(B) Increases.

(i) In general. As of the first day of each plan year beginning after 2008, the prefunding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of--

(I) the aggregate total of employer contributions to the plan for the preceding plan year, over--

(II) the minimum required contribution for such preceding plan year.

(ii) Adjustments for interest. Any excess contributions under clause (i) shall be properly adjusted for interest accruing for the periods between the first day of the current plan year and the dates on which the excess contributions were made, determined by using the effective interest rate for the preceding plan year and by treating contributions as being first used to satisfy the minimum required contribution.

(iii) Certain contributions necessary to avoid benefit limitations disregarded. The excess described in clause (i) with respect to any preceding plan year shall be reduced (but not below zero) by the amount of contributions an employer would be required to make under paragraph (1), (2), or (4) of section 206(g) [*29 USCS § 1056(g)*] to avoid a benefit limitation which would otherwise be imposed under such paragraph for the preceding plan year. Any contribution which may be taken into account in satisfying the requirements of more than 1 of such paragraphs shall be taken into account only once for purposes of this clause.

(C) Decrease. The prefunding balance of a plan shall be decreased (but not below zero) by--

(i) as of the first day of each plan year after 2008, the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) as of the time specified in paragraph (5)(A), any reduction in such balance elected under paragraph (5).

(7) Funding standard carryover balance.

(A) In general. A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

(B) Beginning balance. The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

(C) Decreases. The funding standard carryover balance of a plan shall be decreased (but not below zero) by--

(i) as of the first day of each plan year after 2008, the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) as of the time specified in paragraph (5)(A), any reduction in such balance elected under paragraph (5).

(8) Adjustments for investment experience. In determining the prefunding balance or the funding standard carryover balance of a plan as of the first day of the plan year, the plan sponsor shall, in accordance with regulations prescribed by the Secretary of the Treasury, adjust such balance to reflect the rate of return on plan assets for the preceding plan year. Notwithstanding subsection (g)(3), such rate of return shall be determined on the basis of fair market value and shall properly take into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

(9) Elections. Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary of the Treasury.

(g) Valuation of plan assets and liabilities.

(1) Timing of determinations. Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

(2) Valuation date. For purposes of this section--

(A) In general. Except as provided in subparagraph (B), the valuation date of a plan for any plan year shall be the first day of the plan year.

(B) Exception for small plans. If, on each day during the preceding plan year, a plan had 100 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans which are single-employer plans and are maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

(C) Application of certain rules in determination of plan size. For purposes of this paragraph--

(i) Plans not in existence in preceding year. In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

(ii) Predecessors. Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

(3) Determination of value of plan assets. For purposes of this section--

(A) In general. Except as provided in subparagraph (B), the value of plan assets shall be the fair market value of the assets.

(B) Averaging allowed. A plan may determine the value of plan assets on the basis of the averaging of fair market values, but only if such method--

(i) is permitted under regulations prescribed by the Secretary of the Treasury,

(ii) does not provide for averaging of such values over more than the period beginning on the last day of the 25th month preceding the month in which the valuation date occurs and ending on the valuation date (or a similar period in the case of a valuation date which is not the 1st day of a month), and

(iii) does not result in a determination of the value of plan assets which, at any time, is lower than 90 percent or greater than 110 percent of the fair market value of such assets at such time.

Any such averaging shall be adjusted for contributions, distributions, and expected earnings (as determined by the plan's actuary on the basis of an assumed earnings rate specified by the actuary but not in excess of the third segment rate applicable under subsection (h)(2)(C)(iii)), as specified by the Secretary of the Treasury.

(4) Accounting for contribution receipts. For purposes of determining the value of assets under paragraph (3)--

(A) Prior year contributions. If--

(i) an employer makes any contribution to the plan after the valuation date for the plan year in which the contribution is made, and

(ii) the contribution is for a preceding plan year,

the contribution shall be taken into account as an asset of the plan as of the valuation date, except that in the case of any plan year beginning after 2008, only the present value (determined as of the valuation date) of such contribution may be taken into account. For purposes of the preceding sentence, present value shall be determined using the effective interest rate for the preceding plan year to which the contribution is properly allocable.

(B) Special rule for current year contributions made before valuation date. If any contributions for any plan year are made to or under the plan during the plan year but before the valuation date for the plan year, the assets of the plan as of the valuation date shall not include--

(i) such contributions, and

(ii) interest on such contributions for the period between the date of the contributions and the valuation date, determined by using the effective interest rate for the plan year.

(h) Actuarial assumptions and methods.

(1) In general. Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods--

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(2) Interest rates.

(A) Effective interest rate. For purposes of this section, the term "effective interest rate" means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan"s accrued or earned benefits referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

(B) Interest rates for determining funding target. For purposes of determining the funding target and normal cost of a plan for any plan year, the interest rate used in determining the present value of the benefits of the plan shall be--

(i) in the case of benefits reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

(ii) in the case of benefits reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

(iii) in the case of benefits reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

(C) Segment rates. For purposes of this paragraph--

(i) First segment rate. The term "first segment rate" means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

(ii) Second segment rate. The term "second segment rate" means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

(iii) Third segment rate. The term "third segment rate" means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

(D) Corporate bond yield curve. For purposes of this paragraph--

(i) In general. The term "corporate bond yield curve" means, with respect to any month, a yield curve which is prescribed by the Secretary of the Treasury for such month and which reflects the average, for the 24-month period ending with the month preceding such month, of monthly yields on investment grade corporate bonds with varying maturities and that are in the top 3 quality levels available.

(ii) Election to use yield curve. Solely for purposes of determining the minimum required contribution under this section, the plan sponsor may, in lieu of the segment rates determined under subparagraph (C), elect to use interest rates under the corporate bond yield curve. For purposes of the preceding sentence such curve shall be determined without regard to the 24-month averaging described in clause (i). Such election, once made, may be revoked only with the consent of the Secretary of the Treasury.

(E) Applicable month. For purposes of this paragraph, the term "applicable month" means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary of the Treasury.

(F) Publication requirements. The Secretary of the Treasury shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 205(g)(3)(B)(iii)(I) [*29 USCS § 1055(g)(3)(B)(iii)(I)*] for such month) and each of the rates determined under subparagraph (C) for such month. The Secretary of the Treasury shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan"s projection of future interest rates.

(G) Transition rule.

(i) In general. Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2008 or 2009, the first, second, or third segment rate for a plan with respect to any month shall be equal to the sum of--

(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

(II) the product of the rate determined under the rules of section 302(b)(5)(B)(ii)(II) [*29 USCS § 1082(b)(5)(B)(ii)(II)*] (as in effect for plan years beginning in 2007), multiplied by a percentage equal to 100 percent minus the applicable percentage.

(ii) Applicable percentage. For purposes of clause (i), the applicable percentage is 33 1/3 percent for plan years beginning in 2008 and 66 2/3 percent for plan years beginning in 2009.

(iii) New plans ineligible. Clause (i) shall not apply to any plan if the first plan year of the plan begins after December 31, 2007.

(iv) Election. The plan sponsor may elect not to have this subparagraph apply. Such election, once made, may be revoked only with the consent of the Secretary of the Treasury.

(3) Mortality tables.

(A) In general. Except as provided in subparagraph (C) or (D), the Secretary of the Treasury shall by regulation prescribe mortality tables to be used in determining any present value or making any computation under this section. Such tables shall be based on the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary of the Treasury shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(B) Periodic revision. The Secretary of the Treasury shall (at least every 10 years) make revisions in any table in effect under subparagraph (A) to reflect the actual experience of pension plans and projected trends in such experience.

(C) Substitute mortality table.

(i) In general. Upon request by the plan sponsor and approval by the Secretary of the Treasury, a mortality table which meets the requirements of clause (iii) shall be used in determining any present value or making any computation under this section during the period of consecutive plan years (not to exceed 10) specified in the request.

(ii) Early termination of period. Notwithstanding clause (i), a mortality table described in clause (i) shall cease to be in effect as of the earliest of--

(I) the date on which there is a significant change in the participants in the plan by reason of a plan spinoff or merger or otherwise, or

(II) the date on which the plan actuary determines that such table does not meet the requirements of clause (iii).

(iii) Requirements. A mortality table meets the requirements of this clause if--

(I) there is a sufficient number of plan participants, and the pension plans have been maintained for a sufficient period of time, to have credible information necessary for purposes of subclause (II), and

(II) such table reflects the actual experience of the pension plans maintained by the sponsor and projected trends in general mortality experience.

(iv) All plans in controlled group must use separate table. Except as provided by the Secretary of the Treasury, a plan sponsor may not use a mortality table under this subparagraph for any plan maintained by the plan sponsor unless--

(I) a separate mortality table is established and used under this subparagraph for each other plan maintained by the plan sponsor and if the plan sponsor is a member of a controlled group, each member of the controlled group, and

(II) the requirements of clause (iii) are met separately with respect to the table so established for each such plan, determined by only taking into account the participants of such plan, the time such plan has been in existence, and the actual experience of such plan.

(v) Deadline for submission and disposition of application.

(I) Submission. The plan sponsor shall submit a mortality table to the Secretary of the Treasury for approval under this subparagraph at least 7 months before the 1st day of the period described in clause (i).

(II) Disposition. Any mortality table submitted to the Secretary of the Treasury for approval under this subparagraph shall be treated as in effect as of the 1st day of the period described in clause (i) unless the Secretary of the Treasury, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of clause (iii). The 180-day period shall be extended upon mutual agreement of the Secretary of the Treasury and the plan sponsor.

(D) Separate mortality tables for the disabled. Notwithstanding subparagraph (A)--

(i) In general. The Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under subparagraph (A)) under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary of the Treasury shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(ii) Special rule for disabilities occurring after 1994. In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under clause (i) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act [*42 USCS §§ 401* et seq.] and the regulations thereunder.

(iii) Periodic revision. The Secretary of the Treasury shall (at least every 10 years) make revisions in any table in effect under clause (i) to reflect the actual experience of pension plans and projected trends in such experience.

(4) Probability of benefit payments in the form of lump sums or other optional forms. For purposes of determining any present value or making any computation under this section, there shall be taken into account--

(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

(5) Approval of large changes in actuarial assumptions.

(A) In general. No actuarial assumption used to determine the funding target for a plan to which this paragraph applies may be changed without the approval of the Secretary of the Treasury.

(B) Plans to which paragraph applies. This paragraph shall apply to a plan only if--

(i) the plan is a single-employer plan to which title IV applies,

(ii) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) [*29 USCS § 1306(a)(3)(E)(iii)*]) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) [*29 USCS § 1301(a)*(13]) and members of such sponsors's controlled groups (as defined in section 4001(a)(14) [*29 USCS § 1301(a)(14)*]) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $ 50,000,000, and

(iii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $ 50,000,000, or that exceeds $ 5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

(i) Special rules for at-risk plans.

(1) Funding target for plans in at-risk status.

(A) In general. In the case of a plan which is in at-risk status for a plan year, the funding target of the plan for the plan year shall be equal to the sum of--

(i) the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, as determined by using the additional actuarial assumptions described in subparagraph (B), and

(ii) in the case of a plan which also has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor determined under subparagraph (C).

(B) Additional actuarial assumptions. The actuarial assumptions described in this subparagraph are as follows:

(i) All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the 10 succeeding plan years shall be assumed to retire at the earliest retirement date under the plan but not before the end of the plan year for which the at-risk funding target and at-risk target normal cost are being determined.

(ii) All employees shall be assumed to elect the retirement benefit available under the plan at the assumed retirement age (determined after application of clause (i)) which would result in the highest present value of benefits.

(C) Loading factor. The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of--

(i) $ 700, times the number of participants in the plan, plus

(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

(2) Target normal cost of at-risk plans. In the case of a plan which is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be equal to the sum of--

(A) the excess of--

(i) the sum of--

(I) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B), plus

(II) the amount of plan-related expenses expected to be paid from plan assets during the plan year, over

(ii) the amount of mandatory employee contributions expected to be made during the plan year, plus

(B) in the case of a plan which also has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor equal to 4 percent of the amount determined under subsection (b)(1)(A)(i) with respect to the plan for the plan year.

(3) Minimum amount. In no event shall--

(A) the at-risk funding target be less than the funding target, as determined without regard to this subsection, or

(B) the at-risk target normal cost be less than the target normal cost, as determined without regard to this subsection.

(4) Determination of at-risk status. For purposes of this subsection--

(A) In general. A plan is in at-risk status for a plan year if--

(i) the funding target attainment percentage for the preceding plan year (determined under this section without regard to this subsection) is less than 80 percent, and

(ii) the funding target attainment percentage for the preceding plan year (determined under this section by using the additional actuarial assumptions described in paragraph (1)(B) in computing the funding target) is less than 70 percent.

(B) Transition rule. In the case of plan years beginning in 2008, 2009, and 2010, subparagraph (A)(i) shall be applied by substituting the following percentages for "80 percent":

(i) 65 percent in the case of 2008.

(ii) 70 percent in the case of 2009.

(iii) 75 percent in the case of 2010.

In the case of plan years beginning in 2008, the funding target attainment percentage for the preceding plan year under subparagraph (A) may be determined using such methods of estimation as the Secretary of the Treasury may provide.

(C) Special rule for employees offered early retirement in 2006.

(i) In general. For purposes of subparagraph (A)(ii), the additional actuarial assumptions described in paragraph (1)(B) shall not be taken into account with respect to any employee if--

(I) such employee is employed by a specified automobile manufacturer,

(II) such employee is offered a substantial amount of additional cash compensation, substantially enhanced retirement benefits under the plan, or materially reduced employment duties on the condition that by a specified date (not later than December 31, 2010) the employee retires (as defined under the terms of the plan),

(III) such offer is made during 2006 and pursuant to a bona fide retirement incentive program and requires, by the terms of the offer, that such offer can be accepted not later than a specified date (not later than December 31, 2006), and

(IV) such employee does not elect to accept such offer before the specified date on which the offer expires.

(ii) Specified automobile manufacturer. For purposes of clause (i), the term "specified automobile manufacturer" means--

(I) any manufacturer of automobiles, and

(II) any manufacturer of automobile parts which supplies such parts directly to a manufacturer of automobiles and which, after a transaction or series of transactions ending in 1999, ceased to be a member of a controlled group which included such manufacturer of automobiles.

(5) Transition between applicable funding targets and between applicable target normal costs.

(A) In general. In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of--

(i) the amount determined under this section without regard to this subsection, plus

(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

(B) Transition percentage. For purposes of subparagraph (A), the transition percentage shall be determined in accordance with the following table:

If the consecutive number of years (including the plan year) the plan is in at-risk status is-	The transition percentage is-
1	20
2	40
3	60
4	80.

(C) Years before effective date. For purposes of this paragraph, plan years beginning before 2008 shall not be taken into account.

(6) Small plan exception. If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan shall not be treated as in at-risk status for the plan year. For purposes of this paragraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall

be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account and the rules of subsection (g)(2)(C) shall apply.

(j) Payment of minimum required contributions.

(1) In general. For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8 1/2 months after the close of the plan year.

(2) Interest. Any payment required under paragraph (1) for a plan year that is made on a date other than the valuation date for such plan year shall be adjusted for interest accruing for the period between the valuation date and the payment date, at the effective rate of interest for the plan for such plan year.

(3) Accelerated quarterly contribution schedule for underfunded plans.

(A) Failure to timely make required installment. In any case in which the plan has a funding shortfall for the preceding plan year, the employer maintaining the plan shall make the required installments under this paragraph and if the employer fails to pay the full amount of a required installment for the plan year, then the amount of interest charged under paragraph (2) on the underpayment for the period of underpayment shall be determined by using a rate of interest equal to the rate otherwise used under paragraph (2) plus 5 percentage points. In the case of plan years beginning in 2008, the funding shortfall for the preceding plan year may be determined using such methods of estimation as the Secretary of the Treasury may provide.

(B) Amount of underpayment, period of underpayment. For purposes of subparagraph (A)--

(i) Amount. The amount of the underpayment shall be the excess of--

(I) the required installment, over

(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

(ii) Period of underpayment. The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

(iii) Order of crediting contributions. For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(C) Number of required installments; due dates. For purposes of this paragraph--

(i) Payable in 4 installments. There shall be 4 required installments for each plan year.

(ii) Time for payment of installments. The due dates for required installments are set forth in the following table:

In the case of the following required installments:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year.

(D) Amount of required installment. For purposes of this paragraph--

(i) In general. The amount of any required installment shall be 25 percent of the required annual payment.

(ii) Required annual payment. For purposes of clause (i), the term "required annual payment" means the lesser of--

(I) 90 percent of the minimum required contribution (determined without regard to this subsection) to the plan for the plan year under this section, or

(II) 100 percent of the minimum required contribution (determined without regard to this subsection or to any waiver under section 302(c) [*29 USCS § 1082(c)*]) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

(E) Fiscal years, short years, and years with alternate valuation date.

(i) Fiscal years. In applying this paragraph to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this paragraph, the months which correspond thereto.

(ii) Short plan year. This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury.

(iii) Plan with alternate valuation date. The Secretary of the Treasury shall prescribe regulations for the application of this paragraph in the case of a plan which has a valuation date other than the first day of the plan year.

(4) Liquidity requirement in connection with quarterly contributions.

(A) In general. A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

(B) Plans to which paragraph applies. This paragraph shall apply to a plan (other than a plan described in subsection (g)(2)(B)) which--

(i) is required to pay installments under paragraph (3) for a plan year, and

(ii) has a liquidity shortfall for any quarter during such plan year.

(C) Period of underpayment. For purposes of paragraph (3)(A), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

(D) Limitation on increase. If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

(E) Definitions. For purposes of this paragraph--

(i) Liquidity shortfall. The term "liquidity shortfall" means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of--

(I) the base amount with respect to such quarter, over

(II) the value (as of such last day) of the plan"s liquid assets.

(ii) Base amount.

(I) In general. The term "base amount" means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

(II) Special rule. If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary of the Treasury that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) Disbursements from the plan. The term "disbursements from the plan" means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

(iv) Adjusted disbursements. The term "adjusted disbursements" means disbursements from the plan reduced by the product of--

(I) the plan's funding target attainment percentage for the plan year, and

(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall provide in regulations.

(v) Liquid assets. The term "liquid assets" means cash, marketable securities, and such other assets as specified by the Secretary of the Treasury in regulations.

(vi) Quarter. The term "quarter" means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

(F) Regulations. The Secretary of the Treasury may prescribe such regulations as are necessary to carry out this paragraph.

(k) Imposition of lien where failure to make required contributions.

(1) In general. In the case of a plan to which this subsection applies (as provided under paragraph (2)), if--

(A) any person fails to make a contribution payment required by section 302 [*29 USCS § 1082*] and this section before the due date for such payment, and

(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $ 1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

(2) Plans to which subsection applies. This subsection shall apply to a single-employer plan covered under section 4021 [*29 USCS § 1321*] for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

(3) Amount of lien. For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 302 [*29 USCS § 1082*] for which payment has not been made before the due date.

(4) Notice of failure; lien.

(A) Notice of failure. A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

(B) Period of lien. The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

(C) Certain rules to apply. Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 [*29 USCS § 1368*] shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

(5) Enforcement. Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

(6) Definitions. For purposes of this subsection--

(A) Contribution payment. The term "contribution payment" means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (j).

(B) Due date; required installment. The terms "due date" and "required installment" have the meanings given such terms by subsection (j).

(C) Controlled group. The term "controlled group" means any group treated as a single employer under subsections (b), (c), (m), and (o) of *section 414 of the Internal Revenue Code of 1986* [*26 USCS § 414*].

(l) Qualified transfers to health benefit accounts. In the case of a qualified transfer (as defined in *section 420 of the Internal Revenue Code of 1986* [*26 USCS § 420*]), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FUNDING

29 USCS § 1084

§ 1084. Minimum funding standards for multiemployer plans

(a) In general. For purposes of section 302 [*29 USCS § 1082*], the accumulated funding deficiency of a multiemployer plan for any plan year is--

(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part [*29 USCS §§ 1801* et seq.] applies to the plan) over the total credits to such account for such years, and

(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243 [*29 USCS § 1423*].

(b) Funding standard account.

(1) Account required. Each multiemployer plan to which this part [*29 USCS §§ 1801* et seq.] applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) Charges to account. For a plan year, the funding standard account shall be charged with the sum of--

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)--

(i) in the case of a plan which comes into existence on or after January 1, 2008, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(iii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

(iv) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 302(c)(3) [*29 USCS § 1082(c)(3)*]) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 302(b)(3)(D) [*29 USCS § 1082(b)(3)(D)*] (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006 [enacted Aug. 17, 2006]), and

(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(7)(A)(i)(I) [*29 USCS § 1082(c)(7)(A)(i)(I)*] (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006 [enacted Aug. 17, 2006]).

(3) Credits to account. For a plan year, the funding standard account shall be credited with the sum of--

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)--

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount of the waived funding deficiency (within the meaning of section 302(c)(3) [*29 USCS § 1082(c)(3)*]) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 305 [*29 USCS § 1085*] (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006 [enacted Aug. 17, 2006]), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Special rule for amounts first amortized in plan years before 2008. In the case of any amount amortized under section 302(b) [*29 USCS § 1082(b)*] (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006 [enacted Aug. 17, 2006]) over any period beginning with a plan year beginning before 2008, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

(5) Combining and offsetting amounts to be amortized. Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be--

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(6) Interest. The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(7) Special rules relating to charges and credits to funding standard account. For purposes of this part [*29 USCS §§ 1801* et seq.]--

(A) Withdrawal liability. Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV [*29 USCS §§ 1381* et seq.] shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

(B) Adjustments when a multiemployer plan leaves reorganization. If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year--

(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 4243(a) [*29 USCS § 1423(a)*] as of the end of the last plan year that the plan was in reorganization.

(C) Plan payments to supplemental program or withdrawal liability payment fund. Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of this Act [*29 USCS § 1402*] or to a fund exempt under *section 501(c)(22) of the Internal Revenue Code of 1986* [*26 USCS § 501(c)(22)*] pursuant to section 4223 of this Act [*29 USCS § 1403*] shall reduce the amount of contributions considered received by the plan for the plan year.

(D) Interim withdrawal liability payments. Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV [*29 USCS §§ 1381* et seq.] and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary of the Treasury.

(E) Election for deferral of charge for portion of net experience loss. If an election is in effect under section 302(b)(7)(F) [*29 USCS § 1082(b)(7)(F)*] (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006 [enacted Aug. 17, 2006]) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iii) shall not apply to the amount so charged).

(F) Financial assistance. Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 302 [*29 USCS § 1082*] in such manner as is determined by the Secretary of the Treasury.

(G) Short-term benefits. To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are not payable as a life annuity but are payable under the terms of

the plan for a period that does not exceed 14 years from the effective date of the amendment, paragraph (2)(B)(ii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for "15".

(c) Additional rules.

(1) Determinations to be made under funding method. For purposes of this part [*29 USCS §§ 1801* et seq.], normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2) Valuation of assets.

(A) In general. For purposes of this part [*29 USCS §§ 1801* et seq.], the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

(B) Election with respect to bonds. The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of such Secretary.

(3) Actuarial assumptions must be reasonable. For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods--

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) Treatment of certain changes as experience gain or loss. For purposes of this section, if--

(A) a change in benefits under the Social Security Act [*42 USCS §§ 301* et seq.] or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term "wages" under *section 3121 of the Internal Revenue Code of 1986* [*26 USCS § 3121*], or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of such Code [*26 USCS § 401(a)(5)*],

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) Full funding. If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation--

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

(6) Full-funding limitation.

(A) In general. For purposes of paragraph (5), the term "full-funding limitation" means the excess (if any) of--

(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(ii) the lesser of--

(I) the fair market value of the plan's assets, or

(II) the value of such assets determined under paragraph (2).

(B) Minimum amount.

(i) In general. In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of--

(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

(II) the value of the plan's assets determined under paragraph (2).

(ii) Assets. For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

(C) Full funding limitation. For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration *section 411(d)(3) of the Internal Revenue Code of 1986* [*26 USCS § 411(d)(3)*]).

(D) Current liability. For purposes of this paragraph--

(i) In general. The term "current liability" means all liabilities to employees and their beneficiaries under the plan.

(ii) Treatment of unpredictable contingent event benefits. For purposes of clause (i), any benefit contingent on an event other than--

(I) age, service, compensation, death, or disability, or

(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury),

shall not be taken into account until the event on which the benefit is contingent occurs.

(iii) Interest rate used. The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

(iv) Mortality tables.

(I) Commissioners' standard table. In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners' standard table (described in *section 807(d)(5)(A) of the Internal Revenue Code of 1986* [*26 USCS § 807(d)(5)(A)*]) used to determine reserves for group annuity contracts issued on January 1, 1993.

(II) Secretarial authority. The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, such Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(v) Separate mortality tables for the disabled. Notwithstanding clause (iv)--

(I) In general. The Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(II) Special rule for disabilities occurring after 1994. In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act [*29 USCS §§ 401* et seq.] and the regulations thereunder.

(vi) Periodic review. The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(E) Required change of interest rate. For purposes of determining a plan's current liability for purposes of this paragraph--

(i) In general. If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

(ii) Permissible range. For purposes of this subparagraph--

(I) In general. Except as provided in subclause (II), the term "permissible range" means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

(II) Secretarial authority. If the Secretary of the Treasury finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, such Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

(iii) Assumptions. Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be--

(I) determined without taking into account the experience of the plan and reasonable expectations, but

(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

(7) Annual valuation.

(A) In general. For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

(B) Valuation date.

(i) Current year. Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) Use of prior year valuation. The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(iii) Adjustments. Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) Limitation. A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(8) Time when certain contributions deemed made. For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury.

(d) Extension of amortization periods for multiemployer plans.

(1) Automatic extension upon application by certain plans.

(A) In general. If the plan sponsor of a multiemployer plan--

(i) submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and

(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary of the Treasury shall extend the amortization period for the period of time (not in excess of 5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

(B) Criteria. A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions--

(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

(iv) the notice required under paragraph (3)(A) has been provided.

(C) Termination. The preceding provisions of this paragraph shall not apply with respect to any application submitted after December 31, 2014.

(2) Alternative extension.

(A) In general. If the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary of the Treasury may extend the amortization period for a period of time (not in excess of 10 years reduced by the number of years of any extension under paragraph (1) with respect to such unfunded liability) if the Secretary of the Treasury makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

(B) Determination. The Secretary of the Treasury may grant an extension under subparagraph (A) if such Secretary determines that--

(i) such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries, and

(ii) the failure to permit such extension would--

(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

(II) be adverse to the interests of plan participants in the aggregate.

(C) Action by Secretary of the Treasury. The Secretary of the Treasury shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If such Secretary rejects the application for an extension under this paragraph, such Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

(3) Advance notice.

(A) In general. The Secretary of the Treasury shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21) [*29 USCS § 1301(a)(21)*]) with

respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

(B) Consideration of relevant information. The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FUNDING

29 USCS § 1085

§ 1085. Additional funding rules for multiemployer plans in endangered status or critical status

(a) General rule. For purposes of this part [*29 USCS §§ 1081* et seq.], in the case of a multiemployer plan in effect on July 16, 2006--

(1) if the plan is in endangered status--

(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period, and

(2) if the plan is in critical status--

(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period.

(b) Determination of endangered and critical status. For purposes of this section--

(1) Endangered status. A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and, as of the beginning of the plan year, either--

(A) the plan's funded percentage for such plan year is less than 80 percent, or

(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 304(d) [*29 USCS § 1084(d)*].

For purposes of this section, a plan shall be treated as in seriously endangered status for a plan year if the plan is described in both subparagraphs (A) and (B).

(2) Critical status. A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

(A) A plan is described in this subparagraph if--

(i) the funded percentage of the plan is less than 65 percent, and

(ii) the sum of--

(I) the fair market value of plan assets, plus

(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

(B) A plan is described in this subparagraph if--

(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 304(d) [*29 USCS § 1084(d)*], or

(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 304(d) [*29 USCS § 1084(d)*].

(C) A plan is described in this subparagraph if--

(i) (I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year,

(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d) [*29 USCS § 1084(d)*].

(D) A plan is described in this subparagraph if the sum of--

(i) the fair market value of plan assets, plus

(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

(3) Annual certification by plan actuary.

(A) In general. Not later than the 90th day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary of the Treasury and to the plan sponsor--

(i) whether or not the plan is in endangered status for such plan year and whether or not the plan is or will be in critical status for such plan year, and

(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

(B) Actuarial projections of assets and liabilities.

(i) In general. In making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The actuary's projections shall be based on reasonable actuarial estimates, assumptions, and methods that, except as provided in clause (iii), offer the actuary's best estimate of anticipated experience under the plan. The projected present value of liabilities as of the beginning of such year shall be determined based on the most recent of either--

(I) the actuarial statement required under section 103(d) [*29 USCS § 1083(d)*] with respect to the most recently filed annual report, or

(II) the actuarial valuation for the preceding plan year.

(ii) Determinations of future contributions. Any actuarial projection of plan assets shall assume--

(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

(iii) Projected industry activity. Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, shall be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

(C) Penalty for failure to secure timely actuarial certification. Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) [*29 USCS § 1132(c)(2)*] as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(1) [*29 USCS § 1081(b)(1)*].

(D) Notice.

(i) In general. In any case in which it is certified under subparagraph (A) that a multiemployer plan is or will be in endangered or critical status for a plan year, the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary.

(ii) Plans in critical status. If it is certified under subparagraph (A) that a multiemployer plan is or will be in critical status, the plan sponsor shall include in the notice under clause (i) an explanation of the possibility that--

(I) adjustable benefits (as defined in subsection (e)(8)) may be reduced, and

(II) such reductions may apply to participants and beneficiaries whose benefit commencement date is on or after the date such notice is provided for the first plan year in which the plan is in critical status.

(iii) Model notice. The Secretary of the Treasury, in consultation with the Secretary shall prescribe a model notice that a multiemployer plan may use to satisfy the requirements under clause (ii).

(c) Funding improvement plan must be adopted for multiemployer plans in endangered status.

(1) In general. In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection--

(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the funding improvement plan--

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable benchmarks in accordance with the funding improvement plan, including--

(I) one proposal for reductions in the amount of future benefit accruals necessary to achieve the applicable benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the applicable benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

(II) one proposal for increases in contributions under the plan necessary to achieve the applicable benchmarks, assuming no amendments reducing future benefit accruals under the plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the applicable benchmarks in accordance with the funding improvement plan.

For purposes of this section, the term "applicable benchmarks" means the requirements applicable to the multiemployer plan under paragraph (3) (as modified by paragraph (5)).

(2) Exception for years after process begins. Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

(3) Funding improvement plan. For purposes of this section--

(A) In general. A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, formulated to provide, based on reasonably anticipated experience and reasonable actuarial assumptions, for the attainment by the plan during the funding improvement period of the following requirements:

(i) Increase in plan's funding percentage. The plan's funded percentage as of the close of the funding improvement period equals or exceeds a percentage equal to the sum of--

(I) such percentage as of the beginning of such period, plus

(II) 33 percent of the difference between 100 percent and the percentage under subclause (I).

(ii) Avoidance of accumulated funding deficiencies. No accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 304(d) [*29 USCS § 1084(d)*]).

(B) Seriously endangered plans. In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A)(i)(II) shall be applied by substituting "20 percent" for "33 percent".

(4) Funding improvement period. For purposes of this section--

(A) In general. The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of--

(i) the second anniversary of the date of the adoption of the funding improvement plan, or

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

(B) Seriously endangered plans. In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A) shall be applied by substituting "15-year period" for "10-year period".

(C) Coordination with changes in status.

(i) Plans no longer in endangered status. If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is

not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

(ii) Plans in critical status. If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

(D) Plans in endangered status at end of period. If the plan's actuary certifies under subsection (b)(3)(A) for the first plan year following the close of the period described in subparagraph (A) that the plan is in endangered status, the provisions of this subsection and subsection (d) shall be applied as if such first plan year were an initial determination year, except that the plan may not be amended in a manner inconsistent with the funding improvement plan in effect for the preceding plan year until a new funding improvement plan is adopted.

(5) Special rules for seriously endangered plans more than 70 percent funded.

(A) In general. If the funded percentage of a plan in seriously endangered status was more than 70 percent as of the beginning of the initial determination year--

(i) paragraphs (3)(B) and (4)(B) shall apply only if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), and

(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of paragraph (3)(B) and (4)(B) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

(B) Special rule after expiration of agreements. Notwithstanding subparagraph (A)(ii), if, for any plan year ending after the date described in subparagraph (A)(ii), the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), paragraphs (3)(B) and (4)(B) shall continue to apply for such year.

(6) Updates to funding improvement plan and schedules.

(A) Funding improvement plan. The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104 [*29 USCS § 1024*].

(B) Schedules. The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(C) Duration of schedule. A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(7) Imposition of default schedule where failure to adopt funding improvement plan.

(A) In general. If--

(i) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered endangered status expires, and

(ii) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor,

the plan sponsor shall implement the schedule described in paragraph (1)(B)(i)(I) beginning on the date specified in subparagraph (B).

(B) Date of implementation. The date specified in this subparagraph is the date which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) expires.

(C) Failure to make scheduled contributions. Any failure to make a contribution under a schedule of contribution rates provided under this paragraph shall be treated as a delinquent contribution under section 515 [*29 USCS § 1145*] and shall be enforceable as such.

(8) Funding plan adoption period. For purposes of this section, the term "funding plan adoption period" means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

(d) Rules for operation of plan during adoption and improvement periods.

(1) Special rules for plan adoption period. During the funding plan adoption period--

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for--

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation,

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 [*26 USCS §§ 401* et seq.] or to comply with other applicable law, and

(C) in the case of a plan in seriously endangered status, the plan sponsor shall take all reasonable actions which are consistent with the terms of the plan and applicable law and which are expected, based on reasonable assumptions, to achieve--

(i) an increase in the plan's funded percentage, and

(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Actions under subparagraph (C) include applications for extensions of amortization periods under section 304(d) [*29 USCS § 1084(d)*], use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

(2) Compliance with funding improvement plan.

(A) In general. A plan may not be amended after the date of the adoption of a funding improvement plan so as to be inconsistent with the funding improvement plan.

(B) No reduction in contributions. A plan sponsor may not during any funding improvement period accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for--

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

(C) Special rules for benefit increases. A plan may not be amended after the date of the adoption of a funding improvement plan so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that the benefit increase is consistent with the funding improvement plan and is paid for out of contributions not required by the funding improvement plan to meet the applicable benchmark in accordance with the schedule contemplated in the funding improvement plan.

(e) Rehabilitation plan must be adopted for multiemployer plans in critical status.

(1) In general. In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection--

(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the rehabilitation plan--

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and adjustable benefits, and increases in contributions, that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 204(g) [*29 USCS § 1054(g)*]) have been reduced to the maximum extent permitted by law.

(2) Exception for years after process begins. Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

(3) Rehabilitation plan. For purposes of this section--

(A) In general. A rehabilitation plan is a plan which consists of--

(i) actions, including options or a range of options to be proposed to the bargaining parties, formulated, based on reasonably anticipated experience and reasonable actuarial assumptions, to enable the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245 [*29 USCS § 1426*]).

A rehabilitation plan must provide annual standards for meeting the requirements of such rehabilitation plan. Such plan shall also include the schedules required to be provided under paragraph (1)(B)(i) and if clause (ii) applies, shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

(B) Updates to rehabilitation plan and schedules.

(i) Rehabilitation plan. The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104 [*29 USCS § 1024*].

(ii) Schedules. The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(iii) Duration of schedule. A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(C) Imposition of default schedule where failure to adopt rehabilitation plan.

(i) In general. If--

(I) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires, and

(II) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),

the plan sponsor shall implement the default schedule described in the last sentence of paragraph (1) beginning on the date specified in clause (ii).

(ii) Date of implementation. The date specified in this clause is the date which is 180 days after the date on which the collective bargaining agreement described in clause (i) expires.

(iii) Failure to make scheduled contributions. Any failure to make a contribution under a schedule of contribution rates provided under this subsection shall be treated as a delinquent contribution under section 515 [*29 USCS § 1145*] and shall be enforceable as such.

(4) Rehabilitation period. For purposes of this section--

(A) In general. The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of--

(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

(B) Emergence. A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 304(d) [*29 USCS § 1084(d)*].

(5) Rehabilitation plan adoption period. For purposes of this section, the term "rehabilitation plan adoption period" means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

(6) Limitation on reduction in rates of future accruals. Any reduction in the rate of future accruals under the default schedule described in the last sentence of paragraph (1) shall not reduce the rate of future accruals below--

(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that establish lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

(7) Automatic employer surcharge.

(A) Imposition of surcharge. Each employer otherwise obligated to make contributions for the initial critical year shall be obligated to pay to the plan for such year a surcharge equal to 5 percent of the contributions otherwise required under the applicable collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each succeeding plan year in which the plan is in critical status for a consecutive period of years beginning with the initial critical year, the surcharge shall be 10 percent of the contributions otherwise so required.

(B) Enforcement of surcharge. The surcharges under subparagraph (A) shall be due and payable on the same schedule as the contributions on which the surcharges are based. Any failure to make a surcharge payment shall be treated as a delinquent contribution under section 515 [*29 USCS § 1145*] and shall be enforceable as such.

(C) Surcharge to terminate upon collective bargaining agreement renegotiation. The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement (or other agreement pursuant to which the employer contributes), beginning on the effective date of a collective bargaining agreement (or other such agreement) that includes terms consistent with a schedule presented by the plan sponsor under paragraph (1)(B)(i), as modified under subparagraph (B) of paragraph (3).

(D) Surcharge not to apply until employer receives notice. The surcharge under this paragraph shall not apply to an employer until 30 days after the employer has been notified by the plan sponsor that the plan is in critical status and that the surcharge is in effect.

(E) Surcharge not to generate increased benefit accruals. Notwithstanding any provision of a plan to the contrary, the amount of any surcharge under this paragraph shall not be the basis for any benefit accrual under the plan.

(8) Benefit adjustments.

(A) Adjustable benefits.

(i) In general. Notwithstanding section 204(g) [*29 USCS § 1054(g)*], the plan sponsor shall, subject to the notice requirements in subparagraph (C), make any reductions to adjustable benefits which the plan sponsor deems appropriate, based upon the outcome of collective bargaining over the schedule or schedules provided under paragraph (1)(B)(i).

(ii) Exception for retirees. Except in the case of adjustable benefits described in clause (iv)(III), the plan sponsor of a plan in critical status shall not reduce adjustable benefits of any participant or beneficiary whose benefit commencement date is before the date on which the plan provides notice to the participant or beneficiary under subsection (b)(3)(D) for the initial critical year.

(iii) Plan sponsor flexibility. The plan sponsor shall include in the schedules provided to the bargaining parties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted under this title and considered appropriate by the plan sponsor based on the plan's then current overall funding status.

(iv) Adjustable benefit defined. For purposes of this paragraph, the term "adjustable benefit" means--

(I) benefits, rights, and features under the plan, including post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

(II) any early retirement benefit or retirement-type subsidy (within the meaning of section 204(g)(2)(A) [*29 USCS § 1054(g)(2)(A)*]) and any benefit payment option (other than the qualified joint and survivor annuity), and

(III) benefit increases that would not be eligible for a guarantee under section 4022A [*29 USCS § 1322a*] on the first day of initial critical year because the increases were adopted (or, if later, took effect) less than 60 months before such first day.

(B) Normal retirement benefits protected. Except as provided in subparagraph (A)(iv)(III), nothing in this paragraph shall be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age.

(C) Notice requirements.

(i) In general. No reduction may be made to adjustable benefits under subparagraph (A) unless notice of such reduction has been given at least 30 days before the general effective date of such reduction for all participants and beneficiaries to--

(I) plan participants and beneficiaries,

(II) each employer who has an obligation to contribute (within the meaning of section 4212(a) [*29 USCS § 1392(a)*]) under the plan, and

(III) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(ii) Content of notice. The notice under clause (i) shall contain--

(I) sufficient information to enable participants and beneficiaries to understand the effect of any reduction on their benefits, including an estimate (on an annual or monthly basis) of any affected adjustable benefit that a participant or beneficiary would otherwise have been eligible for as of the general effective date described in clause (i), and

(II) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(iii) Form and manner. Any notice under clause (i)--

(I) shall be provided in a form and manner prescribed in regulations of the Secretary of the Treasury, in consultation with the Secretary,

(II) shall be written in a manner so as to be understood by the average plan participant, and

(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

The Secretary of the Treasury shall in the regulations prescribed under subclause (I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

(9) Adjustments disregarded in withdrawal liability determination.

(A) Benefit reductions. Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 [*29 USCS § 1381*].

(B) Surcharges. Any surcharges under paragraph (7) shall be disregarded in determining the allocation of unfunded vested benefits to an employer under section 4211 [*29 USCS § 1391*], except for purposes of determining the unfunded vested benefits attributable to an employer under section 4211(c)(4) [*29 USCS § 1391(c)(4)*] or a comparable method approved under section 4211(c)(5) [*29 USCS § 1391(c)(5)*].

(C) Simplified calculations. The Pension Benefit Guaranty Corporation shall prescribe simplified methods for the application of this paragraph in determining withdrawal liability.

(f) Rules for operation of plan during adoption and rehabilitation period.

(1) Compliance with rehabilitation plan.

(A) In general. A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

(B) Special rules for benefit increases. A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

(2) Restriction on lump sums and similar benefits.

(A) In general. Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 204(g) [*29 USCS § 1054(g)*], the plan shall not pay--

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 204(b)(1)(G)) [*29 USCS § 1054(b)(1)(G)*], to a participant or beneficiary whose annuity starting date (as defined in section 205(h)(2) [*29 USCS § 1055(h)(2)*]) occurs after the date such notice is sent,

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary of the Treasury by regulations.

(B) Exception. Subparagraph (A) shall not apply to a benefit which under section 203(e) [*29 USCS § 1083(e)*] may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

(3) Adjustments disregarded in withdrawal liability determination. Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 [*29 USCS § 1381*].

(4) Special rules for plan adoption period. During the rehabilitation plan adoption period--

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for--

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 [*26 USCS §§ 401* et seq.] or to comply with other applicable law.

(g) Expedited resolution of plan sponsor decisions. If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

(h) Nonbargained participation.

(1) Both bargained and nonbargained employee-participants. In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

(2) Nonbargained employees only. In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining party, and its participation agreement with the plan were a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

(i) Definitions; actuarial method. For purposes of this section--

(1) Bargaining party. The term "bargaining party" means--

(A) (i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

(ii) in the case of a plan described under *section 404(c) of the Internal Revenue Code of 1986* [*26 USCS § 404(c)*], or a continuation of such a plan, the association of employers that is the employer settlor of the plan; and

(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

(2) Funded percentage. The term "funded percentage" means the percentage equal to a fraction--

(A) the numerator of which is the value of the plan's assets, as determined under section 304(c)(2) [*29 USCS § 1084(c)(2)*], and

(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 304(c)(3) [*29 USCS § 1084(c)(3)*].

(3) Accumulated funding deficiency. The term "accumulated funding deficiency" has the meaning given such term in section 304(a) [*29 USCS § 1084(a)*].

(4) Active participant. The term "active participant" means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

(5) Inactive participant. The term "inactive participant" means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who--

(A) is not in covered service under the plan, and

(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

(6) Pay status. A person is in pay status under a multiemployer plan if--

(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

(B) to the extent provided in regulations of the Secretary of the Treasury, such person is entitled to such a benefit under the plan.

(7) Obligation to contribute. The term "obligation to contribute" has the meaning given such term under section 4212(a) [*29 USCS § 1392(a)*].

(8) Actuarial method. Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

(9) Plan sponsor. In the case of a plan described under *section 404(c) of the Internal Revenue Code of 1986* [*26 USCS § 404(c)*], or a continuation of such a plan, the term "plan sponsor" means the bargaining parties described under paragraph (1).

(10) Benefit commencement date. The term "benefit commencement date" means the annuity starting date (or in the case of a retroactive annuity starting date, the date on which benefit payments begin).

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FUNDING

29 USCS § 1085a

§ 1085a. [Repealed]

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FUNDING

29 USCS § 1085b

§ 1085b. [Repealed]

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FUNDING

29 USCS § 1086

§ 1086. [Repealed]

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS prec § 1101

Preceding § 1101

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1101

§ 1101. Coverage

(a) Scope of coverage. This part [*29 USCS §§ 1101* et seq.] shall apply to any employee benefit plan described in section 4(a) [*29 USCS § 1003(a)*] (and not exempted under section 4(b) [*29 USCS § 1003(b)*]), other than--

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

(2) any agreement described in *section 736 of the Internal Revenue Code of 1986* [*26 USCS § 736*], which provides payments to a retired partner or deceased partner or a deceased partner's successor in interest.

(b) Securities or policies deemed to be included in plan assets. For purposes of this part [*29 USCS §§ 1101* et seq.]:

(1) In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, solely by reason of such investment, be deemed to include any assets of such investment company.

(2) In the case of a plan to which a guaranteed benefit policy is issued by an insurer, the assets of such plan shall be deemed to include such policy, but shall not, solely by reason of the issuance of such policy, be deemed to include any assets of such insurer. For purposes of this paragraph:

(A) The term "insurer" means an insurance company, insurance service, or insurance organization, qualified to do business in a State.

(B) The term "guaranteed benefit policy" means an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. Such term includes any surplus in a separate account, but excludes any other portion of a separate account.

(c) Clarification of application of ERISA to insurance company general accounts.

(1) (A) Not later than June 30, 1997, the Secretary shall issue proposed regulations to provide guidance for the purpose of determining, in cases where an insurer issues 1 or more policies to or for the benefit of an employee benefit plan (and such policies are supported by assets of such insurer's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute assets of the plan for purposes of this part [*29 USCS §§ 1101* et seq.] and section 4975 of the Internal Revenue Code of 1986 [*26 USCS § 4975*] and to provide guidance with respect to the application of this title to the general account assets of insurers.

(B) The proposed regulations under subparagraph (A) shall be subject to public notice and comment until September 30, 1997.

(C) The Secretary shall issue final regulations providing the guidance described in subparagraph (A) not later than December 31, 1997.

(D) Such regulations shall only apply with respect to policies which are issued by an insurer on or before December 31, 1998, to or for the benefit of an employee benefit plan which is supported by assets of such insurer's general account. With respect to policies issued on or before December 31, 1998, such regulations shall take effect at the end of the 18-month period following the date on which such regulations become final.

(2) The Secretary shall ensure that the regulations issued under paragraph (1)--

(A) are administratively feasible, and

(B) protect the interests and rights of the plan and of its participants and beneficiaries (including meeting the requirements of paragraph (3)).

(3) The regulations prescribed by the Secretary pursuant to paragraph (1) shall require, in connection with any policy issued by an insurer to or for the benefit of an employee benefit plan to the extent that the policy is not a guaranteed benefit policy (as defined in subsection (b)(2)(B))--

(A) that a plan fiduciary totally independent of the insurer authorize the purchase of such policy (unless such purchase is a transaction exempt under section 408(b)(5) [*29 USCS § 1108(b)(5)*]),

(B) that the insurer describe (in such form and manner as shall be prescribed in such regulations), in annual reports and in policies issued to the policyholder after the date on which such regulations are issued in final form pursuant to paragraph (1)(C)--

(i) a description of the method by which any income and expenses of the insurer's general account are allocated to the policy during the term of the policy and upon the termination of the policy, and

(ii) for each report, the actual return to the plan under the policy and such other financial information as the Secretary may deem appropriate for the period covered by each such annual report,

(C) that the insurer disclose to the plan fiduciary the extent to which alternative arrangements supported by assets of separate accounts of the insurer (which generally hold plan assets) are available, whether there is a right under the policy to transfer funds to a separate account and the terms governing any such right, and the extent to which support by assets of the insurer's general account and support by assets of separate accounts of the insurer might pose differing risks to the plan, and

(D) that the insurer manage those assets of the insurer which are assets of such insurer's general account (irrespective of whether any such assets are plan assets) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, taking into account all obligations supported by such enterprise.

(4) Compliance by the insurer with all requirements of the regulations issued by the Secretary pursuant to paragraph (1) shall be deemed compliance by such insurer with sections 404, 406, and 407 [*29 USCS §§ 1104*, *1106*, *1107*] with respect to those assets of the insurer's general account which support a policy described in paragraph (3).

(5) (A) Subject to subparagraph (B), any regulations issued under paragraph (1) shall not take effect before the date on which such regulations become final.

(B) No person shall be subject to liability under this part [*29 USCS §§ 1101* et seq.] or section 4975 of the Internal Revenue Code of 1986 [*26 USCS § 4975*] for conduct which occurred before the date which is 18 months following the date described in subparagraph (A) on the basis of a claim that the assets of an insurer (other than plan assets held in a separate account) constitute assets of the plan, except--

(i) as otherwise provided by the Secretary in regulations intended to prevent avoidance of the regulations issued under paragraph (1), or

(ii) as provided in an action brought by the Secretary pursuant to paragraph (2) or (5) of section 502(a) for a breach of fiduciary responsibilities which would also constitute a violation of Federal or State criminal law.

The Secretary shall bring a cause of action described in clause (ii) if a participant, beneficiary, or fiduciary demonstrates to the satisfaction of the Secretary that a breach described in clause (ii) has occurred.

(6) Nothing in this subsection shall preclude the application of any Federal criminal law.

(7) For purposes of this subsection, the term "policy" includes a contract.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1102

§ 1102. Establishment of plan

(a) Named fiduciaries.

(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

(2) For purposes of this title, the term "named fiduciary" means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly.

(b) Requisite features of plan. Every employee benefit plan shall--

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this title,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 405(c)(1) [*29 USCS § 1105(c)(1)*]),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan.

(c) Optional features of plan. Any employee benefit plan may provide--

(1) that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator);

(2) that a named fiduciary, or a fiduciary designated by a named fiduciary pursuant to a plan procedure described in section 405(c)(1) [*29 USCS § 1105(c)(1)*], may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the plan; or

(3) that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1103

§ 1103. Establishment of trust

(a) Benefit plan assets to be held in trust; authority of trustees. Except as provided in subsection (b), all assets of an employee benefit plan shall be held in trust by one or more trustees. Such trustee or trustees shall be either named in the trust instrument or in the plan instrument described in section 402(a) [*29 USCS § 1102(a)*] or appointed by a person who is a named fiduciary, and upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that--

(1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to this Act, or

(2) authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3) *[28 USCS § 1102*(c)(3)].

(b) Exceptions. The requirements of subsection (a) of this section shall not apply--

(1) to any assets of a plan which consist of insurance contracts or policies issued by an insurance company qualified to do business in a State;

(2) to any assets of such an insurance company or any assets of a plan which are held by such an insurance company;

(3) to a plan--

(A) some or all of the participants of which are employees described in *section 401(c)(1) of the Internal Revenue Code of 1986* [*26 USCS § 401(c)(1)*]; or

(B) which consists of one or more individual retirement accounts described in *section 408 of the Internal Revenue Code of 1986* [*26 USCS § 408*];

to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of such Code [*26 USCS § 401(f)* or *408(h)*], whichever is applicable.

(4) to a plan which the Secretary exempts from the requirement of subsection (a) and which is not subject to any of the following provisions of this Act--

(A) part 2 of this subtitle [*29 USCS §§ 1051* et seq.],

(B) part 3 of this subtitle [*29 USCS §§ 1081* et seq.], or

(C) title IV of this Act; or

(5) to a contract established and maintained under *section 403(b) of the Internal Revenue Code of 1986* [*26 USCS § 403(b)*] to the extent that the assets of the contract are held in one or more custodial accounts pursuant to section 403(b)(7) of such Code [*26 USCS § 403(b)(7)*].

(6) Any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this Act.

(c) Assets of plan not to inure to benefit of employer; allowable purposes of holding plan assets.

(1) Except as provided in paragraph (2), (3), or (4) or subsection (d), or under section 4042 and 4044 [*29 USCS §§ 1342*, *1344*] (relating to termination of insured plans), or under *section 420 of the Internal Revenue Code of 1986* [*26 USCS § 420*] (as in effect on the date of the enactment of the Pension Protection Act of 2006 [enacted Aug. 17, 2006]), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

(2)

(A) In the case of a contribution, or a payment of withdrawal liability under part 1 of subtitle E of Title IV [*29 USCS §§ 1381* et seq.]--

(i) if such contribution or payment is made by an employer to a plan (other than a multiemployer plan) by a mistake of fact, paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the payment of the contribution, and

(ii) if such contribution or payment is made by an employer to a multiemployer plan by a mistake of fact or law (other than a mistake relating to whether the plan is described in *section 401(a) of the Internal Revenue Code of 1986* [*26 USCS § 401(a)*] or the trust which is part of such plan is exempt from taxation under section 501(a) of such Code [*26 USCS § 501(a)*]), paragraph (1) shall not prohibit the return of such contribution or payment to the employer within 6 months after the plan administrator determines that the contribution was made by such a mistake.

(B) If a contribution is conditioned on initial qualification of the plan under *section 401* or *403(a) of the Internal Revenue Code of 1986* [*26 USCS § 401* or *403(a)*], and if the plan receives an adverse determination with respect to its initial qualification, then paragraph (1) shall not prohibit the return of such contribution to the employer within one year after such determination, but only if the application for the determination is made by the time prescribed by law for filing the employer's return for the taxable year in which such plan was adopted, or such later date as the Secretary of the Treasury may prescribe.

(C) If a contribution is conditioned upon the deductibility of the contribution under *section 404 of the Internal Revenue Code of 1986* [*26 USCS § 404*], then, to the extent the deduction is disallowed, paragraph (1) shall not prohibit the return to the employer of such contribution (to the extent disallowed) within one year after the disallowance of the deduction.

(3) In the case of a withdrawal liability payment which has been determined to be an overpayment, paragraph (1) shall not prohibit the return of such payment to the employer within 6 months after the date of such determination.

(d) Termination of plan.

(1) Upon termination of a pension plan to which section 4021 [*29 USCS § 1321*] does not apply at the time of termination and to which this part [*29 USCS §§ 1101* et seq.] applies (other than a plan to which no employer contributions have been made) the assets of the plan shall be allocated in accordance with the provisions of section 4044 of this Act [*29 USCS § 1344*], except as otherwise provided in regulations of the Secretary.

(2) The assets of a welfare plan which terminates shall be distributed in accordance with the terms of the plan, except as otherwise provided in regulations of the Secretary.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1104

§ 1104. Fiduciary duties

(a) Prudent man standard of care.

(1) Subject to sections 403(c) and (d), 4042, and 4044 [*29 USCS §§ 1103(c),* (d), 1342, 1344], a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and--

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and title IV.

(2) In the case of an eligible individual account plan (as defined in section 407(d)(3) [*29 USCS § 1107(d)(3)*]), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B) is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in section 407(d)(4) and (5) [*29 USCS § 1107(d)(4)* and (5)]).

(b) Indicia of ownership of assets outside jurisdiction of district courts. Except as authorized by the Secretary by regulation, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States.

(c) Control over assets by participant or beneficiary.

(1) (A) In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over assets in his account, if a participant or beneficiary exercises control over the assets in his account (as determined under regulations of the Secretary)--

(i) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and

(ii) no person who is otherwise a fiduciary shall be liable under this part [*29 USCS §§ 1101* et seq.] for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control, except that this clause shall not apply in connection with such participant or beneficiary for any blackout period during which the ability of such participant or beneficiary to direct the investment of the assets in his or her account is suspended by a plan sponsor or fiduciary.

(B) If a person referred to in subparagraph (A)(ii) meets the requirements of this title in connection with authorizing and implementing the blackout period, any person who is otherwise a fiduciary shall not be liable under this title for any loss occurring during such period.

(C) For purposes of this paragraph, the term "blackout period" has the meaning given such term by section 101(i)(7) [*29 USCS § 1021(i)(7)*].

(2) In the case of a simple retirement account established pursuant to a qualified salary reduction arrangement under *section 408(p) of the Internal Revenue Code of 1986* [*26 USCS § 408(p)*], a participant or beneficiary shall, for purposes of paragraph (1), be treated as exercising control over the assets in the account upon the earliest of--

(A) an affirmative election among investment options with respect to the initial investment of any contribution,

(B) a rollover to any other simple retirement account or individual retirement plan, or

(C) one year after the simple retirement account is established.

No reports, other than those required under section 101(g) [*29 USCS § 1021(g)*], shall be required with respect to a simple retirement account established pursuant to such a qualified salary reduction arrangement.

(3) In the case of a pension plan which makes a transfer to an individual retirement account or annuity of a designated trustee or issuer under *section 401(a)(31)(B) of the Internal Revenue Code of 1986*, the participant or beneficiary shall, for purposes of paragraph (1), be treated as exercising control over the assets in the account or annuity upon--

(A) the earlier of--

(i) a rollover of all or a portion of the amount to another individual retirement account or annuity; or

(ii) one year after the transfer is made; or

(B) a transfer that is made in a manner consistent with guidance provided by the Secretary.

(4) (A) In any case in which a qualified change in investment options occurs in connection with an individual account plan, a participant or beneficiary shall not be treated for purposes of paragraph (1) as not exercising control over the assets in his account in connection with such change if the requirements of subparagraph (C) are met in connection with such change.

(B) For purposes of subparagraph (A), the term "qualified change in investment options" means, in connection with an individual account plan, a change in the investment options offered to the participant or beneficiary under the terms of the plan, under which--

(i) the account of the participant or beneficiary is reallocated among one or more remaining or new investment options which are offered in lieu of one or more investment options offered immediately prior to the effective date of the change, and

(ii) the stated characteristics of the remaining or new investment options provided under clause (i), including characteristics relating to risk and rate of return, are, as of immediately after the change, reasonably similar to those of the existing investment options as of immediately before the change.

(C) The requirements of this subparagraph are met in connection with a qualified change in investment options if--

(i) at least 30 days and no more than 60 days prior to the effective date of the change, the plan administrator furnishes written notice of the change to the participants and beneficiaries, including information comparing the existing and new investment options and an explanation that, in the absence of affirmative investment instructions from the participant or beneficiary to the contrary, the account of the participant or beneficiary will be invested in the manner described in subparagraph (B),

(ii) the participant or beneficiary has not provided to the plan administrator, in advance of the effective date of the change, affirmative investment instructions contrary to the change, and

(iii) the investments under the plan of the participant or beneficiary as in effect immediately prior to the effective date of the change were the product of the exercise by such participant or beneficiary of control over the assets of the account within the meaning of paragraph (1).

(5) Default investment arrangements.

(A) In general. For purposes of paragraph (1), a participant or beneficiary in an individual account plan meeting the notice requirements of subparagraph (B) shall be treated as exercising control over the assets in the account with respect to the amount of contributions and earnings which, in the absence of an investment election by the participant or beneficiary, are invested by the plan in accordance with regulations prescribed by the Secretary. The regulations under this subparagraph shall provide guidance on the appropriateness of designating default investments that include a mix of asset classes consistent with capital preservation or long-term capital appreciation, or a blend of both.

(B) Notice requirements.

(i) In general. The requirements of this subparagraph are met if each participant--

(I) receives, within a reasonable period of time before each plan year, a notice explaining the employee's right under the plan to designate how contributions and earnings will be invested and explaining how, in the absence of any investment election by the participant or beneficiary, such contributions and earnings will be invested, and

(II) has a reasonable period of time after receipt of such notice and before the beginning of the plan year to make such designation.

(ii) Form of notice. The requirements of clauses (i) and (ii) of *section 401(k)(12)(D) of the Internal Revenue Code of 1986* [*26 USCS § 401(k)(12)(D)*] shall apply with respect to the notices described in this subparagraph.

(d) Plan terminations.

(1) If, in connection with the termination of a pension plan which is a single-employer plan, there is an election to establish or maintain a qualified replacement plan, or to increase benefits, as provided under *section 4980(d) of the Internal Revenue Code of 1986* [*26 USCS § 4980(d)*], a fiduciary shall discharge the fiduciary's duties under this title and title IV in accordance with the following requirements:

(A) In the case of a fiduciary of the terminated plan, any requirement-

(i) under section 4980(d)(2)(B) of such Code [*26 USCS § 4980(d)(2)(B)* with respect to the transfer of assets from the terminated plan to a qualified replacement plan, and

(ii) under section 4980(d)(2)(B)(ii) or 4980(d)(3) of such Code [*26 USCS § 4980(d)(2)(B)(ii)* or (3)] with respect to any increase in benefits under the terminated plan.

(B) In the case of a fiduciary of a qualified replacement plan, any requirement-

(i) under section 4980(d)(2)(A) of such Code [*26 USCS § 4980(d)(2)(A)*] with respect to participation in the qualified replacement plan of active participants in the terminated plan,

(ii) under section 4980(d)(2)(B) of such Code [*26 USCS § 4980(d)(2)(B)*] with respect to the receipt of assets from the terminated plan, and

(iii) under section 4980(d)(2)(C) of such Code [*26 USCS § 4980(d)(2)(C)*] with respect to the allocation of assets to participants of the qualified replacement plan.

(2) For purposes of this subsection-

(A) any term used in this subsection which is also used in *section 4980(d) of the Internal Revenue Code of 1986* [*26 USCS § 4980(d)*] shall have the same meaning as when used in such section, and

(B) any reference in this subsection to the Internal Revenue Code of 1986 [*26 USCS §§ 1* et seq.] shall be a reference to such Code as in effect immediately after the enactment of the Omnibus Budget Reconciliation Act of 1990 [enacted Nov. 5, 1990].

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1105

§ 1105. Liability for breach by co-fiduciary

(a) Circumstances giving to liability. In addition to any liability which he may have under any other provision of this part [*29 USCS §§ 1101* et seq.], a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 404(a)(1) [*29 USCS § 1104(a)(1)*] in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or

(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(b) Assets held by two or more trustees.

(1) Except as otherwise provided in subsection (d) and in section 403(a)(1) and (2) [*29 USCS § 1103(a)(1)* and (2)], if the assets of a plan are held by two or more trustees--

(A) each shall use reasonable care to prevent a co-trustee from committing a breach; and

(B) they shall jointly manage and control the assets of the plan, except that nothing in this subparagraph (B) shall preclude any agreement, authorized by the trust instrument, allocating specific responsibilities, obligations, or duties among trustees, in which event a trustee to whom certain responsibilities, obligations, or duties have not been allocated shall not be liable by reason of this subparagraph (B) either individually or as a trustee for any loss resulting to the plan arising from the acts or omissions on the part of another trustee to whom such responsibilities, obligations, or duties have been allocated.

(2) Nothing in this subsection shall limit any liability that a fiduciary may have under subsection (a) or any other provision of this part [*29 USCS §§ 1101* et seq.].

(3) (A) In the case of a plan the assets of which are held in more than one trust, a trustee shall not be liable under paragraph (1) except with respect to an act or omission of a trustee of a trust of which he is a trustee.

(B) No trustee shall be liable under this subsection for following instructions referred to in section 403(a)(1) [*29 USCS § 1103(a)(1)*].

(c) Allocation of fiduciary responsibility; designated persons to carry out fiduciary responsibilities.

(1) The instrument under which a plan is maintained may expressly provide for procedures (A) for allocating fiduciary responsibilities (other than trustee responsibilities) among named fiduciaries, and (B) for named fiduciaries to designate persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan.

(2) If a plan expressly provides for a procedure described in paragraph (1), and pursuant to such procedure any fiduciary responsibility of a named fiduciary is allocated to any person, or a person is designated to carry out any such responsibility, then such named fiduciary shall not be liable for an act or omission of such person in carrying out such responsibility except to the extent that--

(A) the named fiduciary violated section 404(a)(1) [*29 USCS § 1104(a)(1)*]--

(i) with respect to such allocation or designation,

(ii) with respect to the establishment or implementation of the procedure under paragraph (1), or

(iii) in continuing the allocation or designation; or

(B) the named fiduciary would otherwise be liable in accordance with subsection (a).

(3) For purposes of this subsection, the term "trustee responsibility" means any responsibility provided in the plan's trust instrument (if any) to manage or control the assets of the plan, other than a power under the trust instrument of a named fiduciary to appoint an investment manager in accordance with section 402(c)(3) [*29 USCS § 1102(c)(3)*].

(d) Investment managers.

(1) If an investment manager or managers have been appointed under section 402(c)(3) [*29 USCS § 1102(c)(3)*], then, notwithstanding subsections (a) (2) and (3) and subsection (b), no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.

(2) Nothing in this subsection shall relieve any trustee of any liability under this part [*29 USCS §§ 1101* et seq.] for any act of such trustee.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1106

§ 1106. Prohibited transactions

(a) Transactions between plan and party in interest. Except as provided in section 408 [*29 USCS § 1108*]:

(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect--

(A) sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) lending of money or other extension of credit between the plan and a party in interest;

(C) furnishing of goods, services, or facilities between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan; or

(E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 407(a) [*29 USCS § 1107(a)*].

(2) No fiduciary who has authority or discretion to control or manage the assets of a plan shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a) [*29 USCS § 1107(a)*].

(b) Transactions between plan and fiduciary. A fiduciary with respect to a plan shall not--

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

(c) Transfer of real or personal property to plan by party in interest. A transfer of real or personal property by a party in interest to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a party-in-interest placed on the property within the 10-year period ending on the date of the transfer.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1107

§ 1107. Limitation with respect to acquisition and holding of employer securities and employer real property by certain plans

(a) Percentage limitation. Except as otherwise provided in this section and section 414 [*29 USCS § 1114*]:

(1) A plan may not acquire or hold--

(A) any employer security which is not a qualifying employer security, or

(B) any employer real property which is not qualifying employer real property.

(2) A plan may not acquire any qualifying employer security or qualifying employer real property, if immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeds 10 percent of the fair market value of the assets of the plan.

(3) (A) After December 31, 1984, a plan may not hold any qualifying employer securities or qualifying employer real property (or both) to the extent that the aggregate fair market value of such securities and property determined on December 31, 1984, exceeds 10 percent of the greater of--

(i) the fair market value of the assets of the plan, determined on December 31, 1984, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(B) Subparagraph (A) of this paragraph shall not apply to any plan which on any date after December 31, 1974; and before January 1, 1985, did not hold employer securities or employer real property (or both) the aggregate fair market value of which determined on such date exceeded 10 percent of the greater of

(i) the fair market value of the assets of the plan, determined on such date, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(4) (A) After December 31, 1979, a plan may not hold any employer securities or employer real property in excess of the amount specified in regulations under subparagraph (B). This subparagraph shall not apply to a plan after the earliest date after December 31, 1974, on which it complies with such regulations.

(B) Not later than December 31, 1976, the Secretary shall prescribe regulations which shall have the effect of requiring that a plan divest itself of 50 percent of the holdings of employer securities and employer real property which the plan would be required to divest before January 1, 1985, under paragraph (2) or subsection (c) (whichever is applicable).

(b) Exception.

(1) Subsection (a) of this section shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property by an eligible individual account plan.

(2)

(A) If this paragraph applies to an eligible individual account plan, the portion of such plan which consists of applicable elective deferrals (and earnings allocable thereto) shall be treated as a separate plan--

(i) which is not an eligible individual account plan, and

(ii) to which the requirements of this section apply.

(B) (i) This paragraph shall apply to any eligible individual account plan if any portion of the plan's applicable elective deferrals (or earnings allocable thereto) are required to be invested in qualifying employer securities or qualifying employer real property or both--

(I) pursuant to the terms of the plan, or

(II) at the direction of a person other than the participant on whose behalf such elective deferrals are made to the plan (or a beneficiary).

(ii) This paragraph shall not apply to an individual account plan for a plan year if, on the last day of the preceding plan year, the fair market value of the assets of all individual account plans maintained by the employer equals not more than 10 percent of the fair market value of the assets of all pension plans (other than multiemployer plans) maintained by the employer.

(iii) This paragraph shall not apply to an individual account plan that is an employee stock ownership plan as defined in *section 4975(e)(7) of the Internal Revenue Code of 1986* [*26 USCS § 4975(e)(7)*].

(iv) This paragraph shall not apply to an individual account plan if, pursuant to the terms of the plan, the portion of any employee's applicable elective deferrals which is required to be invested in qualifying employer securities and qualifying employer real property for any year may not exceed 1 percent of the employee's compensation which is taken into account under the plan in determining the maximum amount of the employee's applicable elective deferrals for such year.

(C) For purposes of this paragraph, the term "applicable elective deferral" means any elective deferral (as defined in *section 402(g)(3)(A) of the Internal Revenue Code of 1986* [*26 USCS § 402(g)(3)(A)*]) which is made pursuant to a qualified cash or deferred arrangement as defined in *section 401(k) of the Internal Revenue Code of 1986* [*26 USCS § 401(k)*].

(3) Cross references.

(A) For exemption from diversification requirements for holding of qualifying employer securities and qualifying employer real property by eligible individual account plans, see section 404(a)(2) [*29 USCS § 1104(a)(2)*].

(B) For exemption from prohibited transactions for certain acquisitions of qualifying employer securities and qualifying employer real property which are not in violation of 10 percent limitation, see section 408(e) [*29 USCS § 1108(e)*].

(C) For transitional rules respecting securities or real property subject to binding contracts in effect on June 30, 1974, see section 414(c) [*29 USCS § 1114(c)*].

(D) For diversification requirements for qualifying employer securities held in certain individual account plans, see section 204(j) [*29 USCS § 1054(j)*].

(c) Election.

(1) A plan which makes the election, under paragraph (3) shall be treated as satisfying the requirement of subsection (a)(3) if and only if employer securities held on any date after December 31, 1974 and before January 1, 1985 have a fair market value, determined as of December 31, 1974, not in excess of 10 percent of the lesser of--

(A) the fair market value of the assets of the plan determined on such date (disregarding any portion of the fair market value of employer securities which is attributable to appreciation of such securities after December 31, 1974) but not less than the fair market value of plan assets on January 1, 1975, or

(B) an amount equal to the sum of (i) the total amount of the contributions to the plan received after December 31, 1974, and prior to such date, plus (ii) the fair market value of the assets of the plan, determined on January 1, 1975.

(2) For purposes of this subsection, in the case of an employer security held by a plan after January 1, 1975, the ownership of which is derived from ownership of employer securities held by the plan on January 1, 1975, or from the exercise of rights derived from such ownership, the value of such security held after January 1, 1975, shall be based on the value as of January 1, 1975, of the security from which ownership was derived. The Secretary shall prescribe regulations to carry out this paragraph.

(3) An election under this paragraph may not be made after December 31, 1975. Such an election shall be made in accordance with regulations prescribed by the Secretary, and shall be irrevocable. A plan may make an election under this paragraph only if on January 1, 1975, the plan holds no employer real property. After such election and before January 1, 1985 the plan may not acquire any employer real property.

(d) Definitions. For purposes of this section--

(1) The term "employer security" means a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. A contract to which section 408(b)(5) [*29 USCS § 1108(b)(5)*] applies shall not be treated as a security for purposes of this section.

(2) The term "employer real property" means real property (and related personal property) which is leased to an employer of employees covered by the plan, or to an affiliate of such employer. For purposes of determining the time at which a plan acquires employer real property for purposes of this section, such property shall be deemed to be acquired by the plan on the date on which the plan acquires the property or on the date on which the lease to the employer (or affiliate) is entered into, whichever is later.

(3) (A) The term "eligible individual account plan" means an individual account plan which is (i) a profit-sharing, stock bonus, thrift, or savings plan; (ii) an employee stock ownership plan; or (iii) a money purchase plan which was in existence on the date of enactment of this Act [enacted Sept. 2, 1974] and which on such date invested primarily in qualifying employer securities. Such term excludes an individual retirement account or annuity described in *section 408 of the Internal Revenue Code of 1986* [*26 USCS § 408*].

(B) Notwithstanding subparagraph (A), a plan shall be treated as an eligible individual account plan with respect to the acquisition or holding of qualifying employer real property or qualifying employer securities only if such plan explicitly provides for acquisition and holding of qualifying employer securities or qualifying employer real property (as the case may be). In the case of a plan in existence on the date of enactment of this Act [enacted Sept. 2, 1974], this subparagraph shall not take effect until January 1, 1976.

(C) The term "eligible individual account plan" does not include any individual account plan the benefits of which are taken into account in determining the benefits payable to a participant under any defined benefit plan.

(4) The term "qualifying employer real property" means parcels of employer real property--

(A) if a substantial number of the parcels are dispersed geographically;

(B) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use;

(C) even if all of such real property is leased to one lessee (which may be an employer, or an affiliate of an employer); and

(D) if the acquisition and retention of such property comply with the provisions of this part [*29 USCS §§ 1101* et seq.] (other than section 404(a)(1)(B) [*29 USCS § 1104(a)(1)(B)*] to the extent it requires diversification, and sections 404(a)(1)(C), 406 [*29 USCS §§ 1104(a)(1)(C), 1106*], and subsection (a) of this section).

(5) The term "qualifying employer security" means an employer security which is--

(A) stock,

(B) a marketable obligation (as defined in subsection (e)), or

(C) an interest in a publicly traded partnership (as defined in *section 7704(b) of the Internal Revenue Code of 1986* [*26 USCS § 7704(b)*]), but only if such partnership is an existing partnership as defined in section 10211(c)(2)(A) of the Revenue Act of 1987 (Public Law 100-203) [*26 USCS § 7704* note].

After December 17, 1987, in the case of a plan other than an eligible individual account plan, an employer security described in subparagraph (A) or (C) shall be considered a qualifying employer security only if such employer security satisfies the requirements of subsection (f)(1).

(6) The term "employee stock ownership plan" means an individual account plan--

(A) which is a stock bonus plan which is qualified, or a stock bonus plan and money purchase plan both of which are qualified, under *section 401 of the Internal Revenue Code of 1986* [*26 USCS § 401*], and which is designed to invest primarily in qualifying employer securities, and

(B) which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

(7) A corporation is an affiliate of an employer if it is a member of any controlled group of corporations (as defined in *section 1563(a) of the Internal Revenue Code of 1986* [*26 USCS § 1563(a)*], except that "applicable percentage" shall be substituted for "80 percent" wherever the latter percentage appears in such section) of which the employer who maintains the plan is a member. For purposes of the preceding sentence, the term "applicable percentage" means 50 percent, or such lower percentage as the Secretary may prescribe by regulation. A person other than a corporation shall be treated as an affiliate of an employer to the extent provided in regulations of the Secretary. An employer which is a person other than a corporation shall be treated as affiliated with another person to the extent provided by regulations of the Secretary. Regulations under this paragraph shall be prescribed only after consultation and coordination with the Secretary of the Treasury.

(8) The Secretary may prescribe regulations specifying the extent to which conversions, splits, the exercise of rights, and similar transactions are not treated as acquisitions.

(9) For purposes of this section, an arrangement which consists of a defined benefit plan and an individual account plan shall be treated as 1 plan if the benefits of such individual account plan are taken into account in determining the benefits payable under such defined benefit plan.

(e) Marketable obligations. For purposes of subsection (d)(5), the term "marketable obligation" means a bond, debenture, note, or certificate, or other evidence of indebtedness (hereinafter in this subsection referred to as "obligation") if--

(1) such obligation is acquired--

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the plan than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the plan than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation--

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the plan is invested in obligations of the employer or an affiliate of the employer.

(f) Maximum percentage of stock held by plan; time of holding or acquisition; necessity of legally binding contract.

(1) Stock satisfies the requirements of this paragraph if, immediately following the acquisition of such stock--

(A) no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer.

(2) Until January 1, 1993, a plan shall not be treated as violating subsection (a) solely by holding stock which fails to satisfy the requirements of paragraph (1) if such stock--

(A) has been so held since December 17, 1987, or

(B) was acquired after December 17, 1987, pursuant to a legally binding contract in effect on December 17, 1987, and has been so held at all times after the acquisition.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1108

§ 1108. Exemptions from prohibited transactions

(a) Grant of exemptions. The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 406 and 407(a) [*29 USCS §§ 1106, 1107(a)*]. Action under this subsection may be taken only after consultation and coordination with the Secretary of the Treasury. An exemption granted under this section shall not relieve a fiduciary from any other applicable provision of this Act. The Secretary may not grant an exemption under this subsection unless he finds that such exemption is--

(1) administratively feasible,

(2) in the interests of the plan and of its participants and beneficiaries, and

(3) protective of the rights of participants and beneficiaries of such plan.

Before granting an exemption under this subsection from section 406(a) or 407(a) [*29 USCS § 1106(a)* or *1107(a)*], the Secretary shall publish notice in the Federal Register of the pendency of the exemption, shall require that adequate notice be given to interested persons, and shall afford interested persons opportunity to present views. The Secretary may not grant an exemption under this subsection from section 406(b) [*29 USCS § 1106(b)*] unless he affords an opportunity for a hearing and makes a determination on the record with respect to the findings required by paragraphs (1), (2), and (3) of this subsection.

(b) Enumeration of transactions exempted from *29 USCS § 1106* prohibitions. The prohibitions provided in section 406 [*29 USCS § 1106*] shall not apply to any of the following transactions:

(1) Any loans made by the plan to parties in interest who are participants or beneficiaries of the plan if such loans (A) are available to all such participants and beneficiaries on a reasonably equivalent basis, (B) are not made available to highly compensated employees (within the meaning of *section 414(q) of the Internal Revenue Code of 1986* [*26 USCS § 414(q)*]) in an amount greater than the amount made available to other employees, (C) are made in accordance with specific provisions regarding such loans set forth in the plan, (D) bear a reasonable rate of interest, and (E) are adequately secured. A loan made by a plan shall not fail to meet the requirements of the preceding sentence by reason of a loan repayment suspension described under *section 414(u)(4) of the Internal Revenue Code of 1986* [*26 USCS § 414(u)(4)*].

(2) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.

(3) A loan to an employee stock ownership plan (as defined in section 407(d)(6) [*29 USCS § 1107(d)(6)*]), if--

(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

(B) such loan is at an interest rate which is not in excess of a reasonable rate.

If the plan gives collateral to a party in interest for such loan, such collateral may consist only of qualifying employer securities (as defined in section 407(d)(5) [*29 USCS § 1107(d)(5)*]).

(4) The investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if--

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment.

(5) Any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State, if the plan pays no more than adequate consideration, and if each such insurer or insurers is--

(A) the employer maintaining the plan, or

(B) a party in interest which is wholly owned (directly or indirectly) by the employer maintaining the plan, or by any person which is a party in interest with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are parties in interest (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan).

(6) The providing of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan, and if--

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and adherence to such guidelines would reasonably preclude such bank or similar financial institution from providing such ancillary service (i) in an excessive or unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans.

Such ancillary services shall not be provided at more than reasonable compensation.

(7) The exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary, but only if the plan receives no less than adequate consideration pursuant to such conversion.

(8) Any transaction between a plan and (i) a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency or (ii) a pooled investment fund of an insurance company qualified to do business in a State, if--

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company. or an affiliate thereof) who has authority to manage and control the assets of the plan.

(9) The making by a fiduciary of a distribution of the assets of the plan in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of this Act [*29 USCS § 1344*] (relating to allocation of assets).

(10) Any transaction required or permitted under part 1 of subtitle E of title IV [*29 USCS §§ 1381* et seq.].

(11) A merger of multiemployer plans, or the transfer of assets or liabilities between multiemployer plans, determined by the Pension Benefit Guaranty Corporation to meet the requirements of section 4231 [*29 USCS § 1411*].

(12) The sale by a plan to a party in interest on or after December 18, 1987, of any stock, if--

(A) the requirements of paragraphs (1) and (2) of subsection (e) are met with respect to such stock,

(B) on the later of the date on which the stock was acquired by the plan, or January 1, 1975, such stock constituted a qualifying employer security (as defined in section 407(d)(5) [*29 USCS § 1107(d)(5)*] as then in effect), and

(C) such stock does not constitute a qualifying employer security (as defined in section 407(d)(5) [*29 USCS § 1107(d)(5)*] as in effect at the time of the sale).

(13) Any transfer made before January 1, 2014, of excess pension assets from a defined benefit plan to a retiree health account in a qualified transfer permitted under *section 420 of the Internal Revenue Code of 1986* [*26 USCS § 420*] (as in effect on the date of the enactment of the Pension Protection Act of 2006 [enacted Aug. 17, 2006]).

(14) Any transaction in connection with the provision of investment advice described in section 3(21)(A)(ii) [*29 USCS § 1002(21)(A)(ii)*] to a participant or beneficiary of an individual account plan that permits such participant or beneficiary to direct the investment of assets in their individual account, if--

(A) the transaction is--

(i) the provision of the investment advice to the participant or beneficiary of the plan with respect to a security or other property available as an investment under the plan,

(ii) the acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice, or

(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of

the advice or in connection with an acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice; and

(B) the requirements of subsection (g) are met.

(15) (A) Any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary), between a plan and a party in interest (other than a fiduciary described in section 3(21)(A) [*29 USCS § 1002(21)(A)*]) with respect to a plan if--

(i) the transaction involves a block trade,

(ii) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor), does not exceed 10 percent of the aggregate size of the block trade,

(iii) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction, and

(iv) the compensation associated with the purchase and sale is not greater than the compensation associated with an arm's length transaction with an unrelated party.

(B) For purposes of this paragraph, the term "block trade" means any trade of at least 10,000 shares or with a market value of at least $ 200,000 which will be allocated across two or more unrelated client accounts of a fiduciary.

(16) Any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary), between a plan and a party in interest if--

(A) the transaction is executed through an electronic communication network, alternative trading system, or similar execution system or trading venue subject to regulation and oversight by--

(i) the applicable Federal regulating entity, or

(ii) such foreign regulatory entity as the Secretary may determine by regulation,

(B) either--

(i) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the execution system in accordance with applicable rules of the Securities and Exchange Commission or other relevant governmental authority, or

(ii) neither the execution system nor the parties to the transaction take into account the identity of the parties in the execution of trades,

(C) the price and compensation associated with the purchase and sale are not greater than the price and compensation associated with an arm's length transaction with an unrelated party,

(D) if the party in interest has an ownership interest in the system or venue described in subparagraph (A), the system or venue has been authorized by the plan sponsor or other independent fiduciary for transactions described in this paragraph, and

(E) not less than 30 days prior to the initial transaction described in this paragraph executed through any system or venue described in subparagraph (A), a plan fiduciary is provided written or electronic notice of the execution of such transaction through such system or venue.

(17) (A) Transactions described in subparagraphs (A), (B), and (D) of section 406(a)(1) [*29 USCS § 1106(a)(1)*] between a plan and a person that is a party in interest other than a fiduciary (or an affiliate) who has or exercises any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of section 3(21)(A)(ii) [*29 USCS § 1002(21)(A)(ii)*]) with respect to those assets, solely by reason of providing services to the plan or solely by reason of a relationship to such a service provider described in subparagraph (F), (G), (H), or (I) of section 3(14) [*29 USCS § 1002(14)*], or both, but only if in connection with such transaction the plan receives no less, nor pays no more, than adequate consideration.

(B) For purposes of this paragraph, the term "adequate consideration" means--

(i) in the case of a security for which there is a generally recognized market--

(I) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934 [*15 USCS § 78f*], taking into account factors such as the size of the transaction and marketability of the security, or

(II) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of the party in interest, taking into account factors such as the size of the transaction and marketability of the security, and

(ii) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary.

(18) Foreign exchange transactions. Any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either), and a plan (as defined in section 3(3) [*29 USCS § 1002(3)*]) with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or other party in interest, if--

(A) the transaction is in connection with the purchase, holding, or sale of securities or other investment assets (other than a foreign exchange transaction unrelated to any other investment in securities or other investment assets),

(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,

(C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more than 3 percent from the interbank bid and asked rates for transactions of comparable size and maturity at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

(D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction.

(19) Cross trading. Any transaction described in sections 406(a)(1)(A) and 406(b)(2) [*29 USCS § 1106(a)(1)(A)* and (b)(2)] involving the purchase and sale of a security between a plan and any other account managed by the same investment manager, if--

(A) the transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available,

(B) the transaction is effected at the independent current market price of the security (within the meaning of *section 270.17a-7(b) of title 17, Code of Federal R*egulations),

(C) no brokerage commission, fee (except for customary transfer fees, the fact of which is disclosed pursuant to subparagraph (D)), or other remuneration is paid in connection with the transaction,

(D) a fiduciary (other than the investment manager engaging in the cross-trades or any affiliate) for each plan participating in the transaction authorizes in advance of any cross-trades (in a document that is separate from any other written agreement of the parties) the investment manager to engage in cross trades at the investment manager's discretion, after such fiduciary has received disclosure regarding the conditions under which cross trades may take place (but only if such disclosure is separate from any other agreement or disclosure involving the asset management relationship), including the written policies and procedures of the investment manager described in subparagraph (H),

(E) each plan participating in the transaction has assets of at least $ 100,000,000, except that if the assets of a plan are invested in a master trust containing the assets of plans maintained by employers in the same controlled group (as defined in section 407(d)(7) [*29 USCS § 1107(d)(7)*]), the master trust has assets of at least $ 100,000,000,

(F) the investment manager provides to the plan fiduciary who authorized cross trading under subparagraph (D) a quarterly report detailing all cross trades executed by the investment manager in which the plan participated during such quarter, including the following information, as applicable: (i) the identity of each security bought or sold; (ii) the number of shares or units traded; (iii) the parties involved in the cross-trade; and (iv) trade price and the method used to establish the trade price,

(G) the investment manager does not base its fee schedule on the plan's consent to cross trading, and no other service (other than the investment opportunities and cost savings available through a cross trade) is conditioned on the plan's consent to cross trading,

(H) the investment manager has adopted, and cross-trades are effected in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program, and that include a description of the manager's pricing policies and procedures, and the manager's policies and procedures for allocating cross trades in an objective manner among accounts participating in the cross-trading program, and

(I) the investment manager has designated an individual responsible for periodically reviewing such purchases and sales to ensure compliance with the written policies and procedures described in subparagraph (H), and following such review, the individual shall issue an annual written report no later than 90 days following the period to which it relates signed under penalty of perjury to the plan fiduciary who authorized cross trading under subparagraph (D) describing the steps performed during the course of the review, the level of compliance, and any specific instances of noncompliance.

The written report under subparagraph (I) shall also notify the plan fiduciary of the plan's right to terminate participation in the investment manager's cross-trading program at any time.

(20) (A) Except as provided in subparagraphs (B) and (C), a transaction described in section 406(a) [*29 USCS § 1106(a)*] in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.

(B) Subparagraph (A) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d)(1) [*29 USCS § 1107(d)(1)*]) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2) [*29 USCS § 1107(d)(2)*]).

(C) In the case of any fiduciary or other party in interest (or any other person knowingly participating in such transaction), subparagraph (A) does not apply to any transaction if, at the time the transaction occurs, such fiduciary or party in interest (or other person) knew (or reasonably should have known) that the transaction would (without regard to this paragraph) constitute a violation of section 406(a) [*29 USCS § 1106(a)*].

(D) For purposes of this paragraph, the term 'correction period' means, in connection with a fiduciary or party in interest (or other person knowingly participating in the transaction), the 14-day period beginning on the date on which such fiduciary or party in interest (or other person) discovers, or reasonably should have discovered, that the transaction would (without regard to this paragraph) constitute a violation of section 406(a) [*29 USCS § 1106(a)*].

(E) For purposes of this paragraph--

(i) The term "security" has the meaning given such term by *section 475(c)(2) of the Internal Revenue Code of 1986* [*26 USCS § 475(c)(2)*] (without regard to subparagraph (F)(iii) and the last sentence thereof).

(ii) The term "commodity" has the meaning given such term by section 475(e)(2) of such Code [*26 USCS § 475(e)(2)*] (without regard to subparagraph (D)(iii) thereof).

(iii) The term "correct" means, with respect to a transaction--

(I) to undo the transaction to the extent possible and in any case to make good to the plan or affected account any losses resulting from the transaction, and

(II) to restore to the plan or affected account any profits made through the use of assets of the plan.

(c) Fiduciary benefits and compensation not prohibited by *29 USCS § 1106*. Nothing in section 406 [*29 USCS § 1106*] shall be construed to prohibit any fiduciary from--

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan; except that no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in such plan shall receive compensation from such plan, except for reimbursement of expenses properly and actually incurred; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(d) Owner-employees; family members; shareholder employees.

(1) Section 407(b) [*29 USCS § 1107(b)*] and subsections (b), (c), and (e) of this section shall not apply to a transaction in which a plan directly or indirectly--

(A) lends any part of the corpus or income of the plan to,

(B) pays any compensation for personal services rendered to the plan to, or

(C) acquires for the plan any property from, or sells any property to,

any person who is with respect to the plan an owner-employee (as defined in *section 401(c)(3) of the Internal Revenue Code of 1986* [*26 USCS § 401(c)(3)*]), a member of the family (as defined in section 267(c)(4) of such Code [*26 USCS § 267(c)(4)*]) of any such owner-employee, or any corporation in which any such owner-employee owns, directly or indirectly, 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(2) (A) For purposes of paragraph (1), the following shall be treated as owner-employees:

(i) A shareholder-employee.

(ii) A participant or beneficiary of an individual retirement plan (as defined in *section 7701(a)(37) of the Internal Revenue Code of 1986* [*26 USCS § 7701(a)(37)*]).

(iii) An employer or association of employees which establishes such an individual retirement plan under section 408(c) of such Code [*26 USCS § 408(c)*].

(B) Paragraph (1)(C) shall not apply to a transaction which consists of a sale of employer securities to an employee stock ownership plan (as defined in section 407(d)(6) [*29 USCS § 1107(d)(6)*]) by a shareholder-employee, a member of

the family (as defined in section 267(c)(4) of such Code [*26 USCS § 267(c)(4)*]) of any such owner-employee, or a corporation in which such a shareholder-employee owns stock representing a 50 percent or greater interest described in paragraph (1).

(C) For purposes of paragraph (1)(A), the term "owner-employee" shall only include a person described in clause (ii) or (iii) of subparagraph (A).

(3) For purposes of paragraph (2), the term "shareholder-employee" means an employee or officer of an S corporation (as defined in section 1361(a)(1) of such Code [*26 USCS § 1361(a)(1)*]) who owns (or is considered as owning within the meaning of section 318(a)(1) of such Code [*26 USCS § 318(a)(1)*]) more than 5 percent of the outstanding stock of the corporation on any day during the taxable year of such corporation.

(e) Acquisition or sale by plan of qualifying employer securities; acquisition, sale, or lease by plan of qualifying employer real property. Sections 406 and 407 [*29 USCS §§ 1106* and *1107*] shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 407(d)(5) [*29 USCS § 1107(d)(5)*]) or acquisition, sale or lease by a plan of qualifying employer real property (as defined in section 407(d)(4) [*29 USCS § 1107(d)(4)*])--

(1) if such acquisition, sale, or lease is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under section 407(e)(1) [*29 USCS § 1107(e)(1)*]),

(2) if no commission is charged with respect thereto, and

(3) if--

(A) the plan is an eligible individual account plan (as defined in section 407(d)(3) [*29 USCS § 1107(d)(3)*]), or

(B) in the case of an acquisition or lease of qualifying employer real property by a plan which is not an eligible individual account plan, or of an acquisition of qualifying employer securities by such a plan, the lease or acquisition is not prohibited by section 407(a) [*29 USCS § 1107(a)*].

(f) Applicability of statutory prohibitions to mergers or transfers. Section 406(b)(2) [*29 USCS 1106(b)(2)*] shall not apply to any merger or transfer described in subsection (b)(11).

(g) Provision of investment advice to participant and beneficiaries.

(1) In general. The prohibitions provided in section 406 [*29 USCS § 1106*] shall not apply to transactions described in subsection (b)(14) if the investment advice provided by a fiduciary adviser is provided under an eligible investment advice arrangement.

(2) Eligible investment advice arrangement. For purposes of this subsection, the term "eligible investment advice arrangement" means an arrangement--

(A) which either--

(i) provides that any fees (including any commission or other compensation) received by the fiduciary adviser for investment advice or with respect to the sale, holding, or acquisition of any security or other property for purposes of investment of plan assets do not vary depending on the basis of any investment option selected, or

(ii) uses a computer model under an investment advice program meeting the requirements of paragraph (3) in connection with the provision of investment advice by a fiduciary adviser to a participant or beneficiary, and

(B) with respect to which the requirements of paragraph (4), (5), (6), (7), (8), and (9) are met.

(3) Investment advice program using computer model.

(A) In general. An investment advice program meets the requirements of this paragraph if the requirements of subparagraphs (B), (C), and (D) are met.

(B) Computer model. The requirements of this subparagraph are met if the investment advice provided under the investment advice program is provided pursuant to a computer model that--

(i) applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time,

(ii) utilizes relevant information about the participant, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,

(iii) utilizes prescribed objective criteria to provide asset allocation portfolios comprised of investment options available under the plan,

(iv) operates in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser, and

(v) takes into account all investment options under the plan in specifying how a participant's account balance should be invested and is not inappropriately weighted with respect to any investment option.

(C) Certification.

(i) In general. The requirements of this subparagraph are met with respect to any investment advice program if an eligible investment expert certifies, prior to the utilization of the computer model and in accordance with rules prescribed by the Secretary, that the computer model meets the requirements of subparagraph (B).

(ii) Renewal of certifications. If, as determined under regulations prescribed by the Secretary, there are material modifications to a computer model, the requirements of this subparagraph are met only if a certification described in clause (i) is obtained with respect to the computer model as so modified.

(iii) Eligible investment expert. The term "eligible investment expert" means any person--

(I) which meets such requirements as the Secretary may provide, and

(II) does not bear any material affiliation or contractual relationship with any investment adviser or a related person thereof (or any employee, agent, or registered representative of the investment adviser or related person).

(D) Exclusivity of recommendation. The requirements of this subparagraph are met with respect to any investment advice program if--

(i) the only investment advice provided under the program is the advice generated by the computer model described in subparagraph (B), and

(ii) any transaction described in subsection (b)(14)(A)(ii) occurs solely at the direction of the participant or beneficiary.

Nothing in the preceding sentence shall preclude the participant or beneficiary from requesting investment advice other than that described in subparagraph (A), but only if such request has not been solicited by any person connected with carrying out the arrangement.

(4) Express authorization by separate fiduciary. The requirements of this paragraph are met with respect to an arrangement if the arrangement is expressly authorized by a plan fiduciary other than the person offering the investment advice program, any person providing investment options under the plan, or any affiliate of either.

(5) Annual audit. The requirements of this paragraph are met if an independent auditor, who has appropriate technical training or experience and proficiency and so represents in writing--

(A) conducts an annual audit of the arrangement for compliance with the requirements of this subsection, and

(B) following completion of the annual audit, issues a written report to the fiduciary who authorized use of the arrangement which presents its specific findings regarding compliance of the arrangement with the requirements of this subsection.

For purposes of this paragraph, an auditor is considered independent if it is not related to the person offering the arrangement to the plan and is not related to any person providing investment options under the plan.

(6) Disclosure. The requirements of this paragraph are met if--

(A) the fiduciary adviser provides to a participant or a beneficiary before the initial provision of the investment advice with regard to any security or other property offered as an investment option, a written notification (which may consist of notification by means of electronic communication)--

(i) of the role of any party that has a material affiliation or contractual relationship with the fiduciary adviser in the development of the investment advice program and in the selection of investment options available under the plan,

(ii) of the past performance and historical rates of return of the investment options available under the plan,

(iii) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

(iv) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

(v) the manner, and under what circumstances, any participant or beneficiary information provided under the arrangement will be used or disclosed,

(vi) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

(vii) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

(viii) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property, and

(B) at all times during the provision of advisory services to the participant or beneficiary, the fiduciary adviser--

(i) maintains the information described in subparagraph (A) in accurate form and in the manner described in paragraph (8),

(ii) provides, without charge, accurate information to the recipient of the advice no less frequently than annually,

(iii) provides, without charge, accurate information to the recipient of the advice upon request of the recipient, and

(iv) provides, without charge, accurate information to the recipient of the advice concerning any material change to the information required to be provided to the recipient of the advice at a time reasonably contemporaneous to the change in information.

(7) Other conditions. The requirements of this paragraph are met if--

(A) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

(B) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

(C) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

(D) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

(8) Standards for presentation of information.

(A) In general. The requirements of this paragraph are met if the notification required to be provided to participants and beneficiaries under paragraph (6)(A) is written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and is sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

(B) Model form for disclosure of fees and other compensation. The Secretary shall issue a model form for the disclosure of fees and other compensation required in paragraph (6)(A)(iii) which meets the requirements of subparagraph (A).

(9) Maintenance for 6 years of evidence of compliance. The requirements of this paragraph are met if a fiduciary adviser who has provided advice referred to in paragraph (1) maintains, for a period of not less than 6 years after the provision of the advice, any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 [*29 USCS § 1106*] shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

(10) Exemption for plan sponsor and certain other fiduciaries.

(A) In general. Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part [*29 USCS §§ 1101* et seq.] solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) [*29 USCS § 1102(21)(A)(ii)*] (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if--

(i) the advice is provided by a fiduciary adviser pursuant to an eligible investment advice arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

(ii) the terms of the eligible investment advice arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

(iii) the terms of the eligible investment advice arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

(B) Continued duty of prudent selection of adviser and periodic review. Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part [*29 USCS §§ 1101* et seq.] for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an eligible investment advice arrangement for the provision of investment advice referred to in section 3(21)(A)(ii) [*29 USCS § 1102(21)(A)(ii)*]. The plan sponsor or other person who is a fiduciary has no duty under this part [*29 USCS §§ 1101* et seq.] to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

(C) Availability of plan assets for payment for advice. Nothing in this part [*29 USCS §§ 1101* et seq.] shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii) [*29 USCS § 1102(21)(A)(ii)*].

(11) Definitions. For purposes of this subsection and subsection (b)(14)--

(A) Fiduciary adviser. The term "fiduciary adviser" means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in section 3(21)(A)(ii) [*29 USCS § 1102(21)(A)(ii)*] by the person to a participant or beneficiary of the plan and who is--

(i) registered as an investment adviser under the Investment Advisers Act of 1940 (*15 U.S.C. 80b-1* et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

(ii) a bank or similar financial institution referred to in subsection (b)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (*12 U.S.C. 1813(b)(1)*), but only if the advice is provided through a

trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

(iii) an insurance company qualified to do business under the laws of a State,

(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (*15 U.S.C. 78a* et seq.),

(v) an affiliate of a person described in any of clauses (i) through (iv), or

(vi) an employee, agent, or registered representative of a person described in clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

For purposes of this part [*29 USCS §§ 1101* et seq.], a person who develops the computer model described in paragraph (3)(B) or markets the investment advice program or computer model shall be treated as a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in section 3(21)(A)(ii) [*29 USCS § 1102(21)(A)(ii)*] to a participant or beneficiary and shall be treated as a fiduciary adviser for purposes of this subsection and subsection (b)(14), except that the Secretary may prescribe rules under which only 1 fiduciary adviser may elect to be treated as a fiduciary with respect to the plan.

(B) Affiliate. The term "affiliate" of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (*15 U.S.C. 80a-2(a)(3)*)).

(C) Registered representative. The term "registered representative" of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (*15 U.S.C. 78c(a)(18)*) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (*15 U.S.C. 80b-2(a)(17)*) (substituting the entity for the investment adviser referred to in such section).

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1109

§ 1109. Liability for breach of fiduciary duty

(a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act [*29 USCS § 1111*].

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1110

§ 1110. Exculpatory provisions; insurance

(a) Except as provided in sections 405(b)(1) and 405(d) [*29 USCS § 1105(b)(1)* and (d)], any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part [*29 USCS §§ 1101* et seq.] shall be void as against public policy.

(b) Nothing in this subpart [part] shall preclude--
(1) a plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;
(2) a fiduciary from purchasing insurance to cover liability under this part [*29 USCS §§ 1101* et seq.] from and for his own account; or
(3) an employer or an employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee benefit plan.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1111

§ 1111. Persons prohibited from holding certain positions

(a) Conviction or imprisonment. No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 [*21 USCS § 802(6)*], murder, rape, kidnapping, perjury, assault with intent to kill, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (*15 U.S.C. 80a-9(a)(1)*), a violation of any provision of this Act, a violation of section 302 of the Labor-Management Relations Act, 1947 (*29 U.S.C. 186*), a violation of chapter 63 of title 18, United States Code [*18 USCS §§ 1341* et seq.], a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (*29 U.S.C. 401*), any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve--

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan,

(2) as a consultant or adviser to an employee benefit plan, including but not limited to any entity whose activities are in whole or substantial part devoted to providing goods or services to any employee benefit plan, or

(3) in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan,

during or for the period of thirteen years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period, in the case of a person so convicted or imprisoned (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, the United States district court for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements under *section 994(a) of title 28, United States Code*, determines that such person's service in any capacity referred to in paragraphs (1) through (3) would not be contrary to the purposes of this title. Prior to making any such determination the court shall hold a hearing and shall give notice to [of] such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The court's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such court that such service would be inconsistent with the intention of this section.

(b) Penalty. Any person who intentionally violates this section shall be fined not more than $ 10,000 or imprisoned for not more than five years, or both.

(c) Definitions. For the purpose of this section--

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

(2) The term "consultant" means any person who, for compensation, advises, or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(3) A period of parole or supervised release shall not be considered as part of a period of imprisonment.

(d) Salary of person barred from employee benefit plan office during appeal of conviction. Whenever any person--

(1) by operation of this section, has been barred from office or other position in an employee benefit plan as a result of a conviction, and

(2) has filed an appeal of that conviction,

any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of that person's conviction on appeal, the amounts in escrow shall be returned to the individual or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute [section] from assuming any position from which such person was previously barred.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1112

§ 1112. Bonding

(a) Requisite bonding of plan officials. Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan (hereafter in this section referred to as "plan official") shall be bonded as provided in this section; except that--

(1) where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section,

(2) no bond shall be required of any entity which is registered as a broker or a dealer under section 15(b) of the Securities Exchange Act of 1934 (*15 U.S.C. 78o(b)*) if the broker or dealer is subject to the fidelity bond requirements of a self-regulatory organization (within the meaning of section 3(a)(26) of such Act (*15 U.S.C. 78c(a)(26)*).

(3) no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary--

(A) is a corporation organized and doing business under the laws of the United States or of any State;

(B) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(C) is subject to supervision or examination by Federal or State authority; and

(D) has at all times a combined capital and surplus in excess of such a minimum amount as may be established by regulations issued by the Secretary, which amount shall be at least $ 1,000,000. Paragraph (2) shall apply to a bank or other financial institution which is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation, only if such bank or institution meets bonding or similar requirements under State law which the Secretary determines are at least equivalent to those imposed on banks by Federal law.

The amount of such bond shall be fixed at the beginning of each fiscal year of the plan. Such amount shall be not less than 10 per centum of the amount of funds handled. In no case shall such bond be less than $ 1,000 nor more than $ 500,000, except that the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $ 500,000, subject to the 10 per centum limitation of the preceding sentence. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of the plan official, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 6 through 13 of title 6, United States Code [*31 USCS §§ 9304-9308*]. Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class. In the case of a plan that holds employer securities (within the meaning of section 407(d)(1) [*29 USCS § 1107(d)(1)*]), this subsection shall be applied by substituting "$ 1,000,000" for "$ 500,000" each place it appears.

(b) Unlawful acts. It shall be unlawful for any plan official to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee benefit plan, without being bonded as required by subsection (a) and it shall be unlawful for any plan official of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any plan official, with respect to whom the requirements of subsection (a) have not been met.

(c) Conflict of interest prohibited in procuring bonds. It shall be unlawful for any person to procure any bond required by subsection (a) from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any control or significant financial interest, direct or indirect.

(d) Exclusiveness of statutory basis for bonding requirement for persons handling funds or other property of employee benefit plans. Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) because he handles funds or other property of an employee benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) Regulations. The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section including exempting a plan from the requirements of this section where he finds that (1) other bonding arrangements or (2) the overall financial condition of the plan would be adequate to protect the interests of the beneficiaries and participants. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1113

§ 1113. Limitation of actions

No action may be commenced under this title with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part [*29 USCS §§ 1101* et seq.], or with respect to a violation of this part [*29 USCS §§ 1101* et seq.], after the earlier of--

(1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation;

except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
FIDUCIARY RESPONSIBILITY

29 USCS § 1114

§ 1114. Effective date

(a) Except as provided in subsections (b), (c), and (d), this part [*29 USCS §§ 1101* et seq.] shall take effect on January 1, 1975.

(b) (1) The provisions of this part [*29 USCS §§ 1101* et seq.] authorizing the Secretary to promulgate regulations shall take effect on the date of enactment of this Act [enacted Sept. 2, 1974].

(2) Upon application of a plan, the Secretary may postpone until not later than January 1, 1976, the applicability of any provision of sections 402 [*29 USCS § 1102*], 403 [*29 USCS § 1103*] (other than 403(c) [*29 USCS § 1103(c)*]), 405 [*29 USCS § 1105*] (other than 405(a) and (d) [*29 USCS § 1105(a)* and (d)]), and 410(a) [*29 USCS § 1110(a)*], as it applies to any plan in existence on the date of enactment of this Act [enacted Sept. 2, 1974] if he determines such postponement is (A) necessary to amend the instrument establishing the plan under which the plan is maintained and (B) not adverse to the interest of participants and beneficiaries.

(3) This part [*29 USCS §§ 1101* et seq.] shall take effect on the date of enactment of this Act [enacted Sept. 2, 1974] with respect to a plan which terminates after June 30, 1974, and before January 1, 1975, and to which at the time of termination section 4021 [*29 USCS § 1321*] applies.

(c) Section 406 and 407(a) [*29 USCS §§ 1106, 1107(a)*] (relating to prohibited transactions) shall not apply--

(1) until June 30, 1984, to a loan of money or other extension of credit between a plan and a party in interest under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of *section 503(b) of the Internal Revenue Code of 1954* [*26 USCS § 503(b)*] or the corresponding provisions of prior law);

(2) until June 30, 1984, to a lease or joint use of property involving the plan and a party in interest pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of *section 503(b) of the Internal Revenue Code of 1986* [*26 USCS § 503(b)*] or the corresponding provisions of prior law);

(3) until June 30, 1984, to the sale, exchange, or other disposition of property described in paragraph (2) between a plan and a party in interest if--

(A) in the case of a sale, exchange, or other disposition of the property by the plan to the party in interest, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(B) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition;

(4) until June 30, 1977, to the provision of services, to which paragraphs (1), (2), and (3) do not apply between a plan and a party in interest--

(A) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or

(B) if the party in interest ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if such provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of *section 503(b) of the Internal Revenue Code of 1954* [*26 USCS § 503(b)*]) or the corresponding provisions of prior law; or

(5) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a party in interest, if such plan is required to dispose of such property in order to comply with the provisions of section 407(a) [*29 USCS § 1107(a)*] (relating to the prohibition against holding excess employer securities and employer real property), and if the plan receives not less than adequate consideration.

(d) Any election, or failure to elect, by a disqualified person under section 2003(c)(1)(B) of this Act [*26 USCS § 4975* note] shall be treated for purposes of this part [*29 USCS §§ 1101* et seq.] (but not for purposes of section 514 [*29 USCS § 1144*]) as an act or omission occurring before the effective date of this part.

(e) The preceding provisions of this section shall not apply with respect to amendments made to this part [*29 USCS §§ 1101* et seq.] in provisions enacted after the date of the enactment of this Act [enacted Sept. 2, 1974].

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS prec § 1131

Preceding § 1131

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1131

§ 1131. Criminal penalties

Any person who willfully violates any provision of part 1 of this subtitle [*29 USCS §§ 1021* et seq.], or any regulation or order issued under any such provision, shall upon conviction be fined not more than $ 100,000 or imprisoned not more than 10 years, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $ 500,000.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1132

§ 1132. Civil enforcement

(a) Persons empowered to bring a civil action. A civil action may be brought--
(1) by a participant or beneficiary--
(A) for the relief provided for in subsection (c) of this section, or
(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;
(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409 [*29 USCS § 1109*];
(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;
(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 105(c) [*29 USCS § 1025(c)*];
(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title;
(6) by the Secretary to collect any civil penalty under paragraph (2), (4), (5), (6), (7), (8), or (9) of subsection (c) or under subsection (i) or (l);
(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 609(a)(2)(A) [*29 USCS § 1169(a)(2)(A)*]);
(8) by the Secretary, or by an employer or other person referred to in section 101(f)(1) [*29 USCS § 1021(f)(1)*], (A) to enjoin any act or practice which violates subsection (f) of section 101 [*29 USCS § 1021(f)*], or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection;
(9) in the event that the purchase of an insurance contract or insurance annuity in connection with termination of an individual's status as a participant covered under a pension plan with respect to all or any portion of the participant's pension benefit under such plan constitutes a violation of part 4 of this title [subtitle] or the terms of the plan, by the Secretary, by any individual who was a participant or beneficiary at the time of the alleged violation, or by a fiduciary, to obtain appropriate relief, including the posting of security if necessary, to assure receipt by the participant or beneficiary of the amounts provided or to be provided by such insurance contract or annuity, plus reasonable prejudgment interest on such amounts; or
(10) in the case of a multiemployer plan that has been certified by the actuary to be in endangered or critical status under section 305 [*29 USCS § 1085*], if the plan sponsor--
(A) has not adopted a funding improvement or rehabilitation plan under that section by the deadline established in such section, or
(B) fails to update or comply with the terms of the funding improvement or rehabilitation plan in accordance with the requirements of such section,
by an employer that has an obligation to contribute with respect to the multiemployer plan or an employee organization that represents active participants in the multiemployer plan, for an order compelling the plan sponsor to adopt a funding improvement or rehabilitation plan or to update or comply with the terms of the funding improvement or rehabilitation plan in accordance with the requirements of such section and the funding improvement or rehabilitation plan.

(b) Plans qualified under Internal Revenue Code; maintenance of actions involving delinquent contributions.
(1) In the case of a plan which is qualified under *section 401(a), 403(a),* or *405(a) of the Internal Revenue Code of 1986* (or with respect to which an application to so qualify has been filed and has not been finally determined) the Sec-

retary may exercise his authority under subsection (a)(5) with respect to a violation of, or the enforcement of, parts 2 and 3 of this subtitle [*29 USCS §§ 1051* et seq., *§§ 1081* et seq.] (relating to participation, vesting, and funding), only if--

(A) requested by the Secretary of the Treasury, or

(B) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe by regulation) that he exercise such authority on their behalf. In the case of such a request under this paragraph he may exercise such authority only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefits under the plan.

(2) The Secretary shall not initiate an action to enforce section 515 [*29 USCS § 1145*].

(3) Except as provided in subsections (c)(9) and (a)(6) (with respect to collecting civil penalties under subsection (c)(9)), the Secretary is not authorized to enforce under this part any requirement of part 7 [*29 USCS §§ 1181* et seq.] against a health insurance issuer offering health insurance coverage in connection with a group health plan (as defined in section 733(a)(1) [*29 USCS § 1191b(a)(1)*]). Nothing in this paragraph shall affect the authority of the Secretary to issue regulations to carry out such part.

(c) Administrator's refusal to supply requested information; penalty for failure to provide annual report in complete form.

(1) Any administrator (A) who fails to meet the requirements of paragraph (1) or (4) of section 606, section 101(e)(1), section 101(f), or section 105(a) [*29 USCS § 1166(a)(1)* or (4), 1021(e)(1), 1021(f), or 1025(a)] with respect to a participant or beneficiary, or (B) who fails or refuses to comply with a request for any information which such administrator is required by this title to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $ 100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper. For purposes of this paragraph, each violation described in subparagraph (A) with respect to any single participant, and each violation described in subparagraph (B) with respect to any single participant or beneficiary, shall be treated as a separate violation.

(2) The Secretary may assess a civil penalty against any plan administrator of up to $ 1,000 a day from the date of such plan administrator's failure or refusal to file the annual report required to be filed with the Secretary under section 101(b)(1) [*29 USCS § 1021(b)(1)*]. For purposes of this paragraph, an annual report that has been rejected under section 104(a)(4) [*29 USCS § 1024(a)(4)*] for failure to provide material information shall not be treated as having been filed with the Secretary.

(3) Any employer maintaining a plan who fails to meet the notice requirement of section 101(d) [*29 USCS § 1021(d)*] with respect to any participant or beneficiary or who fails to meet the requirements of section 101(e)(2) [*29 USCS § 1021(e)(2)*] with respect to any person or who fails to meet the requirements of section 302(d)(12)(E) [*29 USCS § 1082(d)(12)(E)*] with respect to any person may in the court's discretion be liable to such participant or beneficiary or to such person in the amount of up to $ 100 a day from the date of such failure, and the court may in its discretion order such other relief as it deems proper.

(4) The Secretary may assess a civil penalty of not more than $ 1,000 a day for each violation by any person of subsection (j), (k), or (l) of section 101 [*29 USCS § 1021*] or section 514(e)(3) [*29 USCS § 1144(e)(3)*].

(5) The Secretary may assess a civil penalty against any person of up to $ 1,000 a day from the date of the person's failure or refusal to file the information required to be filed by such person with the Secretary under regulations prescribed pursuant to section 101(g) [*29 USCS § 1021(g)*].

(6) If, within 30 days of a request by the Secretary to a plan administrator for documents under section 104(a)(6) [*29 USCS § 1024(a)(6)*], the plan administrator fails to furnish the material requested to the Secretary, the Secretary may assess a civil penalty against the plan administrator of up to $ 100 a day from the date of such failure (but in no event in excess of $ 1,000 per request). No penalty shall be imposed under this paragraph for any failure resulting from matters reasonably beyond the control of the plan administrator.

(7) The Secretary may assess a civil penalty against a plan administrator of up to $ 100 a day from the date of the plan administrator's failure or refusal to provide notice to participants and beneficiaries in accordance with subsection (i) or (m) of section 101 [*29 USCS § 1021*]. For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.

(8) The Secretary may assess against any plan sponsor of a multiemployer plan a civil penalty of not more than $ 1,100 per day--

(A) for each violation by such sponsor of the requirement under section 305 [*29 USCS § 1085*] to adopt by the deadline established in that section a funding improvement plan or rehabilitation plan with respect to a multiemployer plan which is in endangered or critical status, or

(B) in the case of a plan in endangered status which is not in seriously endangered status, for failure by the plan to meet the applicable benchmarks under section 305 [*29 USCS § 1085*] by the end of the funding improvement period with respect to the plan.

(9) (A) The Secretary may assess a civil penalty against any employer of up to $ 100 a day from the date of the employer's failure to meet the notice requirement of section 701(f)(3)(B)(i)(I) [*29 USCS § 1181(f)(3)(B)(i)(I)*]. For purposes of this subparagraph, each violation with respect to any single employee shall be treated as a separate violation.

(B) The Secretary may assess a civil penalty against any plan administrator of up to $ 100 a day from the date of the plan administrator's failure to timely provide to any State the information required to be disclosed under section 701(f)(3)(B)(ii) [*29 USCS § 1181(f)(3)(B)(ii)*]. For purposes of this subparagraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.

(10) Secretarial enforcement authority relating to use of genetic information.

(A) General rule. The Secretary may impose a penalty against any plan sponsor of a group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, for any failure by such sponsor or issuer to meet the requirements of subsection (a)(1)(F), (b)(3), (c), or (d) of section 702 [*29 USCS § 1182*] or *section 701* or *702(b)(1)* [*29 USCS § 1181* or *1182(b)(1)*] with respect to genetic information, in connection with the plan.

(B) Amount.

(i) In general. The amount of the penalty imposed by subparagraph (A) shall be $ 100 for each day in the noncompliance period with respect to each participant or beneficiary to whom such failure relates.

(ii) Noncompliance period. For purposes of this paragraph, the term "noncompliance period" means, with respect to any failure, the period--

(I) beginning on the date such failure first occurs; and

(II) ending on the date the failure is corrected.

(C) Minimum penalties where failure discovered. Notwithstanding clauses (i) and (ii) of subparagraph (D):

(i) In general. In the case of 1 or more failures with respect to a participant or beneficiary--

(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such participant or beneficiary shall not be less than $ 2,500.

(ii) Higher minimum penalty where violations are more than de minimis. To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting "$ 15,000" for "$ 2,500" with respect to such person.

(D) Limitations.

(i) Penalty not to apply where failure not discovered exercising reasonable diligence. No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

(ii) Penalty not to apply to failures corrected within certain periods. No penalty shall be imposed by subparagraph (A) on any failure if--

(I) such failure was due to reasonable cause and not to willful neglect; and

(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

(iii) Overall limitation for unintentional failures. In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of--

(I) 10 percent of the aggregate amount paid or incurred by the plan sponsor (or predecessor plan sponsor) during the preceding taxable year for group health plans; or

(II) $ 500,000.

(E) Waiver by Secretary. In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.

(F) Definitions. Terms used in this paragraph which are defined in section 733 [*29 USCS § 1191b*] shall have the meanings provided such terms in such section.

[(11)](10) The Secretary and the Secretary of Health and Human Services shall maintain such ongoing consultation as may be necessary and appropriate to coordinate enforcement under this subsection with enforcement under section 1144(c)(8) of the Social Security Act [*42 USCS § 1320b-14(c)(8)*].

(d) Status of employee benefit plan as entity.

(1) An employee benefit plan may sue or be sued under this title as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this title against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title.

(e) Jurisdiction.

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 101(f)(1) [*29 USCS § 1021(f)(1)*]. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

(2) Where an action under this title is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach 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.

(f) Amount in controversy; citizenship of parties. The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(g) Attorney's fees and costs; awards in actions involving delinquent contributions.

(1) In any action under this title (other than an action described in paragraph 2) by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(2) In any action under this title by a fiduciary for or on behalf of a plan to enforce section 515 [*29 USCS § 1145*] in which a judgment in favor of the plan is awarded, the court shall award the plan--

(A) the unpaid contributions,

(B) interest on the unpaid contributions,

(C) an amount equal to the greater of--

(i) interest on the unpaid contributions, or

(ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),

(D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and

(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under *section 6621 of the Internal Revenue Code of 1986* [*26 USCS § 6621*].

(h) Service upon Secretary of Labor and Secretary of the Treasury. A copy of the complaint in any action under this title by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle [*29 USCS §§ 1101* et seq.]. If the Secretary brings an action under subsection (a) on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

(i) Administrative assessment of civil penalty. In the case of a transaction prohibited by section 406 [*29 USCS § 1106*] by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved in each such transaction (as defined in *section 4975(f)(4) of the Internal Revenue Code of 1986* [*26 USCS § 4975(f)(4)*]) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe in regulations which shall be consistent with section 4975(f)(5) of such Code [*26 USCS § 4975(f)(5)*]) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not apply to a transaction with respect to a plan described in section 4975(e)(1) of such Code [*26 USCS § 4975(e)(1)*].

(j) Direction and control of litigation by Attorney General. In all civil actions under this title, attorneys appointed by the Secretary may represent the Secretary (except as provided in *section 518(a) of title 28, United States Code*), but all such litigation shall be subject to the direction and control of the Attorney General.

(k) Jurisdiction of actions against the Secretary of Labor. Suits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan to review a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this Act, or to compel him to take action required under this title, may be brought in the district court of the United States for the district where the plan has its principal office, or in the United States District Court for the District of Columbia.

(l) Civil penalties on violations by fiduciaries.

(1) In the case of--

(A) any breach of fiduciary responsibility under (or other violation of) part 4 [*29 USCS §§ 1101* et seq.] by a fiduciary, or

(B) any knowing participation in such a breach or violation by any other person,

the Secretary shall assess a civil penalty against such fiduciary or other person in an amount equal to 20 percent of the applicable recovery amount.

(2) For purposes of paragraph (1), the term "applicable recovery amount" means any amount which is recovered from a fiduciary or other person with respect to a breach or violation described in paragraph (1)--

(A) pursuant to any settlement agreement with the Secretary, or

(B) ordered by a court to be paid by such fiduciary or other person to a plan or its participants and beneficiaries in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5).

(3) The Secretary may, in the Secretary's sole discretion, waive or reduce the penalty under paragraph (1) if the Secretary determines in writing that--

(A) the fiduciary or other person acted reasonably and in good faith, or

(B) it is reasonable to expect that the fiduciary or other person will not be able to restore all losses to the plan (or to provide the relief ordered pursuant to subsection (a)(9)) without severe financial hardship unless such waiver or reduction is granted.

(4) The penalty imposed on a fiduciary or other person under this subsection with respect to any transaction shall be reduced by the amount of any penalty or tax imposed on such fiduciary or other person with respect to such transaction under subsection (i) of this section and *section 4975 of the Internal Revenue Code of 1986* [*26 USCS § 4975*].

(m) Penalty for improper distribution. In the case of a distribution to a pension plan participant or beneficiary in violation of section 206(e) [*29 USCS § 1056(e)*] by a plan fiduciary, the Secretary shall assess a penalty against such fiduciary in an amount equal to the value of the distribution. Such penalty shall not exceed $ 10,000 for each such distribution.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1133

§ 1133. Claims procedure

In accordance with regulations of the Secretary, every employee benefit plan shall--

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1134

§ 1134. Investigative authority

(a) Investigation and submission of reports, books, etc. The Secretary shall have the power, in order to determine whether any person has violated or is about to violate any provision of this title or any regulation or order thereunder--
(1) to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under this title, and
(2) to enter such places, inspect such books and records and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation, if he has reasonable cause to believe there may exist a violation of this title 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 the Internal Revenue Code of 1986* [*26 USCS § 6103(g)*] 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 title 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 title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act (*15 U.S.C. 49, 50*) 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 3(q) of the Federal Deposit Insurance Act (*12 U.S.C. 1813(q)*).

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1135

§ 1135. Regulations

Subject to title III and section 109 [*29 USCS § 1029*], the Secretary may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this title. 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 504(a) and (b) [*29 USCS § 1134(a)* and (b)]).

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1136

§ 1136. Coordination and responsibility of agencies enforcing Employee Retirement Income Security Act 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 title 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 of 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 title. 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 title as may be found to warrant consideration for criminal prosecution under the provisions of this title or other Federal law.

(b) Responsibility for detecting and investigating civil and criminal violations of Employee Retirement Income Security Act 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 title and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of title 18 of the United States Code [*18 USCS §§ 1* et seq.]. Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this title 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 502 and 504 [*29 USCS §§ 1132, 1134*] to enforce the requirements under part 7 [*29 USCS §§ 1181* et seq.] in connection with multiple employer welfare arrangements, providing medical care (within the meaning of section 733(a)(2) [*29 USCS § 1191b(a)(2)*]), which are not group health plans.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1137

§ 1137. Administration

(a) Subchapter II of chapter 5, and chapter 7, of title 5, United States Code [*5 USCS §§ 551* et seq., *701* et seq.] (relating to administrative procedure), shall be applicable to this title.

(b) [Omitted]

(c) No employee of the Department of Labor or the Department of the Treasury shall administer or enforce this title or the Internal Revenue Code of 1986 [*26 USCS §§ 1* et seq.] 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.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1138

§ 1138. Appropriations

There are hereby authorized to be appropriated such sums as may be necessary to enable the Secretary to carry out his functions and duties under this Act.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1139

§ 1139. Separability

If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1140

§ 1140. Interference with protected rights

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this title, section 3001 [*29 USCS § 1201*], or the Welfare and Pension Plans Disclosure Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this title, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this Act or the Welfare and Pension Plans Disclosure Act. In the case of a multiemployer plan, it shall be unlawful for the plan sponsor or any other person to discriminate against any contributing employer for exercising rights under this Act or for giving information or testifying in any inquiry or proceeding relating to this Act before Congress. The provisions of section 502 [*29 USCS § 1132*] shall be applicable in the enforcement of this section.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1141

§ 1141. Coercive interference

It shall be unlawful for any person through the use of fraud, force, violence, or threat of the use of force or violence, to restrain, coerce, intimidate, or attempt to restrain, coerce, or intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, this title, section 3001 [*29 USCS § 1201*], or the Welfare and Pension Plans Disclosure Act. Any person who willfully violates this section shall be fined $ 100,000 or imprisoned for not more than ten years, or both.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1142

§ 1142. Advisory Council on Employee Welfare and Pension Benefit Plans

(a) Establishment; membership; terms; appointment and reappointment; vacancies; quorum.

(1) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter in this section referred to as the "Council") consisting of fifteen members appointed by the Secretary. Not more than eight members of the Council shall be members of the same political party.

(2) Members shall be persons qualified to appraise the programs instituted under this Act.

(3) Of the members appointed, three shall be representatives of employee organizations (at least one of whom shall be representative of any organization members of which are participants in a multiemployer plan); three shall be representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); three representatives shall be appointed from the general public, one of whom shall be a person representing those receiving benefits from a pension plan; and there shall be one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and the accounting field.

(4) Members shall serve for terms of three years except that of those first appointed, five shall be appointed for terms of one year, five shall be appointed for terms of two years, and five shall be appointed for terms of three years. A member may be reappointed. A member appointed to fill a vacancy shall be appointed only for the remainder of such term. A majority of members shall constitute a quorum and action shall be taken only by a majority vote of those present and voting.

(b) Duties and functions. It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this Act and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least four times each year and at such other times as the Secretary requests. In his annual report submitted pursuant to section 513(b) [*29 USCS § 1143(b)*], the Secretary shall include each recommendation which he has received from the Council during the preceding calendar year.

(c) Executive secretary; secretarial and clerical services. The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to conduct its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

(d) Compensation.

(1) Members of the Council shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule [*5 USCS § 5332*] for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council.

(2) While away from their homes or regular places of business in the performance of services for Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under *section 5703(b) of title 5 of the United States Code*.

(e) Termination. Section 14(a) of the Federal Advisory Committee Act *[5 USCS Appx § 14*(a)] (relating to termination) shall not apply to the Council.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1143

§ 1143. Research, studies, and reports

(a) Authorization to undertake research and surveys.

(1) The Secretary is authorized to undertake research and surveys and in connection therewith to collect, compile, analyze and publish data, information, and statistics relating to employee benefit plans, including retirement, deferred compensation, and welfare plans, and types of plans not subject to this Act.

(2) The Secretary is authorized and directed to undertake research studies relating to pension plans, including but not limited to (A) the effects of this title upon the provisions and costs of pension plans, (B) the role of private pensions in meeting the economic security needs of the Nation, and (C) the operation of private pension plans including types and levels of benefits, degree of reciprocity or portability, and financial and actuarial characteristics and practices, and methods of encouraging the growth of the private pension system.

(3) The Secretary may, as he deems appropriate or necessary, undertake other studies relating to employee benefit plans, the matters regulated by this title, and the enforcement procedures provided for under this title.

(4) The research, surveys, studies, and publications referred to in this subsection may be conducted directly, or indirectly through grant or contract arrangements.

(b) [Omitted]

(c) Cooperation with Congress. The Secretary is authorized and directed to cooperate with the Congress and its appropriate committees, subcommittees, and staff in supplying data and any other information, and personnel and services, required by the Congress in any study, examination, or report by the Congress relating to pension benefit plans established or maintained by States or their political subdivisions.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1143a

§ 1143a. Studies by Comptroller General

(1) In general. The Comptroller General of the United States may, pursuant to the request of any Member of Congress, study employee benefit plans, including the effects of such plans on employees, participants, and their beneficiaries.

(2) Access to books, documents, etc. For the purpose of conducting studies under this subsection, the Comptroller General, or any of his duly authorized representatives, shall have access to and the right to examine and copy any books, documents, papers, records, or other recorded information--

(A) within the possession or control of the administrator, sponsor, or employer of and persons providing services to any employee benefit plan, and

(B) which the Comptroller General or his representative finds, in his own judgment, pertinent to such study.

The Comptroller General shall not disclose the identity of any individual or employer in making any information obtained under this subsection available to the public.

(3) Definitions. For purposes of this subsection, the terms "employee benefit plan", "participant", "administrator", "beneficiary", "plan sponsor", "employee", and "employer" are defined in section 3 of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1002*].

(4) Effective date. The preceding provisions of this subsection [adding this section] shall be effective on the date of the enactment of this Act [enacted April 7, 1986].

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1144

§ 1144. Other laws

(a) Supersedure; effective date. Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) [*29 USCS § 1003(a)*] and not exempt under section 4(b) [*29 USCS § 1003(b)*]. This section shall take effect on January 1, 1975.

(b) Construction and application.

(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2) (A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a) [*29 USCS § 1003(a)*], which is not exempt under section 4(b) [*29 USCS § 1003(b)*] (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 506 of this Act [*29 USCS § 1136*].

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State.

(5) (A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (*Haw. Rev. Stat. §§ 393-1* through 393-51).

(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a)--

(i) any State tax law relating to employee benefit plans, or

(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle [*29 USCS §§ 1021* et seq., *1101* et seq.], and the preceding sections of this part [*29 USCS §§ 1131* et seq.] to the extent they govern matters which are governed by the provisions of such parts 1 and 4 [*29 USCS §§ 1021* et seq., *1101* et seq.], shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after the date of the enactment of this paragraph [enacted Jan. 14, 1983]), but the Secretary may enter into cooperative arrangements under this paragraph and section 506 [*29 USCS § 1136*] with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts 1 and 4 [*29 USCS §§ 1021* et seq., *1101* et seq.] and the preceding sections of this part [*29 USCS § 1131* et seq.].

(6) (A) Notwithstanding any other provision of this section--

(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides--

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

(II) provisions to enforce such standards, and

(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.

(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 3(1) and section 4 [*29 USCS §§ 1002(1), 1003*] necessary to be considered an employee welfare benefit plan to which this title applies.

(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this title apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

(7) Subsection (a) shall not apply to qualified domestic relations orders (within the meaning of section 206(d)(3)(B)(i) [*29 USCS § 1056(d)(3)(B)(i)*]), qualified medical child support orders (within the meaning of section 609(a)(2)(A)) [*29 USCS § 1169(a)(2)(A)*], and the provisions of law referred to in section 609(a)(2)(B)(ii) [*29 USCS § 1169(a)(2)(B)(ii)*] to the extent they apply to qualified medical child support orders.

(8) Subsection (a) of this section shall not be construed to preclude any State cause of action--

(A) with respect to which the State exercises its acquired rights under section 609(b)(3) [*29 USCS § 1169(b)(3)*] with respect to a group health plan (as defined in section 607(1) [*29 USCS § 1167(1)*]), or

(B) for recoupment of payment with respect to items or services pursuant to a State plan for medical assistance approved under title XIX of the Social Security Act [*42 USCS §§ 1396* et seq.] which would not have been payable if such acquired rights had been executed before payment with respect to such items or services by the group health plan.

(9) For additional provisions relating to group health plans, see section 731 [*29 USCS § 1191*].

(c) Definitions. For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.

(d) Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of the United States prohibited. Nothing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 111 and 507(b) [*29 USCS §§ 1031, 1137(b)*]) or any rule or regulation issued under any such law.

(e) Preemption of conflicting state regulations.

(1) Notwithstanding any other provision of this section, this title shall supersede any law of a State which would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement. The Secretary may prescribe regulations which would establish minimum standards that such an arrangement would be required to satisfy in order for this subsection to apply in the case of such arrangement.

(2) For purposes of this subsection, the term "automatic contribution arrangement" means an arrangement--

(A) under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

(B) under which a participant is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

(C) under which such contributions are invested in accordance with regulations prescribed by the Secretary under section 404(c)(5) [*29 USCS § 1104(c)(5)*].

(3) (A) The plan administrator of an automatic contribution arrangement shall, within a reasonable period before such plan year, provide to each participant to whom the arrangement applies for such plan year notice of the participant's rights and obligations under the arrangement which--

(i) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

(B) A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless--

(i) the notice includes an explanation of the participant's right under the arrangement not to have elective contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage),

(ii) the participant has a reasonable period of time, after receipt of the notice described in clause (i) and before the first elective contribution is made, to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1144a

§ 1144a. Clarification of church welfare plan status under State insurance law

(a) In general. For purposes of determining the status of a church plan that is a welfare plan under provisions of a State insurance law described in subsection (b), such a church plan (and any trust under such plan) shall be deemed to be a plan sponsored by a single employer that reimburses costs from general church assets, or purchases insurance coverage with general church assets, or both.

(b) State insurance law. A State insurance law described in this subsection is a law that--
(1) requires a church plan, or an organization described in *section 414(e)(3)(A) of the Internal Revenue Code of 1986* [*26 USCS § 414(e)(3)(A)*] and *section 3(33)(C)(i)* of the Employee Retirement Income Security Act of 1974 (*29 U.S.C. 1002(33)(C)(i)*) to the extent that it is administering or funding such a plan, to be licensed; or
(2) relates solely to the solvency or insolvency of a church plan (including participation in State guaranty funds and associations).

(c) Definitions. For purposes of this section:
(1) Church plan. The term "church plan" has the meaning given such term by *section 414(e) of the Internal Revenue Code of 1986* [*26 USCS § 414(e)*] and *section 3(33)* of the Employee Retirement Income Security Act of 1974 (*29 U.S.C. 1002(33)*).
(2) Reimburses costs from general church assets. The term "reimburses costs from general church assets" means engaging in an activity that is not the spreading of risk solely for the purposes of the provisions of State insurance laws described in subsection (b).
(3) Welfare plan. The term "welfare plan"--
(A) means any church plan to the extent that such plan provides medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services; and
(B) does not include any entity, such as a health insurance issuer described in *section 9832(b)(2) of the Internal Revenue Code of 1986* [*26 USCS § 9832(b)(2)*] or a health maintenance organization described in section 9832(b)(3) of such Code [*26 USCS § 9832(b)(3)*], or any other organization that does business with the church plan or organization sponsoring or maintaining such a plan.

(d) Enforcement authority. Notwithstanding any other provision of this section, for purposes of enforcing provisions of State insurance laws that apply to a church plan that is a welfare plan, the church plan shall be subject to State enforcement as if the church plan were an insurer licensed by the State.

(e) Application of section. Except as provided in subsection (d), the application of this section is limited to determining the status of a church plan that is a welfare plan under the provisions of State insurance laws described in subsection (b). This section shall not otherwise be construed to recharacterize the status, or modify or affect the rights, of any plan participant or beneficiary, including participants or beneficiaries who make plan contributions.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1145

§ 1145. Delinquent contributions

Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1146

§ 1146. Outreach to promote retirement income savings

(a) In general. The Secretary shall maintain an ongoing program of outreach to the public designed to effectively promote retirement income savings by the public.

(b) Methods. The Secretary shall carry out the requirements of subsection (a) by means which shall ensure effective communication to the public, including publication of public service announcements, public meetings, creation of educational materials, and establishment of a site on the Internet.

(c) Information to be made available. The information to be made available by the Secretary as part of the program of outreach required under subsection (a) shall include the following:

(1) a description of the vehicles currently available to individuals and employers for creating and maintaining retirement income savings, specifically including information explaining to employers, in simple terms, the characteristics and operation of the different retirement savings vehicles, including the steps to establish each such vehicle; and

(2) information regarding matters relevant to establishing retirement income savings, such as--

(A) the forms of retirement income savings;

(B) the concept of compound interest;

(C) the importance of commencing savings early in life;

(D) savings principles;

(E) the importance of prudence and diversification in investing;

(F) the importance of the timing of investments; and

(G) the impact on retirement savings of life's uncertainties, such as living beyond one's life expectancy.

(d) Establishment of site on Internet. The Secretary shall establish a permanent site on the Internet concerning retirement income savings. The site shall contain at least the following information:

(1) a means for individuals to calculate their estimated retirement savings needs, based on their retirement income goal as a percentage of their preretirement income;

(2) a description in simple terms of the common types of retirement income savings arrangements available to both individuals and employers (specifically including small employers), including information on the amount of money that can be placed into a given vehicle, the tax treatment of the money, the amount of accumulation possible through different typical investment options and interest rate projections, and a directory of resources of more descriptive information;

(3) materials explaining to employers in simple terms, the characteristics and operation of the different retirement savings arrangements for their workers and what the basic legal requirements are under this Act and the Internal Revenue Code of 1986 [*26 USCS §§ 1* et seq.], including the steps to establish each such arrangement;

(4) copies of all educational materials developed by the Department of Labor, and by other Federal agencies in consultation with such Department, to promote retirement income savings by workers and employers; and

(5) links to other sites maintained on the Internet by governmental agencies and nonprofit organizations that provide additional detail on retirement income savings arrangements and related topics on savings or investing.

(e) Coordination. The Secretary shall coordinate the outreach program under this section with similar efforts undertaken by other public and private entities.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1147

§ 1147. National Summit on Retirement Savings

(a) Authority to call Summit. Not later than July 15, 1998, the President shall convene a National Summit on Retirement Income Savings at the White House, to be co-hosted by the President and the Speaker and the Minority Leader of the House of Representatives and the Majority Leader and Minority Leader of the Senate. Such a National Summit shall be convened thereafter in 2001 and 2005 on or after September 1 of each year involved. Such a National Summit shall--

(1) advance the public's knowledge and understanding of retirement savings and its critical importance to the future well-being of American workers and their families;

(2) facilitate the development of a broad-based, public education program to encourage and enhance individual commitment to a personal retirement savings strategy;

(3) develop recommendations for additional research, reforms, and actions in the field of private pensions and individual retirement savings; and

(4) disseminate the report of, and information obtained by, the National Summit and exhibit materials and works of the National Summit.

(b) Planning and direction. The National Summit shall be planned and conducted under the direction of the Secretary, in consultation with, and with the assistance of, the heads of such other Federal departments and agencies as the President may designate. Such assistance may include the assignment of personnel. The Secretary shall, in planning and conducting the National Summit, consult with the congressional leaders specified in subsection (e)(2). The Secretary shall also, in carrying out the Secretary's duties under this subsection, consult and coordinate with at least one organization made up of private sector businesses and associations partnered with Government entities to promote long-term financial security in retirement through savings.

(c) Purpose of National Summit. The purpose of the National Summit shall be--

(1) to increase the public awareness of the value of personal savings for retirement;

(2) to advance the public's knowledge and understanding of retirement savings and its critical importance to the future well-being of American workers and their families;

(3) to facilitate the development of a broad-based, public education program to encourage and enhance individual commitment to a personal retirement savings strategy;

(4) to identify the problems workers have in setting aside adequate savings for retirement;

(5) to identify the barriers which employers, especially small employers, face in assisting their workers in accumulating retirement savings;

(6) to examine the impact and effectiveness of individual employers to promote personal savings for retirement among their workers and to promote participation in company savings options;

(7) to examine the impact and effectiveness of government programs at the Federal, State, and local levels to educate the public about, and to encourage, retirement income savings;

(8) to develop such specific and comprehensive recommendations for the legislative and executive branches of the Government and for private sector action as may be appropriate for promoting private pensions and individual retirement savings; and

(9) to develop recommendations for the coordination of Federal, State, and local retirement income savings initiatives among the Federal, State, and local levels of government and for the coordination of such initiatives.

(d) Scope of National Summit. The scope of the National Summit shall consist of issues relating to individual and employer-based retirement savings and shall not include issues relating to the old-age, survivors, and disability insurance program under title II of the Social Security Act [*42 USCS §§ 401* et seq.].

(e) National Summit participants.

(1) In general. To carry out the purposes of the National Summit, the National Summit shall bring together--

(A) professionals and other individuals working in the fields of employee benefits and retirement savings;

(B) Members of Congress and officials in the executive branch;

(C) representatives of State and local governments;

(D) representatives of private sector institutions, including individual employers, concerned about promoting the issue of retirement savings and facilitating savings among American workers; and

(E) representatives of the general public.

(2) Statutorily required participation. The participants in the National Summit shall include the following individuals or their designees:

(A) the Speaker and the Minority Leader of the House of Representatives;

(B) the Majority Leader and the Minority Leader of the Senate;

(C) the Chairman and ranking Member of the Committee on Education and the Workforce of the House of Representatives;

(D) the Chairman and ranking Member of the Committee on Labor and Human Resources of the Senate;

(E) the Chairman and ranking Member of the Special Committee on Aging of the Senate;

(F) the Chairman and ranking Member of the Subcommittees on Labor, Health and Human Services, and Education of the Senate and House of Representatives; and

(G) the parties referred to in subsection (b).

(3) Additional participants.

(A) In general. There shall be not more than 200 additional participants. Of such additional participants--

(i) one-half shall be appointed by the President, in consultation with the elected leaders of the President's party in Congress (either the Speaker of the House of Representatives or the Minority Leader of the House of Representatives, and either the Majority Leader or the Minority Leader of the Senate[])]; and

(ii) one-half shall be appointed by the elected leaders of Congress of the party to which the President does not belong (one-half of that allotment to be appointed by either the Speaker of the House of Representatives or the Minority Leader of the House of Representatives, and one-half of that allotment to be appointed by either the Majority Leader or the Minority Leader of the Senate).

(B) Appointment requirements. The additional participants described in subparagraph (A) shall be--

(i) appointed not later than January 31, 1998;

(ii) selected without regard to political affiliation or past partisan activity; and

(iii) representative of the diversity of thought in the fields of employee benefits and retirement income savings.

(4) Presiding officers. The National Summit shall be presided over equally by representatives of the executive and legislative branches.

(f) National Summit administration.

(1) Administration. In administering this section, the Secretary shall--

(A) request the cooperation and assistance of such other Federal departments and agencies and other parties referred to in subsection (b) as may be appropriate in the carrying out of this section;

(B) furnish all reasonable assistance to State agencies, area agencies, and other appropriate organizations to enable them to organize and conduct conferences in conjunction with the National Summit;

(C) make available for public comment a proposed agenda for the National Summit that reflects to the greatest extent possible the purposes for the National Summit set out in this section;

(D) prepare and make available background materials for the use of participants in the National Summit that the Secretary considers necessary; and

(E) appoint and fix the pay of such additional personnel as may be necessary to carry out the provisions of this section without regard to provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such *title [5 USCS §§ 5101* et seq. and *5331* et seq.] relating to classification and General Schedule pay rates.

(2) Duties. The Secretary shall, in carrying out the responsibilities and functions of the Secretary under this section, and as part of the National Summit, ensure that--

(A) the National Summit shall be conducted in a manner that ensures broad participation of Federal, State, and local agencies and private organizations, professionals, and others involved in retirement income savings and provides a strong basis for assistance to be provided under paragraph (1)(B);

(B) the agenda prepared under paragraph (1)(C) for the National Summit is published in the Federal Register; and

(C) the personnel appointed under paragraph (1)(E) shall be fairly balanced in terms of points of views represented and shall be appointed without regard to political affiliation or previous partisan activities.

(3) Nonapplication of FACA. The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the National Summit.

(g) Report. The Secretary shall prepare a report describing the activities of the National Summit and shall submit the report to the President, the Speaker and Minority Leader of the House of Representatives, the Majority and Minority Leaders of the Senate, and the chief executive officers of the States not later than 90 days after the date on which the National Summit is adjourned.

(h) "State" defined. For purposes of this section, the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(i) Authorization of appropriations.

(1) In general. There is authorized to be appropriated for fiscal years beginning on or after October 1, 1997, such sums as are necessary to carry out this section.

(2) Authorization to accept private contributions. In order to facilitate the National Summit as a public-private partnership, the Secretary may accept private contributions, in the form of money, supplies, or services, to defray the costs of the National Summit.

(j) Financial obligation for fiscal Year 1998. The financial obligation for the Department of Labor for fiscal year 1998 shall not exceed the lesser of--

(1) one-half of the costs of the National Summit; or

(2) $ 250,000.

The private sector organization described in subsection (b) and contracted with by the Secretary shall be obligated for the balance of the cost of the National Summit.

(k) Contracts. The Secretary may enter into contracts to carry out the Secretary's responsibilities under this section. The Secretary shall enter into a contract on a sole-source basis to ensure the timely completion of the National Summit in fiscal year 1998.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
ADMINISTRATION AND ENFORCEMENT

29 USCS § 1148

§ 1148. Authority to postpone certain deadlines by reason of Presidentially declared disaster or terroristic or military actions

In the case of a pension or other employee benefit plan, or any sponsor, administrator, participant, beneficiary, or other person with respect to such plan, affected by a Presidentially declared disaster (as defined in *section 1033(h)(3) of the Internal Revenue Code of 1986* [*26 USCS § 1033(h)(3)*]) or a terroristic or military action (as defined in section 692(c)(2) of such Code [*26 USCS § 692(c)(2)*]), the Secretary may, notwithstanding any other provision of law, prescribe, by notice or otherwise, a period of up to 1 year which may be disregarded in determining the date by which any action is required or permitted to be completed under this Act. No plan shall be treated as failing to be operated in accordance with the terms of the plan solely as the result of disregarding any period by reason of the preceding sentence.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
CONTINUATION COVERAGE AND ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

29 USCS prec § 1161

Preceding § 1161

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
CONTINUATION COVERAGE AND ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

29 USCS § 1161

§ 1161. Plans must provide continuation coverage to certain individuals

(a) In general. The plan sponsor of each group health plan shall provide, in accordance with this part [*29 USCS §§ 1161* et seq.], that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

(b) Exception for certain plans. Subsection (a) shall not apply to any group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
CONTINUATION COVERAGE AND ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

29 USCS § 1162

§ 1162. Continuation coverage

For purposes of section 601 [*29 USCS § 1161*], the term "continuation coverage" means coverage under the plan which meets the following requirements:

(1) Type of benefit coverage. The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part [*29 USCS §§ 1161* et seq.] in connection with such group.

(2) Period of coverage. The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(A) Maximum required period.

(i) General rule for terminations and reduced hours. In the case of a qualifying event described in section 603(2) [*29 USCS § 1163(2)*], except as provided in clause (ii), the date which is 18 months after the date of the qualifying event.

(ii) Special rule for multiple qualifying events. If a qualifying event (other than a qualifying event described in section 603(6) [*29 USCS § 1163(6)*]) occurs during the 18 months after the date of a qualifying event described in section 603(2) [*29 USCS § 1163(2)*], the date which is 36 months after the date of the qualifying event described in section 603(2) [*29 USCS § 1163(2)*].

(iii) Special rule for certain bankruptcy proceedings. In the case of a qualifying event described in section 603(6) [*29 USCS § 1163(6)*] (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in section 607(3)(C)(iii) [*29 USCS § 1167(3)(C)(iii)*]), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee.

(iv) General rule for other qualifying events. In the case of a qualifying event not described in section 603(2) or 603(6) [*29 USCS § 1163(2)* or (6)], the date which is 36 months after the date of the qualifying event.

(v) Special rule for PBGC recipients. In the case of a qualifying event described in section 603(2) [*29 USCS § 1163(2)*] with respect to a covered employee who (as of such qualifying event) has a nonforfeitable right to a benefit any portion of which is to be paid by the Pension Benefit Guaranty Corporation under title IV [*29 USCS §§ 1301* et seq.], notwithstanding clause (i) or (ii), the date of the death of the covered employee, or in the case of the surviving spouse or dependent children of the covered employee, 24 months after the date of the death of the covered employee. The preceding sentence shall not require any period of coverage to extend beyond December 31, 2010.

(vi) Special rule for TAA-eligible individuals. In the case of a qualifying event described in section 603(2) [*29 USCS § 1163(2)*] with respect to a covered employee who is (as of the date that the period of coverage would, but for this clause or clause (vii), otherwise terminate under clause (i) or (ii)) a TAA-eligible individual (as defined in section 605(b)(4)(B) [*29 USCS § 1165(b)(4)(B)*]), the period of coverage shall not terminate by reason of clause (i) or (ii), as the case may be, before the later of the date specified in such clause or the date on which such individual ceases to be such a TAA-eligible individual. The preceding sentence shall not require any period of coverage to extend beyond December 31, 2010.

(vii) Medicare entitlement followed by qualifying event. In the case of a qualifying event described in section 603(2) [*29 USCS § 1163(2)*] that occurs less than 18 months after the date the covered employee became entitled to benefits under title XVIII of the Social Security Act [*42 USCS §§ 1395* et seq.], the period of coverage for qualified beneficiaries other than the covered employee shall not terminate under this subparagraph before the close of the 36-month period beginning on the date the covered employee became so entitled.

(viii) Special rule for disability. In the case of a qualified beneficiary who is determined, under title II or XVI of the Social Security Act [*42 USCS §§ 401* et seq. or *1381* et seq.], to have been disabled at any time during the first 60 days of continuation coverage under this part [*29 USCS §§ 1161* et seq.], any reference in clause (i) or (ii) to 18 months

is deemed a reference to 29 months (with respect to all qualified beneficiaries), but only if the qualified beneficiary has provided notice of such determination under section 606(3) [*29 USCS § 1166(3)*] before the end of such 18 months.

(B) End of plan. The date on which the employer ceases to provide any group health plan to any employee.

(C) Failure to pay premium. The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

(D) Group health plan coverage or Medicare entitlement. The date on which the qualified beneficiary first becomes, after the date of the election--

(i) covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary (other than such an exclusion or limitation which does not apply to (or is satisfied by) such beneficiary by reason of chapter 100 of the Internal Revenue Code of 1986 [*26 USCS §§ 9801* et seq.], part 7 of this subtitle [*29 USCS §§ 1181* et seq.], or title XXVII of the Public Health Service Act [*42 USCS §§ 300gg* et seq.]), or

(ii) in the case of a qualified beneficiary other than a qualified beneficiary described in section 607(3)(C) [*29 USCS § 1167(3)(C)*], entitled to benefits under title XVIII of the Social Security Act [*42 USCS §§ 1395* et seq.].

(E) Termination of extended coverage for disability. In the case of a qualified beneficiary who is disabled at any time during the first 60 days of continuation coverage under this part [*29 USCS §§ 1161* et seq.], the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act [*42 USCS §§ 401* et seq. or *1381* et seq.] that the qualified beneficiary is no longer disabled.

(3) Premium requirements. The plan may require payment of a premium for any period of continuation coverage, except that such premium--

(A) shall not exceed 102 percent of the applicable premium for such period, and

(B) may, at the election of the payor, be made in monthly installments.

In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage. In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to "102 percent" is deemed a reference to "150 percent" for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).

(4) No requirement of insurability. The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(5) Conversion option. In the case of a qualified beneficiary whose period of continuation coverage expires under paragraph (2)(A), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
CONTINUATION COVERAGE AND ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

29 USCS § 1163

§ 1163. Qualifying event

For purposes of this part [*29 USCS §§ 1161* et seq.], the term "qualifying event" means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this part [*29 USCS §§ 1161* et seq.], would result in the loss of coverage of a qualified beneficiary:

(1) The death of the covered employee.

(2) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

(3) The divorce or legal separation of the covered employee from the employee's spouse.

(4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act [*42 USCS §§ 1395* et seq.].

(5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(6) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in paragraph (6), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in section 607(3)(C) [*29 USCS § 1167(3)(C)*] within one year before or after the date of commencement of the proceeding.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
CONTINUATION COVERAGE AND ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

29 USCS § 1164

§ 1164. Applicable premium

For purposes of this part [*29 USCS §§ 1161* et seq.]--

(1) In general. The term "applicable premium" means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

(2) Special rule for self-insured plans. To the extent that a plan is a self-insured plan--

(A) In general. Except as provided in subparagraph (B), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which--

(i) is determined on an actuarial basis, and

(ii) takes into account such factors as the Secretary may prescribe in regulations.

(B) Determination on basis of past cost. If an administrator elects to have this subparagraph apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to--

(i) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under paragraph (3), adjusted by

(ii) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

(C) Subparagraph (B) not to apply where significant change. An administrator may not elect to have subparagraph (B) apply in any case in which there is any significant difference, between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under paragraph (3).

(3) Determination period. The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
CONTINUATION COVERAGE AND ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

29 USCS § 1165

§ 1165. Election

(a) In general. For purposes of this part [*29 USCS §§ 1161* et seq.]--
(1) Election period. The term "election period" means the period which--
(A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,
(B) is of at least 60 days' duration, and
(C) ends not earlier than 60 days after the later of--
(i) the date described in subparagraph (A), or
(ii) in the case of any qualified beneficiary who receives notice under section 606(4) [*29 USCS § 1166(a)(4)*], the date of such notice.
(2) Effect of election on other beneficiaries. Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of section 607(3) [*29 USCS § 1167(3)(A)(i)* or (B)] shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

(b) Temporary extension of COBRA election period for certain individuals.
(1) In general. In the case of a nonelecting TAA-eligible individual and notwithstanding subsection (a), such individual may elect continuation coverage under this part during the 60-day period that begins on the first day of the month in which the individual becomes a TAA-eligible individual, but only if such election is made not later than 6 months after the date of the TAA-related loss of coverage.
(2) Commencement of coverage; no reach-back. Any continuation coverage elected by a TAA-eligible individual under paragraph (1) shall commence at the beginning of the 60-day election period described in such paragraph and shall not include any period prior to such 60-day election period.
(3) Preexisting conditions. With respect to an individual who elects continuation coverage pursuant to paragraph (1), the period--
(A) beginning on the date of the TAA-related loss of coverage, and
(B) ending on the first day of the 60-day election period described in paragraph (1),
shall be disregarded for purposes of determining the 63-day periods referred to in section 701(c)(2) [*29 USCS § 1181(c)(2)*], *section 2701(c)(2)* of the Public Health Service Act [*42 USCS § 300gg(c)(2)*], and *section 9801(c)(2)* of the Internal Revenue Code of 1986 [*26 USCS § 9801(c)(2)*].
(4) Definitions. For purposes of this subsection:
(A) Nonelecting TAA-eligible individual. The term "nonelecting TAA-eligible individual" means a TAA-eligible individual who--
(i) has a TAA-related loss of coverage; and
(ii) did not elect continuation coverage under this part during the TAA-related election period.
(B) TAA-eligible individual. The term "TAA-eligible individual" means--
(i) an eligible TAA recipient (as defined in paragraph (2) of *section 35(c) of the Internal Revenue Code of 1986* [*26 USCS § 35(c)*]), and
(ii) an eligible alternative TAA recipient (as defined in paragraph (3) of such section).
(C) TAA-related election period. The term "TAA-related election period" means, with respect to a TAA-related loss of coverage, the 60-day election period under this part which is a direct consequence of such loss.
(D) TAA-related loss of coverage. The term "TAA-related loss of coverage" means, with respect to an individual whose separation from employment gives rise to being an TAA-eligible individual, the loss of health benefits coverage associated with such separation.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
CONTINUATION COVERAGE AND ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

29 USCS § 1166

§ 1166. Notice requirements

(a) In general. In accordance with regulations prescribed by the Secretary--

(1) the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection [part],

(2) the employer of an employee under a plan must notify the administrator of a qualifying event described in paragraph (1), (2), (4), or (6) of section 603 [*29 USCS § 1163(1)*, (2), (4), or (6)] within 30 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date of the qualifying event,

(3) each covered employee or qualified beneficiary is responsible for notifying the administrator of the occurrence of any qualifying event described in paragraph (3) or (5) of section 603 [*29 USCS § 1163(3)* or (5)] within 60 days after the date of the qualifying event and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act [*42 USCS §§ 401* et seq. or *1381* et seq.], to have been disabled at any time during the first 60 days of continuation coverage under this part [*29 USCS §§ 1161* et seq.] is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of any final determination under such title or *titles [42 USCS §§ 401* et seq. or *1381* et seq.] that the qualified beneficiary is no longer disabled, and

(4) the administrator shall notify--

(A) in the case of a qualifying event described in paragraph (1), (2), (4), or (6) of section 603 [*29 USCS § 1163(1)*, (2), (4), or (6)], any qualified beneficiary with respect to such event, and

(B) in the case of a qualifying event described in paragraph (3) or (5) of section 603 [*29 USCS § 1163(3)* or (5)] where the covered employee notifies the administrator under paragraph (3), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection [part].

(b) Alternative means of compliance with requirement for notification of multiemployer plans by employers. The requirements of subsection (a)(2) shall be considered satisfied in the case of a multiemployer plan in connection with a qualifying event described in paragraph (2) of section 603 [*29 USCS § 1163(2)*] if the plan provides that the determination of the occurrence of such qualifying event will be made by the plan administrator.

(c) Rules relating to notification of qualified beneficiaries by plan administrator. For purposes of subsection (a)(4), any notification shall be made within 14 days (or, in the case of a group health plan which is a multiemployer plan, such longer period of time as may be provided in the terms of the plan) of the date on which the administrator is notified under paragraph (2) or (3), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
CONTINUATION COVERAGE AND ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

29 USCS § 1167

§ 1167. Definitions and special rules

For purposes of this part [*29 USCS §§ 1161* et seq.]--

(1) Group health plan. The term "group health plan" means an employee welfare benefit plan providing medical care (as defined in *section 213(d) of the Internal Revenue Code of 1986* [*26 USCS § 213(d)*]) to participants or beneficiaries directly or through insurance, reimbursement, or otherwise. Such term shall not include any plan substantially all of the coverage under which is for qualified long-term care services (as defined in section 7702B(c) of such Code [*26 USCS § 7702B(c)*]).

(2) Covered employee. The term "covered employee" means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in *section 401(c)(1) of the Internal Revenue Code of 1986*) [*26 USCS § 401(c)(1)*].

(3) Qualified beneficiary.

(A) In general. The term "qualified beneficiary" means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan--

(i) as the spouse of the covered employee, or

(ii) as the dependent child of the employee.

Such term shall also include a child who is born to or placed for adoption with the covered employee during the period of continuation coverage under this part [*29 USCS §§ 1161* et seq.].

(B) Special rule for terminations and reduced employment. In the case of a qualifying event described in section 603(2) [*29 USCS § 1163(2)*], the term "qualified beneficiary" includes the covered employee.

(C) Special rule for retirees and widows. In the case of a qualifying event described in section 603(6) [*29 USCS § 1163(6)*], the term "qualified beneficiary" includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan--

(i) as the spouse of the covered employee,

(ii) as the dependent child of the employee, or

(iii) as the surviving spouse of the covered employee.

(4) Employer. Subsection (n) (relating to leased employees) and subsection (t) (relating to application of controlled group rules to certain employee benefits) of *section 414 of the Internal Revenue Code of 1986* [*26 USCS § 414*] shall apply for purposes of this part [*29 USCS §§ 1161* et seq.] in the same manner and to the same extent as such subsections apply for purposes of section 106 of such Code [*26 USCS § 106*]. Any regulations prescribed by the Secretary pursuant to the preceding sentence shall be consistent and coextensive with any regulations prescribed for similar purposes by the Secretary of the Treasury (or such Secretary's delegate) under such subsections.

(5) Optional extension of required periods. A group health plan shall not be treated as failing to meet the requirements of this part solely because the plan provides both--

(A) that the period of extended coverage referred to in section 602(2) [*29 USCS § 1162(2)*] commences with the date of the loss of coverage, and

(B) that the applicable notice period provided under section 606(a)(2) [*29 USCS § 1166(a)(2)*] commences with the date of the loss of coverage.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
CONTINUATION COVERAGE AND ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

29 USCS § 1168

§ 1168. Regulations

The Secretary may prescribe regulations to carry out the provisions of this part [*29 USCS §§ 1161* et seq.].

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
CONTINUATION COVERAGE AND ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

29 USCS § 1169

§ 1169. Additional standards for group health plans

(a) Group health plan coverage pursuant to medical child support orders.

(1) In general. Each group health plan shall provide benefits in accordance with the applicable requirements of any qualified medical child support order. A qualified medical child support order with respect to any participant or beneficiary shall be deemed to apply to each group health plan which has received such order, from which the participant or beneficiary is eligible to receive benefits, and with respect to which the requirements of paragraph (4) are met.

(2) Definitions. For purposes of this subsection--

(A) Qualified medical child support order. The term "qualified medical child support order" means a medical child support order--

(i) which creates or recognizes the existence of an alternate recipient's right to, or assigns to an alternate recipient the right to, receive benefits for which a participant or beneficiary is eligible under a group health plan, and

(ii) with respect to which the requirements of paragraphs (3) and (4) are met.

(B) Medical child support order. The term "medical child support order" means any judgment, decree, or order (including approval of a settlement agreement) which--

(i) provides for child support with respect to a child of a participant under a group health plan or provides for health benefit coverage to such a child, is made pursuant to a State domestic relations law (including a community property law), and relates to benefits under such plan, or

(ii) is made pursuant to a law relating to medical child support described in section 1908 of the Social Security Act [*42 USCS § 1396g-1*] (as added by section 13822 [13623(b)] of the Omnibus Budget Reconciliation Act of 1993) with respect to a group health plan,

if such judgment, decree, or order (I) is issued by a court of competent jurisdiction or (II) is issued through an administrative process established under State law and has the force and effect of law under applicable State law. For purposes of this subparagraph, an administrative notice which is issued pursuant to an administrative process referred to in subclause (II) of the preceding sentence and which has the effect of an order described in clause (i) or (ii) of the preceding sentence shall be treated as such an order.

(C) Alternate recipient. The term "alternate recipient" means any child of a participant who is recognized under a medical child support order as having a right to enrollment under a group health plan with respect to such participant.

(D) Child. The term "child" includes any child adopted by, or placed for adoption with, a participant of a group health plan.

(3) Information to be included in qualified order. A medical child support order meets the requirements of this paragraph only if such order clearly specifies--

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate recipient covered by the order, except that, to the extent provided in the order, the name and mailing address of an official of a State or a political subdivision thereof may be substituted for the mailing address of any such alternate recipient,

(B) a reasonable description of the type of coverage to be provided to each such alternate recipient, or the manner in which such type of coverage is to be determined, and

(C) the period to which such order applies.

(4) Restriction on new types or forms of benefits. A medical child support order meets the requirements of this paragraph only if such order does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan, except to the extent necessary to meet the requirements of a law relating to medical child support described in section 1908 of the Social Security Act [*42 USCS § 1396g-1*] (as added by section 13822 [13623(b)] of the Omnibus Budget Reconciliation Act of 1993).

(5) Procedural requirements.

(A) Timely notifications and determinations. In the case of any medical child support order received by a group health plan--

(i) the plan administrator shall promptly notify the participant and each alternate recipient of the receipt of such order and the plan's procedures for determining whether medical child support orders are qualified medical child support orders, and

(ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified medical child support order and notify the participant and each alternate recipient of such determination.

(B) Establishment of procedures for determining qualified status of orders. Each group health plan shall establish reasonable procedures to determine whether medical child support orders are qualified medical child support orders and to administer the provision of benefits under such qualified orders. Such procedures--

(i) shall be in writing,

(ii) shall provide for the notification of each person specified in a medical child support order as eligible to receive benefits under the plan (at the address included in the medical child support order) of such procedures promptly upon receipt by the plan of the medical child support order, and

(iii) shall permit an alternate recipient to designate a representative for receipt of copies of notices that are sent to the alternate recipient with respect to a medical child support order.

(C) National Medical Support Notice deemed to be a qualified medical child support order.

(i) In general. If the plan administrator of a group health plan which is maintained by the employer of a noncustodial parent of a child or to which such an employer contributes receives an appropriately completed National Medical Support Notice promulgated pursuant to section 401(b) of the Child Support Performance and Incentive Act of 1998 [*42 USCS § 651* note] in the case of such child, and the Notice meets the requirements of paragraphs (3) and (4), the Notice shall be deemed to be a qualified medical child support order in the case of such child.

(ii) Enrollment of child in plan. In any case in which an appropriately completed National Medical Support Notice is issued in the case of a child of a participant under a group health plan who is a noncustodial parent of the child, and the Notice is deemed under clause (i) to be a qualified medical child support order, the plan administrator, within 40 business days after the date of the Notice, shall--

(I) notify the State agency issuing the Notice with respect to such child whether coverage of the child is available under the terms of the plan and, if so, whether such child is covered under the plan and either the effective date of the coverage or, if necessary, any steps to be taken by the custodial parent (or by the official of a State or political subdivision thereof substituted for the name of such child pursuant to paragraph (3)(A)) to effectuate the coverage; and

(II) provide to the custodial parent (or such substituted official) a description of the coverage available and any forms or documents necessary to effectuate such coverage.

(iii) Rule of construction. Nothing in this subparagraph shall be construed as requiring a group health plan, upon receipt of a National Medical Support Notice, to provide benefits under the plan (or eligibility for such benefits) in addition to benefits (or eligibility for benefits) provided under the terms of the plan as of immediately before receipt of such Notice.

(6) Actions taken by fiduciaries. If a plan fiduciary acts in accordance with part 4 of this subtitle [*29 USCS §§ 1101* et seq.] in treating a medical child support order as being (or not being) a qualified medical child support order, then the plan's obligation to the participant and each alternate recipient shall be discharged to the extent of any payment made pursuant to such act of the fiduciary.

(7) Treatment of alternate recipients.

(A) Treatment as beneficiary generally. A person who is an alternate recipient under a qualified medical child support order shall be considered a beneficiary under the plan for purposes of any provision of this Act.

(B) Treatment as participant for purposes of reporting and disclosure requirements. A person who is an alternate recipient under any medical child support order shall be considered a participant under the plan for purposes of the reporting and disclosure requirements of part 1 [*29 USCS §§ 1021* et seq.].

(8) Direct provision of benefits provided to alternate recipients. Any payment for benefits made by a group health plan pursuant to a medical child support order in reimbursement for expenses paid by an alternate recipient or an alternate recipient's custodial parent or legal guardian shall be made to the alternate recipient or the alternate recipient's custodial parent or legal guardian.

(9) Payment to State official treated as satisfaction of plan's obligation to make payment to alternate recipient. Payment of benefits by a group health plan to an official of a State or a political subdivision thereof whose name and address have been substituted for the address of an alternate recipient in a qualified medical child support order, pursuant

to paragraph (3)(A), shall be treated, for purposes of this *title [29 USCS §§ 1001* et seq.], as payment of benefits to the alternate recipient.

(b) Rights of States with respect to group health plans where participants or beneficiaries thereunder are eligible for Medicaid benefits.

(1) Compliance by plans with assignment of rights. A group health plan shall provide that payment for benefits with respect to a participant under the plan will be made in accordance with any assignment of rights made by or on behalf of such participant or a beneficiary of the participant as required by a State plan for medical assistance approved under title XIX of the Social Security Act [*42 USCS §§ 1396* et seq.] pursuant to section 1912(a)(1)(A) of such Act [*42 USCS § 1396k(a)(1)(A)*] (as in effect on the date of the enactment of the Omnibus Budget Reconciliation Act of 1993 [enacted Aug. 10, 1993]).

(2) Enrollment and provision of benefits without regard to Medicaid eligibility. A group health plan shall provide that, in enrolling an individual as a participant or beneficiary or in determining or making any payments for benefits of an individual as a participant or beneficiary, the fact that the individual is eligible for or is provided medical assistance under a State plan for medical assistance approved under title XIX of the Social Security Act [*42 USCS §§ 1396* et seq.] will not be taken into account.

(3) Acquisition by States of rights of third parties. A group health plan shall provide that, to the extent that payment has been made under a State plan for medical assistance approved under title XIX of the Social Security Act [*42 USCS §§ 1396* et seq.] in any case in which a group health plan has a legal liability to make payment for items or services constituting such assistance, payment for benefits under the plan will be made in accordance with any State law which provides that the State has acquired the rights with respect to a participant to such payment for such items or services.

(c) Group health plan coverage of dependent children in cases of adoption.

(1) Coverage effective upon placement for adoption. In any case in which a group health plan provides coverage for dependent children of participants or beneficiaries, such plan shall provide benefits to dependent children placed with participants or beneficiaries for adoption under the same terms and conditions as apply in the case of dependent children who are natural children of participants or beneficiaries under the plan, irrespective of whether the adoption has become final.

(2) Restrictions based on preexisting conditions at time of placement for adoption prohibited. A group health plan may not restrict coverage under the plan of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of such child at the time that such child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

(3) Definitions. For purposes of this subsection--

(A) Child. The term "child" means, in connection with any adoption, or placement for adoption, of the child, an individual who has not attained age 18 as of the date of such adoption or placement for adoption.

(B) Placement for adoption. The term "placement", or being "placed", for adoption, in connection with any placement for adoption of a child with any person, means the assumption and retention by such person of a legal obligation for total or partial support of such child in anticipation of adoption of such child. The child's placement with such person terminates upon the termination of such legal obligation.

(d) Continued coverage of costs of a pediatric vaccine under group health plans. A group health plan may not reduce its coverage of the costs of pediatric vaccines (as defined under section 1928(h)(6) of the Social Security Act [*42 USCS § 1396s(h)(6)*] as amended by section 13830 [13631(b)] of the Omnibus Budget Reconciliation Act of 1993) below the coverage it provided as of May 1, 1993.

(e) Regulations. Any regulations prescribed under this section shall be prescribed by the Secretary of Labor, in consultation with the Secretary of Health and Human Services.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
GROUP HEALTH PLAN REQUIREMENTS

29 USCS prec § 1181

Preceding § 1181

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
GROUP HEALTH PLAN REQUIREMENTS
REQUIREMENTS RELATING TO PORTABILITY, ACCESS, AND RENEWABILITY

29 USCS § 1181

§ 1181. Increased portability through limitation on preexisting condition exclusions

(a) Limitation on preexisting condition exclusion period; crediting for periods of previous coverage. Subject to subsection (d), a group health plan, and a health insurance issuer offering group health insurance coverage, may, with respect to a participant or beneficiary, impose a preexisting condition exclusion only if--

(1) such exclusion relates to a condition (whether physical or mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the enrollment date;

(2) such exclusion extends for a period of not more than 12 months (or 18 months in the case of a late enrollee) after the enrollment date; and

(3) the period of any such preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage (if any, as defined in subsection (c)(1)) applicable to the participant or beneficiary as of the enrollment date.

(b) Definitions. For purposes of this part [*29 USCS §§ 1181* et seq.]--

(1) Preexisting condition exclusion.

(A) In general. The term "preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

(B) Treatment of genetic information. Genetic information shall not be treated as a condition described in subsection (a)(1) in the absence of a diagnosis of the condition related to such information.

(2) Enrollment date. The term "enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for such enrollment.

(3) Late enrollee. The term "late enrollee" means, with respect to coverage under a group health plan, a participant or beneficiary who enrolls under the plan other than during--

(A) the first period in which the individual is eligible to enroll under the plan, or

(B) a special enrollment period under subsection (f).

(4) Waiting period. The term "waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

(c) Rules relating to crediting previous coverage.

(1) Creditable coverage defined. For purposes of this part [*29 USCS §§ 1181* et seq.], the term "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

(A) A group health plan.

(B) Health insurance coverage.

(C) Part A or part B of title XVIII of the Social Security Act [*42 USCS §§ 1395c* et seq. or *1395j* et seq.].

(D) Title XIX of the Social Security Act [*42 USCS §§ 1396* et seq.], other than coverage consisting solely of benefits under section 1928 [*42 USCS § 1396s*].

(E) Chapter 55 of title 10, United States Code [*10 USCS §§ 1071* et seq.].

(F) A medical care program of the Indian Health Service or of a tribal organization.

(G) A State health benefits risk pool.

(H) A health plan offered under chapter 89 of title 5, United States Code [*5 USCS §§ 8901* et seq.].

(I) A public health plan (as defined in regulations).

(J) A health benefit plan under section 5(e) of the Peace Corps Act (*22 U.S.C. 2504(e)*).

Such term does not include coverage consisting solely of coverage of excepted benefits (as defined in section 733(c) [*29 USCS § 1191b(c)*]).

(2) Not counting periods before significant breaks in coverage.

(A) In general. A period of creditable coverage shall not be counted, with respect to enrollment of an individual under a group health plan, if, after such period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.

(B) Waiting period not treated as a break in coverage. For purposes of subparagraph (A) and subsection (d)(4), any period that an individual is in a waiting period for any coverage under a group health plan (or for group health insurance coverage) or is in an affiliation period (as defined in subsection (g)(2)) shall not be taken into account in determining the continuous period under subparagraph (A).

(C) TAA-eligible individuals. In the case of plan years beginning before January 1, 2011--

(i) TAA pre-certification period rule. In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date that is 7 days after the date of the issuance by the Secretary (or by any person or entity designated by the Secretary) of a qualified health insurance costs credit eligibility certificate for such individual for purposes of *section 7527 of the Internal Revenue Code of 1986* [*26 USCS § 7527*] shall not be taken into account in determining the continuous period under subparagraph (A).

(ii) Definitions. The terms "TAA-eligible individual" and "TAA-related loss of coverage" have the meanings given such terms in section 605(b)(4) [*29 USCS § 1165(b)(4)*].

(3) Method of crediting coverage.

(A) Standard method. Except as otherwise provided under subparagraph (B), for purposes of applying subsection (a)(3), a group health plan, and a health insurance issuer offering group health insurance coverage, shall count a period of creditable coverage without regard to the specific benefits covered during the period.

(B) Election of alternative method. A group health plan, or a health insurance issuer offering group health insurance coverage, may elect to apply subsection (a)(3) based on coverage of benefits within each of several classes or categories of benefits specified in regulations rather than as provided under subparagraph (A). Such election shall be made on a uniform basis for all participants and beneficiaries. Under such election a group health plan or issuer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within such class or category.

(C) Plan notice. In the case of an election with respect to a group health plan under subparagraph (B) (whether or not health insurance coverage is provided in connection with such plan), the plan shall--

(i) prominently state in any disclosure statements concerning the plan, and state to each enrollee at the time of enrollment under the plan, that the plan has made such election, and

(ii) include in such statements a description of the effect of this election.

(4) Establishment of period. Periods of creditable coverage with respect to an individual shall be established through presentation of certifications described in subsection (e) or in such other manner as may be specified in regulations.

(d) Exceptions.

(1) Exclusion not applicable to certain newborns. Subject to paragraph (4), a group health plan, and a health insurance issuer offering group health insurance coverage, may not impose any preexisting condition exclusion in the case of an individual who, as of the last day of the 30-day period beginning with the date of birth, is covered under creditable coverage.

(2) Exclusion not applicable to certain adopted children. Subject to paragraph (4), a group health plan, and a health insurance issuer offering group health insurance coverage, may not impose any preexisting condition exclusion in the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence shall not apply to coverage before the date of such adoption or placement for adoption.

(3) Exclusion not applicable to pregnancy. A group health plan, and health insurance issuer offering group health insurance coverage, may not impose any preexisting condition exclusion relating to pregnancy as a preexisting condition.

(4) Loss if break in coverage. Paragraphs (1) and (2) shall no longer apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage.

(e) Certifications and disclosure of coverage.

(1) Requirement for certification of period of creditable coverage.

(A) In general. A group health plan, and a health insurance issuer offering group health insurance coverage, shall provide the certification described in subparagraph (B)--

(i) at the time an individual ceases to be covered under the plan or otherwise becomes covered under a COBRA continuation provision,

(ii) in the case of an individual becoming covered under such a provision, at the time the individual ceases to be covered under such provision, and

(iii) on the request on behalf of an individual made not later than 24 months after the date of cessation of the coverage described in clause (i) or (ii), whichever is later.

The certification under clause (i) may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

(B) Certification. The certification described in this subparagraph is a written certification of--

(i) the period of creditable coverage of the individual under such plan and the coverage (if any) under such COBRA continuation provision, and

(ii) the waiting period (if any) (and affiliation period, if applicable) imposed with respect to the individual for any coverage under such plan.

(C) Issuer compliance. To the extent that medical care under a group health plan consists of group health insurance coverage, the plan is deemed to have satisfied the certification requirement under this paragraph if the health insurance issuer offering the coverage provides for such certification in accordance with this paragraph.

(2) Disclosure of information on previous benefits. In the case of an election described in subsection (c)(3)(B) by a group health plan or health insurance issuer, if the plan or issuer enrolls an individual for coverage under the plan and the individual provides a certification of coverage of the individual under paragraph (1)--

(A) upon request of such plan or issuer, the entity which issued the certification provided by the individual shall promptly disclose to such requesting plan or issuer information on coverage of classes and categories of health benefits available under such entity's plan or coverage, and

(B) such entity may charge the requesting plan or issuer for the reasonable cost of disclosing such information.

(3) Regulations. The Secretary shall establish rules to prevent an entity's failure to provide information under paragraph (1) or (2) with respect to previous coverage of an individual from adversely affecting any subsequent coverage of the individual under another group health plan or health insurance coverage.

(f) Special enrollment periods.

(1) Individuals losing other coverage. A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if each of the following conditions is met:

(A) The employee or dependent was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent.

(B) The employee stated in writing at such time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor or issuer (if applicable) required such a statement at such time and provided the employee with notice of such requirement (and the consequences of such requirement) at such time.

(C) The employee's or dependent's coverage described in subparagraph (A)--

(i) was under a COBRA continuation provision and the coverage under such provision was exhausted; or

(ii) was not under such a provision and either the coverage was terminated as a result of loss of eligibility for the coverage (including as a result of legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment) or employer contributions toward such coverage were terminated.

(D) Under the terms of the plan, the employee requests such enrollment not later than 30 days after the date of exhaustion of coverage described in subparagraph (C)(i) or termination of coverage or employer contribution described in subparagraph (C)(ii).

(2) For dependent beneficiaries.

(A) In general. If--

(i) a group health plan makes coverage available with respect to a dependent of an individual,

(ii) the individual is a participant under the plan (or has met any waiting period applicable to becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to enroll during a previous enrollment period), and

(iii) a person becomes such a dependent of the individual through marriage, birth, or adoption or placement for adoption,

the group health plan shall provide for a dependent special enrollment period described in subparagraph (B) during which the person (or, if not otherwise enrolled, the individual) may be enrolled under the plan as a dependent of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if such spouse is otherwise eligible for coverage.

(B) Dependent special enrollment period. A dependent special enrollment period under this subparagraph shall be a period of not less than 30 days and shall begin on the later of--

(i) the date dependent coverage is made available, or

(ii) the date of the marriage, birth, or adoption or placement for adoption (as the case may be) described in subparagraph (A)(iii).

(C) No waiting period. If an individual seeks to enroll a dependent during the first 30 days of such a dependent special enrollment period, the coverage of the dependent shall become effective--

(i) in the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

(ii) in the case of a dependent's birth, as of the date of such birth; or

(iii) in the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption.

(3) Special rules for application in case of Medicaid and CHIP.

(A) In general. A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if either of the following conditions is met:

(i) Termination of Medicaid or CHIP coverage. The employee or dependent is covered under a Medicaid plan under title XIX of the Social Security Act [*42 USCS §§ 1396* et seq.] or under a State child health plan under title XXI of such Act [*42 USCS §§ 1397aa* et seq.] and coverage of the employee or dependent under such a plan is terminated as a result of loss of eligibility for such coverage and the employee requests coverage under the group health plan (or health insurance coverage) not later than 60 days after the date of termination of such coverage.

(ii) Eligibility for employment assistance under Medicaid or CHIP. The employee or dependent becomes eligible for assistance, with respect to coverage under the group health plan or health insurance coverage, under such Medicaid plan or State child health plan (including under any waiver or demonstration project conducted under or in relation to such a plan), if the employee requests coverage under the group health plan or health insurance coverage not later than 60 days after the date the employee or dependent is determined to be eligible for such assistance.

(B) Coordination with Medicaid and Chip.

(i) Outreach to employees regarding availability of Medicaid and CHIP coverage.

(I) In general. Each employer that maintains a group health plan in a State that provides medical assistance under a State Medicaid plan under title XIX of the Social Security Act [*42 USCS §§ 1396* et seq.], or child health assistance under a State child health plan under title XXI of such Act [*42 USCS §§ 1397aa* et seq.], in the form of premium assistance for the purchase of coverage under a group health plan, shall provide to each employee a written notice informing the employee of potential opportunities then currently available in the State in which the employee resides for premium assistance under such plans for health coverage of the employee or the employee's dependents.

(II) Model notice. Not later than 1 year after the date of enactment of the Children's Health Insurance Program Reauthorization Act of 2009 [enacted Feb. 4, 2009], the Secretary and the Secretary of Health and Human Services, in consultation with Directors of State Medicaid agencies under title XIX of the Social Security Act [*42 USCS §§ 1396* et seq.] and Directors of State CHIP agencies under title XXI of such Act [*42 USCS §§ 1397aa* et seq.], shall jointly develop national and State-specific model notices for purposes of subparagraph (A). The Secretary shall provide employers with such model notices so as to enable employers to timely comply with the requirements of subparagraph (A). Such model notices shall include information regarding how an employee may contact the State in which the employee resides for additional information regarding potential opportunities for such premium assistance, including how to apply for such assistance.

(III) Option to provide concurrent with provision of plan materials to employee. An employer may provide the model notice applicable to the State in which an employee resides concurrent with the furnishing of materials notifying the employee of health plan eligibility, concurrent with materials provided to the employee in connection with an open season or election process conducted under the plan, or concurrent with the furnishing of the summary plan description as provided in section 104(b) [*29 USCS § 1024(b)*].

(ii) Disclosure about group health plan benefits to States for Medicaid and CHIP eligible individuals. In the case of a participant or beneficiary of a group health plan who is covered under a Medicaid plan of a State under title XIX of the Social Security Act [*42 USCS §§ 1396* et seq.] or under a State child health plan under title XXI of such Act [*42 USCS §§ 1397aa* et seq.], the plan administrator of the group health plan shall disclose to the State, upon request, information about the benefits available under the group health plan in sufficient specificity, as determined under regulations of the Secretary of Health and Human Services in consultation with the Secretary that require use of the model coverage coordination disclosure form developed under section 311(b)(1)(C) of the Children's Health Insurance Program Reauthorization Act of 2009 [note to this section], so as to permit the State to make a determination (under paragraph (2)(B), (3), or (10) of section 2105(c) of the Social Security Act [*42 USCS § 1397ee(c)*] or otherwise) concerning the cost-effectiveness of the State providing medical or child health assistance through premium assistance for the purchase of coverage under such group health plan and in order for the State to provide supplemental benefits required under paragraph (10)(E) of such section or other authority.

(g) Use of affiliation period by HMOs as alternative to preexisting condition exclusion.

(1) In general. In the case of a group health plan that offers medical care through health insurance coverage offered by a health maintenance organization, the plan may provide for an affiliation period with respect to coverage through the organization only if--

(A) no preexisting condition exclusion is imposed with respect to coverage through the organization,

(B) the period is applied uniformly without regard to any health status-related factors, and

(C) such period does not exceed 2 months (or 3 months in the case of a late enrollee).

(2) Affiliation period.

(A) Defined. For purposes of this part [*29 USCS §§ 1181* et seq.], the term "affiliation period" means a period which, under the terms of the health insurance coverage offered by the health maintenance organization, must expire before the health insurance coverage becomes effective. The organization is not required to provide health care services or benefits during such period and no premium shall be charged to the participant or beneficiary for any coverage during the period.

(B) Beginning. Such period shall begin on the enrollment date.

(C) Runs concurrently with waiting periods. An affiliation period under a plan shall run concurrently with any waiting period under the plan.

(3) Alternative methods. A health maintenance organization described in paragraph (1) may use alternative methods, from those described in such paragraph, to address adverse selection as approved by the State insurance commissioner or official or officials designated by the State to enforce the requirements of part A of title XXVII of the Public Health Service Act [*42 USCS §§ 300gg* et seq.] for the State involved with respect to such issuer.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
GROUP HEALTH PLAN REQUIREMENTS
REQUIREMENTS RELATING TO PORTABILITY, ACCESS, AND RENEWABILITY

29 USCS § 1182

§ 1182. Prohibiting discrimination against individual participants and beneficiaries based on health status

(a) In eligibility to enroll.

(1) In general. Subject to paragraph (2), a group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any of the following health status-related factors in relation to the individual or a dependent of the individual:

(A) Health status.

(B) Medical condition (including both physical and mental illnesses).

(C) Claims experience.

(D) Receipt of health care.

(E) Medical history.

(F) Genetic information.

(G) Evidence of insurability (including conditions arising out of acts of domestic violence).

(H) Disability.

(2) No application to benefits or exclusions. To the extent consistent with section 701 [*29 USCS § 1181*], paragraph (1) shall not be construed--

(A) to require a group health plan, or group health insurance coverage, to provide particular benefits other than those provided under the terms of such plan or coverage, or

(B) to prevent such a plan or coverage from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage.

(3) Construction. For purposes of paragraph (1), rules for eligibility to enroll under a plan include rules defining any applicable waiting periods for such enrollment.

(b) In premium contributions.

(1) In general. A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, may not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution which is greater than such premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health status-related factor in relation to the individual or to an individual enrolled under the plan as a dependent of the individual.

(2) Construction. Nothing in paragraph (1) shall be construed--

(A) to restrict the amount that an employer may be charged for coverage under a group health plan except as provided in paragraph (3); or

(B) to prevent a group health plan, and a health insurance issuer offering group health insurance coverage, from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

(3) No group-based discrimination on basis of genetic information.

(A) In general. For purposes of this section, a group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not adjust premium or contribution amounts for the group covered under such plan on the basis of genetic information.

(B) Rule of construction. Nothing in subparagraph (A) or in paragraphs (1) and (2) of subsection (d) shall be construed to limit the ability of a health insurance issuer offering health insurance coverage in connection with a group health plan to increase the premium for an employer based on the manifestation of a disease or disorder of an individual who is enrolled in the plan. In such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the employer.

(c) Genetic testing.

(1) Limitation on requesting or requiring genetic testing. A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

(2) Rule of construction. Paragraph (1) shall not be construed to limit the authority of a health care professional who is providing health care services to an individual to request that such individual undergo a genetic test.

(3) Rule of construction regarding payment.

(A) In general. Nothing in paragraph (1) shall be construed to preclude a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, from obtaining and using the results of a genetic test in making a determination regarding payment (as such term is defined for the purposes of applying the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act [*42 USCS §§ 1320d* et seq.] and *section 264* of the Health Insurance Portability and Accountability Act of 1996 [*42 USCS § 1320d-2* note], as may be revised from time to time) consistent with subsection (a).

(B) Limitation. For purposes of subparagraph (A), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, may request only the minimum amount of information necessary to accomplish the intended purpose.

(4) Research exception. Notwithstanding paragraph (1), a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, may request, but not require, that a participant or beneficiary undergo a genetic test if each of the following conditions is met:

(A) The request is made, in writing, pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

(B) The plan or issuer clearly indicates to each participant or beneficiary, or in the case of a minor child, to the legal guardian of such beneficiary, to whom the request is made that--

(i) compliance with the request is voluntary; and

(ii) non-compliance will have no effect on enrollment status or premium or contribution amounts.

(C) No genetic information collected or acquired under this paragraph shall be used for underwriting purposes.

(D) The plan or issuer notifies the Secretary in writing that the plan or issuer is conducting activities pursuant to the exception provided for under this paragraph, including a description of the activities conducted.

(E) The plan or issuer complies with such other conditions as the Secretary may by regulation require for activities conducted under this paragraph.

(d) Prohibition on collection of genetic information.

(1) In general. A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request, require, or purchase genetic information for underwriting purposes (as defined in section 733 [*29 USCS § 1191b*]).

(2) Prohibition on collection of genetic information prior to enrollment. A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the plan or coverage in connection with such enrollment.

(3) Incidental collection. If a group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of paragraph (2) if such request, requirement, or purchase is not in violation of paragraph (1).

(e) Application to all plans. The provisions of subsections (a)(1)(F), (b)(3), (c), and (d), and subsection (b)(1) and section 701 [*29 USCS § 1181*] with respect to genetic information, shall apply to group health plans and health insurance issuers without regard to section 732(a) [*29 USCS § 1191a(a)*].

(f) Genetic information of a fetus or embryo. Any reference in this part to genetic information concerning an individual or family member of an individual shall--

(1) with respect to such an individual or family member of an individual who is a pregnant woman, include genetic information of any fetus carried by such pregnant woman; and

(2) with respect to an individual or family member utilizing an assisted reproductive technology, include genetic information of any embryo legally held by the individual or family member.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
GROUP HEALTH PLAN REQUIREMENTS
REQUIREMENTS RELATING TO PORTABILITY, ACCESS, AND RENEWABILITY

29 USCS § 1183

§ 1183. Guaranteed renewability in multiemployer plans and multiple employer welfare arrangements

A group health plan which is a multiemployer plan or which is a multiple employer welfare arrangement may not deny an employer whose employees are covered under such a plan continued access to the same or different coverage under the terms of such a plan, other than--

(1) for nonpayment of contributions;

(2) for fraud or other intentional misrepresentation of material fact by the employer;

(3) for noncompliance with material plan provisions;

(4) because the plan is ceasing to offer any coverage in a geographic area;

(5) in the case of a plan that offers benefits through a network plan, there is no longer any individual enrolled through the employer who lives, resides, or works in the service area of the network plan and the plan applies this paragraph uniformly without regard to the claims experience of employers or any health status-related factor in relation to such individuals or their dependents; and

(6) for failure to meet the terms of an applicable collective bargaining agreement, to renew a collective bargaining or other agreement requiring or authorizing contributions to the plan, or to employ employees covered by such an agreement.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
GROUP HEALTH PLAN REQUIREMENTS
OTHER REQUIREMENTS

29 USCS § 1185

§ 1185. Standards relating to benefits for mothers and newborns

(a) Requirements for minimum hospital stay following birth.
(1) In general. A group health plan, and a health insurance issuer offering group health insurance coverage, may not--
(A) except as provided in paragraph (2)--
(i) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a normal vaginal delivery, to less than 48 hours, or
(ii) restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child, following a cesarean section, to less than 96 hours; or
(B) require that a provider obtain authorization from the plan or the issuer for prescribing any length of stay required under subparagraph (A) (without regard to paragraph (2)).
(2) Exception. Paragraph (1)(A) shall not apply in connection with any group health plan or health insurance issuer in any case in which the decision to discharge the mother or her newborn child prior to the expiration of the minimum length of stay otherwise required under paragraph (1)(A) is made by an attending provider in consultation with the mother.

(b) Prohibitions. A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not--
(1) deny to the mother or her newborn child eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section;
(2) provide monetary payments or rebates to mothers to encourage such mothers to accept less than the minimum protections available under this section;
(3) penalize or otherwise reduce or limit the reimbursement of an attending provider because such provider provided care to an individual participant or beneficiary in accordance with this section;
(4) provide incentives (monetary or otherwise) to an attending provider to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section; or
(5) subject to subsection (c)(3), restrict benefits for any portion of a period within a hospital length of stay required under subsection (a) in a manner which is less favorable than the benefits provided for any preceding portion of such stay.

(c) Rules of construction.
(1) Nothing in this section shall be construed to require a mother who is a participant or beneficiary--
(A) to give birth in a hospital; or
(B) to stay in the hospital for a fixed period of time following the birth of her child.
(2) This section shall not apply with respect to any group health plan, or any group health insurance coverage offered by a health insurance issuer, which does not provide benefits for hospital lengths of stay in connection with childbirth for a mother or her newborn child.
(3) Nothing in this section shall be construed as preventing a group health plan or issuer from imposing deductibles, coinsurance, or other cost-sharing in relation to benefits for hospital lengths of stay in connection with childbirth for a mother or newborn child under the plan (or under health insurance coverage offered in connection with a group health plan), except that such coinsurance or other cost-sharing for any portion of a period within a hospital length of stay required under subsection (a) may not be greater than such coinsurance or cost-sharing for any preceding portion of such stay.

(d) Notice under group health plan. The imposition of the requirements of this section shall be treated as a material modification in the terms of the plan described in section 102(a)(1) [*29 USCS § 1022(a)(1)*], for purposes of assuring notice of such requirements under the plan; except that the summary description required to be provided under the last sentence of section 104(b)(1) [*29 USCS § 1024(b)(1)*] with respect to such modification shall be provided by not later than 60 days after the first day of the first plan year in which such requirements apply.

(e) Level and type of reimbursements. Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(f) Preemption; exception for health insurance coverage in certain States.

(1) In general. The requirements of this section shall not apply with respect to health insurance coverage if there is a State law (as defined in section 731(d)(1) [*29 USCS § 1191(d)(1)*]) for a State that regulates such coverage that is described in any of the following subparagraphs:

(A) Such State law requires such coverage to provide for at least a 48-hour hospital length of stay following a normal vaginal delivery and at least a 96-hour hospital length of stay following a cesarean section.

(B) Such State law requires such coverage to provide for maternity and pediatric care in accordance with guidelines established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, or other established professional medical associations.

(C) Such State law requires, in connection with such coverage for maternity care, that the hospital length of stay for such care is left to the decision of (or required to be made by) the attending provider in consultation with the mother.

(2) Construction. Section 731(a)(1) [*29 USCS § 1191(a)(1)*] shall not be construed as superseding a State law described in paragraph (1).

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
GROUP HEALTH PLAN REQUIREMENTS
OTHER REQUIREMENTS

29 USCS § 1185a

§ 1185a. Parity in the application of certain limits to mental health

(a) In general.

(1) Aggregate lifetime limits. In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health benefits--

(A) No lifetime limit. If the plan or coverage does not include an aggregate lifetime limit on substantially all medical and surgical benefits, the plan or coverage may not impose any aggregate lifetime limit on mental health benefits.

(B) Lifetime limit. If the plan or coverage includes an aggregate lifetime limit on substantially all medical and surgical benefits (in this paragraph referred to as the "applicable lifetime limit"), the plan or coverage shall either--

(i) apply the applicable lifetime limit both to the medical and surgical benefits to which it otherwise would apply and to mental health benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health benefits; or

(ii) not include any aggregate lifetime limit on mental health benefits that is less than the applicable lifetime limit.

(C) Rule in case of different limits. In the case of a plan or coverage that is not described in subparagraph (A) or (B) and that includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan or coverage with respect to mental health benefits by substituting for the applicable lifetime limit an average aggregate lifetime limit that is computed taking into account the weighted average of the aggregate lifetime limits applicable to such categories.

(2) Annual limits. In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health benefits--

(A) No annual limit. If the plan or coverage does not include an annual limit on substantially all medical and surgical benefits, the plan or coverage may not impose any annual limit on mental health benefits.

(B) Annual limit. If the plan or coverage includes an annual limit on substantially all medical and surgical benefits (in this paragraph referred to as the "applicable annual limit"), the plan or coverage shall either--

(i) apply the applicable annual limit both to medical and surgical benefits to which it otherwise would apply and to mental health benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health benefits; or

(ii) not include any annual limit on mental health benefits that is less than the applicable annual limit.

(C) Rule in case of different limits. In the case of a plan or coverage that is not described in subparagraph (A) or (B) and that includes no or different annual limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan or coverage with respect to mental health benefits by substituting for the applicable annual limit an average annual limit that is computed taking into account the weighted average of the annual limits applicable to such categories.

(b) Construction. Nothing in this section shall be construed--

(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any mental health benefits; or

(2) in the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides mental health benefits, as affecting the terms and conditions (including cost sharing, limits on numbers of visits or days of coverage, and requirements relating to medical necessity) relating to the amount, duration, or scope of mental health benefits under the plan or coverage, except as specifically provided in subsection (a) (in regard to parity in the imposition of aggregate lifetime limits and annual limits for mental health benefits).

(c) Exemptions.

(1) Small employer exemption.

(A) In general. This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

(B) Small employer. For purposes of subparagraph (A), the term "small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

(C) Application of certain rules in determination of employer size. For purposes of this paragraph--

(i) Application of aggregation rule for employers. Rules similar to the rules under subsections (b), (c), (m), and (o) of *section 414 of the Internal Revenue Code of 1986* [*26 USCS § 414*] shall apply for purposes of treating persons as a single employer.

(ii) Employers not in existence in preceding year. In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(iii) Predecessors. Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

(2) Increased cost exemption. This section shall not apply with respect to a group health plan (or health insurance coverage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least 1 percent.

(d) Separate application to each option offered. In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

(e) Definitions. For purposes of this section--

(1) Aggregate lifetime limit. The term "aggregate lifetime limit" means, with respect to benefits under a group health plan or health insurance coverage, a dollar limitation on the total amount that may be paid with respect to such benefits under the plan or health insurance coverage with respect to an individual or other coverage unit.

(2) Annual limit. The term "annual limit" means, with respect to benefits under a group health plan or health insurance coverage, a dollar limitation on the total amount of benefits that may be paid with respect to such benefits in a 12-month period under the plan or health insurance coverage with respect to an individual or other coverage unit.

(3) Medical or surgical benefits. The term "medical or surgical benefits" means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include mental health benefits.

(4) Mental health benefits. The term "mental health benefits" means benefits with respect to mental health services, as defined under the terms of the plan or coverage (as the case may be), but does not include benefits with respect to treatment of substance abuse or chemical dependency.

(f) [Deleted]

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
GROUP HEALTH PLAN REQUIREMENTS
OTHER REQUIREMENTS

29 USCS § 1185b

§ 1185b. Required coverage for reconstructive surgery following mastectomies

(a) In general. A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, that provides medical and surgical benefits with respect to a mastectomy shall provide, in a case of a participant or beneficiary who is receiving benefits in connection with a mastectomy and who elects breast reconstruction in connection with such mastectomy, coverage for--

(1) all stages of reconstruction of the breast on which the mastectomy has been performed;

(2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and

(3) prostheses and physical complications of mastectomy, including lymphedemas;

in a manner determined in consultation with the attending physician and the patient. Such coverage may be subject to annual deductibles and coinsurance provisions as may be deemed appropriate and as are consistent with those established for other benefits under the plan or coverage. Written notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter.

(b) Notice. A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan shall provide notice to each participant and beneficiary under such plan regarding the coverage required by this section in accordance with regulations promulgated by the Secretary. Such notice shall be in writing and prominently positioned in any literature or correspondence made available or distributed by the plan or issuer and shall be transmitted--

(1) in the next mailing made by the plan or issuer to the participant or beneficiary;

(2) as part of any yearly informational packet sent to the participant or beneficiary; or

(3) not later than January 1, 1999;

whichever is earlier.

(c) Prohibitions. A group health plan, and a health insurance issuer offering group health insurance coverage in connection with a group health plan, may not--

(1) deny to a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of this section; and

(2) penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

(d) Rule of construction. Nothing in this section shall be construed to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

(e) Preemption, relation to State laws.

(1) In general. Nothing in this section shall be construed to preempt any State law in effect on the date of enactment of this section [enacted Oct. 21, 1998] with respect to health insurance coverage that requires coverage of at least the coverage of reconstructive breast surgery otherwise required under this section.

(2) ERISA. Nothing in this section shall be construed to affect or modify the provisions of section 514 with respect to group health plans [*29 USCS § 1144*].

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
GROUP HEALTH PLAN REQUIREMENTS
OTHER REQUIREMENTS

29 USCS § 1185c

§ 1185c. Coverage of dependent students on medically necessary leave of absence

(a) Medically necessary leave of absence. In this section, the term "medically necessary leave of absence" means, with respect to a dependent child described in subsection (b)(2) in connection with a group health plan or health insurance coverage offered in connection with such plan, a leave of absence of such child from a postsecondary educational institution (including an institution of higher education as defined in section 102 of the Higher Education Act of 1965 [*20 USCS § 1002*]), or any other change in enrollment of such child at such an institution, that--

(1) commences while such child is suffering from a serious illness or injury;

(2) is medically necessary; and

(3) causes such child to lose student status for purposes of coverage under the terms of the plan or coverage.

(b) Requirement to continue coverage.

(1) In general. In the case of a dependent child described in paragraph (2), a group health plan, or a health insurance issuer that provides health insurance coverage in connection with a group health plan, shall not terminate coverage of such child under such plan or health insurance coverage due to a medically necessary leave of absence before the date that is the earlier of--

(A) the date that is 1 year after the first day of the medically necessary leave of absence; or

(B) the date on which such coverage would otherwise terminate under the terms of the plan or health insurance coverage.

(2) Dependent child described. A dependent child described in this paragraph is, with respect to a group health plan or health insurance coverage offered in connection with the plan, a beneficiary under the plan who--

(A) is a dependent child, under the terms of the plan or coverage, of a participant or beneficiary under the plan or coverage; and

(B) was enrolled in the plan or coverage, on the basis of being a student at a postsecondary educational institution (as described in subsection (a)), immediately before the first day of the medically necessary leave of absence involved.

(3) Certification by physician. Paragraph (1) shall apply to a group health plan or health insurance coverage offered by an issuer in connection with such plan only if the plan or issuer of the coverage has received written certification by a treating physician of the dependent child which states that the child is suffering from a serious illness or injury and that the leave of absence (or other change of enrollment) described in subsection (a) is medically necessary.

(c) Notice. A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, shall include, with any notice regarding a requirement for certification of student status for coverage under the plan or coverage, a description of the terms of this section for continued coverage during medically necessary leaves of absence. Such description shall be in language which is understandable to the typical plan participant.

(d) No change in benefits. A dependent child whose benefits are continued under this section shall be entitled to the same benefits as if (during the medically necessary leave of absence) the child continued to be a covered student at the institution of higher education and was not on a medically necessary leave of absence.

(e) Continued application in case of changed coverage. If--

(1) a dependent child of a participant or beneficiary is in a period of coverage under a group health plan or health insurance coverage offered in connection with such a plan, pursuant to a medically necessary leave of absence of the child described in subsection (b);

(2) the manner in which the participant or beneficiary is covered under the plan changes, whether through a change in health insurance coverage or health insurance issuer, a change between health insurance coverage and self-insured coverage, or otherwise; and

(3) the coverage as so changed continues to provide coverage of beneficiaries as dependent children,

this section shall apply to coverage of the child under the changed coverage for the remainder of the period of the medically necessary leave of absence of the dependent child under the plan in the same manner as it would have applied if the changed coverage had been the previous coverage.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
GROUP HEALTH PLAN REQUIREMENTS
GENERAL PROVISIONS

29 USCS § 1191

§ 1191. Preemption; State flexibility; construction

(a) Continued applicability of State law with respect to health insurance issuers.
(1) In general. Subject to paragraph (2) and except as provided in subsection (b), this part [*29 USCS §§ 1181* et seq.] shall not be construed to supersede any provision of State law which establishes, implements, or continues in effect any standard or requirement solely relating to health insurance issuers in connection with group health insurance coverage except to the extent that such standard or requirement prevents the application of a requirement of this part [*29 USCS §§ 1181* et seq.].
(2) Continued preemption with respect to group health plans. Nothing in this part [*29 USCS §§ 1181* et seq.] shall be construed to affect or modify the provisions of section 514 [*29 USCS § 1144*] with respect to group health plans.

(b) Special rules in case of portability requirements.
(1) In general. Subject to paragraph (2), the provisions of this part [*29 USCS §§ 1181* et seq.] relating to health insurance coverage offered by a health insurance issuer supersede any provision of State law which establishes, implements, or continues in effect a standard or requirement applicable to imposition of a preexisting condition exclusion specifically governed by section 701 [*29 USCS § 1181*] which differs from the standards or requirements specified in such section.
(2) Exceptions. Only in relation to health insurance coverage offered by a health insurance issuer, the provisions of this part [*29 USCS §§ 1181* et seq.] do not supersede any provision of State law to the extent that such provision--
(A) substitutes for the reference to "6-month period" in section 701(a)(1) [*29 USCS § 1181(a)(1)*] a reference to any shorter period of time;
(B) substitutes for the reference to "12 months" and "18 months" in section 701(a)(2) [*29 USCS § 1181(a)(2)*] a reference to any shorter period of time;
(C) substitutes for the references to "63 days" in sections 701(c)(2)(A) and (d)(4)(A) [*29 USCS § 1181(c)(2)(A)*, (d)(4)(A)] a reference to any greater number of days;
(D) substitutes for the reference to "30-day period" in sections 701(b)(2) and (d)(1) [*29 USCS § 1181(b)(2)*, (d)(1)] a reference to any greater period;
(E) prohibits the imposition of any preexisting condition exclusion in cases not described in section 701(d) [*29 USCS § 1181(d)*] or expands the exceptions described in such section;
(F) requires special enrollment periods in addition to those required under section 701(f) [*29 USCS § 1181(f)*]; or
(G) reduces the maximum period permitted in an affiliation period under section 701(g)(1)(B) [*29 USCS § 1181(g)(1)(B)*].

(c) Rules of construction. Except as provided in section 711 [*29 USCS § 1185*], nothing in this part [*29 USCS §§ 1181* et seq.] shall be construed as requiring a group health plan or health insurance coverage to provide specific benefits under the terms of such plan or coverage.

(d) Definitions. For purposes of this section--
(1) State law. The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.
(2) State. The term "State" includes a State, the Northern Mariana Islands, any political subdivisions of a State or such Islands, or any agency or instrumentality of either.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
GROUP HEALTH PLAN REQUIREMENTS
GENERAL PROVISIONS

29 USCS § 1191a

§ 1191a. Special rules relating to group health plans

(a) General exception for certain small group health plans. The requirements of this part [*29 USCS §§ 1181* et seq.] (other than section 711 [*29 USCS § 1185*]) shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year if, on the first day of such plan year, such plan has less than 2 participants who are current employees.

(b) Exception for certain benefits. The requirements of this part [*29 USCS §§ 1181* et seq.] shall not apply to any group health plan (and group health insurance coverage) in relation to its provision of excepted benefits described in section 731(c)(1) [*29 USCS § 1191(c)(1)*].

(c) Exception for certain benefits if certain conditions met.
(1) Limited, excepted benefits. The requirements of this part [*29 USCS §§ 1181* et seq.] shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) in relation to its provision of excepted benefits described in section 731(c)(2) [*29 USCS § 1191(c)(2)*] if the benefits--
(A) are provided under a separate policy, certificate, or contract of insurance; or
(B) are otherwise not an integral part of the plan.
(2) Noncoordinated, excepted benefits. The requirements of this part [*29 USCS §§ 1181* et seq.] shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) in relation to its provision of excepted benefits described in section 733(c)(3) [*29 USCS § 1191b(c)(3)*] if all of the following conditions are met:
(A) The benefits are provided under a separate policy, certificate, or contract of insurance.
(B) There is no coordination between the provision of such benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor.
(C) Such benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor.
(3) Supplemental excepted benefits. The requirements of this part [*29 USCS §§ 1181* et seq.] shall not apply to any group health plan (and group health insurance coverage) in relation to its provision of excepted benefits described in section 733(c)(4) [*29 USCS § 1191b(c)(4)*] if the benefits are provided under a separate policy, certificate, or contract of insurance.

(d) Treatment of partnerships. For purposes of this part [*29 USCS §§ 1181* et seq.]--
(1) Treatment as a group health plan. Any plan, fund, or program which would not be (but for this subsection) an employee welfare benefit plan and which is established or maintained by a partnership, to the extent that such plan, fund, or program provides medical care (including items and services paid for as medical care) to present or former partners in the partnership or to their dependents (as defined under the terms of the plan, fund, or program), directly or through insurance, reimbursement, or otherwise, shall be treated (subject to paragraph (2)) as an employee welfare benefit plan which is a group health plan.
(2) Employer. In the case of a group health plan, the term 'employer' also includes the partnership in relation to any partner.
(3) Participants of group health plans. In the case of a group health plan, the term "participant" also includes--
(A) in connection with a group health plan maintained by a partnership, an individual who is a partner in relation to the partnership, or
(B) in connection with a group health plan maintained by a self-employed individual (under which one or more employees are participants), the self-employed individual,

if such individual is, or may become, eligible to receive a benefit under the plan or such individual's beneficiaries may be eligible to receive any such benefit.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
GROUP HEALTH PLAN REQUIREMENTS
GENERAL PROVISIONS

29 USCS § 1191b

§ 1191b. Definitions

(a) Group health plan. For purposes of this part [*29 USCS §§ 1181* et seq.]--

(1) In general. The term "group health plan" means an employee welfare benefit plan to the extent that the plan provides medical care (as defined in paragraph (2) and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

(2) Medical care. The term "medical care" means amounts paid for--

(A) the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body,

(B) amounts paid for transportation primarily for and essential to medical care referred to in subparagraph (A), and

(C) amounts paid for insurance covering medical care referred to in subparagraphs (A) and (B).

(b) Definitions relating to health insurance. For purposes of this part [*29 USCS §§ 1181* et seq.]--

(1) Health insurance coverage. The term "health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

(2) Health insurance issuer. The term "health insurance issuer" means an insurance company, insurance service, or insurance organization (including a health maintenance organization, as defined in paragraph (3)) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2) [*29 USCS § 1144(b)(2)*]). Such term does not include a group health plan.

(3) Health maintenance organization. The term "health maintenance organization" means--

(A) a federally qualified health maintenance organization (as defined in section 1301(a) of the Public Health Service Act (*42 U.S.C. 300e(a)*)),

(B) an organization recognized under State law as a health maintenance organization, or

(C) a similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization.

(4) Group health insurance coverage. The term "group health insurance coverage" means, in connection with a group health plan, health insurance coverage offered in connection with such plan.

(c) Excepted benefits. For purposes of this part [*29 USCS §§ 1181* et seq.], the term "excepted benefits" means benefits under one or more (or any combination thereof) of the following:

(1) Benefits not subject to requirements.

(A) Coverage only for accident, or disability income insurance, or any combination thereof.

(B) Coverage issued as a supplement to liability insurance.

(C) Liability insurance, including general liability insurance and automobile liability insurance.

(D) Workers' compensation or similar insurance.

(E) Automobile medical payment insurance.

(F) Credit-only insurance.

(G) Coverage for on-site medical clinics.

(H) Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(2) Benefits not subject to requirements if offered separately.

(A) Limited scope dental or vision benefits.

(B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

(C) Such other similar, limited benefits as are specified in regulations.

(3) Benefits not subject to requirements if offered as independent, noncoordinated benefits.

(A) Coverage only for a specified disease or illness.

(B) Hospital indemnity or other fixed indemnity insurance.

(4) Benefits not subject to requirements if offered as separate insurance policy. Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act [*42 USCS § 1395ss(g)(1)*]), coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, and similar supplemental coverage provided to coverage under a group health plan.

(d) Other definitions. For purposes of this part [*29 USCS §§ 1181* et seq.]--

(1) COBRA continuation provision. The term "COBRA continuation provision" means any of the following:

(A) Part 6 of this subtitle [*29 USCS §§ 1161* et seq.].

(B) *Section 4980B of the Internal Revenue Code of 1986* [*26 USCS § 4980B*], other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines.

(C) Title XXII of the Public Health Service Act *[42 USCS §§ 350gg* et seq.].

(2) Health status-related factor. The term "health status-related factor" means any of the factors described in section 702(a)(1) [*29 USCS § 1182(a)(1)*].

(3) Network plan. The term "network plan" means health insurance coverage offered by a health insurance issuer under which the financing and delivery of medical care (including items and services paid for as medical care) are provided, in whole or in part, through a defined set of providers under contract with the issuer.

(4) Placed for adoption. The term "placement", or being "placed", for adoption, has the meaning given such term in section 609(c)(3)(B) [*29 USCS § 1169(c)(3)(B)*].

(5) Family member. The term "family member" means, with respect to an individual--

(A) a dependent (as such term is used for purposes of section 701(f)(2) [*29 USCS § 1181(f)(2)*]) of such individual, and

(B) any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual or of an individual described in subparagraph (A).

(6) Genetic information.

(A) In general. The term "genetic information" means, with respect to any individual, information about--

(i) such individual's genetic tests,

(ii) the genetic tests of family members of such individual, and

(iii) the manifestation of a disease or disorder in family members of such individual.

(B) Inclusion of genetic services and participation in genetic research. Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual.

(C) Exclusions. The term "genetic information" shall not include information about the sex or age of any individual.

(7) Genetic test.

(A) In general. The term "genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

(B) Exceptions. The term "genetic test" does not mean--

(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(8) Genetic services. The term "genetic services" means--

(A) a genetic test;

(B) genetic counseling (including obtaining, interpreting, or assessing genetic information); or

(C) genetic education.

(9) Underwriting purposes. The term "underwriting purposes" means, with respect to any group health plan, or health insurance coverage offered in connection with a group health plan--

(A) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the plan or coverage;

(B) the computation of premium or contribution amounts under the plan or coverage;

(C) the application of any pre-existing condition exclusion under the plan or coverage; and

(D) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

TITLE 29. LABOR
CHAPTER 18. EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
PROTECTION OF EMPLOYEE BENEFIT RIGHTS
REGULATORY PROVISIONS
GROUP HEALTH PLAN REQUIREMENTS
GENERAL PROVISIONS

29 USCS § 1191c

§ 1191c. Regulations

The Secretary, consistent with section 104 of the Health Care Portability and Accountability Act of 1996 [*42 USCS § 300gg-92* note], may promulgate such regulations as may be necessary or appropriate to carry out the provisions of this part [*29 USCS §§ 1181* et seq.]. The Secretary may promulgate any interim final rules as the Secretary determines are appropriate to carry out this part [*29 USCS §§ 1181* et seq.].