

Subtitle A

Pension Benefit Guaranty Corporation

1301. Definitions

- (a) For purposes of this subchapter, the term—
- (1) “administrator” means the person or persons described in paragraph (16) of section 1002 of this title;
 - (2) “substantial employer”, for any plan year of a single-employer plan, means one or more persons—
 - (A) who are contributing sponsors of the plan in such plan year,
 - (B) who, at any time during such plan year, are members of the same controlled group, and
 - (C) whose required contributions to the plan for each plan year constituting one of—
 - (i) the two immediately preceding plan years, or
 - (ii) the first two of the three immediately preceding plan years,total an amount greater than or equal to 10 percent of all contributions required to be paid to or under the plan for such plan year;
 - (3) “multiemployer plan” means a plan—
 - (A) to which more than one employer is required to contribute,
 - (B) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and
 - (C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation, except that, in applying this paragraph—
 - (i) a plan shall be considered a multiemployer plan on and after its termination date if the plan was a multiemployer plan under this paragraph for the plan year preceding such termination, and
 - (ii) for any plan year which began before September 26, 1980, the term “multiemployer plan” means a plan described in section 414 (f) of title 26 as in effect immediately before such date;
 - (4) “corporation”, except where the context clearly requires otherwise, means the Pension Benefit Guaranty Corporation established under section 1302 of this title;
 - (5) “fund” means the appropriate fund established under section 1305 of this title;
 - (6) “basic benefits” means benefits guaranteed under section 1322 of this title (other than under section 1322 (c) ^[1] of this title), or under section 1322a of this title (other than under section 1322a (g) of this title);
 - (7) “non-basic benefits” means benefits guaranteed under section 1322 (c) ^[1] of this title or 1322a(g) of this title;
 - (8) “nonforfeitable benefit” means, with respect to a plan, a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of this chapter (other than submission of a formal application,

retirement, completion of a required waiting period, or death in the case of a benefit which returns all or a portion of a participant's accumulated mandatory employee contributions upon the participant's death), whether or not the benefit may subsequently be reduced or suspended by a plan amendment, an occurrence of any condition, or operation of this chapter or the Internal Revenue Code of 1986;

(9) "reorganization index" means the amount determined under section 1421 (b) of this title;

(10) "plan sponsor" means, with respect to a multiemployer plan—

(A) the plan's joint board of trustees, or

(B) if the plan has no joint board of trustees, the plan administrator;

(11) "contribution base unit" means a unit with respect to which an employer has an obligation to contribute under a multiemployer plan, as defined in regulations prescribed by the Secretary of the Treasury;

(12) "outstanding claim for withdrawal liability" means a plan's claim for the unpaid balance of the liability determined under part 1 of subtitle E of this subchapter for which demand has been made, valued in accordance with regulations prescribed by the corporation;

(13) "contributing sponsor", of a single-employer plan, means a person described in section 1082 (c)(11)(A) of this title (without regard to section 1082 (c)(11)(B) of this title) or section 412 (c)(11)(A) of title 26 (without regard to section 412(c)(11)(B) of such title).^[2]

(14) in the case of a single-employer plan—

(A) "controlled group" means, in connection with any person, a group consisting of such person and all other persons under common control with such person;

(B) the determination of whether two or more persons are under "common control" shall be made under regulations of the corporation which are consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under subsections (b) and (c) of section 414 of title 26; and

(C)

(i) notwithstanding any other provision of this subchapter, during any period in which an individual possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an affected air carrier of which he was an accountable owner, whether through the ownership of voting securities, by contract, or otherwise, the affected air carrier shall be considered to be under common control not only with those persons described in subparagraph (B), but also with all related persons; and

(ii) for purposes of this subparagraph, the term—

(I) "affected air carrier" means an air carrier, as defined in section 40102 (a)(2) of title 49, that holds a certificate of public convenience and necessity under section 41102 of title 49 for route number 147, as of November 12, 1991;

(II) "related person" means any person which was under common control (as determined under subparagraph (B)) with an affected air carrier on October 10, 1991, or any successor to such related person;

(III) “accountable owner” means any individual who on October 10, 1991, owned directly or indirectly through the application of section 318 of title 26 more than 50 percent of the total voting power of the stock of an affected air carrier;

(IV) “successor” means any person that acquires, directly or indirectly through the application of section 318 of title 26, more than 50 percent of the total voting power of the stock of a related person, more than 50 percent of the total value of the securities (as defined in section 1002 (20) of this title) of the related person, more than 50 percent of the total value of the assets of the related person, or any person into which such related person shall be merged or consolidated; and

(V) “individual” means a living human being;

(15) “single-employer plan” means any defined benefit plan (as defined in section 1002 (35) of this title) which is not a multiemployer plan;

(16) “benefit liabilities” means the benefits of employees and their beneficiaries under the plan (within the meaning of section 401 (a)(2) of title 26);

(17) “amount of unfunded guaranteed benefits”, of a participant or beneficiary as of any date under a single-employer plan, means an amount equal to the excess of—

(A) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title) of the benefits of the participant or beneficiary under the plan which are guaranteed under section 1322 of this title, over

(B) the current value (as of such date) of the assets of the plan which are required to be allocated to those benefits under section 1344 of this title;

(18) “amount of unfunded benefit liabilities” means, as of any date, the excess (if any) of—

(A) the value of the benefit liabilities under the plan (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title), over

(B) the current value (as of such date) of the assets of the plan;

(19) “outstanding amount of benefit liabilities” means, with respect to any plan, the excess (if any) of—

(A) the value of the benefit liabilities under the plan (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 1344 of this title), over

(B) the value of the benefit liabilities which would be so determined by only taking into account benefits which are guaranteed under section 1322 of this title or to which assets of the plan are allocated under section 1344 of this title;

(20) “person” has the meaning set forth in section 1002 (9) of this title;

(21) “affected party” means, with respect to a plan—

(A) each participant in the plan,

(B) each beneficiary under the plan who is a beneficiary of a deceased participant or who is an alternate payee (within the meaning of section 1056 (d)(3)(K) of this title) under an applicable qualified domestic relations order (within the meaning of section 1056 (d)(3)(B)(i) of this title),

(C) each employee organization representing participants in the plan, and

(D) the corporation,

except that, in connection with any notice required to be provided to the affected party, if an affected party has designated, in writing, a person to receive such notice on behalf of the affected party, any reference to the affected party shall be construed to refer to such person.

(b)

(1) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401 (c)(1) of title 26. For purposes of this subchapter, under regulations prescribed by the corporation, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer and all such trades and businesses as a single employer. The regulations prescribed under the preceding sentence shall be consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under section 414 (c) of title 26.

(2) For purposes of subtitle E of this subchapter—

(A) except as otherwise provided in subtitle E of this subchapter, contributions or other payments shall be considered made under a plan for a plan year if they are made within the period prescribed under section 412 (c)(10) of title 26 (determined, in the case of a terminated plan, as if the plan had continued beyond the termination date), and

(B) the term “Secretary of the Treasury” means the Secretary of the Treasury or such Secretary’s delegate.

1302. Pension Benefit Guaranty Corporation

(a) Establishment within Department of Labor

There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation. In carrying out its functions under this subchapter, the corporation shall be administered by the chairman of the board of directors in accordance with policies established by the board. The purposes of this subchapter, which are to be carried out by the corporation, are—

(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

(2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this subchapter applies, and

(3) to maintain premiums established by the corporation under section 1306 of this title at the lowest level consistent with carrying out its obligations under this subchapter.

(b) Powers of corporation

To carry out the purposes of this subchapter, the corporation has the powers conferred on a nonprofit corporation under the District of Columbia Nonprofit Corporation Act and, in addition to any specific power granted to the corporation elsewhere in this subchapter or under that Act, the corporation has the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by the board of directors, bylaws, rules, and regulations relating to the conduct of its business and the exercise of all other rights and powers granted to it by this chapter and such other bylaws, rules, and regulations as may be necessary to carry out the purposes of this subchapter;

(4) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this chapter in any State or other jurisdiction without regard to qualification, licensing, or other requirements imposed by law in such State or other jurisdiction;

(5) to lease, purchase, accept gifts or donations of, or otherwise to acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of, any property, real, personal, or mixed, or any interest therein wherever situated;

(6) to appoint and fix the compensation of such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, and, to the extent desired by the corporation, require bonds for them and fix the penalty thereof, and to appoint and fix the compensation of experts and consultants in accordance with the provisions of section 3109 of title 5;

(7) to utilize the personnel and facilities of any other agency or department of the United States Government, with or without reimbursement, with the consent of the head of such agency or department; and

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to the corporation by this chapter.

(c) Omitted

(d) Board of directors; compensation; reimbursement for expenses

The board of directors of the corporation consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce. Members of the Board shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the board. The Secretary of Labor is the chairman of the board of directors.

(e) Meetings

The board of directors shall meet at the call of its chairman, or as otherwise provided by the bylaws of the corporation.

(f) Adoption of bylaws; amendment, alteration; publication in the Federal Register

As soon as practicable, but not later than 180 days after September 2, 1974, the board of directors shall adopt initial bylaws and rules relating to the conduct of the business of the corporation. Thereafter, the board of directors may alter, supplement, or repeal any existing bylaw or rule, and may adopt additional bylaws and rules from time to time as may be necessary. The chairman of the board shall cause a copy of the bylaws of the corporation to be published in the Federal Register not less often than once each year.

(g) Exemption from taxation

(1) The corporation, its property, its franchise, capital, reserves, surplus, and its income (including, but not limited to, any income of any fund established under section 1305 of this title), shall be exempt from all taxation now or hereafter imposed by the United States (other than taxes imposed under chapter 21 of title 26, relating to Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.], and chapter 23 of title 26, relating to Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.]), or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of the corporation shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed.

(2) The receipts and disbursements of the corporation in the discharge of its functions shall be included in the totals of the budget of the United States Government. The United States is not liable for any obligation or liability incurred by the corporation.

(3) Omitted.

(h) Advisory committee to corporation

(1) There is established an advisory committee to the corporation, for the purpose of advising the corporation as to its policies and procedures relating to

(A) the appointment of trustees in termination proceedings,

(B) investment of moneys,

(C) whether plans being terminated should be liquidated immediately or continued in operation under a trustee, and

(D) such other issues as the corporation may request from time to time. The advisory committee may also recommend persons for appointment as trustees in termination proceedings, make recommendations with respect to the investment of moneys in the funds, and advise the corporation as to whether a plan subject to being terminated should be liquidated immediately or continued in operation under a trustee.

(2) The advisory committee consists of seven members appointed, from among individuals recommended by the board of directors, by the President. Of the seven members, two shall represent the interests of employee organizations, two shall represent the interests of employers who maintain pension plans, and three shall represent the interests of the general public. The President shall designate one member as chairman at the time of the appointment of that member.

(3) Members shall serve for terms of 3 years each, except that, of the members first appointed, one of the members representing the interests of employee organizations, one of the members representing the interests of employers, and one of the members representing the interests of the general public shall be appointed for terms of 2 years each, one of the members representing the interests of the general public shall be appointed for a term of 1 year, and the other members shall be appointed to full 3-year terms. The advisory committee shall meet at least six times each year and at such other times as may be determined by the chairman or requested by any three members of the advisory committee.

(4) Members shall be chosen on the basis of their experience with employee organizations, with employers who maintain pension plans, with the

administration of pension plans, or otherwise on account of outstanding demonstrated ability in related fields. Of the members serving on the advisory committee at any time, no more than four shall be affiliated with the same political party.

(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. Any vacancy occurring in the office of a member of the advisory committee shall be filled in the manner in which that office was originally filled.

(6) The advisory committee shall appoint and fix the compensation of such employees as it determines necessary to discharge its duties, including experts and consultants in accordance with the provisions of section 3109 of title 5. The corporation shall furnish to the advisory committee such professional, secretarial, and other services as the committee may request.

(7) Members of the advisory committee shall, for each day (including traveltime) during which they are attending meetings or conferences of the committee or otherwise engaged in the business of the committee, be compensated at a rate fixed by the corporation which is not in excess of the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

(8) The Federal Advisory Committee Act does not apply to the advisory committee established by this subsection.

(i) Special rules regarding disasters, etc.

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 title 26) or a terroristic or military action (as defined in section 692(c)(2) of such title), the corporation 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 chapter. 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.

1303. Operation of corporation

(a) Investigatory authority; audit of statistically significant number of terminating plans

The corporation may make such investigations as it deems necessary to enforce any provision of this subchapter or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the corporation shall determine, as to all the facts and circumstances concerning the matter to be investigated. The corporation shall annually audit a statistically significant number of plans terminating under section

1341 (b) of this title to determine whether participants and beneficiaries have received their benefit commitments and whether section 1350 (a) of this title has been satisfied. Each audit shall include a statistically significant number of participants and beneficiaries.

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

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

(c) Contempt

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

(d) Cooperation with other governmental agencies

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

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

(1) Civil actions may be brought by the corporation for appropriate relief, legal or equitable or both, to enforce

(A) the provisions of this subchapter, and

(B) in the case of a plan which is covered under this subchapter (other than a multiemployer plan) and for which the conditions for imposition of a lien described in section 1082 (f)(1)(A) and (B) of this title or section 412 (n)(1)(A) and (B) of title 26 have been met, section 1082 of this title and section 412 of title 26.

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

(3) The district courts of the United States shall have jurisdiction of actions brought by the corporation under this subchapter without regard to the amount in controversy in any such action.

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

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

(6)

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

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

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

(B)

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

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

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

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

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

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

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

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

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

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

(4) This subsection shall be the exclusive means for bringing actions against the corporation under this subchapter, including actions against the corporation in its capacity as a trustee under section 1342 or 1349^[1] of this title.

(5)

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

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

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

(B)

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

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

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

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

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

1304. Repealed. Pub. L. 99–272, title XI, § 11016(c)(6), Apr. 7, 1986, 100 Stat. 274

Section, Pub. L. 93–406, title IV, § 4004, Sept. 2, 1974, 88 Stat. 1008, related to appointment, within 270 days after Sept. 2, 1974, and powers and functions of a receiver to assume control of terminated plan and its assets.

1305. Pension benefit guaranty funds

(a) Establishment of four revolving funds on books of Treasury of the United States

There are established on the books of the Treasury of the United States for revolving funds to be used by the corporation in carrying out its duties under this subchapter. One of the funds shall be used with respect to basic benefits guaranteed under section 1322 of this title, one of the funds shall be used with respect to basic benefits guaranteed under section 1322a of this title, one of the funds shall be used with respect to nonbasic benefits guaranteed under section 1322 of this title (if any), and the remaining fund shall be used with respect to nonbasic benefits guaranteed under section 1322a of this title (if any), other than subsection (g)(2) thereof (if any). Whenever in this subchapter reference is made to the term "fund" the reference shall be considered to refer to the appropriate fund established under this subsection.

(b) Credits to funds; availability of funds; investment of moneys in excess of current needs

(1) Each fund established under this section shall be credited with the appropriate portion of—

- (A) funds borrowed under subsection (c) of this section,
- (B) premiums, penalties, interest, and charges collected under this subchapter,
- (C) the value of the assets of a plan administered under section 1342 of this title by a trustee to the extent that they exceed the liabilities of such plan,
- (D) the amount of any employer liability payments under subtitle D of this subchapter, to the extent that such payments exceed liabilities of the plan (taking into account all other plan assets),
- (E) earnings on investments of the fund or on assets credited to the fund under this subsection,
- (F) attorney's fees awarded to the corporation, and
- (G) receipts from any other operations under this subchapter.

(2) Subject to the provisions of subsection (a) of this section, each fund shall be available—

- (A) for making such payments as the corporation determines are necessary to pay benefits guaranteed under section 1322 or 1322a of this title or benefits payable under section 1350 of this title,
- (B) to purchase assets from a plan being terminated by the corporation when the corporation determines such purchase will best protect the interests of the corporation, participants in the plan being terminated, and other insured plans,
- (C) to repay to the Secretary of the Treasury such sums as may be borrowed (together with interest thereon) under subsection (c) of this section,
- (D) to pay the operational and administrative expenses of the corporation, including reimbursement of the expenses incurred by the Department of the Treasury in maintaining the funds, and the Comptroller General in auditing the corporation, and
- (E) to pay to participants and beneficiaries the estimated amount of benefits which are guaranteed by the corporation under this subchapter and the estimated amount of other benefits to which plan assets are allocated under section 1344 of this title, under single-employer plans which are unable to pay benefits when due or which are abandoned.

(3) Whenever the corporation determines that the moneys of any fund are in excess of current needs, it may request the investment of such amounts as it determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States but, until all borrowings under subsection (c) of this section have been repaid, the obligations in which such excess moneys are invested may not yield a rate of return in excess of the rate of interest payable on such borrowings.

(c) Authority to issue notes or other obligations; purchase by Secretary of the Treasury as public debt transaction

The corporation is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed \$100,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations of the corporation. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations issued by the corporation under this subsection, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(d) Establishment of fifth fund; purpose, availability, etc.

(1) A fifth fund shall be established for the reimbursement of uncollectible withdrawal liability under section 1402 of this title, and shall be credited with the appropriate—

(A) premiums, penalties, and interest charges collected under this subchapter, and

(B) earnings on investments of the fund or on assets credited to the fund.

The fund shall be available to make payments pursuant to the supplemental program established under section 1402 of this title, including those expenses and other charges determined to be appropriate by the corporation.

(2) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

(e) Establishment of sixth fund; purpose, availability, etc.

(1) A sixth fund shall be established for the supplemental benefit guarantee program provided under section 1322a (g)(2) of this title.

(2) Such fund shall be credited with the appropriate—

(A) premiums, penalties, and interest charges collected under section 1322a (g)(2) of this title, and

(B) earnings on investments of the fund or on assets credited to the fund.

The fund shall be available for making payments pursuant to the supplemental benefit guarantee program established under section 1322a (g)(2) of this title, including those expenses and other charges determined to be appropriate by the corporation.

(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

(f) Deposit of premiums into separate revolving fund

(1) A seventh fund shall be established and credited with—

(A) premiums, penalties, and interest charges collected under section 1306

(a)(3)(A)(i) of this title (not described in subparagraph (B)) to the extent attributable to the amount of the premium in excess of \$8.50,

(B) premiums, penalties, and interest charges collected under section 1306 (a)(3)(E) of this title, and

(C) earnings on investments of the fund or on assets credited to the fund.

(2) Amounts in the fund shall be available for transfer to other funds established under this section with respect to a single-employer plan but shall not be available to pay—

(A) administrative costs of the corporation, or

(B) benefits under any plan which was terminated before October 1, 1988, unless no other amounts are available for such payment.

(3) The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

(g) Other use of funds; deposits of repayments

(1) Amounts in any fund established under this section may be used only for the purposes for which such fund was established and may not be used to make loans to (or on behalf of) any other fund or to finance any other activity of the corporation.

(2) None of the funds borrowed under subsection (c) of this section may be used to make loans to (or on behalf of) any fund other than a fund described in the second sentence of subsection (a) of this section.

(3) Any repayment to the corporation of any amount paid out of any fund in connection with a multiemployer plan shall be deposited in such fund.

(h) Voting by corporation of stock paid as liability

Any stock in a person liable to the corporation under this subchapter which is paid to the corporation by such person or a member of such person's controlled group in satisfaction of such person's liability under this subchapter may be voted only by the custodial trustees or outside money managers of the corporation.

1306. Premium rates

(a) Schedules for premium rates and bases for application; establishment, coverage, etc.

(1) The corporation shall prescribe such schedules of premium rates and bases for the application of those rates as may be necessary to provide sufficient revenue to the fund for the corporation to carry out its functions under this subchapter. The premium rates charged by the corporation for any period shall

be uniform for all plans, other than multiemployer plans, insured by the corporation with respect to basic benefits guaranteed by it under section 1322 of this title, and shall be uniform for all multiemployer plans with respect to basic benefits guaranteed by it under section 1322a of this title.

(2) The corporation shall maintain separate schedules of premium rates, and bases for the application of those rates, for—

(A) basic benefits guaranteed by it under section 1322 of this title for single-employer plans,

(B) basic benefits guaranteed by it under section 1322a of this title for multiemployer plans,

(C) nonbasic benefits guaranteed by it under section 1322 of this title for single-employer plans,

(D) nonbasic benefits guaranteed by it under section 1322a of this title for multiemployer plans, and

(E) reimbursements of uncollectible withdrawal liability under section 1402 of this title.

The corporation may revise such schedules whenever it determines that revised schedules are necessary. Except as provided in section 1322a (f) of this title, in order to place a revised schedule described in subparagraph (A) or (B) in effect, the corporation shall proceed in accordance with subsection (b)(1) of this section, and such schedule shall apply only to plan years beginning more than 30 days after the date on which a joint resolution approving such revised schedule is enacted.

(3)

(A) Except as provided in subparagraph (C), the annual premium rate payable to the corporation by all plans for basic benefits guaranteed under this subchapter is—

(i) in the case of a single-employer plan, for plan years beginning after December 31, 1990, an amount equal to the sum of \$19 plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;

(ii) in the case of a multiemployer plan, for the plan year within which the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980 falls, an amount for each individual who is a participant in such plan for such plan year equal to the sum of—

(I) 50 cents, multiplied by a fraction the numerator of which is the number of months in such year ending on or before such date and the denominator of which is 12, and

(II) \$1.00, multiplied by a fraction equal to 1 minus the fraction determined under clause (i),

(iii) in the case of a multiemployer plan, for plan years beginning after September 26, 1980, an amount equal to—

(I) \$1.40 for each participant, for the first, second, third, and fourth plan years,

(II) \$1.80 for each participant, for the fifth and sixth plan years,

(III) \$2.20 for each participant, for the seventh and eighth plan years, and

(IV) \$2.60 for each participant, for the ninth plan year, and for each succeeding plan year.

(B) The corporation may prescribe by regulation the extent to which the rate described in subparagraph (A)(i) applies more than once for any plan year to an individual participating in more than one plan maintained by the same employer, and the corporation may prescribe regulations under which the rate described in subparagraph (A)(iii) will not apply to the same participant in any multiemployer plan more than once for any plan year.

(C)

(i) If the sum of—

(I) the amounts in any fund for basic benefits guaranteed for multiemployer plans, and

(II) the value of any assets held by the corporation for payment of basic benefits guaranteed for multiemployer plans, is for any calendar year less than 2 times the amount of basic benefits guaranteed by the corporation under this subchapter for multiemployer plans which were paid out of any such fund or assets during the preceding calendar year, the annual premium rates under subparagraph (A) shall be increased to the next highest premium level necessary to insure that such sum will be at least 2 times greater than such amount during the following calendar year.

(ii) If the board of directors of the corporation determines that an increase in the premium rates under subparagraph (A) is necessary to provide assistance to plans which are receiving assistance under section 1431 of this title and to plans the board finds are reasonably likely to require such assistance, the board may order such increase in the premium rates.

(iii) The maximum annual premium rate which may be established under this subparagraph is \$2.60 for each participant.

(iv) The provisions of this subparagraph shall not apply if the annual premium rate is increased to a level in excess of \$2.60 per participant under any other provisions of this subchapter.

(D)

(i) Not later than 120 days before the date on which an increase under subparagraph (C)(ii) is to become effective, the corporation shall publish in the Federal Register a notice of the determination described in subparagraph (C)(ii), the basis for the determination, the amount of the increase in the premium, and the anticipated increase in premium income that would result from the increase in the premium rate. The notice shall invite public comment, and shall provide for a public hearing if one is requested. Any such hearing shall be commenced not later than 60 days before the date on which the increase is to become effective.

(ii) The board of directors shall review the hearing record established under clause (i) and shall, not later than 30 days before the date on which the increase is to become effective, determine (after consideration of the comments received) whether the amount of the increase should be changed and shall publish its determination in the Federal Register.

(E)

(i) The additional premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year.

(ii) The amount determined under this clause for any plan year shall be an amount equal to \$9.00 for each \$1,000 (or fraction thereof) of unfunded vested benefits under the plan as of the close of the preceding plan year.

(iii) For purposes of clause (ii)—

(I) Except as provided in subclause (II) or (III), the term “unfunded vested benefits” means the amount which would be the unfunded current liability (within the meaning of section 1082 (d)(8)(A) of this title) if only vested benefits were taken into account.

(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to the applicable percentage of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins. For purposes of this subclause, the applicable percentage is 80 percent for plan years beginning before July 1, 1997, 85 percent for plan years beginning after June 30, 1997, and before the 1st plan year to which the first tables prescribed under section 1082 (d)(7)(C)(ii)(II) of this title apply, and 100 percent for such 1st plan year and subsequent plan years.

(III) In the case of any plan year for which the applicable percentage under subclause (II) is 100 percent, the value of the plan’s assets used in determining unfunded current liability under subclause (I) shall be their fair market value.

(IV) In the case of plan years beginning after December 31, 2001, and before January 1, 2004, subclause (II) shall be applied by substituting “100 percent” for “85 percent”. Subclause (III) shall be applied for such years without regard to the preceding sentence. Any reference to this clause or this subparagraph by any other sections or subsections (other than sections 1305, 1310, 1311, and 1343 of this title) shall be treated as a reference to this clause or this subparagraph without regard to this subclause.

(V) In the case of plan years beginning after December 31, 2003, and before January 1, 2006, the annual yield taken into account under subclause (II) shall be the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the month in which the plan year begins. For purposes of the preceding sentence, the Secretary of the Treasury shall determine such rate of interest on the basis of 2 or more indices that are selected periodically by the Secretary of the Treasury and that are in the top 3 quality levels available. The Secretary of the Treasury shall make the permissible range, and the indices and methodology used to determine the rate, publicly available.

(iv) No premium shall be determined under this subparagraph for any plan year if, as of the close of the preceding plan year, contributions to the plan for the preceding plan year were not less than the full funding limitation for the preceding plan year under section 412 (c)(7) of title 26.

(4) The corporation may prescribe, subject to the enactment of a joint resolution in accordance with this section or section 1322a (f) of this title, alternative

schedules of premium rates, and bases for the application of those rates, for basic benefits guaranteed by it under sections 1322 and 1322a of this title based, in whole or in part, on the risks insured by the corporation in each plan.

(5)

(A) In carrying out its authority under paragraph (1) to establish schedules of premium rates, and bases for the application of those rates, for nonbasic benefits guaranteed under sections 1322 and 1322a of this title the premium rates charged by the corporation for any period for nonbasic benefits guaranteed shall—

- (i) be uniform by category of nonbasic benefits guaranteed,
- (ii) be based on the risks insured in each category, and
- (iii) reflect the experience of the corporation (including experience which may be reasonably anticipated) in guaranteeing such benefits.

(B) Notwithstanding subparagraph (A), premium rates charged to any multiemployer plan by the corporation for any period for supplemental guarantees under section 1322a (g)(2) of this title may reflect any reasonable considerations which the corporation determines to be appropriate.

(6)

(A) In carrying out its authority under paragraph (1) to establish premium rates and bases for basic benefits guaranteed under section 1322 of this title with respect to single-employer plans, the corporation shall establish such rates and bases in coverage schedules in accordance with the provisions of this paragraph.

(B) The corporation may establish annual premiums for single-employer plans composed of the sum of—

- (i) a charge based on a rate applicable to the excess, if any, of the present value of the basic benefits of the plan which are guaranteed over the value of the assets of the plan, not in excess of 0.1 percent, and
- (ii) an additional charge based on a rate applicable to the present value of the basic benefits of the plan which are guaranteed.

The rate for the additional charge referred to in clause (ii) shall be set by the corporation for every year at a level which the corporation estimates will yield total revenue approximately equal to the total revenue to be derived by the corporation from the charges referred to in clause (i) of this subparagraph.

(C) The corporation may establish annual premiums for single-employer plans based on—

- (i) the number of participants in a plan, but such premium rates shall not exceed the rates described in paragraph (3),
- (ii) unfunded basic benefits guaranteed under this subchapter, but such premium rates shall not exceed the limitations applicable to charges referred to in subparagraph (B)(i), or
- (iii) total guaranteed basic benefits, but such premium rates shall not exceed the rates for additional charges referred to in subparagraph (B)(ii).

If the corporation uses two or more of the rate bases described in this subparagraph, the premium rates shall be designed to produce approximately equal amounts of aggregate premium revenue from each of the rate bases used.

(D) For purposes of this paragraph, the corporation shall by regulation define the terms “value of assets” and “present value of the benefits of the plan which are guaranteed” in a manner consistent with the purposes of this subchapter and the provisions of this section.

(b) Revised schedule; Congressional procedures applicable

(1) In order to place a revised schedule (other than a schedule described in subsection (a)(2)(C), (D), or (E) of this section) in effect, the corporation shall transmit the proposed schedule, its proposed effective date, and the reasons for its proposal to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(2) The succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3). They shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any rule of that House.

(3) For the purpose of the succeeding paragraphs of this subsection, “resolution” means only a joint resolution, the matter after the resolving clause of which is as follows: “The proposed revised schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on XX is hereby approved.”, the blank space therein being filled with the date on which the corporation’s message proposing the rate was delivered.

(4) A resolution shall be referred to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate.

(5) If a committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move to discharge the committee from further consideration of that resolution, or to discharge the committee from further consideration of any other resolution with respect to the proposed adjustment which has been referred to the committee. The motion to discharge may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposed rate), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be

made with respect to any other resolution with respect to the same proposed rate.

(6) When a committee has reported, or has been discharged from further consideration of a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(7) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution and motions to proceed to the consideration of other business shall be decided without debate. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(c) Rates for plans for basic benefits

(1) Except as provided in subsection (a)(3) of this section, and subject to paragraph (2), the rate for all plans for basic benefits guaranteed under this subchapter with respect to plan years ending after September 2, 1974, is—

(A) in the case of each plan which was not a multiemployer plan in a plan year—
(i) with respect to each plan year beginning before January 1, 1978, an amount equal to \$1 for each individual who was a participant in such plan during the plan year,

(ii) with respect to each plan year beginning after December 31, 1977, and before January 1, 1986, an amount equal to \$2.60 for each individual who was a participant in such plan during the plan year, and ^[1]

(iii) with respect to each plan year beginning after December 31, 1985, and before January 1, 1988, an amount equal to \$8.50 for each individual who was a participant in such plan during the plan year, and

(iv) with respect to each plan year beginning after December 31, 1987, and before January 1, 1991, an amount equal to \$16 for each individual who was a participant in such plan during the plan year, and

(B) in the case of each plan which was a multiemployer plan in a plan year, an amount equal to 50 cents for each individual who was a participant in such plan during the plan year.

(2) The rate applicable under this subsection for the plan year preceding September 1, 1975, is the product of—

(A) the rate described in the preceding sentence; and

(B) a fraction—

(i) the numerator of which is the number of calendar months in the plan year which ends after September 2, 1974, and before the date on which the new plan year commences, and

(ii) the denominator of which is 12.

1307. Payment of premiums

(a) Premiums payable when due; accrual; waiver or reduction

The designated payor of each plan shall pay the premiums imposed by the corporation under this subchapter with respect to that plan when they are due. Premiums under this subchapter are payable at the time, and on an estimated, advance, or other basis, as determined by the corporation. Premiums imposed by this subchapter on September 2, 1974 (applicable to that portion of any plan year during which such date occurs) are due within 30 days after such date. Premiums imposed by this subchapter on the first plan year commencing after September 2, 1974, are due within 30 days after such plan year commences. Premiums shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure, or until a trustee is appointed pursuant to section 1342 of this title, whichever is earlier. The corporation may waive or reduce premiums for a multiemployer plan for any plan year during which such plan receives financial assistance from the corporation under section 1431 of this title, except that any amount so waived or reduced shall be treated as financial assistance under such section.

(b) Late payment charge; waiver

If any basic benefit premium is not paid when it is due the corporation is authorized to assess a late payment charge of not more than 100 percent of the premium payment which was not timely paid. The preceding sentence shall not apply to any payment of premium made within 60 days after the date on which payment is due, if before such date, the designated payor obtains a waiver from the corporation based upon a showing of substantial hardship arising from the timely payment of the premium. The corporation is authorized to grant a waiver under this subsection upon application made by the designated payor, but the corporation may not grant a waiver if it appears that the designated payor will be unable to pay the premium within 60 days after the date on which it is due. If any premium is not paid by the last date prescribed for a payment, interest on the amount of such premium at the rate imposed under section 6601 (a) of title 26 (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) shall be paid for the period from such last date to the date paid.

(c) Civil action to recover premium penalty and interest

If any designated payor fails to pay a premium when due, the corporation is authorized to bring a civil action in any district court of the United States within the jurisdiction of which the plan assets are located, the plan is administered, or in which a defendant resides or is found for the recovery of the amount of the premium penalty, and interest, and process may be served in any other district. The district courts of the United States shall have jurisdiction over actions brought under this subsection by the corporation without regard to the amount in controversy.

(d) Basic benefits guarantee not stopped by designated payor's failure to pay premiums when due

The corporation shall not cease to guarantee basic benefits on account of the failure of a designated payor to pay any premium when due.

(e) Designated payor

(1) For purposes of this section, the term "designated payor" means—

(A) the contributing sponsor or plan administrator in the case of a single-employer plan, and

(B) the plan administrator in the case of a multiemployer plan.

(2) If the contributing sponsor of any single-employer plan is a member of a controlled group, each member of such group shall be jointly and severally liable for any premiums required to be paid by such contributing sponsor. For purposes of the preceding sentence, the term "controlled group" means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of title 26.

1308. Annual report by the corporation

As soon as practicable after the close of each fiscal year the corporation shall transmit to the President and the Congress a report relative to the conduct of its business under this subchapter for that fiscal year. The report shall include financial statements setting forth the finances of the corporation at the end of such fiscal year and the result of its operations (including the source and application of its funds) for the fiscal year and shall include an actuarial evaluation of the expected operations and status of the funds established under section 1305 of this title for the next five years (including a detailed statement of the actuarial assumptions and methods used in making such evaluation).

1309. Portability assistance

The corporation shall provide advice and assistance to individuals with respect to evaluating the economic desirability of establishing individual retirement accounts or other forms of individual retirement savings for which a deduction is allowable under section 219 of title 26 and with respect to evaluating the desirability, in particular cases, of transferring amounts representing an employee's interest in a qualified plan to such an account upon the employee's separation from service with an employer.

1310. Authority to require certain information

(a) Information required

Each person described in subsection (b) of this section shall provide the corporation annually, on or before a date specified by the corporation in regulations, with—

(1) such records, documents, or other information that the corporation specifies in regulations as necessary to determine the liabilities and assets of plans covered by this subchapter; and

(2) copies of such person's audited (or, if unavailable, unaudited) financial statements, and such other financial information as the corporation may prescribe in regulations.

(b) Persons required to provide information

The persons covered by subsection (a) of this section are each contributing sponsor, and each member of a contributing sponsor's controlled group, of a single-employer plan covered by this subchapter, if—

(1) the aggregate unfunded vested benefits at the end of the preceding plan year (as determined under section 1306 (a)(3)(E)(iii) of this title) of plans maintained by the contributing sponsor and the members of its controlled group exceed \$50,000,000 (disregarding plans with no unfunded vested benefits);

(2) the conditions for imposition of a lien described in section 1082 (f)(1)(A) and (B) of this title or section 412 (n)(1)(A) and (B) of title 26 have been met with respect to any plan maintained by the contributing sponsor or any member of its controlled group; or

(3) minimum funding waivers in excess of \$1,000,000 have been granted with respect to any plan maintained by the contributing sponsor or any member of its controlled group, and any portion thereof is still outstanding.

(c) Information exempt from disclosure requirements

Any information or documentary material submitted to the corporation pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

1311. Notice to participants

(a) In general

The plan administrator of a plan subject to the additional premium under section 1306 (a)(3)(E) of this title shall provide, in a form and manner and at such time as prescribed in regulations of the corporation, notice to plan participants and beneficiaries of the plan's funding status and the limits on the corporation's guaranty should the plan terminate while underfunded. Such notice shall be written in a manner so as to be understood by the average plan participant.

(b) Exception

Subsection (a) of this section shall not apply to any plan to which section 1082 (d) of this title does not apply for the plan year by reason of paragraph (9) thereof.

