

ERISA 501 (29 USC 1132)

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ERISA SEC 501

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(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 1109](#) of this title;
- (3) by a **participant**, **beneficiary**, or **fiduciary**
 - (A) to enjoin any act or practice which violates any provision of this subchapter 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 subchapter 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 1025(c) of this title;
- (5) except as otherwise provided in subsection (b) of this section, by the **Secretary**
 - (A) to enjoin any act or practice which violates any provision of this subchapter, or
 - (B) to obtain other appropriate equitable relief
 - (i) to redress such violation or
 - (ii) to enforce any provision of this subchapter;
- (6) by the **Secretary** to collect any civil penalty under paragraph (2), (4), (5), (6), (7), (8), or (9) of subsection (c) of this section or under subsection (i) or (l) of this section;
- (7) by a **State** to enforce compliance with a qualified medical child support order (as defined in [section 1169\(a\)\(2\)](#)(A) of this title);
- (8) by the **Secretary**, or by an **employer** or **other person** referred to in [section 1021\(f\)\(1\)](#) of this title, (A) to enjoin any act or practice which violates [subsection \(f\) of section 1021](#) of this title, 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 [\[FN1\]](#) 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 pre-judgment interest on such amounts; or

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(10) in the case of a multiemployer plan that has been certified by the actuary to be in endangered or critical status under [section 1085](#) of this title, 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 Title 26](#) (or with respect to which an application to so qualify has been filed and has not been finally determined) the Secretary may exercise his authority under subsection (a)(5) of this section with respect to a violation of, or the enforcement of, parts 2 and 3 of this subtitle (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 1145](#) of this title.

(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 against a health insurance issuer offering health insurance coverage in connection with a group health plan (as defined in [section 1191b\(a\)\(1\)](#) of this title). 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 1166](#) of this title, [section 1021\(e\)\(1\)](#) of this title or [section 1021\(f\)](#), or [section 1025\(a\)](#) of this title 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 subchapter 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

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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 1021\(b\)\(1\)](#) of this title. For purposes of this paragraph, an annual report that has been rejected under [section 1024\(a\)\(4\)](#) of this title 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 1021\(d\)](#) of this title with respect to any participant or beneficiary or who fails to meet the requirements of [section 1021\(e\)\(2\)](#) of this title with respect to any person or who fails to meet the requirements of [section 1082\(d\)\(12\)\(E\)](#) of this title 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](#) or [section 1144\(e\)\(3\)](#) of this title.
- (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 1021\(g\)](#) of this title.
- (6) If, within 30 days of a request by the Secretary to a plan administrator for documents under [section 1024\(a\)\(6\)](#) of this title, 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 1021](#) of this title. 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 1085](#) of this title 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 1085](#) of this title by the end of the funding improvement period with respect to the plan.

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(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 1181\(f\)\(3\)\(B\)\(i\)\(I\)](#) of this title. 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 1181\(f\)\(3\)\(B\)\(ii\)](#) of this title. For purposes of this subparagraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.

(10) [FN2] 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 1182](#) of this title or [section 1181](#) or [1182\(b\)\(1\)](#) of this title 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;

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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 1191b](#) of this title shall have the meanings provided such terms in such section.

(10) [FN21](#) The Secretary and the Secretary of Health and Human Services shall maintain such ongoing consultation as may be necessary and appropriate to

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coordinate enforcement under this subsection with enforcement under [section 1320b-14\(c\)\(8\) of Title 42](#).

(d) Status of employee benefit plan as entity

- (1) An employee benefit plan may sue or be sued under this subchapter as an entity. Service of summons, subpoena, 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 subchapter 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 subchapter.

(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 subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in [section 1021\(f\)\(1\)](#) of this title. 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 subchapter 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 subchapter (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 subchapter by a fiduciary for or on behalf of a plan to enforce [section 1145](#) of this title 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--

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(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 Title 26](#).

(h) Service upon Secretary of Labor and Secretary of the Treasury

A copy of the complaint in any action under this subchapter by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) of this section 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. If the Secretary brings an action under subsection (a) of this section 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 1106](#) of this title 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 Title 26](#)) 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 Title 26](#)) 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 Title 26](#).

(j) Direction and control of litigation by Attorney General

In all civil actions under this subchapter, attorneys appointed by the Secretary may represent the Secretary (except as provided in [section 518\(a\) of Title 28](#)), 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 chapter, or to compel him to take action required under this subchapter, 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.

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(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 of this subtitle 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) of this section.

(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) of this section) 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 Title 26](#).

(m) Penalty for improper distribution

In the case of a distribution to a pension plan participant or beneficiary in violation of [section 1056\(e\)](#) of this title 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.

[\[FN1\]](#) So in original. Probably should be "subtitle".

[\[FN2\]](#) So in original. Two pars. (10) have been enacted.