Part

AMENDMENTS

2006—Pub. L. 109–280, title I, §113(a)(2), Aug. 17, 2006, 120 Stat. 852, added item for part III.

1964—Pub. L. 88–272, title II, §221(d)(1), Feb. 26, 1964, 78 Stat. 75, substituted ''Certain stock options'' for ''Miscellaneous provisions'' in heading to part II.

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

Subpart

A. General rule.
B. Special rules.
C. Special rules for multiemployer plans.
D. Treatment of welfare benefit funds.
E. Treatment of transfers to retiree health accounts.[1]

AMENDMENTS

1984—Pub. L. 98–369, div. A, title V, §511(d), July 18, 1984, 98 Stat. 862, added heading for subpart D.

1980—Pub. L. 96–364, title II, §202(b), Sept. 26, 1980, 94 Stat. 1285, added heading for subpart C.

SUBPART A—GENERAL RULE

Sec.

401. Qualified pension, profit-sharing, and stock bonus plans.
402. Taxability of beneficiary of employees' trust.
402A. Optional treatment of elective deferrals as Roth contributions.
403. Taxation of employee annuities.
404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan.
404A. Deduction for certain foreign deferred compensation plans.
[405. Repealed.]
406. Employees of foreign affiliates covered by section 3121(*l*) agreements.
407. Certain employees of domestic subsidiaries engaged in business outside the United States.
408. Individual retirement accounts.
408A. Roth IRAs.
409. Qualifications for tax credit employee stock ownership plans.
409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §885(c), Oct. 22, 2004, 118 Stat. 1640, added item 409A.

2001—Pub. L. 107–16, title VI, §617(e)(2), June 7, 2001, 115 Stat. 106, added item 402A.

1997—Pub. L. 105–34, title III, §302(e), Aug. 5, 1997, 111 Stat. 829, added item 408A.

1986—Pub. L. 99–514, title XVIII, §1899A(70), Oct. 22, 1986, 100 Stat. 2963, substituted ''Qualifications'' for ''Qualification'' in item 409.

1984—Pub. L. 98–369, div. A, title IV, §491(d)(54), (e)(10), July 18, 1984, 98 Stat. 852, 853, struck out items 405 and 409, which read ''Qualified bond purchase plans'' and ''Retirement bonds'', respectively, and redesignated item 409A as 409.

1983—Pub. L. 98–21, title III, §321(e)(2)(D)(ii), Apr. 20, 1983, 97 Stat. 120, substituted ''Employees of foreign affiliates covered by section 3121(*l*) agreements'' for ''Certain employees of foreign subsidiaries'' in item 406.

1980—Pub. L. 96–603, §2(d)(1), Dec. 28, 1980, 94 Stat. 3510, added item 404A.

Pub. L. 96–222, title I, §101(a)(7)(L)(v)(VIII), Apr. 1, 1980, 94 Stat. 200, substituted ''tax credit employee stock ownership plans'' for ''ESOPS'' in item 409A.

1978—Pub. L. 95–600, title I, §141(f)(8), Nov. 6, 1978, 92 Stat. 2795, added item 409A.

1974—Pub. L. 93–406, title II, §1016(b)(1), Sept. 2, 1974, 88 Stat. 932, inserted heading ''Subpart A—General Rule'' and added analysis of subparts.

Pub. L. 93–406, title II, §2002(h)(2), Sept. 2, 1974, 88 Stat. 970, added items 408 and 409.

1964—Pub. L. 88–272, title II, §220(c)(1), Feb. 26, 1964, 78 Stat. 62, added items 406 and 407.

1962—Pub. L. 87–792, §5(b), Oct. 10, 1962, 76 Stat. 827, added item 405.

§401. Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification

A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), or by a charitable remainder trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1)), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a), or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination).;[1]

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).

(5) SPECIAL RULES RELATING TO NONDISCRIMINATION REQUIREMENTS.—

(A) SALARIED OR CLERICAL EMPLOYEES.—A classification shall not be considered dis-

[1] Editorially supplied. Subpart E of part I added by Pub. L. 101–508 without corresponding amendment of part analysis.

[1] So in original. Period before semicolon probably should be a closing parenthesis.

criminatory within the meaning of paragraph (4) or section 410(b)(2)(A)(i) merely because it is limited to salaried or clerical employees.

(B) CONTRIBUTIONS AND BENEFITS MAY BEAR UNIFORM RELATIONSHIP TO COMPENSATION.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan bear a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees.

(C) CERTAIN DISPARITY PERMITTED.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan favor highly compensated employees (as defined in section 414(q)) in the manner permitted under subsection (l).

(D) INTEGRATED DEFINED BENEFIT PLAN.—

(i) IN GENERAL.—A defined benefit plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the plan provides that the employer-derived accrued retirement benefit for any participant under the plan may not exceed the excess (if any) of—

(I) the participant's final pay with the employer, over

(II) the employer-derived retirement benefit created under Federal law attributable to service by the participant with the employer.

For purposes of this clause, the employer-derived retirement benefit created under Federal law shall be treated as accruing ratably over 35 years.

(ii) FINAL PAY.—For purposes of this subparagraph, the participant's final pay is the compensation (as defined in section 414(q)(4)) paid to the participant by the employer for any year—

(I) which ends during the 5-year period ending with the year in which the participant separated from service for the employer, and

(II) for which the participant's total compensation from the employer was highest.

(E) 2 OR MORE PLANS TREATED AS SINGLE PLAN.—For purposes of determining whether 2 or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan—

(i) CONTRIBUTIONS.—If the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate.

(ii) BENEFITS.—If the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates.

(F) SOCIAL SECURITY RETIREMENT AGE.—For purposes of testing for discrimination under paragraph (4)—

(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

(ii) subsidized early retirement benefits and joint and survivor annuities shall not be treated as being unavailable to employees on the same terms merely because such benefits or annuities are based in whole or in part on an employee's social security retirement age (as so defined).

(G) GOVERNMENTAL PLANS.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d)).

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).

(8) A trust forming part of a defined benefit plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) REQUIRED DISTRIBUTIONS.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee—

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(B) REQUIRED DISTRIBUTION WHERE EMPLOYEE DIES BEFORE ENTIRE INTEREST IS DISTRIBUTED.—

(i) WHERE DISTRIBUTIONS HAVE BEGUN UNDER SUBPARAGRAPH (A)(ii).—A trust shall not constitute a qualified trust under this section unless the plan provides that if—

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

(ii) 5-YEAR RULE FOR OTHER CASES.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

(iii) EXCEPTION TO 5-YEAR RULE FOR CERTAIN AMOUNTS PAYABLE OVER LIFE OF BENEFICIARY.—If—

(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,

(II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,

for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

(iv) SPECIAL RULE FOR SURVIVING SPOUSE OF EMPLOYEE.—If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee—

(I) the date on which the distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee would have attained age 70½, and

(II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

(C) REQUIRED BEGINNING DATE.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''required beginning date'' means April 1 of the calendar year following the later of—

(I) the calendar year in which the employee attains age 70½, or

(II) the calendar year in which the employee retires.

(ii) EXCEPTION.—Subclause (II) of clause (i) shall not apply—

(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70½, or

(II) for purposes of section 408(a)(6) or (b)(3).

(iii) ACTUARIAL ADJUSTMENT.—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

(iv) EXCEPTION FOR GOVERNMENTAL AND CHURCH PLANS.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term ''church plan'' means a plan maintained by a church for church employees, and the term ''church'' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(D) LIFE EXPECTANCY.—For purposes of this paragraph, the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

(E) DESIGNATED BENEFICIARY.—For purposes of this paragraph, the term ''designated beneficiary'' means any individual designated as a beneficiary by the employee.

(F) TREATMENT OF PAYMENTS TO CHILDREN.—Under regulations prescribed by the Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).

(G) TREATMENT OF INCIDENTAL DEATH BENEFIT DISTRIBUTIONS.—For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph.

(H) TEMPORARY WAIVER OF MINIMUM REQUIRED DISTRIBUTION.—

(i) IN GENERAL.—The requirements of this paragraph shall not apply for calendar year 2009 to—

(I) a defined contribution plan which is described in this subsection or in section 403(a) or 403(b),

(II) a defined contribution plan which is an eligible deferred compensation plan described in section 457(b) but only if such plan is maintained by an employer described in section 457(e)(1)(A), or

(III) an individual retirement plan.

(ii) SPECIAL RULES REGARDING WAIVER PERIOD.—For purposes of this paragraph—

(I) the required beginning date with respect to any individual shall be determined without regard to this subparagraph for purposes of applying this paragraph for calendar years after 2009, and

(II) if clause (ii) of subparagraph (B) applies, the 5-year period described in such clause shall be determined without regard to calendar year 2009.

(10) OTHER REQUIREMENTS.—

(A) PLANS BENEFITING OWNER-EMPLOYEES.—In the case of any plan which provides contributions or benefits for employees some or

all of whom are owner-employees (as defined in subsection (c)(3)), a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of subsection (d) are also met.

(B) TOP-HEAVY PLANS.—

(i) IN GENERAL.—In the case of any top-heavy plan, a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of section 416 are met.

(ii) PLANS WHICH MAY BECOME TOP-HEAVY.—Except to the extent provided in regulations, a trust forming part of a plan (whether or not a top-heavy plan) shall constitute a qualified trust under this section only if such plan contains provisions—

(I) which will take effect if such plan becomes a top-heavy plan, and

(II) which meet the requirements of section 416.

(iii) EXEMPTION FOR GOVERNMENTAL PLANS.—This subparagraph shall not apply to any governmental plan.

(11) REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY.—

(A) IN GENERAL.—In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless—

(i) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and

(ii) 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 is provided to the surviving spouse of such participant.

(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to—

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution 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 section 417(a)(2), to a designated beneficiary),

(II) such participant does not elect a 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 clause (i) or (ii) or to which this clause applied with respect to the participant.

Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(C) EXCEPTION FOR CERTAIN ESOP BENEFITS.—

(i) IN GENERAL.—In the case of—

(I) a tax credit employee stock ownership plan (as defined in section 409(a)), or

(II) an employee stock ownership plan (as defined in section 4975(e)(7)),

subparagraph (A) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) apply.

(ii) NONFORFEITABLE BENEFIT MUST BE PAID IN FULL, ETC.—In the case of any participant, clause (i) shall apply only if the requirements of subclauses (I), (II), and (III) of subparagraph (B)(iii) are met with respect to such participant.

(D) SPECIAL RULE WHERE PARTICIPANT AND SPOUSE MARRIED LESS THAN 1 YEAR.—A plan shall not be treated as failing to meet the requirements of subparagraphs (B)(iii) or (C) 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.

(E) EXCEPTION FOR PLANS DESCRIBED IN SECTION 404(c).—This paragraph shall not apply to a plan which the Secretary has determined is a plan described in section 404(c) (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(F) CROSS REFERENCE.—For—

(i) provisions under which participants may elect to waive the requirements of this paragraph, and

(ii) other definitions and special rules for purposes of this paragraph,

see section 417.

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, 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 does not apply to any multiemployer plan with respect 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 the Employee Retirement Income Security Act of 1974 applies.

(13) ASSIGNMENT AND ALIENATION.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for 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 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

(B) SPECIAL RULES FOR DOMESTIC RELATIONS ORDERS.—Subparagraph (A) 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 subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

(C) SPECIAL RULE FOR CERTAIN JUDGMENTS AND SETTLEMENTS.—Subparagraph (A) shall not apply to any offset of a participant's benefits provided under a plan against an amount that the participant is ordered or required to pay to the plan if—

(i) 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 subtitle B of title I of the Employee Retirement Income Security Act of 1974, or

(III) pursuant to a settlement agreement between the Secretary of Labor 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 such subtitle by a fiduciary or any other person,

(ii) 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

(iii) in a case in which the survivor annuity requirements of section 401(a)(11) 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 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 417(a)(2)(B)), or an election to waive the right of the spouse to either a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 417(a),

(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 such subtitle, 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 401(a)(11)(A)(i) and under a qualified preretirement survivor annuity provided pursuant to section 401(a)(11)(A)(ii), determined in accordance with subparagraph (D).

A plan shall not be treated as failing to meet the requirements of this subsection, subsection (k), section 403(b), or section 409(d) solely by reason of an offset described in this subparagraph.

(D) SURVIVOR ANNUITY.—

(i) IN GENERAL.—The survivor annuity described in subparagraph (C)(iii)(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.

(ii) DEFINITION.—For purposes of this subparagraph, 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 411(a)(7)) 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.

(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless 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.

(15) a[2] trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be.

(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415.

(17) COMPENSATION LIMIT.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed $200,000.

(B) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust annually the $200,000 amount in subparagraph (A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

[(18) Repealed. Pub. L. 97–248, title II, § 237(b), Sept. 3, 1982, 96 Stat. 511.]

(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part 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 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 (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before September 2, 1974, in the event of withdrawal of certain mandatory contributions).

(20) A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part makes 1 or more distributions within 1 taxable year to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan. This paragraph shall not apply to a defined benefit plan unless the employer maintaining such plan files a notice with the Pension Benefit Guaranty Corporation (at the time and in the manner prescribed by the Pension Benefit Guaranty Corporation) notifying the Corporation of such payment or distribution and the Corporation has approved such payment or distribution or, within 90 days after the date on which such notice was filed, has failed to disapprove such payment or distribution. For purposes of this paragraph, rules similar to the rules of section 402(a)(6)(B) (as in effect before its repeal by section 521 of the Unemployment Compensation Amendments of 1992) shall apply.

[(21) Repealed. Pub. L. 99–514, title XI, § 1171(b)(5), Oct. 22, 1986, 100 Stat. 2513.]

(22) If a defined contribution plan (other than a profit-sharing plan)—

(A) is established by an employer whose stock is not readily tradable on an established market, and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan are securities of the employer,

any trust forming part of such plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409. The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not readily tradable on an established market and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation. For purposes of the preceding sentence, subsections (b), (c), (m), and (*o*) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market.

[2] So in original. Probably should be capitalized.

(23) A stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of subsections (h) and (*o*) of section 409, except that in applying section 409(h) for purposes of this paragraph, the term ''employer securities'' shall include any securities of the employer held by the plan.

(24) Any group trust which otherwise meets the requirements of this section shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any plan or governmental unit described in section 818(a)(6).

(25) REQUIREMENT THAT ACTUARIAL ASSUMPTIONS BE SPECIFIED.—A defined benefit plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.

(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

(A) IN GENERAL.—In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of—

(i) 50 employees of the employer, or

(ii) the greater of—

(I) 40 percent of all employees of the employer, or

(II) 2 employees (or if there is only 1 employee, such employee).

(B) TREATMENT OF EXCLUDABLE EMPLOYEES.—

(i) IN GENERAL.—A plan may exclude from consideration under this paragraph employees described in paragraphs (3) and (4)(A) of section 410(b).

(ii) SEPARATE APPLICATION FOR CERTAIN EXCLUDABLE EMPLOYEES.—If employees described in section 410(b)(4)(B) are covered under a plan which meets the requirements of subparagraph (A) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets such requirements if—

(I) the benefits for such employees are provided under the same plan as benefits for other employees,

(II) the benefits provided to such employees are not greater than comparable benefits provided to other employees under the plan, and

(III) no highly compensated employee (within the meaning of section 414(q)) is included in the group of such employees for more than 1 year.

(C) SPECIAL RULE FOR COLLECTIVE BARGAINING UNITS.—Except to the extent provided in regulations, a plan covering only employees described in section 410(b)(3)(A) may exclude from consideration any employees who are not included in the unit or units in which the covered employees are included.

(D) PARAGRAPH NOT TO APPLY TO MULTIEMPLOYER PLANS.—Except to the extent provided in regulations, this paragraph shall not apply to employees in a multiemployer plan (within the meaning of section 414(f)) who are covered by collective bargaining agreements.

(E) SPECIAL RULE FOR CERTAIN DISPOSITIONS OR ACQUISITIONS.—Rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this paragraph.

(F) SEPARATE LINES OF BUSINESS.—At the election of the employer and with the consent of the Secretary, this paragraph may be applied separately with respect to each separate line of business of the employer. For purposes of this paragraph, the term ''separate line of business'' has the meaning given such term by section 414(r) (without regard to paragraph (2)(A) or (7) thereof).

(G) EXCEPTION FOR GOVERNMENTAL PLANS.—This paragraph shall not apply to a governmental plan (within the meaning of section 414(d)).

(H) REGULATIONS.—The Secretary may by regulation provide that any separate benefit structure, any separate trust, or any other separate arrangement is to be treated as a separate plan for purposes of applying this paragraph.

(27) DETERMINATIONS AS TO PROFIT-SHARING PLANS.—

(A) CONTRIBUTIONS NEED NOT BE BASED ON PROFITS.—The determination of whether the plan under which any contributions are made is a profit-sharing plan shall be made without regard to current or accumulated profits of the employer and without regard to whether the employer is a tax-exempt organization.

(B) PLAN MUST DESIGNATE TYPE.—In the case of a plan which is intended to be a money purchase pension plan or a profit-sharing plan, a trust forming part of such plan shall not constitute a qualified trust under this subsection unless the plan designates such intent at such time and in such manner as the Secretary may prescribe.

(28) ADDITIONAL REQUIREMENTS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS.—

(A) IN GENERAL.—In the case of a trust which is part of an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a plan which meets the requirements of section 409(a), such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B) and (C).

(B) DIVERSIFICATION OF INVESTMENTS.—

(i) IN GENERAL.—A plan meets the requirements of this subparagraph if each qualified participant in the plan may elect within 90 days after the close of each plan year in the qualified election period to direct the plan as to the investment of at least 25 percent of the participant's account in the plan (to the extent such portion exceeds the amount to which a prior election under this subparagraph applies). In the case of the election year in which the participant can make his last election, the preceding sentence shall be applied by substituting ''50 percent'' for ''25 percent''.

(ii) METHOD OF MEETING REQUIREMENTS.—A plan shall be treated as meeting the requirements of clause (i) if—

(I) the portion of the participant's account covered by the election under clause (i) is distributed within 90 days after the period during which the election may be made, or

(II) the plan offers at least 3 investment options (not inconsistent with regulations prescribed by the Secretary) to each participant making an election under clause (i) and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election.

(iii) QUALIFIED PARTICIPANT.—For purposes of this subparagraph, the term ''qualified participant'' means any employee who has completed at least 10 years of participation under the plan and has attained age 55.

(iv) QUALIFIED ELECTION PERIOD.—For purposes of this subparagraph, the term ''qualified election period'' means the 6-plan-year period beginning with the later of—

(I) the 1st plan year in which the individual first became a qualified participant, or

(II) the 1st plan year beginning after December 31, 1986.

For purposes of the preceding sentence, an employer may elect to treat an individual first becoming a qualified participant in the 1st plan year beginning in 1987 as having become a participant in the 1st plan year beginning in 1988.

(v) EXCEPTION.—This subparagraph shall not apply to an applicable defined contribution plan (as defined in paragraph (35)(E)).

(C) USE OF INDEPENDENT APPRAISER.—A plan meets the requirements of this subparagraph if all valuations of employer securities which are not readily tradable on an established securities market with respect to activities carried on by the plan are by an independent appraiser. For purposes of the preceding sentence, the term ''independent appraiser'' means any appraiser meeting requirements similar to the requirements of the regulations prescribed under section 170(a)(1).

(29) BENEFIT LIMITATIONS.—In the case of a defined benefit plan (other than a multiemployer plan) to which the requirements of section 412 apply, the trust of which the plan is a part shall not constitute a qualified trust under this subsection unless the plan meets the requirements of section 436.

(30) LIMITATIONS ON ELECTIVE DEFERRALS.—In the case of a trust which is part of a plan under which elective deferrals (within the meaning of section 402(g)(3)) may be made with respect to any individual during a calendar year, such trust shall not constitute a qualified trust under this subsection unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under section 402(g)(1)(A) for taxable years beginning in such calendar year.

(31) DIRECT TRANSFER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution—

(i) elects to have such distribution paid directly to an eligible retirement plan, and

(ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe),

such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

(B) CERTAIN MANDATORY DISTRIBUTIONS.—

(i) IN GENERAL.—In case of a trust which is part of an eligible plan, such trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if—

(I) a distribution described in clause (ii) in excess of $1,000 is made, and

(II) the distributee does not make an election under subparagraph (A) and does not elect to receive the distribution directly,

the plan administrator shall make such transfer to an individual retirement plan of a designated trustee or issuer and shall notify the distributee in writing (either separately or as part of the notice under section 402(f)) that the distribution may be transferred to another individual retirement plan.

(ii) ELIGIBLE PLAN.—For purposes of clause (i), the term ''eligible plan'' means a plan which provides that any nonforfeitable accrued benefit for which the present value (as determined under section 411(a)(11)) does not exceed $5,000 shall be immediately distributed to the participant.

(C) LIMITATION.—Subparagraphs (A) and (B) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to sections 402(c), 403(a)(4), 403(b)(8), and 457(e)(16)). The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—

(i) is a qualified trust which is part of a plan which is a defined contribution plan and agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

(D) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this paragraph, the term ''eligible rollover distribution'' has the meaning given such term by section 402(f)(2)(A).

(E) ELIGIBLE RETIREMENT PLAN.—For purposes of this paragraph, the term ''eligible retirement plan'' has the meaning given such term by section 402(c)(8)(B), except that a qualified trust shall be considered an eligible retirement plan only if it is a defined contribution plan, the terms of which permit the acceptance of rollover distributions.

(32) TREATMENT OF FAILURE TO MAKE CERTAIN PAYMENTS IF PLAN HAS LIQUIDITY SHORTFALL.—

(A) IN GENERAL.—A trust forming part of a pension plan to which section section[3] 430(j)(4) applies shall not be treated as failing to constitute a qualified trust under this section merely because such plan ceases to make any payment described in subparagraph (B) during any period that such plan has a liquidity shortfall (as defined in section section[3] 430(j)(4)).

(B) PAYMENTS DESCRIBED.—A payment is described in this subparagraph if such payment is—

(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 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during the period referred to in subparagraph (A),

(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 by regulations.

(C) PERIOD OF SHORTFALL.—For purposes of this paragraph, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under section 430(j)(3) by reason of section 430(j)(4)(A) thereof.[4]

(33) PROHIBITION ON BENEFIT INCREASES WHILE SPONSOR IS IN BANKRUPTCY.—

(A) IN GENERAL.—A trust which is part of a plan to which this paragraph applies shall not constitute a qualified trust under this section if an amendment to such plan is adopted while the employer is a debtor in a case under title 11, United States Code, or similar Federal or State law, if such amendment increases liabilities of the plan by reason of—

(i) any increase in benefits,

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

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

with respect to employees of the debtor, and such amendment is effective prior to the effective date of such employer's plan of reorganization.

(B) EXCEPTIONS.—This paragraph shall not apply to any plan amendment if—

(i) the plan, were such amendment to take effect, would have a funding target attainment percentage (as defined in section 430(d)(2)) of 100 percent or more,

(ii) the Secretary determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(iii) such amendment only repeals an amendment described in section 412(d)(2), or

(iv) such amendment is required as a condition of qualification under this part.

(C) PLANS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph shall apply only to plans (other than multiemployer plans) covered under section 4021 of the Employee Retirement Income Security Act of 1974.

(D) EMPLOYER.—For purposes of this paragraph, the term ''employer'' means the employer referred to in section 412(b)(1), without regard to section 412(b)(2).

(34) BENEFITS OF MISSING PARTICIPANTS ON PLAN TERMINATION.—In the case of a plan covered by title IV of the Employee Retirement Income Security Act of 1974, a trust forming part of such plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part, upon its termination, transfers benefits of missing participants to the Pension Benefit Guaranty Corporation in accordance with section 4050 of such Act.

(35) DIVERSIFICATION REQUIREMENTS FOR CERTAIN DEFINED CONTRIBUTION PLANS.—

(A) IN GENERAL.—A trust which is part of an applicable defined contribution plan shall not be treated as a qualified trust unless the plan meets the diversification requirements of subparagraphs (B), (C), and (D).

(B) 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 subparagraph 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 subparagraph (D).

(C) 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 subparagraph if each applicable individual who—

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

(ii) is a beneficiary of a participant described in clause (i) or of a deceased participant,

[3] So in original.

[4] So in original. The ''thereof'' probably should not appear.

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 subparagraph (D).

(D) INVESTMENT OPTIONS.—

(i) IN GENERAL.—The requirements of this subparagraph 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 paragraph, each of which is diversified and has materially different risk and return characteristics.

(ii) 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 subparagraph 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 subparagraph 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 subclause shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

(E) APPLICABLE DEFINED CONTRIBUTION PLAN.—For purposes of this paragraph—

(i) IN GENERAL.—The term ''applicable defined contribution plan'' means any defined contribution plan which holds any publicly traded employer securities.

(ii) 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), and

(II) such plan is a separate plan for purposes of section 414(*l*) with respect to any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

(iii) EXCEPTION FOR ONE PARTICIPANT PLANS.—Such term does not include a one-participant retirement plan.

(iv) ONE-PARTICIPANT RETIREMENT PLAN.—For purposes of clause (iii), 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.

(F) 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), 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).

(G) OTHER DEFINITIONS.—For purposes of this paragraph—

(i) 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.

(ii) ELECTIVE DEFERRAL.—The term ''elective deferral'' means an employer contribution described in section 402(g)(3)(A).

(iii) EMPLOYER SECURITY.—The term ''employer security'' has the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

(iv) EMPLOYEE STOCK OWNERSHIP PLAN.—The term ''employee stock ownership plan'' has the meaning given such term by section 4975(e)(7).

(v) PUBLICLY TRADED EMPLOYER SECURITIES.—The term ''publicly traded employer securities'' means employer securities which are readily tradable on an established securities market.

(vi) YEAR OF SERVICE.—The term ''year of service'' has the meaning given such term by section 411(a)(5).

(H) TRANSITION RULE FOR SECURITIES ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—

(i) RULES PHASED IN OVER 3 YEARS.—

(I) IN GENERAL.—In the case of the portion of an account to which subparagraph (C) applies and which consists of employer securities acquired in a plan year beginning before January 1, 2007, subparagraph (C) 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.—Subclause (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.

(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be determined as follows:

Plan year to which subparagraph (C) applies:	The applicable percentage is:
1st	33
2d	66
3d and following	100.

(36) DISTRIBUTIONS DURING WORKING RETIREMENT.—A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

(37) DEATH BENEFITS UNDER USERRA-QUALIFIED ACTIVE MILITARY SERVICE.—A trust shall not constitute a qualified trust unless the plan provides that, in the case of a participant who dies while performing qualified military service (as defined in section 414(u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death.

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

(b) Certain retroactive changes in plan

A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period.

(c) Definitions and rules relating to self-employed individuals and owner-employees

For purposes of this section—

(1) Self-employed individual treated as employee

(A) In general

The term ''employee'' includes, for any taxable year, an individual who is a self-employed individual for such taxable year.

(B) Self-employed individual

The term ''self-employed individual'' means, with respect to any taxable year, an individual who has earned income (as defined in paragraph (2)) for such taxable year. To the extent provided in regulations prescribed by the Secretary, such term also includes, for any taxable year—

(i) an individual who would be a self-employed individual within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(ii) an individual who has been a self-employed individual within the meaning of the preceding sentence for any prior taxable year.

(2) Earned income

(A) In general

The term ''earned income'' means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) in the case of any individual who is treated as an employee under sections[5] 3121(d)(3)(A), (C), or (D), without regard to paragraph (2) of section 1402(c),

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items,

(v) with regard to the deductions allowed by section 404 to the taxpayer, and

(vi) with regard to the deduction allowed to the taxpayer by section 164(f).

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date. For purposes of this part only (other than sections 419 and 419A), this subparagraph shall be applied as if the term ''trade or business'' for purposes of section 1402 included service described in section 1402(c)(6).

[5] So in original. Probably should be ''section''.

[(B) Repealed]

(C) Income from disposition of certain property

For purposes of this section, the term ''earned income'' includes gains (other than any gain which is treated under any provision of this chapter as gain from the sale or exchange of a capital asset) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(3) Owner-employee

The term ''owner-employee'' means an employee who—

(A) owns the entire interest in an unincorporated trade or business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) Contributions on behalf of owner-employees

The term ''contribution on behalf of an owner-employee'' includes, except as the context otherwise requires, a contribution under a plan—

(A) by the employer for an owner-employee, and

(B) by an owner-employee as an employee.

(6) Special rule for certain fishermen

For purposes of this subsection, the term ''self-employed individual'' includes an individual described in section 3121(b)(20) (relating to certain fishermen).

(d) Contribution limit on owner-employees

A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

[(e) Repealed. Pub. L. 98–369, div. A, title VII, § 713(d)(3), July 18, 1984, 98 Stat. 958]

(f) Certain custodial accounts and contracts

For purposes of this title, a custodial account, an annuity contract, or a contract (other than a life, health or accident, property, casualty, or liability insurance contract) issued by an insurance company qualified to do business in a State shall be treated as a qualified trust under this section if—

(1) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

(2) in the case of a custodial account the assets thereof are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof.

(g) Annuity defined

For purposes of this section and sections 402, 403, and 404, the term ''annuity'' includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a–2); but does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) Medical, etc., benefits for retired employees and their spouses and dependents

Under regulations prescribed by the Secretary, and subject to the provisions of section 420, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

(1) such benefits are subordinate to the retirement benefits provided by the plan,

(2) a separate account is established and maintained for such benefits,

(3) the employer's contributions to such separate account are reasonable and ascertainable,

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits,

(5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer, and

(6) in the case of an employee who is a key employee, a separate account is established and maintained for such benefits payable to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984,

for which the employee is a key employee) are only payable to such employee (and his spouse and dependents) from such separate account.

For purposes of paragraph (6), the term ''key employee'' means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of such employee, is or was a key employee as defined in section 416(i). In no event shall the requirements of paragraph (1) be treated as met if the aggregate actual contributions for medical benefits, when added to actual contributions for life insurance protection under the plan, exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established.

(i) Certain union-negotiated pension plans

In the case of a trust forming part of a pension plan which has been determined by the Secretary to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary that—

(1) such trust was created pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary or his delegate determined that the trust constituted a qualified trust, substantially complied with the terms of the trust, and the plan of which the trust is a part, as subsequently qualified, and

(3) before the time as of which the Secretary determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries,

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).

[(j) Repealed. Pub. L. 97–248, title II, §238(b), Sept. 3, 1982, 96 Stat. 512]

(k) Cash or deferred arrangements

(1) General rule

A profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2) Qualified cash or deferred arrangement

A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of subsection (a)—

(A) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election—

(i) may not be distributable to participants or other beneficiaries earlier than—

(I) severance from employment, death, or disability,

(II) an event described in paragraph (10),

(III) in the case of a profit-sharing or stock bonus plan, the attainment of age 59½,

(IV) in the case of contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies, upon hardship of the employee, or

(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, and

(ii) will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years;

(C) which provides that an employee's right to his accrued benefit derived from employer contributions made to the trust pursuant to his election is nonforfeitable, and

(D) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof).

(3) Application of participation and discrimination standards

(A) A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless—

(i) those employees eligible to benefit under the arrangement satisfy the provisions of section 410(b)(1), and

(ii) the actual deferral percentage for eligible highly compensated employees (as defined in paragraph (5)) for the plan year bears a relationship to the actual deferral percentage for all other eligible employees for the preceding plan year which meets either of the following tests:

(I) The actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.25.

(II) The excess of the actual deferral percentage for the group of eligible highly compensated employees over that of all other eligible employees is not more than 2 percentage points, and the actual deferral percentage for the group of eli-

gible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2.

If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this subparagraph.

If any highly compensated employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement. An arrangement may apply clause (ii) by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) For purposes of subparagraph (A), the actual deferral percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(i) the amount of employer contributions actually paid over to the trust on behalf of each such employee for such plan year, to

(ii) the employee's compensation for such plan year.

(C) A cash or deferred arrangement shall be treated as meeting the requirements of subsection (a)(4) with respect to contributions if the requirements of subparagraph (A)(ii) are met.

(D) For purposes of subparagraph (B), the employer contributions on behalf of any employee—

(i) shall include any employer contributions made pursuant to the employee's election under paragraph (2), and

(ii) under such rules as the Secretary may prescribe, may, at the election of the employer, include—

(I) matching contributions (as defined in 401(m)(4)(A)) which meet the requirements of paragraph (2)(B) and (C), and

(II) qualified nonelective contributions (within the meaning of section 401(m)(4)(C)).

(E) For purposes of this paragraph, in the case of the first plan year of any plan (other than a successor plan), the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

(i) 3 percent, or

(ii) if the employer makes an election under this subclause, the actual deferral percentage of nonhighly compensated employees determined for such first plan year.

(F) SPECIAL RULE FOR EARLY PARTICIPATION.—If an employer elects to apply section 410(b)(4)(B) in determining whether a cash or deferred arrangement meets the requirements of subparagraph (A)(i), the employer may, in determining whether the arrangement meets the requirements of subparagraph (A)(ii), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(G) GOVERNMENTAL PLAN.—A governmental plan (within the meaning of section 414(d)) shall be treated as meeting the requirements of this paragraph.

(4) Other requirements

(A) Benefits (other than matching contributions) must not be contingent on election to defer

A cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m)) made by reason of such an election.

(B) Eligibility of State and local governments and tax-exempt organizations

(i) Tax-exempts eligible

Except as provided in clause (ii), any organization exempt from tax under this subtitle may include a qualified cash or deferred arrangement as part of a plan maintained by it.

(ii) Governments ineligible

A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. This clause shall not apply to a rural cooperative plan or to a plan of an employer described in clause (iii).

(iii) Treatment of Indian tribal governments

An employer which is an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing may include a qualified cash or deferred arrangement as part of a plan maintained by the employer.

(C) Coordination with other plans

Except as provided in section 401(m), any employer contribution made pursuant to an employee's election under a qualified cash or deferred arrangement shall not be taken into account for purposes of determining whether any other plan meets the requirements of section 401(a) or 410(b). This sub-

paragraph shall not apply for purposes of determining whether a plan meets the average benefit requirement of section 410(b)(2)(A)(ii).

(5) Highly compensated employee

For purposes of this subsection, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

(6) Pre-ERISA money purchase plan

For purposes of this subsection, the term ''pre-ERISA money purchase plan'' means a pension plan—

(A) which is a defined contribution plan (as defined in section 414(i)),

(B) which was in existence on June 27, 1974, and which, on such date, included a salary reduction arrangement, and

(C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on such date.

(7) Rural cooperative plan

For purposes of this subsection—

(A) In general

The term ''rural cooperative plan'' means any pension plan—

(i) which is a defined contribution plan (as defined in section 414(i)), and

(ii) which is established and maintained by a rural cooperative.

(B) Rural cooperative defined

For purposes of subparagraph (A), the term ''rural cooperative'' means—

(i) any organization which—

(I) is engaged primarily in providing electric service on a mutual or cooperative basis, or

(II) is engaged primarily in providing electric service to the public in its area of service and which is exempt from tax under this subtitle or which is a State or local government (or an agency or instrumentality thereof), other than a municipality (or an agency or instrumentality thereof),

(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i),

(iii) a cooperative telephone company described in section 501(c)(12),

(iv) any organization which—

(I) is a mutual irrigation or ditch company described in section 501(c)(12) (without regard to the 85 percent requirement thereof), or

(II) is a district organized under the laws of a State as a municipal corporation for the purpose of irrigation, water conservation, or drainage, and

(v) an organization which is a national association of organizations described in clause (i), (ii),,[6] (iii), or (iv).

(C) Special rule for certain distributions

A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) or of paragraph (2) merely by reason of a hardship distribution or a distribution to a participant after attainment of age 59½. For purposes of this section, the term ''hardship distribution'' means a distribution described in paragraph (2)(B)(i)(IV) (without regard to the limitation of its application to profit-sharing or stock bonus plans).

(8) Arrangement not disqualified if excess contributions distributed

(A) In general

A cash or deferred arrangement shall not be treated as failing to meet the requirements of clause (ii) of paragraph (3)(A) for any plan year if, before the close of the following plan year—

(i) the amount of the excess contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed, or

(ii) to the extent provided in regulations, the employee elects to treat the amount of the excess contributions as an amount distributed to the employee and then contributed by the employee to the plan.

Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

(B) Excess contributions

For purposes of subparagraph (A), the term ''excess contributions'' means, with respect to any plan year, the excess of—

(i) the aggregate amount of employer contributions actually paid over to the trust on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of clause (ii) of paragraph (3)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of the actual deferral percentages beginning with the highest of such percentages).

(C) Method of distributing excess contributions

Any distribution of the excess contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions by, or on behalf of, each of such employees.

(D) Additional tax under section 72(t) not to apply

No tax shall be imposed under section 72(t) on any amount required to be distributed under this paragraph.

(E) Treatment of matching contributions forfeited by reason of excess deferral or contribution or permissible withdrawal

For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (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

[6] So in original.

an excess contribution under subparagraph (B), an excess deferral under section 402(g)(2)(A), a permissible withdrawal under section 414(w), or an excess aggregate contribution under section 401(m)(6)(B).

(F) Cross reference

For excise tax on certain excess contributions, see section 4979.

(9) Compensation

For purposes of this subsection, the term ''compensation'' has the meaning given such term by section 414(s).

(10) Distributions upon termination of plan

(A) In general

An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(B) Distributions must be lump sum distributions

(i) In general

A termination shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the termination.

(ii) Lump-sum distribution

For purposes of this subparagraph, the term ''lump-sum distribution'' has the meaning given such term by section 402(e)(4)(D) (without regard to subclauses (I), (II), (III), and (IV) of clause (i) thereof). Such term includes a distribution of an annuity contract from—

(I) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

(II) an annuity plan described in section 403(a).

(11) Adoption of simple plan to meet nondiscrimination tests

(A) In general

A cash or deferred arrangement maintained by an eligible employer shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement meets—

(i) the contribution requirements of subparagraph (B),

(ii) the exclusive plan requirements of subparagraph (C), and

(iii) the vesting requirements of section 408(p)(3).

(B) Contribution requirements

(i) In general

The requirements of this subparagraph are met if, under the arrangement—

(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage of compensation of the employee but which in no event exceeds the amount in effect under section 408(p)(2)(A)(ii),

(II) the employer is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under subclause (I) as does not exceed 3 percent of compensation for the year, and

(III) no other contributions may be made other than contributions described in subclause (I) or (II).

(ii) Employer may elect 2-percent nonelective contribution

An employer shall be treated as meeting the requirements of clause (i)(II) for any year if, in lieu of the contributions described in such clause, the employer elects (pursuant to the terms of the arrangement) to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60th day before the beginning of such year.

(iii) Administrative requirements

(I) In general

Rules similar to the rules of subparagraphs (B) and (C) of section 408(p)(5) shall apply for purposes of this subparagraph.

(II) Notice of election period

The requirements of this subparagraph shall not be treated as met with respect to any year unless the employer notifies each employee eligible to participate, within a reasonable period of time before the 60th day before the beginning of such year (and, for the first year the employee is so eligible, the 60th day before the first day such employee is so eligible), of the rules similar to the rules of section 408(p)(5)(C) which apply by reason of subclause (I).

(C) Exclusive plan requirement

The requirements of this subparagraph are met for any year to which this paragraph applies if no contributions were made, or benefits were accrued, for services during such year under any qualified plan of the employer on behalf of any employee eligible to participate in the cash or deferred arrangement, other than contributions described in subparagraph (B).

(D) Definitions and special rule

(i) Definitions

For purposes of this paragraph, any term used in this paragraph which is also used in section 408(p) shall have the meaning given such term by such section.

(ii) Coordination with top-heavy rules

A plan meeting the requirements of this paragraph for any year shall not be treated as a top-heavy plan under section 416 for

such year if such plan allows only contributions required under this paragraph.

(12) Alternative methods of meeting nondiscrimination requirements

(A) In general

A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—

(i) meets the contribution requirements of subparagraph (B) or (C), and

(ii) meets the notice requirements of subparagraph (D).

(B) Matching contributions

(i) In general

The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—

(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and

(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

(ii) Rate for highly compensated employees

The requirements of this subparagraph are not met if, under the arrangement, the rate of matching contribution with respect to any elective contribution of a highly compensated employee at any rate of elective contribution is greater than that with respect to an employee who is not a highly compensated employee.

(iii) Alternative plan designs

If the rate of any matching contribution with respect to any rate of elective contribution is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

(I) the rate of an employer's matching contribution does not increase as an employee's rate of elective contributions increase, and

(II) the aggregate amount of matching contributions at such rate of elective contribution is at least equal to the aggregate amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

(C) Nonelective contributions

The requirements of this subparagraph are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(D) Notice requirement

An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(E) Other requirements

(i) Withdrawal and vesting restrictions

An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) of this paragraph unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions) taken into account in determining whether the requirements of subparagraphs (B) and (C) of this paragraph are met.

(ii) Social security and similar contributions not taken into account

An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (*l*), and, for purposes of subsection (*l*), employer contributions under subparagraph (B) or (C) shall not be taken into account.

(F) Other plans

An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.

(13) Alternative method for automatic contribution arrangements to meet nondiscrimination requirements

(A) In general

A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

(B) Qualified automatic contribution arrangement

For purposes of this paragraph, the term ''qualified automatic contribution arrangement'' means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (E).

(C) Automatic deferral

(i) In general

The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contribu-

tions in an amount equal to a qualified percentage of compensation.

(ii) Election out

The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

(I) to not have such contributions made, or

(II) to make elective contributions at a level specified in such affirmative election.

(iii) Qualified percentage

For purposes of this subparagraph, the term ''qualified percentage'' means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 10 percent, and is at least—

(I) 3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,

(II) 4 percent during the first plan year following the plan year described in subclause (I),

(III) 5 percent during the second plan year following the plan year described in subclause (I), and

(IV) 6 percent during any subsequent plan year.

(iv) Automatic deferral for current employees not required

Clause (i) may be applied without taking into account any employee who—

(I) was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause), and

(II) had an election in effect on such date either to participate in the arrangement or to not participate in the arrangement.

(D) Matching or nonelective contributions

(i) In general

The requirements of this subparagraph are met if, under the arrangement, the employer—

(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to the sum of 100 percent of the elective contributions of the employee to the extent that such contributions do not exceed 1 percent of compensation plus 50 percent of so much of such contributions as exceed 1 percent but do not exceed 6 percent of compensation, or

(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(ii) Application of rules for matching contributions

The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

(iii) Withdrawal and vesting restrictions

An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—

(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and

(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

(iv) Application of certain other rules

The rules of subparagraphs (E)(ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

(E) Notice requirements

(i) In general

The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written notice of the employee's rights and obligations under the arrangement which—

(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(II) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

(ii) Timing and content requirements

A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

(I) the notice explains the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

(II) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and

before the first elective contribution is made to make either such election.

(*l*) Permitted disparity in plan contributions or benefits

(1) In general

The requirements of this subsection are met with respect to a plan if—

(A) in the case of a defined contribution plan, the requirements of paragraph (2) are met, and

(B) in the case of a defined benefit plan, the requirements of paragraph (3) are met.

(2) Defined contribution plan

(A) In general

A defined contribution plan meets the requirements of this paragraph if the excess contribution percentage does not exceed the base contribution percentage by more than the lesser of—

(i) the base contribution percentage, or

(ii) the greater of—

(I) 5.7 percentage points, or

(II) the percentage equal to the portion of the rate of tax under section 3111(a) (in effect as of the beginning of the year) which is attributable to old-age insurance.

(B) Contribution percentages

For purposes of this paragraph—

(i) Excess contribution percentage

The term ''excess contribution percentage'' means the percentage of compensation which is contributed by the employer under the plan with respect to that portion of each participant's compensation in excess of the integration level.

(ii) Base contribution percentage

The term ''base contribution percentage'' means the percentage of compensation contributed by the employer under the plan with respect to that portion of each participant's compensation not in excess of the integration level.

(3) Defined benefit plan

A defined benefit plan meets the requirements of this paragraph if—

(A) Excess plans

(i) In general

In the case of a plan other than an offset plan—

(I) the excess benefit percentage does not exceed the base benefit percentage by more than the maximum excess allowance,

(II) any optional form of benefit, preretirement benefit, actuarial factor, or other benefit or feature provided with respect to compensation in excess of the integration level is provided with respect to compensation not in excess of such level, and

(III) benefits are based on average annual compensation.

(ii) Benefit percentages

For purposes of this subparagraph, the excess and base benefit percentages shall be computed in the same manner as the excess and base contribution percentages under paragraph (2)(B), except that such determination shall be made on the basis of benefits attributable to employer contributions rather than contributions.

(B) Offset plans

In the case of an offset plan, the plan provides that—

(i) a participant's accrued benefit attributable to employer contributions (within the meaning of section 411(c)(1)) may not be reduced (by reason of the offset) by more than the maximum offset allowance, and

(ii) benefits are based on average annual compensation.

(4) Definitions relating to paragraph (3)

For purposes of paragraph (3)—

(A) Maximum excess allowance

The maximum excess allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, ¾ of a percentage point, and

(ii) in the case of total benefits, ¾ of a percentage point, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum excess allowance exceed the base benefit percentage.

(B) Maximum offset allowance

The maximum offset allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, ¾ percent of the participant's final average compensation, and

(ii) in the case of total benefits, ¾ percent of the participant's final average compensation, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum offset allowance exceed 50 percent of the benefit which would have accrued without regard to the offset reduction.

(C) Reductions

(i) In general

The Secretary shall prescribe regulations requiring the reduction of the ¾ percentage factor under subparagraph (A) or (B)—

(I) in the case of a plan other than an offset plan which has an integration level in excess of covered compensation, or

(II) with respect to any participant in an offset plan who has final average compensation in excess of covered compensation.

(ii) Basis of reductions

Any reductions under clause (i) shall be based on the percentages of compensation

replaced by the employer-derived portions of primary insurance amounts under the Social Security Act for participants with compensation in excess of covered compensation.

(D) Offset plan

The term ''offset plan'' means any plan with respect to which the benefit attributable to employer contributions for each participant is reduced by an amount specified in the plan.

(5) Other definitions and special rules

For purposes of this subsection—

(A) Integration level

(i) In general

The term ''integration level'' means the amount of compensation specified under the plan (by dollar amount or formula) at or below which the rate at which contributions or benefits are provided (expressed as a percentage) is less than such rate above such amount.

(ii) Limitation

The integration level for any year may not exceed the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(iii) Level to apply to all participants

A plan's integration level shall apply with respect to all participants in the plan.

(iv) Multiple integration levels

Under rules prescribed by the Secretary, a defined benefit plan may specify multiple integration levels.

(B) Compensation

The term ''compensation'' has the meaning given such term by section 414(s).

(C) Average annual compensation

The term ''average annual compensation'' means the participant's highest average annual compensation for—

(i) any period of at least 3 consecutive years, or

(ii) if shorter, the participant's full period of service.

(D) Final average compensation

(i) In general

The term ''final average compensation'' means the participant's average annual compensation for—

(I) the 3-consecutive year period ending with the current year, or

(II) if shorter, the participant's full period of service.

(ii) Limitation

A participant's final average compensation shall be determined by not taking into account in any year compensation in excess of the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(E) Covered compensation

(i) In general

The term ''covered compensation'' means, with respect to an employee, the average of the contribution and benefit bases in effect under section 230 of the Social Security Act for each year in the 35-year period ending with the year in which the employee attains the social security retirement age.

(ii) Computation for any year

For purposes of clause (i), the determination for any year preceding the year in which the employee attains the social security retirement age shall be made by assuming that there is no increase in the bases described in clause (i) after the determination year and before the employee attains the social security retirement age.

(iii) Social security retirement age

For purposes of this subparagraph, the term ''social security retirement age'' has the meaning given such term by section 415(b)(8).

(F) Regulations

The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this subsection, including—

(i) in the case of a defined benefit plan which provides for unreduced benefits commencing before the social security retirement age (as defined in section 415(b)(8)), rules providing for the reduction of the maximum excess allowance and the maximum offset allowance, and

(ii) in the case of an employee covered by 2 or more plans of the employer which fail to meet the requirements of subsection (a)(4) (without regard to this subsection), rules preventing the multiple use of the disparity permitted under this subsection with respect to any employee.

For purposes of clause (i), unreduced benefits shall not include benefits for disability (within the meaning of section 223(d) of the Social Security Act).

(6) Special rule for plan maintained by railroads

In determining whether a plan which includes employees of a railroad employer who are entitled to benefits under the Railroad Retirement Act of 1974 meets the requirements of this subsection, rules similar to the rules set forth in this subsection shall apply. Such rules shall take into account the employer-derived portion of the employees' tier 2 railroad retirement benefits and any supplemental annuity under the Railroad Retirement Act of 1974.

(m) Nondiscrimination test for matching contributions and employee contributions

(1) In general

A defined contribution plan shall be treated as meeting the requirements of subsection (a)(4) with respect to the amount of any matching contribution or employee contribution for any plan year only if the contribution percentage requirement of paragraph (2) of this subsection is met for such plan year.

(2) Requirements

(A) Contribution percentage requirement

A plan meets the contribution percentage requirement of this paragraph for any plan year only if the contribution percentage for eligible highly compensated employees for such plan year does not exceed the greater of—

(i) 125 percent of such percentage for all other eligible employees for the preceding plan year, or

(ii) the lesser of 200 percent of such percentage for all other eligible employees for the preceding plan year, or such percentage for all other eligible employees for the preceding plan year plus 2 percentage points.

This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) Multiple plans treated as a single plan

If two or more plans of an employer to which matching contributions, employee contributions, or elective deferrals are made are treated as one plan for purposes of section 410(b), such plans shall be treated as one plan for purposes of this subsection. If a highly compensated employee participates in two or more plans of an employer to which contributions to which this subsection applies are made, all such contributions shall be aggregated for purposes of this subsection.

(3) Contribution percentage

For purposes of paragraph (2), the contribution percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(A) the sum of the matching contributions and employee contributions paid under the plan on behalf of each such employee for such plan year, to

(B) the employee's compensation (within the meaning of section 414(s)) for such plan year.

Under regulations, an employer may elect to take into account (in computing the contribution percentage) elective deferrals and qualified nonelective contributions under the plan or any other plan of the employer. If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year. Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.

(4) Definitions

For purposes of this subsection—

(A) Matching contribution

The term ''matching contribution'' means—

(i) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee contribution made by such employee, and

(ii) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee's elective deferral.

(B) Elective deferral

The term ''elective deferral'' means any employer contribution described in section 402(g)(3).

(C) Qualified nonelective contributions

The term ''qualified nonelective contribution'' means any employer contribution (other than a matching contribution) with respect to which—

(i) the employee may not elect to have the contribution paid to the employee in cash instead of being contributed to the plan, and

(ii) the requirements of subparagraphs (B) and (C) of subsection (k)(2) are met.

(5) Employees taken into consideration

(A) In general

Any employee who is eligible to make an employee contribution (or, if the employer takes elective contributions into account, elective contributions) or to receive a matching contribution under the plan being tested under paragraph (1) shall be considered an eligible employee for purposes of this subsection.

(B) Certain nonparticipants

If an employee contribution is required as a condition of participation in the plan, any employee who would be a participant in the plan if such employee made such a contribution shall be treated as an eligible employee on behalf of whom no employer contributions are made.

(C) Special rule for early participation

If an employer elects to apply section 410(b)(4)(B) in determining whether a plan meets the requirements of section 410(b), the employer may, in determining whether the plan meets the requirements of paragraph (2), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(6) Plan not disqualified if excess aggregate contributions distributed before end of following plan year

(A) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1) for any plan year if, before the close of the following plan year, the amount of the excess aggregate contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed (or, if forfeitable, is forfeited). Such contributions (and such income) may be distributed without regard to any other provision of law.

(B) Excess aggregate contributions

For purposes of subparagraph (A), the term ''excess aggregate contributions'' means,

with respect to any plan year, the excess of—

(i) the aggregate amount of the matching contributions and employee contributions (and any qualified nonelective contribution or elective contribution taken into account in computing the contribution percentage) actually made on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of paragraph (2)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of their contribution percentages beginning with the highest of such percentages).

(C) Method of distributing excess aggregate contributions

Any distribution of the excess aggregate contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions on behalf of, or by, each such employee. Forfeitures of excess aggregate contributions may not be allocated to participants whose contributions are reduced under this paragraph.

(D) Coordination with subsection (k) and 402(g)

The determination of the amount of excess aggregate contributions with respect to a plan shall be made after—

(i) first determining the excess deferrals (within the meaning of section 402(g)), and

(ii) then determining the excess contributions under subsection (k).

(7) Treatment of distributions

(A) Additional tax of section 72(t) not applicable

No tax shall be imposed under section 72(t) on any amount required to be distributed under paragraph (6).

(B) Exclusion of employee contributions

Any distribution attributable to employee contributions shall not be included in gross income except to the extent attributable to income on such contributions.

(8) Highly compensated employee

For purposes of this subsection, the term ''highly compensated employee'' has the meaning given to such term by section 414(q).

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions.

(10) Alternative method of satisfying tests

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(A) meets the contribution requirements of subparagraph (B) of subsection (k)(11),

(B) meets the exclusive plan requirements of subsection (k)(11)(C), and

(C) meets the vesting requirements of section 408(p)(3).

(11) Additional alternative method of satisfying tests

(A) In general

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(i) meets the contribution requirements of subparagraph (B) or (C) of subsection (k)(12),

(ii) meets the notice requirements of subsection (k)(12)(D), and

(iii) meets the requirements of subparagraph (B).

(B) Limitation on matching contributions

The requirements of this subparagraph are met if—

(i) matching contributions on behalf of any employee may not be made with respect to an employee's contributions or elective deferrals in excess of 6 percent of the employee's compensation,

(ii) the rate of an employer's matching contribution does not increase as the rate of an employee's contributions or elective deferrals increase, and

(iii) the matching contribution with respect to any highly compensated employee at any rate of an employee contribution or rate of elective deferral is not greater than that with respect to an employee who is not a highly compensated employee.

(12) Alternative method for automatic contribution arrangements

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

(B) meets the requirements of paragraph (11)(B).

(13) Cross reference

For excise tax on certain excess contributions, see section 4979.

(n) Coordination with qualified domestic relations orders

The Secretary shall prescribe such rules or regulations as may be necessary to coordinate the requirements of subsection (a)(13)(B) and section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of this chapter.

(*o*) Cross reference

For exemption from tax of a trust qualified under this section, see section 501(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 134; Pub. L. 87–792, § 2, Oct. 10, 1962, 76 Stat. 809; Pub. L. 87–863, § 2(a), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 88–272, title II, § 219(a), Feb. 26, 1964, 78 Stat. 57; Pub. L. 89–97, title I, § 106(d)(4), July 30, 1965, 79 Stat. 337; Pub. L. 89–809, title II, §§ 204(b)(1), (c), 205(a), Nov. 13, 1966, 80 Stat. 1577, 1578; Pub. L.

91–691, §1(a), Jan. 12, 1971, 84 Stat. 2074; Pub. L. 93–406, title II, §§1012(b), 1016(a)(2), 1021, 1022(a)–(d), (f), 1023, 2001(c)–(e)(4), (h)(1), 2004(a)(1), Sept. 2, 1974, 88 Stat. 913, 929, 935, 938–940, 943, 952–955, 957, 979; Pub. L. 94–267, §1(c)(1), (2), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94–455, title VIII, §803(b)(2), title XV, §1505(b), title XIX, §§1901(a)(56), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1584, 1738, 1773, 1834; Pub. L. 95–600, title I, §§135(a), 141(f)(3), 143(a), 152(e), Nov. 6, 1978, 92 Stat. 2785, 2795, 2796, 2799; Pub. L. 96–222, title I, §101(a)(7)(L)(i)(V), (9), (14)(E)(iii), Apr. 1, 1980, 94 Stat. 199, 201, 205; Pub. L. 96–364, title II, §208(a), (e), title IV, §410(b), Sept. 26, 1980, 94 Stat. 1289, 1290, 1308; Pub. L. 96–605, title II, §§221(a), 225(b)(1), (2), Dec. 28, 1980, 94 Stat. 3528, 3529; Pub. L. 97–34, title III, §§312(b)(1), (c)(2)–(4), (e)(2), 314(a)(1), 335, 338(a), Aug. 13, 1981, 95 Stat. 283–286, 297, 298; Pub. L. 97–248, title II, §§237(a), (b), (e)(1), 238(b), (d)(1), (2), 240(b), 242(a), 249(a), 254(a), Sept. 3, 1982, 96 Stat. 511–513, 520, 521, 527, 533; Pub. L. 97–448, title I, §103(c)(10)(A), (d)(2), (g)(2)(A), title III, §306(a)(12), Jan. 12, 1983, 96 Stat. 2377–2379, 2405; Pub. L. 98–21, title I, §124(c)(4)(A), Apr. 20, 1983, 97 Stat. 91; Pub. L. 98–369, div. A, title II, §211(b)(5), title IV, §§474(r)(13), 491(e)(4), (5), title V, §§521(a), 524(d)(1), 527(a), (b), 528(b), title VII, §713(c)(2)(A), (d)(3), July 18, 1984, 98 Stat. 754, 842, 853, 865, 872, 875–877, 957, 958; Pub. L. 98–397, title II, §§203(a), 204(a), title III, §301(b), Aug. 23, 1984, 98 Stat. 1440, 1445, 1451; Pub. L. 99–514, title XI, §§1106(d)(1), 1111(a), (b), 1112(b), (d)(1), 1114(b)(7), 1116(a)–(e), 1117(a), 1119(a), 1121(b), 1136(a), 1143(a), 1145(a), 1171(b)(5), 1174(c)(2)(A), 1175(a)(1), 1176(a), title XVIII, §§1848(b), 1852(a)(4)(A), (6), (b)(8), (g), (h)(1), 1879(g)(1), (2), 1898(b)(2)(A), (3)(A), (7)(A), (13)(A), (14)(A), (c)(3), 1899A(10), Oct. 22, 1986, 100 Stat. 2435, 2439, 2444, 2445, 2451, 2454–2456, 2459, 2463, 2465, 2485, 2490, 2513, 2518, 2519, 2857, 2865–2869, 2906, 2907, 2945, 2948, 2950, 2953, 2958; Pub. L. 100–203, title IX, §9341(a), Dec. 22, 1987, 101 Stat. 1330–369; Pub. L. 100–647, title I, §§1011(c)(7)(A), (d)(4), (e)(3), (g)(1)–(3), (h)(3), (k)(1)(A), (B), s2)–(7), (9), (*l*)(1)–(5)(A), (6), (7), 1011A(j), (*l*), 1011B(j)(1), (2), (6), (k)(1), (2), title VI, §§6053(a), 6055(a), 6071(a), (b), Nov. 10, 1988, 102 Stat. 3458–3460, 3463, 3464, 3468–3470, 3483, 3492, 3493, 3696, 3697, 3705; Pub. L. 101–140, title II, §203(a)(5), Nov. 8, 1989, 103 Stat. 830; Pub. L. 101–239, title VII, §§7311(a), 7811(g)(1), (h)(3), 7816(*l*), 7881(i)(1)(A), (4)(A), Dec. 19, 1989, 103 Stat. 2354, 2409, 2421, 2442; Pub. L. 101–508, title XII, §12011(b), Nov. 5, 1990, 104 Stat. 1388–571; Pub. L. 102–318, title V, §§521(b)(5)–(8), 522(a)(1), July 3, 1992, 106 Stat. 310, 313; Pub. L. 103–66, title XIII, §13212(a), Aug. 10, 1993, 107 Stat. 471; Pub. L. 103–465, title VII, §§732(a), 751(a)(9)(C), 766(b), 776(d), Dec. 8, 1994, 108 Stat. 5004, 5021, 5037, 5048; Pub. L. 104–188, title I, §§1401(b)(5), (6), 1404(a), 1422(a), (b), 1426(a), 1431(b)(2), (c)(1)(B), 1432(a), (b), 1433(a)–(e), 1441(a), 1443(a), (b), 1445(a), 1459(a), (b), 1704(a), (t)(67), Aug. 20, 1996, 110 Stat. 1789, 1791, 1800, 1801, 1803–1809, 1811, 1820, 1878, 1890; Pub. L. 105–34, title XV, §§1502(b), 1505(a)(1), (2), (b), 1525(a), 1530(c)(1), title XVI, §1601(d)(2)(A), (B), (D), (3), Aug. 5, 1997, 111 Stat. 1059, 1063, 1072, 1078, 1088, 1089; Pub. L. 106–554, §1(a)(7) [title III, §316(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–644; Pub. L. 107–16, title VI, §§611(c), (f)(3), (g)(1), 641(e)(3), 643(b), 646(a)(1), 657(a), 666(a), June 7, 2001, 115 Stat. 97, 99, 120, 122, 126, 135, 143; Pub. L. 107–147, title IV, §411(*o*)(2), (q)(1), Mar. 9, 2002, 116 Stat. 48, 51; Pub. L. 108–311, title IV, §407(b), Oct. 4, 2004, 118 Stat. 1190; Pub. L. 109–280, title I, §114(a), title VIII, §§827(b)(1), 861(a), (b), title IX, §§901(a)(1), (2)(A), 902(a), (b), (d)(2)(C), (D), (e)(3)(B), 905(b), Aug. 17, 2006, 120 Stat. 853, 1000, 1020, 1021, 1026, 1029, 1033, 1035, 1038, 1050; Pub. L. 110–245, title I, §104(a), June 17, 2008, 122 Stat. 1626; Pub. L. 110–458, title I, §§101(d)(2)(A)–(C), 109(a)–(b)(2), title II, §201(a), Dec. 23, 2008, 122 Stat. 5099, 5111, 5116.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(12), (13)(C)(i)(II), (III), (iii)(II), (29)(B)(i), (33)(C), (34), (35)(G)(iii), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Part 4 of subtitle B of title I of the Act is classified generally to part 4 (§1101 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor. Title IV of the Act is classified generally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Sections 407, 412, 4021, and 4050 of the Act are classified to sections 1107, 1112, 1321, and 1350, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Social Security Act, referred to in subsecs. (a)(15), (*l*)(4)(C)(ii), (5)(A)(ii), (D)(ii), (E)(i), (F), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of Title 42. Sections 223(d) and 230 of the Social Security Act are classified to sections 423(d) and 430, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 521 of the Unemployment Compensation Amendments of 1992, referred to in subsec. (a)(20), is section 521 of Pub. L. 102–318, which amended section 402(a) to (f) of this title generally, and, as so amended, subsec. (a) of section 402 does not contain a par. (6)(B).

The Railroad Retirement Act of 1974, referred to in subsec. (*l*)(6), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

2008—Subsec. (a)(9)(H). Pub. L. 110–458, §201(a), added subpar. (H).

Subsec. (a)(29). Pub. L. 110–458, §101(d)(2)(A), struck out ''on plans in at-risk status'' after ''limitations'' in heading.

Subsec. (a)(32)(C). Pub. L. 110–458, §101(d)(2)(B), substituted ''section 430(j)(3)'' for ''section 430(j)'' and ''section 430(j)(4)(A)'' for ''paragraph (5)(A)''.

Subsec. (a)(33)(B)(iii). Pub. L. 110–458, §101(d)(2)(C)(i), substituted ''section 412(d)(2)'' for ''section 412(c)(2)''.

Subsec. (a)(33)(D). Pub. L. 110–458, §101(d)(2)(C)(ii), substituted ''section 412(b)(1), without regard to section 412(b)(2)'' for ''section 412(b)(2) (without regard to subparagraph (B) thereof)''.

Subsec. (a)(35)(E)(iv). Pub. L. 110–458, §109(a), amended cl. (iv) generally. Prior to amendment, text read as follows: ''For purposes of clause (iii), the term 'one-participant retirement plan' means a retirement plan that—

''(I) on the first day of the plan year covered only one individual (or the individual and the individual's spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or covered only one or more partners (or partners and their spouses) in the plan sponsor,

''(II) meets the minimum coverage requirements of section 410(b) without being combined with any other plan of the business that covers the employees of the business,

''(III) does not provide benefits to anyone except the individual (and the individual's spouse) or the partners (and their spouses),

''(IV) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

''(V) does not cover a business that uses the services of leased employees (within the meaning of section 414(n)).

For purposes of this clause, the term ''partner'' includes a 2-percent shareholder (as defined in section 1372(b)) of an S corporation.''

Subsec. (a)(37). Pub. L. 110–245 added par. (37).

Subsec. (k)(8)(E). Pub. L. 110–458, § 109(b)(2), substituted ''permissible withdrawal'' for ''erroneous automatic contribution'' in heading and ''a permissible withdrawal'' for ''an erroneous automatic contribution'' in text.

Subsec. (k)(13)(D)(i)(I). Pub. L. 110–458, § 109(b)(1), substituted ''such contributions as exceed 1 percent but do not'' for ''such compensation as exceeds 1 percent but does not''.

2006—Subsec. (a)(5)(G). Pub. L. 109–280, § 861(a)(1), (b)(1), substituted ''Governmental'' for ''State and local governmental'' in heading and ''section 414(d))'' for ''section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)'' in text.

Subsec. (a)(26)(G). Pub. L. 109–280, § 861(a)(1), (b)(2), substituted ''Exception for'' for ''Exception for state and local'' in heading and ''section 414(d))'' for ''section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)'' in text.

Subsec. (a)(28)(B)(v). Pub. L. 109–280, § 901(a)(2)(A), added cl. (v).

Subsec. (a)(29). Pub. L. 109–280, § 114(a)(1), amended heading and text of par. (29) generally, substituting provisions relating to benefit limitations on plans in at-risk status for provisions relating to security required upon adoption of plan amendment resulting in significant underfunding.

Subsec. (a)(32)(A). Pub. L. 109–280, § 114(a)(2)(A), substituted ''section 430(j)(4)'' for ''412(m)(5)'' in two places.

Subsec. (a)(32)(C). Pub. L. 109–280, § 114(a)(2)(B), substituted ''section 430(j)'' for ''section 412(m)''.

Subsec. (a)(33)(B)(i). Pub. L. 109–280, § 114(a)(3)(A), which directed amendment of cl. (i) by substituting ''funding target attainment percentage (as defined in section 430(d)(2))'' for ''funded current liability percentage (within the meaning of section 412(*l*)(8))'', was executed by making the substitution for ''funded current liability percentage (as defined in section 412(*l*)(8))'', to reflect the probable intent of Congress.

Subsec. (a)(33)(B)(iii). Pub. L. 109–280, § 114(a)(3)(B), substituted ''section 412(c)(2)'' for ''subsection 412(c)(8)''.

Subsec. (a)(33)(D). Pub. L. 109–280, § 114(a)(3)(C), substituted ''section 412(b)(2) (without regard to subparagraph (B) thereof)'' for ''section 412(c)(11) (without regard to subparagraph (B) thereof)''.

Subsec. (a)(35). Pub. L. 109–280, § 901(a)(1), added par. (35).

Subsec. (a)(36). Pub. L. 109–280, § 905(b), added par. (36).

Subsec. (k)(2)(B)(i)(V). Pub. L. 109–280, § 827(b)(1), added subcl. (V).

Subsec. (k)(3)(G). Pub. L. 109–280, § 861(a)(2), (b)(3), inserted heading and struck out ''maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)'' after ''414(d))'' in text.

Subsec. (k)(8)(A)(i). Pub. L. 109–280, § 902(e)(3)(B)(i), inserted ''through the end of such year'' after ''such contributions''.

Subsec. (k)(8)(E). Pub. L. 109–280, § 902(d)(2)(C), (D), inserted ''or erroneous automatic contribution'' after ''or contribution'' in heading and inserted ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),'' in text.

Subsec. (k)(13). Pub. L. 109–280, § 902(a), added par. (13).

Subsec. (m)(6)(A). Pub. L. 109–280, § 902(e)(3)(B)(ii), inserted ''through the end of such year'' after ''to such contributions''.

Subsec. (m)(12), (13). Pub. L. 109–280, § 902(b), added par. (12) and redesignated former par. (12) as (13).

2004—Subsec. (a)(26)(C) to (I). Pub. L. 108–311 redesignated subpars. (D) to (I) as (C) to (H), respectively, and struck out heading and text of former subpar. (C). Text read as follows: ''In the case of contributions under section 401(k) or 401(m), employees who are eligible to contribute (or may elect to have contributions made on their behalf) shall be treated as benefiting under the plan.''

2002—Subsec. (a)(30). Pub. L. 107–147, § 411(*o*)(2), substituted ''402(g)(1)(A)'' for ''402(g)(1)''.

Subsec. (a)(31)(C)(i). Pub. L. 107–147, § 411(q)(1), inserted ''is a qualified trust which is part of a plan which is a defined contribution plan and'' before ''agrees''.

2001—Subsec. (a)(17). Pub. L. 107–16, § 611(c)(1), substituted ''$200,000'' for ''$150,000'' in two places.

Subsec. (a)(17)(B). Pub. L. 107–16, § 611(c)(2), substituted ''July 1, 2001'' for ''October 1, 1993'' and substituted ''$5,000'' for ''$10,000'' in two places.

Subsec. (a)(31). Pub. L. 107–16, § 657(a)(2)(A), substituted ''Direct'' for ''Optional direct'' in heading.

Subsec. (a)(31)(B). Pub. L. 107–16, § 657(a)(1), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 107–16, § 643(b), inserted at end ''The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—

''(i) agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

''(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).''

Pub. L. 107–16, § 641(e)(3), substituted '', 403(a)(4), 403(b)(8), and 457(e)(16)'' for ''and 403(a)(4)''.

Subsec. (a)(31)(C). Pub. L. 107–16, § 657(a)(2)(B), substituted ''Subparagraphs (A) and (B)'' for ''Subparagraph (A)''.

Pub. L. 107–16, § 657(a)(1), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (a)(31)(D), (E). Pub. L. 107–16, § 657(a)(1), redesignated subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (c)(2)(A). Pub. L. 107–16, § 611(g)(1), inserted at end ''For purposes of this part only (other than sections 419 and 419A), this subparagraph shall be applied as if the term 'trade or business' for purposes of section 1402 included service described in section 1402(c)(6).''

Subsec. (k)(2)(B)(i)(I). Pub. L. 107–16, § 646(a)(1)(A), substituted ''severance from employment'' for ''separation from service''.

Subsec. (k)(10). Pub. L. 107–16, § 646(a)(1)(C)(iii), struck out ''or disposition of assets or subsidiary'' after ''plan'' in heading.

Subsec. (k)(10)(A). Pub. L. 107–16, § 646(a)(1)(B), reenacted heading without change and amended text generally, substituting present provisions for provisions including termination of plan, disposition of assets, and disposition of subsidiary as events described in this paragraph.

Subsec. (k)(10)(B)(i). Pub. L. 107–16, § 646(a)(1)(C)(i), substituted ''A termination'' for ''An event'' and ''the termination'' for ''the event''.

Subsec. (k)(10)(C). Pub. L. 107–16, §646(a)(1)(C)(ii), struck out heading and text of subpar. (C). Text read as follows: ''An event shall not be treated as described in clause (ii) or (iii) of subparagraph (A) unless the transferor corporation continues to maintain the plan after the disposition.''

Subsec. (k)(11)(B)(i)(I). Pub. L. 107–16, §611(f)(3)(A), substituted ''the amount in effect under section 408(p)(2)(A)(ii)'' for ''$6,000''.

Subsec. (k)(11)(E). Pub. L. 107–16, §611(f)(3)(B), struck out heading and text of subpar. (E). Text read as follows: ''The Secretary shall adjust the $6,000 amount under subparagraph (B)(i)(I) at the same time and in the same manner as under section 408(p)(2)(E).''

Subsec. (m)(9). Pub. L. 107–16, §666(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k) including—

''(A) such regulations as may be necessary to prevent the multiple use of the alternative limitation with respect to any highly compensated employee, and

''(B) regulations permitting appropriate aggregation of plans and contributions.

For purposes of the preceding sentence, the term 'alternative limitation' means the limitation of section 401(k)(3)(A)(ii)(II) and the limitation of paragraph (2)(A)(ii) of this subsection.''

2000—Subsec. (k)(10)(B)(ii). Pub. L. 106–554 inserted at end ''Such term includes a distribution of an annuity contract from—

''(I) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

''(II) an annuity plan described in section 403(a).''

1997—Subsec. (a)(1). Pub. L. 105–34, §1530(c)(1), inserted ''or by a charitable remainder trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1)),'' after ''stock bonus plans),''.

Subsec. (a)(5)(G). Pub. L. 105–34, §1505(a)(1), added subpar. (G).

Subsec. (a)(13)(C), (D). Pub. L. 105–34, §1502(b), added subpars. (C) and (D).

Subsec. (a)(26)(H). Pub. L. 105–34, §1505(a)(2), amended heading and text of subpar. (H) generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—An employer may elect to have this paragraph applied separately with respect to any classification of qualified public safety employees for whom a separate plan is maintained.

''(ii) QUALIFIED PUBLIC SAFETY EMPLOYEE.—For purposes of this subparagraph, the term 'qualified public safety employee' means any employee of any police department or fire department organized and operated by a State or political subdivision if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.''

Subsec. (k)(3)(G). Pub. L. 105–34, §1505(b), added subpar. (G).

Subsec. (k)(7)(B)(iii) to (v). Pub. L. 105–34, §1525(a), struck out ''and'' at end of cl. (iii), added cl. (iv), redesignated former cl. (iv) as (v), and in cl. (v), substituted '', (iii), or (iv)'' for ''or (iii)''.

Subsec. (k)(11)(B)(iii). Pub. L. 105–34, §1601(d)(2)(D), added cl. (iii).

Subsec. (k)(11)(D)(ii). Pub. L. 105–34, §1601(d)(2)(A), inserted ''if such plan allows only contributions required under this paragraph'' before period at end.

Subsec. (k)(11)(E). Pub. L. 105–34, §1601(d)(2)(B), added subpar. (E).

Subsec. (m)(11). Pub. L. 105–34, §1601(d)(3), substituted ''Additional alternative'' for ''Alternative'' in heading.

1996—Subsec. (a)(5)(D)(ii). Pub. L. 104–188, §1431(c)(1)(B), substituted ''section 414(q)(4)'' for ''section 414(q)(7)'' in introductory provisions.

Subsec. (a)(5)(F). Pub. L. 104–188, §1445(a), added subpar. (F).

Subsec. (a)(9)(C). Pub. L. 104–188, §1404(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this paragraph, the term 'required beginning date' means April 1 of the calendar year following the calendar year in which the employee attains age 70½. In the case of a governmental plan or church plan, the required beginning date shall be the later of the date determined under the preceding sentence or April 1 of the calendar year following the calendar year in which the employee retires. For purposes of this subparagraph, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).''

Subsec. (a)(17)(A). Pub. L. 104–188, §1431(b)(2), struck out at end ''In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.''

Subsec. (a)(20). Pub. L. 104–188, §1704(t)(67), substituted ''section 521'' for ''section 211'' in last sentence.

Subsec. (a)(26)(A). Pub. L. 104–188, §1432(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''A trust shall not constitute a qualified trust under this subsection unless such trust is part of a plan which on each day of the plan year benefits the lesser of—

''(i) 50 employees of the employer, or

''(ii) 40 percent or more of all employees of the employer.''

Subsec. (a)(26)(G). Pub. L. 104–188, §1432(b), substituted ''paragraph (2)(A) or (7)'' for ''paragraph (7)''.

Subsec. (a)(28)(B)(v). Pub. L. 104–188, §1401(b)(5), struck out cl. (v) which read as follows:

''(v) COORDINATION WITH DISTRIBUTION RULES.—Any distribution required by this subparagraph shall not be taken into account in determining whether a subsequent distribution is a lump sum distribution under section 402(d)(4)(A) or in determining whether section 402(c)(10) applies.''

Subsec. (d). Pub. L. 104–188, §1441(a), amended subsec. (d) generally, substituting provisions relating to contribution limit on owner-employees for former provisions relating to additional requirements for qualification of trusts and plans benefiting owner-employees.

Subsec. (h). Pub. L. 104–188, §1704(a), provided that, except as otherwise expressly provided, whenever in title XII of Pub. L. 101–508 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986. Section 12011(b) of title XII of Pub. L. 101–508 directed the amendment of this section without specifying that the amendment was to the Internal Revenue Code of 1986. See 1990 Amendment note below.

Subsec. (k)(3)(A). Pub. L. 104–188, §1433(c)(1), in introductory provisions of cl. (ii) substituted ''the plan year'' for ''such year'' and ''for the preceding plan year'' for ''for such plan year'' and inserted at end of closing provisions of subpar. (A) ''An arrangement may apply clause (ii) by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.''

Subsec. (k)(3)(E). Pub. L. 104–188, §1433(d)(1), added subpar. (E).

Subsec. (k)(3)(F). Pub. L. 104–188, §1459(a), added subpar. (F).

Subsec. (k)(4)(B). Pub. L. 104–188, §1426(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(B) STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS NOT ELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or

deferred arrangement if it is part of a plan maintained by—

''(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

''(ii) any organization exempt from tax under this subtitle.

This subparagraph shall not apply to a rural cooperative plan.''

Subsec. (k)(7)(B)(i). Pub. L. 104–188, § 1443(b), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''any organization which—

''(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

''(II) is engaged primarily in providing electric service on a mutual or cooperative basis,''.

Subsec. (k)(7)(C). Pub. L. 104–188, § 1443(a), added subpar. (C).

Subsec. (k)(8)(C). Pub. L. 104–188, § 1433(e)(1), substituted ''on the basis of the amount of contributions by, or on behalf of, each of such employees'' for ''on the basis of the respective portions of the excess contributions attributable to each of such employees''.

Subsec. (k)(10)(B)(ii). Pub. L. 104–188, § 1401(b)(6), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows:

''(ii) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term 'lump sum distribution' has the meaning given such term by section 402(d)(4), without regard to clauses (i), (ii), (iii), and (iv) of subparagraph (A), subparagraph (B), or subparagraph (F) thereof.''

Subsec. (k)(11). Pub. L. 104–188, § 1422(a), added par. (11).

Subsec. (k)(12). Pub. L. 104–188, § 1433(a), added par. (12).

Subsec. (m)(2)(A). Pub. L. 104–188, § 1433(c)(2), inserted ''for such plan year'' after ''highly compensated employees'' in introductory provisions, inserted ''for the preceding plan year'' after ''eligible employees'' wherever appearing in cls. (i) and (ii), and inserted at end ''This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.''

Subsec. (m)(3). Pub. L. 104–188, § 1433(d)(2), inserted at end of closing provisions ''Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.''

Subsec. (m)(5)(C). Pub. L. 104–188, § 1459(b), added subpar. (C).

Subsec. (m)(6)(C). Pub. L. 104–188, § 1433(e)(2), substituted ''on the basis of the amount of contributions on behalf of, or by, each such employee'' for ''on the basis of the respective portions of such amounts attributable to each of such employees''.

Subsec. (m)(10). Pub. L. 104–188, § 1422(b), added par. (10). Former par. (10) redesignated (11).

Subsec. (m)(11). Pub. L. 104–188, § 1433(b), added par. (11). Former par. (11) redesignated (12).

Pub. L. 104–188, § 1422(b), redesignated par. (10) as (11).

Subsec. (m)(12). Pub. L. 104–188, § 1433(b), redesignated par. (11) as (12).

1994—Subsec. (a)(17)(B). Pub. L. 103–465, § 732(a), reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—If, for any calendar year after 1994, the excess (if any) of—

''(I) $150,000, increased by the cost-of-living adjustment for the calendar year, over

''(II) the dollar amount in effect under subparagraph (A) for taxable years beginning in the calendar year,

is equal to or greater than $10,000, then the $150,000 amount under subparagraph (A) (as previously adjusted under this subparagraph) for any taxable year beginning in any subsequent calendar year shall be increased by the amount of such excess, rounded to the next lowest multiple of $10,000.

''(ii) COST-OF-LIVING ADJUSTMENT.—The cost-of-living adjustment for any calendar year shall be the adjustment made under section 415(d) for such calendar year, except that the base period for purposes of section 415(d)(1)(A) shall be the calendar quarter beginning October 1, 1993.''

Subsec. (a)(32). Pub. L. 103–465, § 751(a)(9)(C), which directed amendment of subsec. (a) by adding par. (32) at end, was executed by adding par. (32) after par. (31) to reflect the probable intent of Congress.

Subsec. (a)(33). Pub. L. 103–465, § 766(b), which directed amendment of subsec. (a) by adding par. (33) at end, was executed by adding par. (33) after par. (32) to reflect the probable intent of Congress.

Subsec. (a)(34). Pub. L. 103–465, § 776(d), added par. (34).

1993—Subsec. (a)(17). Pub. L. 103–66 inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. heading, substituted ''$150,000'' for ''$200,000'' in first sentence, struck out after first sentence ''The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d).'', and added subpar. (B).

1992—Subsec. (a)(20). Pub. L. 102–318, § 521(b)(5), substituted ''1 or more distributions within 1 taxable year to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan'' for ''a qualified total distribution described in section 402(a)(5)(E)(i)(I)'' and inserted at end ''For purposes of this paragraph, rules similar to the rules of section 402(a)(6)(B) (as in effect before its repeal by section 211 of the Unemployment Compensation Amendments of 1992) shall apply.''

Subsec. (a)(28)(B)(v). Pub. L. 102–318, § 521(b)(6), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: ''Any distribution required by this subparagraph shall not be taken into account in determining whether—

''(I) a subsequent distribution is a lump-sum distribution under section 402(e)(4)(A), or

''(II) section 402(a)(5)(D)(iii) applies to a subsequent distribution.''

Subsec. (a)(31). Pub. L. 102–318, § 522(a)(1), added par. (31).

Subsec. (k)(2)(B)(i)(IV). Pub. L. 102–318, § 521(b)(7), substituted ''402(e)(3)'' for ''402(a)(8)''.

Subsec. (k)(10)(B)(ii). Pub. L. 102–318, § 521(b)(8), substituted ''402(d)(4)'' for ''402(e)(4)'' and ''subparagraph (F)'' for ''subparagraph (H)''.

1990—Subsec. (h). Pub. L. 101–508, which directed that ''section 401(h) is amended by inserting ', and subject to the provisions of section 420'' without specifying that amendment was to the Internal Revenue Code of 1986, was executed by making the insertion in subsec. (h) of this section. See 1996 Amendment note above.

1989—Subsec. (a)(9)(C). Pub. L. 101–140 struck out ''(as defined in section 89(i)(4))'' after ''governmental or church plan'' and inserted at end ''For purposes of this subparagraph, the term 'church plan' means a plan maintained by a church for church employees, and the term 'church' means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).''

Subsec. (a)(28)(B)(ii)(II). Pub. L. 101–239, § 7811(h)(3), made technical correction to directory language of Pub. L. 100–647, § 1011B(j)(1), see 1988 Amendment note below.

Subsec. (a)(29)(A)(i). Pub. L. 101–239, § 7881(i)(4)(A), substituted ''multiemployer plan) to which the requirements of section 412 apply'' for ''multiemployer plan)''.

Subsec. (a)(29)(C)(i)(II). Pub. L. 101–239, § 7881(i)(1)(A), substituted ''plan amendment and any other plan amendments adopted after December 22, 1987, and before such plan amendment'' for ''plan amendment''.

Subsec. (a)(30). Pub. L. 101–239, § 7811(g)(1), moved par. (30) from a position after the undesignated closing par. to a position immediately after par. (29).

Subsec. (h). Pub. L. 101–239, § 7311(a), inserted at end ''In no event shall the requirements of paragraph (1) be

treated as met if the aggregate actual contributions for medical benefits, when added to actual contributions for life insurance protection under the plan, exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established.''

Subsec. (k)(4)(B). Pub. L. 101–239, §7816(*l*), amended Pub. L. 100–647, §6071(b)(2), see 1988 Amendment note below.

1988—Subsec. (a)(9)(C). Pub. L. 100–647, §6053(a), inserted at end ''In the case of a governmental plan or church plan (as defined in section 89(i)(4)), the required beginning date shall be the later of the date determined under the preceding sentence or April 1 of the calendar year following the calendar year in which the employee retires.''

Subsec. (a)(11)(E), (F). Pub. L. 100–647, §1011A(*l*), redesignated subpar. (E), relating to cross reference, as (F).

Subsec. (a)(17). Pub. L. 100–647, §1011(d)(4), inserted at end ''In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.''

Subsec. (a)(22). Pub. L. 100–647, §1011B(k)(1), (2), substituted ''is not readily tradable on an established market'' for ''is not publicly traded'' in subpar. (A) and in last sentence, and inserted at end ''For purposes of the preceding sentence, subsections (b), (c), (m), and (*o*) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market.''

Subsec. (a)(26)(F), (G). Pub. L. 100–647, §1011(h)(3), added subpars. (F) and (G). Former subpar. (F) redesignated (H).

Subsec. (a)(26)(H). Pub. L. 100–647, §6055(a), added subpar. (H). Former subpar. (H) redesignated (I).

Pub. L. 100–647, §1011(h)(3), redesignated former subpar. (F) as (H).

Subsec. (a)(26)(I). Pub. L. 100–647, §6055(a), redesignated former subpar. (H) as (I).

Subsec. (a)(27). Pub. L. 100–647, §1011A(j), inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. (A) heading, and added subpar. (B).

Subsec. (a)(28)(B)(ii)(II). Pub. L. 100–647, §1011B(j)(1), as amended by Pub. L. 101–239, §7811(h)(3), inserted ''and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election'' after ''clause (i)''.

Subsec. (a)(28)(B)(iv). Pub. L. 100–647, §1011B(d)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''For purposes of this subparagraph, the term 'qualified election period' means the 5-plan-year period beginning with the plan year after the plan year in which the participant attains age 55 (or, if later, beginning with the plan year after the 1st plan year in which the individual 1st became a qualified participant).''

Subsec. (a)(28)(B)(v). Pub. L. 100–647, §1011B(j)(6), added cl. (v).

Subsec. (a)(30). Pub. L. 100–647, §1011(c)(7)(A), added par. (30) at end.

Subsec. (k)(1), (2). Pub. L. 100–647, §6071(a), struck out ''electric'' after ''or a rural''.

Subsec. (k)(2)(B). Pub. L. 100–647, §1011(k)(2)(A), inserted ''amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election'' after ''under which''.

Subsec. (k)(2)(B)(i). Pub. L. 100–647, §1011(k)(2)(B), struck out ''amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election'' before ''may not be''.

Pub. L. 100–647, §1011(k)(1)(A), added subcl. (II), redesignated former subcls. (V) and (VI) as (III) and (IV), respectively, and struck out former subcls. (II) to (IV) which read as follows:

''(II) termination of the plan without establishment of a successor plan,

''(III) the date of the sale by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation with respect to an employee who continues employment with the corporation acquiring such assets,

''(IV) the date of the sale by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)) with respect to an employee who continues employment with such subsidiary,''.

Subsec. (k)(2)(B)(ii). Pub. L. 100–647, §1011(k)(2)(C), struck out ''amounts'' before ''will not be''.

Subsec. (k)(3)(A). Pub. L. 100–647, §1011(k)(3)(B), made technical correction to Pub. L. 99–514, §1116(b)(4). See 1986 Amendment note below.

Subsec. (k)(3)(A)(ii). Pub. L. 100–647, §1011(k)(3)(A), inserted ''eligible'' before ''highly compensated employees'' in introductory text, in subcl. (I), and in two places in subcl. (II).

Subsec. (k)(3)(C), (D). Pub. L. 100–647, §1011(k)(4), (5), redesignated subpar. (C), relating to employer contributions, as (D), and substituted ''meet'' for ''meets'' in cl. (ii)(I).

Subsec. (k)(4)(A). Pub. L. 100–647, §1011(k)(6), struck out ''provided by such employer'' after ''any other benefit''.

Subsec. (k)(4)(B). Pub. L. 100–647, §6071(b)(2), as amended by Pub. L. 101–239, §7816(*l*), substituted ''rural cooperative plan'' for ''rural electric cooperative plan'' in last sentence.

Pub. L. 100–647, §1011(k)(9), inserted at end ''This subparagraph shall not apply to a rural electric cooperative plan.''

Subsec. (k)(7). Pub. L. 100–647, §6071(b)(1), substituted ''Rural cooperative plan'' for ''Rural electric cooperative plan'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—The term 'rural cooperative plan' means any pension plan—

''(i) which is a defined contribution plan (as defined in section 414(i)), and

''(ii) which is established and maintained by a rural cooperative.

''(B) RURAL COOPERATIVE DEFINED.—For purposes of subparagraph (A), the term 'rural cooperative' means—

''(i) any organization which—

''(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

''(II) is engaged primarily in providing electric service on a mutual or cooperative basis,

''(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i), and

''(iii) an organization which is a national association of organizations described in clause (i) or (ii).''

Pub. L. 100–647, §1011(e)(3), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''For purposes of this subsection, the term 'rural electric cooperative plan' means any pension plan—

''(A) which is a defined contribution plan (as defined in section 414(i)), and

''(B) which is established and maintained by a rural electric cooperative (as defined in section 457(d)(9)(B)) or a national association of such rural electric cooperatives.''

Subsec. (k)(8)(E), (F). Pub. L. 100–647, §1011(k)(7), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (k)(10). Pub. L. 100–647, §1011(k)(1)(B), added par. (10).

Subsec. (*l*)(2)(B)(i), (ii). Pub. L. 100–647, §1011(g)(1)(A), substituted ''contributed by the employer under'' for ''contributed under''.

Subsec. (*l*)(3)(A)(ii). Pub. L. 100–647, §1011(g)(1)(B), inserted ''attributable to employer contributions'' after ''basis of benefits''.

Subsec. (*l*)(5)(C). Pub. L. 100–647, §1011(g)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The term 'average annual compensation' means the greater of—

''(i) the participant's final average compensation (determined without regard to subparagraph (D)(ii)), or

''(ii) the participant's highest average annual compensation for any other period of at least 3 consecutive years.''

Subsec. (*l*)(5)(E). Pub. L. 100–647, §1011(g)(3), substituted ''the social security retirement age'' for ''age 65'' in cl. (i) and in two places in cl. (ii), and added cl. (iii).

Subsec. (m)(1). Pub. L. 100–647, §1011(*l*)(1), substituted ''A defined contribution plan'' for ''A plan''.

Subsec. (m)(2)(B). Pub. L. 100–647, §1011(*l*)(3), substituted ''contributions to which this subsection applies are made'' for ''such contributions are made''.

Subsec. (m)(3). Pub. L. 100–647, §1011(*l*)(2), inserted at end ''If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year.''

Subsec. (m)(4)(A)(i), (ii). Pub. L. 100–647, §1011(*l*)(4), substituted ''a defined contribution plan'' for ''the plan''.

Subsec. (m)(4)(B). Pub. L. 100–647, §1011(*l*)(5)(A), substituted ''section 402(g)(3)'' for ''section 402(g)(3)(A)''.

Subsec. (m)(6)(C). Pub. L. 100–647, §1011(*l*)(6), substituted ''excess aggregate contributions'' for ''excess contributions'' in heading.

Subsec. (m)(7)(A). Pub. L. 100–647, §1011(*l*)(7), substituted ''paragraph (6)'' for ''paragraph (8)''.

1987—Subsec. (a)(29). Pub. L. 100–203 added par. (29).

1986—Subsec. (a)(4). Pub. L. 99–514, §1114(b)(7), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''if the contributions or the benefits provided under the plan do not discriminate in favor of employees who are—

''(A) officers,

''(B) shareholders, or

''(C) highly compensated.

For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).''

Subsec. (a)(5). Pub. L. 99–514, §1111(b), amended par. (5) generally. Prior to amendment, par. (5) related to conditions which taken alone would not require a classification to be considered discriminatory and means of determining the basic or regular rate of compensation of an employee and whether two or more plans of an employer satisfy requirements of par. (4) when considered as a single plan.

Subsec. (a)(8). Pub. L. 99–514, §1119(a), substituted ''defined benefit plan'' for ''pension plan''.

Subsec. (a)(9)(C). Pub. L. 99–514, §1121(b), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For purposes of this paragraph, the term 'required beginning date' means April 1 of the calendar year following the later of—

''(i) the calendar year in which the employee attains age 70½, or

''(ii) the calendar year in which the employee retires.

Clause (ii) shall not apply in the case of an employee who is a 5-percent owner (as defined in section 416(i)(1)(B)) at any time during the 5-plan-year period ending in the calendar year in which the employee attains age 70½. If the employee becomes a 5-percent owner during any subsequent plan year, the required beginning date shall be April 1 of the calendar year following the calendar year in which such subsequent plan year ends.''

Pub. L. 99–514, §1852(a)(4)(A), substituted last 2 sentences for ''Except as provided in section 409(d), clause (ii) shall not apply in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains 70½.''

Subsec. (a)(9)(G). Pub. L. 99–514, §1852(a)(6), added subpar. (G).

Subsec. (a)(11)(A)(i). Pub. L. 99–514, §1898(b)(3)(A), substituted ''who does not die before the annuity starting date'' for ''who retires under the plan''.

Subsec. (a)(11)(B). Pub. L. 99–514, §1898(b)(2)(A)(ii), inserted at end ''Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.''

Subsec. (a)(11)(B)(iii)(I). Pub. L. 99–514, §1898(b)(7)(A), inserted ''(reduced by any security interest held by the plan by reason of a loan outstanding to such participant)''.

Pub. L. 99–514, §1898(b)(13)(A), substituted ''section 417(a)(2)'' for ''section 417(a)(2)(A)''.

Subsec. (a)(11)(B)(iii)(III). Pub. L. 99–514, §1898(b)(2)(A)(i), inserted ''(in a transfer after December 31, 1984)''.

Subsec. (a)(11)(D), (E). Pub. L. 99–514, §1145(a), added subpar. (E) relating to exception for plans described in section 404(c) and redesignated former subpar. (D), relating to cross references, as (E).

Pub. L. 99–514, §1898(b)(14)(A), added subpar. (D) and redesignated former subpar. (D), relating to cross references, as (E).

Subsec. (a)(17). Pub. L. 99–514, §1106(d)(1), added par. (17).

Subsec. (a)(20). Pub. L. 99–514, §1852(b)(8), substituted ''qualified total distribution described in section 402(a)(5)(E)(i)(I)'' for ''qualifying rollover distribution (determined as if section 402(a)(5)(D)(i) did not contain subclause (II) thereof) described in section 402(a)(5)(A)(i) or 403(a)(4)(A)(i)''.

Subsec. (a)(21). Pub. L. 99–514, §1171(b)(5), struck out par. (21) which read as follows: ''A trust forming part of a tax credit employee stock ownership plan shall not fail to be considered a permanent program merely because employer contributions under the plan are determined solely by reference to the amount of credit which would be allowable under section 41 if the employer made the transfer described in section 41(c)(1)(B)''.

Subsec. (a)(22). Pub. L. 99–514, §1899A(10), substituted ''If'' for ''if''.

Pub. L. 99–514, §1176(a), inserted at end ''The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not publicly traded and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation.''

Subsec. (a)(23). Pub. L. 99–514, §1174(c)(2)(A), amended par. (23) generally. Prior to amendment, par. (23) read as follows: ''A stock bonus plan which otherwise meets the requirements of this section shall not be considered to fail to meet the requirements of this section because it provides a cash distribution option to participants if that option meets the requirements of section 409(h), except that in applying section 409(h) for purposes of this paragraph, the term 'employer securities' shall include any securities of the employer held by the plan.''

Subsec. (a)(26). Pub. L. 99–514, §1112(b), added par. (26).

Subsec. (a)(27). Pub. L. 99–514, §1136(a), added par. (27).

Subsec. (a)(28). Pub. L. 99–514, §1175(a)(1), added par. (28).

Subsec. (c)(2)(A)(v). Pub. L. 99–514, §1848(b), substituted ''section 404'' for ''sections 404 and 405(c)''.

Subsec. (c)(6). Pub. L. 99–514, §1143(a), added par. (6).

Subsec. (h). Pub. L. 99–514, §1852(h)(1), substituted ''key employee'' for ''5-percent owner'' in two places in par. (6) and amended last sentence generally, substituting '''key employee' means any employee, who'' for '''5-percent owner' means any employee who,'' and ''key employee as defined in section 416(i)'' for ''5-percent owner (as defined in section 416(i)(1)(B))''.

Subsec. (k)(1), (2). Pub. L. 99–514, §1879(g)(1), substituted '', a pre-ERISA money purchase plan, or a rural electric cooperative plan'' for ''(or a pre-ERISA money purchase plan)''.

Subsec. (k)(2)(B). Pub. L. 99–514, §1116(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election may not be distributable to participants or other beneficiaries earlier than upon retirement, death, disability, or separation from service (or in the case of a profit sharing or stock bonus plan, hardship or the attainment of age 59½) and will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years; and''.

Subsec. (k)(2)(C). Pub. L. 99–514, §1852(g)(3), substituted ''is nonforfeitable'' for ''are nonforfeitable''.

Subsec. (k)(2)(D). Pub. L. 99–514, §1116(b)(2), added subpar. (D).

Subsec. (k)(3). Pub. L. 99–514, §1116(d)(3), which directed that the last sentence of subpar. (B) be struck out was executed by striking out the last sentence of par. (3) as the probable intent of Congress because subpar. (B) is composed of only one sentence. Prior to being stricken, such last sentence read as follows: ''For purposes of the preceding sentence, the compensation of any employee for a plan year shall be the amount of his compensation which is taken into account under the plan in calculating the contribution which may be made on his behalf for such plan year.''

Subsec. (k)(3)(A). Pub. L. 99–514, §1116(b)(4), as amended by Pub. L. 100–647, §1011(k)(3)(B), substituted ''any highly compensated employee'' for ''an employee'' in concluding provisions.

Pub. L. 99–514, §1852(g)(2), substituted ''If an employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement'' for ''The deferral percentage taken into account under this subparagraph for any employee who is a participant under 2 or more cash or deferred arrangements of the employer shall be the sum of the deferral percentages for such employee under each of such arrangements''.

Subsec. (k)(3)(A)(i). Pub. L. 99–514, §1112(d)(1), struck out ''subparagraph (A) or (B) of'' before ''section 410(b)(1)''.

Subsec. (k)(3)(A)(ii). Pub. L. 99–514, §1116(c)(2), substituted ''paragraph (5)'' for ''paragraph (4)''.

Pub. L. 99–514, §1116(a), substituted ''1.25'' for ''1.5'' in subcl. (I), and ''2 percentage points'' for ''3 percentage points'' and ''2'' for ''2.5'' in subcl. (II).

Subsec. (k)(3)(C). Pub. L. 99–514, §1852(g)(1), added subpar. (C) relating to treatment of cash or deferred arrangements.

Pub. L. 99–514, §1116(e), added subpar. (C) relating to employer contributions.

Subsec. (k)(4). Pub. L. 99–514, §1116(b)(3), added par. (4). Former par. (4) redesignated (5).

Subsec. (k)(5). Pub. L. 99–514, §1116(b)(3), (d)(1), redesignated former par. (4) as (5) and substituted ''the term 'highly compensated employee' has the meaning given such term by section 414(q)'' for ''the term 'highly compensated employee' means any employee who is more highly compensated than two-thirds of all eligible employees, taking into account only compensation which is considered in applying paragraph (3)''. Former par. (5) redesignated (6).

Subsec. (k)(6). Pub. L. 99–514, §1116(b)(3), redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 99–514, §1879(g)(2), added par. (6).

Subsec. (k)(7). Pub. L. 99–514, §1116(b)(3), redesignated former par. (6) as (7).

Subsec. (k)(8). Pub. L. 99–514, §1116(c)(1), added par. (8).

Subsec. (k)(9). Pub. L. 99–514, §1116(d)(2), added par. (9).

Subsec. (*l*). Pub. L. 99–514, §1111(a), amended subsec. (*l*) generally, substituting provisions relating to permitted disparity in plan contributions or benefits for provisions relating to nondiscriminatory coordination of defined contribution plans with OASDI.

Subsec. (m). Pub. L. 99–514, §1117(a), added subsec. (m) and redesignated former subsec. (m) as (n).

Pub. L. 99–514, §1898(c)(3), added subsec. (m).

Subsec. (n). Pub. L. 99–514, §1117(a), redesignated former subsec. (m) as (n). Former subsec. (n) redesignated (*o*).

Pub. L. 99–514, §1898(c)(3), redesignated subsec. (*o*) as (n).

Subsec. (*o*). Pub. L. 99–514, §1117(a), redesignated former subsec. (n) as (*o*).

Pub. L. 99–514, §1898(c)(3), redesignated subsec. (*o*) as (n).

1984—Subsec. (a)(9). Pub. L. 98–369, §521(a)(1), amended par. (9) generally, redesignating existing provisions as subpar. (A) and in subpar. (A) as so redesignated struck out ''In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1)'' before ''a trust forming part of such plan'', substituted ''the plan provides that the entire interest of each employee—'' for '', under the plan, the entire interest of each employee—'', redesignated subpars. (A) and (B) as cls. (i) and (ii) respectively, in cl. (i) as so redesignated substituted provisions stating that a qualified plan provides that the entire interest will be distributed to the employee not later than the beginning date for former provisions which provided alternative dates for providing interest, in cl. (ii) as so redesignated substituted alternate distribution dates to be set in accordance with regulations for former provisions stating that a qualified plan shall be distributed not later than the taxable year in which the taxpayer attains age 70½, and struck out the par. following cl. (ii) which provided ''A trust shall not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust is a part, of a method of distribution which does not meet the terms of the preceding sentence.'', and added subpars. (B) to (F).

Pub. L. 98–369, §521(a)(2), repealed amendment made by Pub. L. 97–248, §242(a). See 1982 Amendment note below.

Subsec. (a)(10)(B)(iii). Pub. L. 98–369, §524(d)(1), added cl. (iii).

Subsec. (a)(11). Pub. L. 98–397, §203(a), amended par. (11) generally, inserting provisions relating to preretirement survivor annuities, and substituting present four subpars. for former eight subpars.

Subsec. (a)(13). Pub. L. 98–397, §204(a), designated existing provisions as subpar. (A), corrected the margin of subpar. (A), and added subpar. (B).

Subsec. (a)(21). Pub. L. 98–369, §474(r)(13), substituted provisions relating to the amount of the credit which would be allowable under section 41 if the employer made the transfer described in section 41(c)(1)(B) for former provisions which had related to the amount of credit which would be allowable under section 46(a) if the employer made the transfer described in section 48(n)(1) or under section 44G if the employer made the transfer described in section 44G(c)(1)(B).

Subsec. (a)(22). Pub. L. 98–369, §491(e)(4), substituted ''section 409'' for ''section 409A''.

Subsec. (a)(23). Pub. L. 98–369, §491(e)(5), substituted ''section 409(h)'' for ''section 409A(h)'' in two places.

Subsec. (a)(24). Pub. L. 98–369, §211(b)(5), substituted ''section 818(a)(6)'' for ''section 805(d)(6)''.

Subsec. (a)(25). Pub. L. 98–397, §301(b), added par. (25).

Subsec. (e). Pub. L. 98–369, §713(d)(3), repealed subsec. (e) which related to contributions for premiums on annuity, etc., contracts.

Subsec. (f)(2). Pub. L. 98–369, §713(c)(2)(A), substituted ''(as defined in section 408(n))'' for ''(as defined in subsection (d)(1))''.

Subsec. (h)(6). Pub. L. 98–369, §528(b), added par. (6).

Subsec. (k)(1), (2). Pub. L. 98–369, §527(b)(1), inserted ''(or a pre-ERISA money purchase plan)''.

Subsec. (k)(2)(B). Pub. L. 98–369, §527(b)(3), substituted ''(or in the case of a profit sharing or stock bonus plan, hardship or the attainment of age 59½)'' for '', hardship or the attainment of age 59½,''.

Subsec. (k)(3)(A). Pub. L. 98–369, § 527(a), struck out ''qualified'' before ''cash or deferred arrangement'', substituted ''shall not be treated as a qualified cash or deferred arrangement unless'' for ''shall be considered to satisfy the requirements of subsection (a)(4), with respect to the amount of contributions, and of subparagraph (B) of section 410(b)(1) for a plan year if'', designated provisions beginning ''those employees'' and ending ''section 401(b)(1)'' as cl. (i) and text following as cl. (ii), redesignated former cls. (i) and (ii) as subcls. (I) and (II) and inserted text following subcl. (II).

Subsec. (k)(5). Pub. L. 98–369, § 527(b)(2), added par. (5).

1983—Subsec. (a)(21). Pub. L. 97–448, § 103(g)(2)(A), designated part of existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(2)(A)(vi). Pub. L. 98–21 added cl. (vi).

Subsec. (d)(2). Pub. L. 97–448, § 306(a)(12), substituted ''paragraph (1)(B)'' for ''paragraph (9)(B)''.

Subsec. (d)(5). Pub. L. 97–448, § 103(c)(10)(A), substituted ''Subparagraphs (A) and (B) shall not apply to contributions described in subsection (e), and shall not apply to any deductible employee contribution (as defined in section 72(*o*)(5))'' for ''Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)'' in second sentence.

Subsec. (j)(3). Pub. L. 97–448, § 103(d)(2), substituted ''under subparagraph (A) of paragraph (2) shall be treated as beginning a new period of plan participation with respect only to such change'' for ''under subparagraph (A) of subsection (j)(2) shall be treated as beginning a new period of plan participation'' in last sentence.

1982—Subsec. (a)(9). Pub. L. 97–248, § 242(a), which was repealed by Pub. L. 98–369, § 521(a)(2), had amended par. (9) generally, redesignating existing provisions as subpar. (A), in subpar. (A), as so redesignated, struck out preliminary provision which limited the application of this paragraph to plans providing contributions or benefits for employees some or all of whom were employees within the meaning of subsec. (c)(1), redesignated former subpars. (A) and (B) as cls. (i) and (ii) of subpar. (A), in cl. (i), as so redesignated, substituted reference to a key employee who is a participant in a top-heavy plan for former reference to owner-employees (within the meaning of subsec. (c)(3)), redesignated former cls. (i) and (ii) of subpar. (B) as subcls. (I) and (II) of cl. (ii), struck out former provision that a trust would not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust was a part, of a method of distribution which did not meet the terms of this paragraph, and adding subpar. (B).

Subsec. (a)(10). Pub. L. 97–248, § 237(e)(1), amended par. (10) generally, redesignating subpar. (B) as (A) and striking out former subpar. (A) relating to qualified trust as a trust forming part of such plan, for provisions relating to discriminatory plans with respect to nonapplicability of paragraph (3), the first and second sentences of paragraph (5) and section 410 of this title.

Subsec. (a)(10)(B). Pub. L. 97–248, § 240(b), added subpar. (B).

Subsec. (a)(17), (18). Pub. L. 97–248, § 237(b), struck out pars. (17) and (18) which related, respectively, to a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), and a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d).

Subsec. (a)(24). Pub. L. 97–248 added par. (24).

Subsec. (c)(1). Pub. L. 97–248, § 238(d)(1), amended par. (1) generally, substituting in heading ''Self-employed individual treated as employee'' for ''Employee'', adding subparagraph headings, and substituting provisions defining ''employee'' and ''self-employed individual'', for provisions defining ''employee''.

Subsec. (c)(2)(A). Pub. L. 97–248, § 238(d)(2), added cl. (v).

Subsec. (d). Pub. L. 97–248, § 237(a), redesignated pars. (9) to (11) as (1) to (3), respectively. Former pars. (1) to (7), which related to trusts created or organized before or after October 10, 1962, contributions under the plan, benefits under the plan for employees, contributions or benefits under the plan, limitations pursuant to the plan, applicability of requirements of subsec. (a)(4) of this section, and distributions under the plan, respectively, were struck out.

Subsec. (j). Pub. L. 97–248, § 238(b), struck out subsec. (j) which related to general requirements, regulation guidelines, applicable percentage, certain contributions and benefits not taken into account, definitions, and special rules with respect to defined benefit plans providing benefits for self-employed individuals and shareholder-employees.

Subsecs. (*l*), (*o*). Pub. L. 97–248, § 249(a), added subsec. (*l*) and redesignated former subsec. (*l*) as (*o*).

1981—Subsec. (a)(17). Pub. L. 97–34, § 312(b)(1), designated provision relating to the annual compensation of each employee as subpar. (A), and in subpar. (A) as so designated, substituted ''$200,000'' for ''$100,000'', and added subpar. (B).

Subsec. (a)(22). Pub. L. 97–34, § 338(a), inserted ''(other than a profit-sharing plan)'' and substituted ''if'' for ''If'' and ''such plan'' for ''said plan''.

Subsec. (a)(23). Pub. L. 97–34, § 335, substituted ''409A(h), except that in applying section 409A(h) for purposes of this paragraph, the term 'employer securities' shall include any securities of the employer held by the plan'' for ''409A(h)(2)''.

Subsec. (d)(4). Pub. L. 97–34, § 312(e)(2), inserted provision making subpar. (B) inapplicable to any distribution to which section 72(m)(9) applies.

Subsec. (d)(5). Pub. L. 97–34, § 314(a)(1), inserted provision making subpar. (C) inapplicable to a distribution on account of the termination of the plan.

Subsec. (e). Pub. L. 97–34, § 312(c)(2), substituted ''for such taxable year exceeds $15,000'' for ''for all such years exceeds $7,500''.

Subsec. (j). Pub. L. 97–34, § 312(c)(3), (4), substituted in par. (2)(A) ''$100,000'' for ''$50,000'' and in par. (3) inserted provision that for purposes of this paragraph, a change in the annual compensation taken into account under subpar. (A) of subsec. (j)(2) be treated as beginning a new period of plan participation.

1980—Subsec. (a)(2). Pub. L. 96–364, §§ 208(e), 410(b), inserted provisions relating to applicability to multiemployer plans and return of contributions made by a mistake of law or fact, or return of withdrawal liability payment.

Subsec. (a)(4). Pub. L. 96–605, § 225(b)(1), substituted ''section 410(b)(3)(A)'' for ''section 410(b)(2)(A)''.

Subsec. (a)(12). Pub. L. 96–364, § 208(a), substituted provisions relating to applicability to multiemployer plans subject to title IV of the Employee Retirement Income Security Act of 1974 of provisions of preceding sentence, for provisions relating to applicability of paragraph to multiemployer plans to extent determined by Corporation.

Subsec. (a)(20). Pub. L. 96–222, § 101(a)(14)(E)(iii), substituted ''makes a qualifying rollover distribution (determined as if section 402(a)(5)(D)(i) did not contain subclause (II) thereof) described in section 402(a)(5)(A)(i) or 403(a)(4)(A)(i)'' for ''makes a payment or distribution described in section 402(a)(5)(i) or 403(a)(4)(i)''.

Subsec. (a)(21). Pub. L. 96–222, § 101(a)(7)(L)(i)(V), substituted ''a tax credit employee stock ownership plan'' for ''an ESOP''.

Subsec. (a)(22)(B). Pub. L. 96–222, § 101(a)(9), substituted ''are securities'' for ''as securities''.

Subsec. (a)(23). Pub. L. 96–605, § 221(a), added par. (23).

Subsec. (d)(3)(B). Pub. L. 96–605, § 225(b)(2), substituted in cl. (i) ''section 410(b)(3)(A)'' for ''section 410(b)(2)(A)'' and in cl. (ii) ''section 410(b)(3)(C)'' for ''section 410(b)(2)(C)''.

1978—Subsec. (a)(5). Pub. L. 95–600, § 152(e), inserted provision that for purposes of determining whether one or more plans of the employer satisfy the requirements

of section 410(b)(4), an employer may take into account all simplified employee pensions to which only the employer contributes.

Subsec. (a)(21). Pub. L. 95–600, §141(f)(3), substituted ''ESOP'' for ''employee stock option plan which satisfies the requirements of section 301(d) of the Tax Reduction Act of 1975'' and ''section 48(n)(1)'' for ''subsection (d)(6) or (e)(3) of section 301 of the Tax Reduction Act of 1975''.

Subsec. (a)(22). Pub. L. 95–600, §143(a), added par. (22).

Subsecs. (k), (*l*). Pub. L. 95–600, §135(a), added subsec. (k) and redesignated former subsec. (k) as (*l*).

1976—Subsec. (a). Pub. L. 94–455, §§803(b)(2), 1901(a)(56), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in pars. (5), (11), and (14), substituted references to Sept. 2, 1974, for references to the enactment of the Employee Retirement Income Security Act of 1974 in pars. (12), (13), (15), and (19), added par. (21), and inserted reference to par. (20) in provisions following par. (21), such addition of reference to par. (20) duplicating amendment by Pub. L. 94–267, §1(c)(2).

Pub. L. 94–267, §1(c)(2), substituted ''(19), and (20)'' for ''and (19)''.

Subsec. (a)(20). Pub. L. 94–267, §1(c)(1), added par. (20).

Subsecs. (b), (c), (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §1505(b), inserted reference to contracts (other than life, health, or accident, property, casualty, or liability insurance contracts) issued by an insurance company qualified to do a business in a State and struck out ''or his delegate'' after ''Secretary''.

Subsecs. (h), (i), (j). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (a). Pub. L. 93–406, §1021(a)(2), inserted provision that paragraphs (11), (12), (13), (14), (15), and (19) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of this section.

Subsec. (a)(3). Pub. L. 93–406, §1016(a)(2)(A), substituted provisions referring simply to a plan of which the trust is a part and the satisfaction by that plan of the requirements of section 410 (relating to minimum participation standards) for provisions referring to a trust, trusts, or trust or trusts and annuity plan or plans designated by the employer as constituting parts of a plan intended to qualify under subsec. (a) and spelling out the requisite coverage of the plan.

Subsec. (a)(4). Pub. L. 93–406, §1022(a), struck out provisions referring to persons whose principal duties consist in supervising the work of other employees and inserted provisions directing the exclusion from consideration of employees described in section 410(b)(2) (A) and (C).

Subsec. (a)(5). Pub. L. 93–406, §§1012(b), 1016(a)(2)(B), inserted provisions covering the determination of whether two or more plans of an employer satisfy the requirements of par. (4) when considered as a single plan and substituted ''shall not be considered discriminatory within the meaning of paragraph (4) of section 410(b) (without regard to paragraph (1)(A) thereof)'' for ''shall not be considered discriminatory within the meaning of paragraph (3)(B) or (4)''.

Subsec. (a)(7). Pub. L. 93–406, §1016(a)(2)(C), substituted provisions referring simply to the satisfaction by the plan of which a trust is a part of the requirements of section 411 (relating to minimum vesting standards) for provisions spelling out in detail the conditions which the plan had to satisfy in order that the trust forming part of that plan constitute a qualified trust under this section.

Subsec. (a)(10)(A). Pub. L. 93–406, §§1022(b)(1), 2001(e)(4), inserted reference to section 410 in provisions preceding cl. (i) and substituted ''subsection (e)'' for ''subsection (e)(3)(A)'' in cl. (ii).

Subsec. (a)(11). Pub. L. 93–406, §1021(a)(1), added par. (11).

Subsec. (a)(12). Pub. L. 93–406, §1021(b), added par. (12).

Subsec. (a)(13). Pub. L. 93–406, §1021(c), added par. (13).

Subsec. (a)(14). Pub. L. 93–406, §1021(d), added par. (14).

Subsec. (a)(15). Pub. L. 93–406, §1021(e), added par. (15).

Subsec. (a)(16). Pub. L. 93–406, §2004(a)(1), added par. (16).

Subsec. (a)(17). Pub. L. 93–406, §2001(c), added par. (17).

Subsec. (a)(18). Pub. L. 93–406, §2001(d)(1), added par. (18).

Subsec. (a)(19). Pub. L. 93–406, §1021(f), added par. (19).

Subsec. (b). Pub. L. 93–406, §1023, substituted reference to the requirements of subsection (a) for the period beginning with the date on which a stock bonus, pension, profit-sharing, or annuity plan was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary or his delegate may designate for reference to the requirements of paragraphs (3), (4), (5), and (6) of subsection (a) for the period beginning with the date on which a stock bonus, pension, profit-sharing, or annuity plan was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect.

Subsec. (d)(1). Pub. L. 93–406, §1022(c), (f), substituted ''October 10, 1962'' for ''the date of the enactment of this subsection'' and ''assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will administer the trust will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so administering the trust'' for ''trustee is a bank, but a person (including the employer) other than a bank'' and inserted reference to an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act) in definition of ''bank''.

Subsec. (d)(3). Pub. L. 93–406, §1022(b)(2), inserted reference to the section 410(a)(3) definition of ''years of service'' and substituted reference to employees included in a unit of employees covered by a collective-bargaining agreement described in section 410(b)(2)(A) and employees who are nonresident aliens described in section 410(b)(2)(C) for reference to employees whose customary employment was for not more than 20 hours in any one week or was for not more than 5 months in any calendar year.

Subsec. (d)(4)(B). Pub. L. 93–406, §2001(h)(1), inserted ''in excess of contributions made by an owner-employee as an employee'' after ''benefits''.

Subsec. (d)(5). Pub. L. 93–406, §2001(e)(1), substituted ''Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)'' for ''Subparagraphs (A) and (B) shall not apply to any contribution which is not considered to be an excess contribution (as defined in subsection (e)(1)) by reason of the application of subsection (e)(3)''.

Subsec. (d)(8). Pub. L. 93–406, §2001(e)(2), struck out par. (8) covering excess contributions.

Subsec. (e). Pub. L. 93–406, §2001(e)(3), struck out pars. (1) and (2) which defined and described the effect of excess contributions, redesignated par. (3) as the entire subsec. (e) and in provisions as thus carried forward as the entire subsec. (e) substituted ''$7,500'' for ''$2,500'' and inserted references to section 4972(b).

Subsec. (f). Pub. L. 93–406, §1022(d), expanded provisions to cover annuity contracts.

Subsecs. (j), (k). Pub. L. 93–406, §2001(d)(2), added subsec. (j) and redesignated former subsec. (j) as (k).

1971—Subsec. (i). Pub. L. 91–691 struck out ''multi-employer'' before ''pension plans'' in heading, and substituted ''one or more employers'' for ''two or more employers who are not related (determined under regulations prescribed by the Secretary or his delegate)'' in par. (1).

1966—Subsec. (a)(10)(A)(ii). Pub. L. 89–809, §204(b)(1)(A), struck out ''(determined without regard

to section 404(a)(10))'' after ''deducted under section 404''.

Subsec. (c)(2)(A). Pub. L. 89–809, § 204(c), struck out ''to the extent that such net earnings constitute earned income (as defined in section 911(b) but determined with the application of subparagraph (B))'' after ''The term 'earned income' means the net earnings from self-employment (as defined in section 1402(a))'', added cl. (i) and redesignated former cls. (i) to (ii) as (ii) to (iv) respectively, and struck out references to section 911(b) and subparagraph (B), as in effect for a taxable year beginning on January 1, 1963, in text following cl. (iv).

Subsec. (c)(2)(B). Pub. L. 89–809, § 204(c), struck out subpar. (B) relating to earned income when both personal services and capital are material income-producing factors. See subsec. (c)(2)(A)(i).

Subsec. (c)(2)(C). Pub. L. 89–809, § 205(a), added subpar. (C).

Subsecs. (d)(5)(A), (B), (d)(6)(A), (e)(1)(A), (B)(i), (3). Pub. L. 89–809, § 204(b)(1)(B) to (E), struck out ''(determined without regard to section 404(a)(10))'' wherever appearing.

1965—Subsec. (d)(4)(B). Pub. L. 89–97 substituted ''section 72(m)(7)'' for ''section 213(g)(3)''.

1964—Subsecs. (i), (j). Pub. L. 88–272 added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (a)(5). Pub. L. 87–792, § 2(1), inserted provisions defining total compensation for purposes of par. (5) and par. (10) of this subsection.

Subsec. (a)(7) to (10). Pub. L. 87–792, § 2(2), added pars. (7) to (10).

Subsecs. (c) to (g). Pub. L. 87–792, § 2(3), added subsecs. (c) to (g). Former subsec. (c) redesignated (h).

Subsec. (h). Pub. L. 87–863 added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 87–792, § 2(3), redesignated former subsec. (c) as (h).

Subsec. (i). Pub. L. 87–863 redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by sections 101(d)(2)(A)–(C) and 109(a)–(b)(2) of Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–458, title II, § 201(c), Dec. 23, 2008, 122 Stat. 5117, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 402 of this title] shall apply for calendar years beginning after December 31, 2008.

''(2) PROVISIONS RELATING TO PLAN OR CONTRACT AMENDMENTS.—

''(A) IN GENERAL.—If this paragraph applies to any pension plan or contract amendment, such pension plan or contract shall not fail to be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(ii) solely because the plan operates in accordance with this section.

''(B) AMENDMENTS TO WHICH PARAGRAPH APPLIES.—

''(i) IN GENERAL.—This paragraph shall apply to any amendment to any pension plan or annuity contract which—

''(I) is made pursuant to the amendments made by this section, and

''(II) is made on or before the last day of the first plan year beginning on or after January 1, 2011.

In the case of a governmental plan, subclause (II) shall be applied by substituting '2012' for '2011'.

''(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless during the period beginning on the effective date of the amendment and ending on December 31, 2009, the plan or contract is operated as if such plan or contract amendment were in effect.''

Pub. L. 110–245, title I, § 104(d), June 17, 2008, 122 Stat. 1627, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 403, 404, 414, and 457 of this title] shall apply with respect to deaths and disabilities occurring on or after January 1, 2007.

''(2) PROVISIONS RELATING TO PLAN AMENDMENTS.—

''(A) IN GENERAL.—If this subparagraph applies to any plan or contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(iii).

''(B) AMENDMENTS TO WHICH SUBPARAGRAPH (A) APPLIES.—

''(i) IN GENERAL.—Subparagraph (A) shall apply to any amendment to any plan or annuity contract which is made—

''(I) pursuant to the amendments made by subsection (a) [amending this section] or pursuant to any regulation issued by the Secretary of the Treasury under subsection (a), and

''(II) on or before the last day of the first plan year beginning on or after January 1, 2010.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this clause shall be applied by substituting '2012' for '2010' in subclause (II).

''(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless—

''(I) the plan or contract is operated as if such plan or contract amendment were in effect for the period described in clause (iii), and

''(II) such plan or contract amendment applies retroactively for such period.

''(iii) PERIOD DESCRIBED.—The period described in this clause is the period—

''(I) beginning on the effective date specified by the plan, and

''(II) ending on the date described in clause (i)(II) (or, if earlier, the date the plan or contract amendment is adopted).''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title I, § 114(g), as added by Pub. L. 110–458, title I, § 101(d)(3), Dec. 23, 2008, 122 Stat. 5099, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 411, 414, 420, 4971, 4972, and 6059 of this title] shall apply to plan years beginning after 2007.

''(2) EXCISE TAX.—The amendments made by subsection (e) [amending sections 4971 and 4972 of this title] shall apply to taxable years beginning after 2007, but only with respect to plan years described in paragraph (1) which end with or within any such taxable year.''

Amendment by section 827(b)(1) of Pub. L. 109–280 applicable to distributions after Sept. 11, 2001, with waiver of limitations if refund or credit of overpayment of tax resulting from such amendment is prevented before the close of the 1-year period beginning on Aug. 17, 2006, see section 827(c) of Pub. L. 109–280, set out as a note under section 72 of this title.

Pub. L. 109–280, title VIII, § 861(c), Aug. 17, 2006, 120 Stat. 1021, provided that: ''The amendments made by this section [amending this section and provisions set out as a note under this section] shall apply to any year beginning after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title IX, § 901(c), Aug. 17, 2006, 120 Stat. 1032, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section, sections 409 and 4980 of this title, and sections 1054 and 1107 of Title 29, Labor] shall apply to plan years beginning after December 31, 2006.

''(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], paragraph (1) shall be applied to

benefits pursuant to, and individuals covered by, any such agreement by substituting for 'December 31, 2006' the earlier of—

''(A) the later of—

''(i) December 31, 2007, or

''(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

''(B) December 31, 2008.

''(3) SPECIAL RULE FOR CERTAIN EMPLOYER SECURITIES HELD IN AN ESOP.—

''(A) IN GENERAL.—In the case of employer securities to which this paragraph applies, the amendments made by this section [amending this section, sections 409 and 4980 of this title, and sections 1054 and 1107 of Title 29, Labor] shall apply to plan years beginning after the earlier of—

''(i) December 31, 2007, or

''(ii) the first date on which the fair market value of such securities exceeds the guaranteed minimum value described in subparagraph (B)(ii).

''(B) APPLICABLE SECURITIES.—This paragraph shall apply to employer securities which are attributable to employer contributions other than elective deferrals, and which, on September 17, 2003—

''(i) consist of preferred stock, and

''(ii) are within an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986), the terms of which provide that the value of the securities cannot be less than the guaranteed minimum value specified by the plan on such date.

''(C) COORDINATION WITH TRANSITION RULE.—In applying section 401(a)(35)(H) of the Internal Revenue Code of 1986 and section 204(j)(7) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(j)(7)] (as added by this section) to employer securities to which this paragraph applies, the applicable percentage shall be determined without regard to this paragraph.''

Pub. L. 109–280, title IX, §902(g), Aug. 17, 2006, 120 Stat. 1039, provided that: ''The amendments made by this section [amending this section, sections 411, 414, 416, and 4979 of this title, and sections 1053, 1132, and 1144 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007, except that the amendments made by subsection (f) [amending sections 1132 and 1144 of Title 29] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title IX, §905(c), Aug. 17, 2006, 120 Stat. 1051, provided that: ''The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall apply to distributions in plan years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title IV, §407(c), Oct. 4, 2004, 118 Stat. 1190, provided that: ''The amendments made by this section [amending this section and section 1377 of this title] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub. L. 104–188] to which they relate.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(c), (f)(3), (g)(1) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Amendment by section 641(e)(3) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Pub. L. 107–16, title VI, §643(d), June 7, 2001, 115 Stat. 123, provided that: ''The amendments made by this section [amending this section and sections 402 and 408 of this title] shall apply to distributions made after December 31, 2001.''

Pub. L. 107–16, title VI, §646(b), June 7, 2001, 115 Stat. 126, provided that: ''The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions after December 31, 2001.''

Pub. L. 107–16, title VI, §657(d), June 7, 2001, 115 Stat. 137, provided that: ''The amendments made by this section [amending this section, section 402 of this title, and section 1104 of Title 29, Labor] shall apply to distributions made after final regulations implementing subsection (c)(2)(A) [set out as a note below] are prescribed [Final regulations implementing subsec. (c)(2)(A) became effective Mar. 28, 2005. See 69 F.R. 58017.].''

Pub. L. 107–16, title VI, §666(b), June 7, 2001, 115 Stat. 144, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 1(a)(7) [title III, §316(e)] of Pub. L. 106–554, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1502(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 1056 of Title 29, Labor] shall apply to judgments, orders, and decrees issued, and settlement agreements entered into, on or after the date of the enactment of this Act [Aug. 5, 1997].''

Pub. L. 105–34, title XV, §1505(d), Aug. 5, 1997, 111 Stat. 1064, as amended by Pub. L. 105–206, title VI, §6015(b), July 22, 1998, 112 Stat. 820; Pub. L. 109–280, title VIII, §861(a)(2), Aug. 17, 2006, 120 Stat. 1021, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 403 and 410 of this title] apply to taxable years beginning on or after the date of enactment of this Act [Aug. 5, 1997].

''(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), 403(b)(1)(D) and (b)(12)(A)(i), and 410 of such Code for all taxable years beginning before the date of enactment of this Act.''

Section 1525(b) of Pub. L. 105–34 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1997.''

Section 1530(d) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and sections 404, 415, 664, 674, 2055, 2056, 4947, 4975, 4978, and 4979A of this title] shall apply to transfers made by trusts to, or for the use of, an employee stock ownership plan after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 1601(d)(2)(A), (B), (3) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, and amendment by section 1601(d)(2)(D) of Pub. L. 105–34 applicable to calendar years beginning after Aug. 5, 1997, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(5), (6) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see sec-

tion 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Section 1404(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1422(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1996.''

Section 1426(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to plan years beginning after December 31, 1996, but shall not apply to any cash or deferred arrangement to which clause (i) of section 1116(f)(2)(B) of the Tax Reform Act of 1986 applies [Pub. L. 99–514, set out below].''

Amendment by section 1431(b)(2) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, and amendment by section 1431(c)(1)(B) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, amendment by section 1431(c)(1)(B) to be treated as having been in effect for years beginning in 1996, see section 1431(d) of Pub. L. 104–188, set out as a note under section 414 of this title.

Section 1432(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1433(f) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1998.

''(2) EXCEPTIONS.—The amendments made by subsections (c), (d), and (e) [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1441(b) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1443(c) of Pub. L. 104–188 provided that:

''(1) DISTRIBUTIONS.—The amendments made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 20, 1996].

''(2) PUBLIC UTILITY DISTRICTS.—The amendments made by subsection (b) [amending this section] shall apply to plan years beginning after December 31, 1996.''

Section 1445(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1459(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1998.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 732(e) of Pub. L. 103–465 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402, 408, and 415 of this title] shall apply to years beginning after December 31, 1994.

''(2) ROUNDING NOT TO RESULT IN DECREASES.—The amendments made by this section providing for the rounding of indexed amounts shall not apply to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994.''

Section 751(b) of Pub. L. 103–465 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 404, 412, and 4971 of this title] shall apply to plan years beginning after December 31, 1994.

''(2) REFERENCE.—The amendment made by subsection (a)(11) [amending section 404 of this title] shall take effect on the date of the enactment of this Act [Dec. 8, 1994].''

Section 766(d) of Pub. L. 103–465 provided that: ''The amendments made by this section [amending this section and sections 1054 and 1322 of Title 29, Labor] shall apply to plan amendments adopted on or after the date of enactment of this Act [Dec. 8, 1994].''

Amendment by section 776(d) of Pub. L. 103–465 effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103–465, set out as a note under section 1056 of Title 29, Labor.

Section 781 of title VII of Pub. L. 103–465 provided that: ''Except as otherwise provided in this subtitle [subtitle F (§§ 750–781) of title VII of Pub. L. 103–465, enacting sections 1310, 1311, and 1350 of Title 29, Labor, amending this section, sections 404, 411, 412, 415, 417, 4971, and 4972 of this title, and sections 1053 to 1056, 1082, 1132, 1301, 1303, 1305, 1306, 1322, 1341, 1342, and 1343 of Title 29, and enacting provisions set out as notes under this section, sections 1, 411, 412, and 4972 of this title, and sections 1056, 1082, 1303, 1306, 1310, 1311, 1322, 1341, and 1342 of Title 29], the amendments made by this subtitle shall be effective on the date of enactment of this Act [Dec. 8, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13212(d) of Pub. L. 103–66, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 404, 408, and 505 of this title] shall apply to benefits accruing in plan years beginning after December 31, 1993.

''(2) COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act [Aug. 10, 1993], the amendments made by this section shall not apply to contributions or benefits pursuant to such agreements for plan years beginning before the earlier of—

''(A) the latest of—

''(i) January 1, 1994,

''(ii) the date on which the last of such collective bargaining agreements terminates (without regard to any extension, amendment, or modification of such agreements on or after such date of enactment), or

''(iii) in the case of a plan maintained pursuant to collective bargaining under the Railway Labor Act [45 U.S.C. 151 et seq.], the date of execution of an extension or replacement of the last of such collective bargaining agreements in effect on such date of enactment, or

''(B) January 1, 1997.

''(3) TRANSITION RULE FOR STATE AND LOCAL PLANS.—

''(A) IN GENERAL.—In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), the dollar limitation under section 401(a)(17) of such Code shall not apply to the extent the amount of compensation which is allowed to be taken into account under the plan would be reduced below the amount which was allowed to be taken into account under the plan as in effect on July 1, 1993.

''(B) ELIGIBLE PARTICIPANT.—For purposes of subparagraph (A), an eligible participant is an individual who first became a participant in the plan during a plan year beginning before the 1st plan year beginning after the earlier of—

''(i) the plan year in which the plan is amended to reflect the amendments made by this section, or

''(ii) December 31, 1995.

''(C) PLAN MUST BE AMENDED TO INCORPORATE LIMITS.—This paragraph shall not apply to any eligible participant of a plan unless the plan is amended so that the plan incorporates by reference the dollar limitation under section 401(a)(17) of the Internal Revenue Code of 1986, effective with respect to noneligible participants for plan years beginning after December 31, 1995 (or earlier if the plan amendment so provides).''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(5)–(8) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

Section 522(d) of Pub. L. 102–318 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402 to 404, 3402, 3405, 6047, and 6652 of this title] shall apply to distributions after December 31, 1992.

''(2) TRANSITION RULE FOR CERTAIN ANNUITY CONTRACTS.—If, as of July 1, 1992, a State law prohibits a direct trustee-to-trustee transfer from an annuity contract described in section 403(b) of the Internal Revenue Code of 1986 which was purchased for an employee by an employer which is a State or a political subdivision thereof (or an agency or instrumentality of any 1 or more of either), the amendments made by this section shall not apply to distributions before the earlier of—

''(A) 90 days after the first day after July 1, 1992, on which such transfer is allowed under State law, or

''(B) January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to transfers in taxable years beginning after Dec. 31, 1990, see section 12011(c)(1) of Pub. L. 101–508, set out as an Effective Date note under section 420 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 7311(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to contributions after October 3, 1989.

''(2) TRANSITION.—The amendment made by this section shall not apply to contributions made before January 1, 1990, if—

''(A) the employer requested before October 3, 1989, a private letter ruling or determination letter with respect to the qualification of the plan maintaining the account under section 401(h) of the Internal Revenue Code of 1986,

''(B) the request sets forth a method under which the amount of contributions to the account are to be determined on the basis of cost,

''(C) such method is permissible under section 401(h) of such Code under the provisions of General Counsel Memorandum 39785, and

''(D) the Internal Revenue Service issued before October 4, 1989, a private letter ruling, determination letter, or other letter providing that the specific plan involved qualifies under section 401(a) of such Code when such method is used, that contributions to the account are deductible, or acknowledging that the account would not adversely affect the qualified status of the plan (contingent on all phases of the particular plan being approved).''

Amendment by sections 7811(g)(1), (h)(3) and 7816(*l*) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Section 7882 of Pub. L. 101–239 provided that: ''Except as otherwise provided in this subpart [subpart C (§§7881, 7882) of part V of title VII of Pub. L. 101–239, amending this section and sections 411 and 412 of this title, and sections 1002, 1021, 1023, 1054, 1082, 1083, 1085b, 1103, 1107, 1108, 1113, 1132, 1306, 1322, 1341, 1342, 1344, 1362, 1364, 1368, 1370, and 1371 of Title 29, Labor, enacting provisions set out as a note under section 1054 of Title 29, and amending provisions set out as notes under sections 404 and 412 of this title and sections 1021, 1301, 1322, and 1344 of Title 29], any amendment made by this subpart shall take effect as if included in the provision of the Pension Protection Act [Pub. L. 100–203, title IX, subtitle D, part II, §§9302–9346] to which such amendment relates.''

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011(c)(7)(E) of Pub. L. 100–647 provided that:

''(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section and sections 403, 408, and 501 of this title] shall apply to plan years beginning after December 31, 1987.

''(ii) In the case of a plan described in section 1105(c)(2) of the Reform Act [section 1105(c)(2) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 402 of this title], the amendments made by this paragraph shall not apply to contributions made pursuant to an agreement described in such section for plan years beginning before the earlier of—

''(I) the later of January 1, 1988, or the date on which the last of such agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(II) January 1, 1989.''

Section 1011(k)(1)(C) of Pub. L. 100–647 provided that:

''(i) Subparagraph (A)(i) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after October 16, 1987.

''(ii) Subparagraph (B) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after March 31, 1988.''

Section 1011(*l*)(5)(B) of Pub. L. 100–647 provided that: ''The amendment made by this paragraph [amending this section] shall take effect as if included in the amendments made by section 1120 of the Reform Act [Pub. L. 99–514].''

Amendment by sections 1011(d)(4), (e)(3), (g)(1)–(3), (h)(3), (k)(1)(A), (B), (2)–(7), (9), (*l*)(1)–(4), (6), (7), 1011A(j), (*l*), and 1011B(j)(1), (2), (6), (k)(1), (2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6053(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 1121 of the Reform Act [Pub. L. 99–514].''

Section 6055(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 1112(b) of the Reform Act [Pub. L. 99–514].''

Section 6071(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 457 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9341(c) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VII, §7881(i)(5), Dec. 19, 1989, 103 Stat. 2442, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting section 1085b of Title 29, Labor, and amending this section] shall apply to plan amendments adopted after the date of the enactment of this Act [Dec. 22, 1987].

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan amendments adopted pursuant to collective bargaining agreements ratified before the date of enactment (without regard to any extension, amendment, or modification of such agreements on or after such date of enactment).''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(1) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514, set out as a note under section 415 of this title.

Section 1111(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011(g)(4), Nov. 10, 1988, 102 Stat. 3464, provided that:

''(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall apply to benefits attributable to plan years beginning after December 31, 1988.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to years beginning after December 31, 1988.

''(3) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) January 1, 1989, or

''(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1991.''

Section 1112(e) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011(h)(6)–(9), Nov. 10, 1988, 102 Stat. 3465, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 402, 404, 406, 407, 410, and 818 of this title] shall apply to plan years beginning after December 31, 1988.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) January 1, 1989, or

''(ii) the date on which the last of such collective bargaining agreement terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1991.

''(3) WAIVER OF EXCISE TAX ON REVERSIONS.—

''(A) IN GENERAL.—If—

''(i) a plan is in existence on August 16, 1986,

''(ii) such plan would fail to meet the requirements of section 401(a)(26) of the Internal Revenue Code of 1986 (as added by subsection (b)) if such section were in effect for the plan year including August 16, 1986, and

''(iii) there is no transfer of assets to or liabilities from the plan or spinoff or merger involving such plan after August 16, 1986,

then no tax shall be imposed under section 4980 of such Code on any employer reversion by reason of the termination or merger of such plan before the 1st year to which the amendment made by subsection (b) applies.

''(B) INTEREST RATE FOR DETERMINING ACCRUED BENEFIT OF HIGHLY COMPENSATED EMPLOYEES FOR CERTAIN PURPOSES.—In the case of a termination, transfer, or distribution of assets of a plan described in subparagraph (A)(ii) before the 1st year to which the amendment made by subsection (b) applies—

''(i) AMOUNT ELIGIBLE FOR ROLLOVER, INCOME AVERAGING, OR TAX-FREE TRANSFER.—For purposes of determining any eligible amount, the present value of the accrued benefit of any highly compensated employee shall be determined by using an interest rate not less than the highest of—

''(I) the applicable rate under the plan's method in effect under the plan on August 16, 1986,

''(II) the highest rate (as of the date of the termination, transfer, or distribution) determined under any of the methods applicable under the plan at any time after August 15, 1986, and before the termination, transfer, or distribution in calculating the present value of the accrued benefit of an employee who is not a highly compensated employee under the plan (or any other plan used in determining whether the plan meets the requirements of section 401 of the Internal Revenue Code of 1986), or

''(III) 5 percent.

''(ii) ELIGIBLE AMOUNT.—For purposes of clause (i), the term 'eligible amount' means any amount with respect to a highly compensated employee which—

''(I) may be rolled over under section 402(a)(5) of such Code,

''(II) is eligible for income averaging under section 402(e)(1) of such Code, or capital gains treatment under section 402(a)(2) or 403(a)(2) of such Code (as in effect before this Act), or

''(III) may be transferred to another plan without inclusion in gross income.

''(iii) AMOUNTS SUBJECT TO EARLY WITHDRAWAL OR EXCESS DISTRIBUTION TAX.—For purposes of sections 72(t) and 4980A of such Code, there shall not be taken into account the excess (if any) of—

''(I) the amount distributed to a highly compensated employee by reason of such termination or distribution, over

''(II) the amount determined by using the interest rate applicable under clause (i).

''(iv) DISTRIBUTIONS OF ANNUITY CONTRACTS.—If an annuity contract purchased after August 16, 1986, is distributed to a highly compensated employee in connection with such termination or distribution, there shall be included in gross income for the taxable year of such distribution an amount equal to the excess of—

''(I) the purchase price of such contract, over

''(II) the present value of the benefits payable under such contract determined by using the interest rate applicable under clause (i).

Such excess shall not be taken into account for purposes of sections 72(t) and 4980A of such Code.

''(v) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subparagraph, the term 'highly compensated employee' has the meaning given such term by section 414(q) of such Code.

''(4) SPECIAL RULE FOR PLANS WHICH MAY NOT TERMINATE.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a plan is prohibited from terminating under title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.] before the 1st year to which the amendment made by subsection (b) would apply, the amendment made by subsection (b) shall only apply to years after the 1st year in which the plan is able to terminate.''

Amendment by section 1114(b)(7) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Section 1116(f) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011(k)(8), (10), Nov. 10, 1988, 102 Stat. 3470, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to years beginning after December 31, 1988.

''(2) NONDISCRIMINATION RULES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsections (a), (b)(4), and (d) [amending this section], and the provisions of section 401(k)(4)(B) of the Internal Revenue Code of 1986 (as added by this section), shall apply to years beginning after December 31, 1986.

''(B) TRANSITION RULES FOR CERTAIN GOVERNMENTAL AND TAX-EXEMPT PLANS.—Subparagraph (B) of section

401(k)(4) of the Internal Revenue Code of 1986 (relating to governments and tax-exempt organizations not eligible for cash or deferred arrangements), as added by this section, shall not apply to any cash or deferred arrangement adopted by—

''(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, before May 6, 1986, or

''(ii) a tax-exempt organization before July 2, 1986.

In the case of an arrangement described in clause (i), the amendments made by subsections (a), (b)(4), and (d) shall apply to years beginning after December 31, 1988. If clause (i) or (ii) applies to any arrangement adopted by a governmental unit, then any cash or deferred arrangement adopted by such unit on or after the date referred to in the applicable clause shall be treated as adopted before such date.

''(3) AGGREGATION AND EXCESS CONTRIBUTIONS.—The amendments made by subsections (c) and (e) [amending this section] shall apply to years beginning after December 31, 1986.

''(4) COLLECTIVE BARGAINING AGREEMENTS.—

''(A) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to years beginning before the earlier of—

''(i) the later of—

''(I) January 1, 1989, or

''(II) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(ii) January 1, 1991.

''(B) SPECIAL RULE FOR NONDISCRIMINATION RULES.—In the case of a plan described in subparagraph (A), the amendments and provisions described in paragraph (2) shall not apply to years beginning before the earlier of—

''(i) the date determined under subparagraph (A)(i)(II), or

''(ii) January 1, 1989.

''(5) SPECIAL RULE FOR QUALIFIED OFFSET ARRANGEMENTS.—

''(A) IN GENERAL.—A cash or deferred arrangement shall not be treated as failing to meet the requirements of section 401(k)(4) of the Internal Revenue Code of 1986 (as added by this section) to the extent such arrangement is part of a qualified offset arrangement consisting of such cash or deferred arrangement and a defined benefit plan.

''(B) QUALIFIED OFFSET ARRANGEMENT.—For purposes of subparagraph (A), a cash or deferred arrangement is part of a qualified offset arrangement with a defined benefit plan to the extent such offset arrangement satisfies each of the following conditions with respect to the employer maintaining the arrangement on April 16, 1986, and at all times thereafter:

''(i) The benefit under the defined benefit plan is directly and uniformly conditioned on the initial elective deferrals (up to 4 percent of compensation).

''(ii) The benefit provided under the defined benefit plan (before the offset) is at least 60 percent of an employee's cumulative elective deferrals (up to 4 percent of compensation).

''(iii) The benefit under the defined benefit plan is reduced by the benefit attributable to the employee's elective deferrals under the plan (up to 4 percent of compensation) and the income allocable thereto. The interest rate used to calculate the reduction shall not exceed the greater of the rate under section 411(a)(11)(B)(ii) of such Code or the interest rate applicable under section 411(c)(2)(C)(iii) of such Code, taking into account section 411(c)(2)(D) of such Code.

For purposes of applying section 401(k)(3) of such Code to the cash or deferred arrangement, the benefits under the defined benefit plan conditioned on initial elective deferrals may be treated as matching contributions under such rules as the Secretary of the Treasury or his delegate may prescribe. The Secretary shall provide rules for the application of this paragraph in the case of successor plans.

''(C) DEFINITION OF EMPLOYER.—For purposes of this paragraph, the term 'employer' includes any research and development center which is federally funded and engaged in cancer research, but only with respect to employees of contractor-operators whose salaries are reimbursed as direct costs against the operator's contract to perform work at such center.

''(6) WITHDRAWALS ON SALE OF ASSETS.—Subclauses (II), (III), and (IV) of section 401(k)(2)(B)(i) of the Internal Revenue Code of 1986 (as added by subsection (b)(1)) shall apply to distributions after December 31, 1984.

''(7) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

''(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(k)(8) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note below], shall be treated as made in accordance with the provisions of such plan.

''(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

''(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(k)(8) of such Code.

''(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.''

Section 1117(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(*l*)(12), Nov. 10, 1988, 102 Stat. 3471, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 4979 of this title and amending this section and section 414 of this title] shall apply to plan years beginning after December 31, 1986.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) January 1, 1989, or

''(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).

''(3) ANNUITY CONTRACTS.—In the case of an annuity contract under section 403(b) of the Internal Revenue Code of 1986—

''(A) the amendments made by this section shall apply to plan years beginning after December 31, 1988, and

''(B) in the case of a collective bargaining agreement described in paragraph (2), the amendments made by this section shall not apply to years beginning before the earlier of—

''(i) the later of—

''(I) January 1, 1989, or

''(II) the date determined under paragraph (2)(B), or

''(ii) January 1, 1991.

''(4) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

''(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note below] shall be treated as made in accordance with the provisions of the plan.

''(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

''(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986.

''(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.''

Section 1119(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1985.''

Section 1121(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(a)(3), (4), Nov. 10, 1988, 102 Stat. 3472, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 402, 408, and 4974 of this title] shall apply to years beginning after December 31, 1988.

''(2) SUBSECTION (c).—The amendments made by subsection (c) [amending sections 402 and 408 of this title] shall apply to years beginning after December 31, 1986.

''(3) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to distributions to individuals covered by such agreements in years beginning before the earlier of—

''(A) the later of—

''(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(ii) January 1, 1989, or

''(B) January 1, 1991.

''(4) TRANSITION RULES.—

''(A) The amendments made by subsections (a) and (b) [amending this section and section 4974 of this title] shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 242(b)(2) of Pub. L. 97–248, formerly set out as a note below].

''(B)(i) Except as provided in clause (ii), the amendment made by subsection (b) [amending this section] shall not apply in the case of any individual who has attained age 70½ before January 1, 1988.

''(ii) Clause (i) shall not apply to any individual who is a 5-percent owner (as defined in section 416(i) of the Internal Revenue Code of 1986), at any time during—

''(I) the plan year ending with or within the calendar year in which such owner attains age 66½, and

''(II) any subsequent plan year.

''(5) PLANS MAY INCORPORATE SECTION 401(a)(9) REQUIREMENTS BY REFERENCE.—Notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, a plan may incorporate by reference the requirements of section 401(a)(9) of the Internal Revenue Code of 1986.''

Section 1136(c) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1985.''

Section 1143(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Section 1145(d) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section, section 1055 of Title 29, Labor, and provisions set out as a note under section 1001 of Title 29] shall apply as if included in the amendments made by the Retirement Equity Act of 1984 [Pub. L. 98–397].''

Amendment by section 1171(b)(5) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Section 1174(c)(2)(B) of Pub. L. 99–514 provided that: ''The amendment made by this paragraph [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986.''

Section 1175(a)(2) of Pub. L. 99–514 provided that: ''The amendment made by this subsection [amending this section] shall apply to stock acquired after December 31, 1986.''

Section 1176(c) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective December 31, 1986. The amendment made by subsection (b) [amending section 409 of this title] shall apply to acquisitions of securities after December 31, 1986.''

Section 1852(h)(1) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(t)(3)(C), Nov. 10, 1988, 102 Stat. 3588, provided that the amendment made by that section is effective for years beginning after Dec. 31, 1985.

Section 1879(g)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1984.''

Amendment by sections 1848(b) and 1852(a)(4)(A), (6), (b)(8), (g), (h)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1898(j) of Pub. L. 99–514 provided that: ''Except as otherwise provided in this section, any amendment made by this section [amending this section, sections 402, 411, 414, 415, 417, and 2503 of this title, and sections 1053 to 1056 of Title 29, Labor, and provisions set out as notes under section 1001 of Title 29] shall take effect as if included in the provision of the Retirement Equity Act of 1984 [Pub. L. 98–397] to which such amendment relates.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 203(a) of Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, amendment by section 204(a) of Pub. L. 98–397 effective Jan. 1, 1985, and amendment by section 301(b) of Pub. L. 98–397 applicable to plan amendments made after July 30, 1984, but not applicable to the termination of a certain defined benefit plan, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Nothing in amendment by section 203(a) of Pub. L. 98–397 to prevent any distribution required by reason of a failure to comply with the terms of a loan made on or before Aug. 18, 1985, and secured by a portion of the participant's accrued benefit, see section 1898(b)(4)(C)(ii) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 417 of this title.

Amendment by section 211(b)(5) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(13) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Section 491(f)(3) of Pub. L. 98–369 provided that: ''The amendments made by subsection (e) [redesignating section 409A as section 409 of this title and amending this section and sections 41, 415, 4975, and 6699 of this title] shall take effect on January 1, 1984.''

Section 521(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 72, 403, and 408 of this title and repealing provisions set out as a note under this section] shall apply to years beginning after December 31, 1984.

''(2) REPEAL OF SECTION 242 OF TEFRA.—The amendment made by subsection (a)(2) [repealing section 242 of Pub. L. 97–248, which amended this section and enacted provisions formerly set out below] shall take effect as if included in the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].

''(3) TRANSITION RULE.—A trust forming part of a plan shall not be disqualified under paragraph (9) of section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a)(1), by reason of distributions under a designation (before January 1, 1984) by any employee in accordance with a designation described in section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (as in efffect [sic] before the amendments made by this Act) [formerly set out as an Effective Date of 1982 Amendment note below].

''(4) SPECIAL RULE FOR GOVERNMENTAL PLANS.—In the case of a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), paragraph (1) shall be applied by substituting '1986' for '1984'.

''(5) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified on or before the date of the enactment of this Act [July 18, 1984] between employee representatives and one or more employers, the amendments made by this section shall not apply to years beginning before the earlier of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

''(B) January 1, 1988.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

Section 524(d)(2) of Pub. L. 98–369 provided that: ''The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1983.''

Section 527(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) SUBSECTION (a).—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1984.

''(B) EXCEPTION FOR CERTAIN EXISTING PLANS.—The amendment made by subsection (a) shall not apply to any plan—

''(i) which was maintained by a State on June 8, 1984, and

''(ii) with respect to which a determination letter had been issued by the Secretary on December 6, 1982.

''(2) SUBSECTION (b).—

''(A) IN GENERAL.—The amendments made by this section [amending this section] shall apply with respect to plan years beginning after the date of the enactment of this Act [July 18, 1984].

''(B) TRANSITIONAL RULE.—Rules similar to the rules under section 135(c)(2) of the Revenue Act of 1978 [section 135(c)(2) of Pub. L. 95–600, set out below] shall apply with respect to any pre-ERISA money purchase plan (as defined in section 401(k)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for plan years beginning after December 31, 1979, and on or before the date of the enactment of this Act.''

Section 528(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply to years beginning after March 31, 1984.''

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 242(b) of Pub. L. 97–248, which prescribed the effective date for amendment by section 242(a) of Pub. L. 97–248, was repealed by Pub. L. 98–369, div. A, title V, §521(a)(2), July 18, 1984, 98 Stat. 867.

Section 249(b) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1983.''

Section 254(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1981.''

Amendment by sections 237, 238, and 240 of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 312(b)(1), (c)(2)–(4), (e)(2) of Pub. L. 97–34 applicable to plans which include employees within the meaning of subsec. (c)(1) of this section with respect to taxable years beginning after Dec. 31, 1981, see section 312(f)(1) of Pub. L. 97–34, set out as a note under section 72 of this title.

Section 314(a)(2) of Pub. L. 97–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to distributions after December 31, 1980, in taxable years beginning after such date.''

Section 338(b) of Pub. L. 97–34 provided that: ''The amendment made by this section [amending this section] shall apply to acquisitions of securities after December 31, 1979.''

Section 339 of Pub. L. 97–34 provided that: ''Except as otherwise provided, the amendments made by this subtitle [subtitle D (§§331–339) of title III of Pub. L. 97–34, enacting section 44G of this title and amending this section and sections 46, 48, 55, 56, 381, 383, 404, 409A, 415, 6096, 6411, 6511, and 6699 of this title] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 221(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to plan years beginning after December 31, 1980.''

Section 225(c) of Pub. L. 96–605 provided that: ''The amendments made by this section [amending this section and sections 408 and 410 of this title] shall apply with respect to plan years beginning after December 31, 1980.''

Section 410(c) of Pub. L. 96–364 provided that: ''The amendment made by this section [amending this section and section 1103 of Title 29, Labor] shall take effect on January 1, 1975, except that in the case of contributions received by a collectively bargained plan maintained by more than one employer before the date of enactment of this Act, [Sept. 26, 1980], any determination by the plan administrator that any such con-

tribution was made by mistake of fact or law before such date shall be deemed to have been made on such date of enactment.''

Amendment by section 208(a), (e) of Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 135(c)(1) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and section 402 of this title] shall apply to plan years beginning after December 31, 1979.''

Amendment by section 141(f)(3) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Section 143(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to acquisitions of securities after December 31, 1979.''

Amendment by section 152(e) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by section 803(b)(2) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1974, see section 803(j) of Pub. L. 94–455, set out as a note under section 46 of this title.

Section 1505(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 801 of this title] apply for taxable years beginning after December 31, 1975.''

Amendment by section 1901(a)(56) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 1(e) of Pub. L. 94–267 provided that: ''The amendments made by this Act [amending this section and sections 402 to 404 and 805 of this title, and enacting provisions set out as a note under section 402 of this title] shall apply with respect to payments made to an employee on or after July 4, 1974.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 1012(b) and 1016(a)(2) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by sections 1012(b) and 196(a)(2) of Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

Section 1021(a)(1), (b) of Pub. L. 93–406 provided that the amendment made by that section is effective with respect to plan years beginning after Dec. 31, 1975.

Section 1022(d) of Pub. L. 93–406 provided that the amendment made by that section is effective as of Jan. 1, 1974.

Section 1022(f) of Pub. L. 93–406 provided that the amendment made by that section is effective as of Jan. 1, 1974.

Section 1024 of Pub. L. 93–406 provided that: ''Except as otherwise provided in section 1021, the amendments made by section 1021 [amending this section] shall apply to plan years to which part I applies. [For description of plan years to which part I applies, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.] Except as otherwise provided in section 1022, the amendments made by section 1022 [amending this section and section 6051 of this title] shall apply to plan years to which part I applies. Section 1023 [amending this section] shall take effect on the date of the enactment of this Act [Sept. 2, 1974].''

Section 2001(i)(2)–(4) of Pub. L. 93–406 provided that:

''(2) The amendments made by subsection (c) [amending this section] apply to

''(A) taxable years beginning after December 31, 1975, and

''(B) any other taxable years beginning after December 31, 1973, for which contributions were made under the plan in excess of the amounts permitted to be made under sections 404(e) and 1379(b) [of this title] as in effect on the day before the date of the enactment of this Act [Sept. 2, 1974].

''(3) The amendments made by subsection (d) [amending this section] apply to taxable years beginning after December 31, 1975.

''(4) The amendments made by subsections (e) and (f) [enacting section 4972 of this title and amending this section and section 72 of this title] apply to contributions made in taxable years beginning after December 31, 1975.''

Amendment by section 2001(h)(1) of Pub. L. 93–406 applicable to taxable years ending after Sept. 2, 1974, see section 2001(i)(6) of Pub. L. 93–406, set out as a note under section 72 of this title.

Amendment by section 2004(a)(1) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transitional Provisions note under section 415 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(b) of Pub. L. 91–691 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954, but only with respect to contributions made after December 31, 1954.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 204(d) of Pub. L. 89–809, as amended by Pub. L. 90–607, Oct. 21, 1968, 82 Stat. 1189; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 404 of this title] shall apply with respect to taxable years beginning after December 31, 1967. The amendment made by subsection (c) [amending this section] shall apply with respect to taxable years beginning after December 31, 1967, and in the case of a taxpayer who applies the averaging provisions of section 401(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning after December 31, 1967, the computation of the amount deductible under section 404 of such Code for any prior taxable year which began before January 1, 1968, shall be made, for purposes of such averaging provisions, as if the amendment made by subsection (c) were applicable to such prior taxable year.''

Section 205(b) of Pub. L. 89–809 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 13, 1966].''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 219(b) of Pub. L. 88–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954, but only with respect to contributions made after December 31, 1954.''

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 2(c) of Pub. L. 87–863 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 404 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 23, 1962].''

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

SHORT TITLE OF 1962 AMENDMENT

Section 1 of Pub. L. 87–792 provided: ''That this Act [enacting sections 405 and 6047 of this title and amending this section and sections 37, 62, 72, 101, 104, 105, 172, 402 to 404, 503, 805, 1361, 2039, 2517, 3306, 3401, and 7207 of this title] may be cited as the 'Self-Employed Individuals Tax Retirement Act of 1962'.''

REGULATIONS

Pub. L. 109–280, title VIII, §823, Aug. 17, 2006, 120 Stat. 998, provided that: ''The Secretary of the Treasury shall issue regulations under which a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) shall, for all years to which section 401(a)(9) of such Code applies to such plan, be treated as having complied with such section 401(a)(9) if such plan complies with a reasonable good faith interpretation of such section 401(a)(9).''

Pub. L. 109–280, title VIII, §826, Aug. 17, 2006, 120 Stat. 999, provided that: ''Within 180 days after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of the Treasury shall modify the rules for determining whether a participant has had a hardship for purposes of section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code of 1986 to provide that if an event (including the occurrence of a medical expense) would constitute a hardship under the plan if it occurred with respect to the participant's spouse or dependent (as defined in section 152 of such Code), such event shall, to the extent permitted under a plan, constitute a hardship if it occurs with respect to a person who is a beneficiary under the plan with respect to the participant. The Secretary of the Treasury shall issue similar rules for purposes of determining whether a participant has had—

''(1) a hardship for purposes of section 403(b)(11)(B) of such Code; or

''(2) an unforeseen financial emergency for purposes of sections 409A(a)(2)(A)(vi), 409A(a)(2)(B)(ii), and 457(d)(1)(A)(iii) of such Code.''

Pub. L. 107–16, title VI, §657(c)(2), June 7, 2001, 115 Stat. 136, provided that:

''(A) AUTOMATIC ROLLOVER SAFE HARBOR.—Not later than 3 years after the date of enactment of this Act [June 7, 2001], the Secretary of Labor shall prescribe regulations providing for safe harbors under which the designation of an institution and investment of funds in accordance with section 401(a)(31)(B) of the Internal Revenue Code of 1986 is deemed to satisfy the fiduciary requirements of section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)).

''(B) USE OF LOW-COST INDIVIDUAL RETIREMENT PLANS.—The Secretary of the Treasury and the Secretary of Labor may provide, and shall give consideration to providing, special relief with respect to the use of low-cost individual retirement plans for purposes of transfers under section 401(a)(31)(B) of the Internal Revenue Code of 1986 and for other uses that promote the preservation of assets for retirement income purposes.''

Section 1141 of Pub. L. 99–514 provided that: ''The Secretary of the Treasury or his delegate shall issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by—

''(1) section 1111 [amending this section], relating to application of nondiscrimination rules to integrated plans,

''(2) section 1112 [amending this section and sections 402, 404, 406, 407, 410, and 818 of this title], relating to coverage requirements for qualified plans,

''(3) section 1113 [amending sections 410 and 411 of this title and sections 1052 to 1054 of Title 29, Labor], relating to minimum vesting standards,

''(4) section 1114 [amending this section, sections 106, 117, 120, 127, 129, 132, 274, 404A, 406, 407, 411, 414, 415, 423, 501, 505, and 4975 of this title, and section 1108 of Title 29], relating to the definition of highly compensated employee,

''(5) section 1115 [amending section 414 of this title], relating to separate lines of business and the definition of compensation,

''(6) section 1116 [amending this section], relating to rules for section 401(k) plans,

''(7) section 1117 [enacting section 4979 of this title and amending this section and section 414 of this title], relating to nondiscrimination requirements for employer matching and employer contribution,

''(8) section 1120 [amending section 403 of this title], relating to nondiscrimination requirements for tax sheltered annuities, and

''(9) section 1133 [enacting section 4981A [now 4980A] of this title], relating to tax on excess distributions.''

SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS OF CERTAIN COOPERATIVES

Pub. L. 109–280, title I, §104, Aug. 17, 2006, 120 Stat. 816, provided that:

''(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was an eligible cooperative plan for its plan year which includes such date, the amendments made by this subtitle [subtitle A (§§101 to 107) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before the earlier of—

''(1) the first plan year for which the plan ceases to be an eligible cooperative plan, or

''(2) January 1, 2017.

''(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) to an eligible cooperative plan for plan years beginning after December 31, 2007, and before the first plan year to which such amendments apply, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

''(c) ELIGIBLE COOPERATIVE PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible cooperative plan for a plan year if the plan is maintained by more than 1 employer and at least 85 percent of the employers are—

''(1) rural cooperatives (as defined in section 401(k)(7)(B) of such Code without regard to clause (iv) thereof), or

''(2) organizations which are—

''(A) cooperative organizations described in section 1381(a) of such Code which are more than 50-percent owned by agricultural producers or by cooperatives owned by agricultural producers, or

''(B) more than 50-percent owned, or controlled by, one or more cooperative organizations described in subparagraph (A).

A plan shall also be treated as an eligible cooperative plan for any plan year for which it is described in section 210(a) of the Employee Retirement Income Secu-

rity Act of 1974 [29 U.S.C. 1060(a)] and is maintained by a rural telephone cooperative association described in section 3(40)(B)(v) of such Act [29 U.S.C. 1002(40)(B)(v)].''

TEMPORARY RELIEF FOR CERTAIN PBGC SETTLEMENT PLANS

Pub. L. 109–280, title I, §105, Aug. 17, 2006, 120 Stat. 817, provided that:

''(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was a PBGC settlement plan as of such date, the amendments made by this subtitle [subtitle A (§§101 to 107) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before January 1, 2014.

''(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B), to a PBGC settlement plan for plan years beginning after December 31, 2007, and before January 1, 2014, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

''(c) PBGC SETTLEMENT PLAN.—For purposes of this section, the term 'PBGC settlement plan' means a defined benefit plan (other than a multiemployer plan) to which section 302 of such Act [29 U.S.C. 1082] and section 412 of such Code apply and—

''(1) which was sponsored by an employer which was in bankruptcy, giving rise to a claim by the Pension Benefit Guaranty Corporation of not greater than $150,000,000, and the sponsorship of which was assumed by another employer that was not a member of the same controlled group as the bankrupt sponsor and the claim of the Pension Benefit Guaranty Corporation was settled or withdrawn in connection with the assumption of the sponsorship, or

''(2) which, by agreement with the Pension Benefit Guaranty Corporation, was spun off from a plan subsequently terminated by such Corporation under section 4042 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1342].''

SPECIAL RULES FOR PLANS OF CERTAIN GOVERNMENT CONTRACTORS

Pub. L. 109–280, title I, §106, Aug. 17, 2006, 120 Stat. 817, provided that:

''(a) GENERAL RULE.—Except as provided in this section, if a plan is an eligible government contractor plan, this subtitle [subtitle A (§§101 to 107) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, repealing sections 1057, 1082 to 1086 of Title 29, and enacting provisions set out as notes under this section and sections 1021, 1082, and 1083 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, enacting provisions set out as notes under sections 409A, 412, 430, and 436 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before the earliest of—

''(1) the first plan year for which the plan ceases to be an eligible government contractor plan,

''(2) the effective date of the Cost Accounting Standards Pension Harmonization Rule, or

''(3) January 1, 2011.

''(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) to an eligible government contractor plan for plan years beginning after December 31, 2007, and before the first plan year to which such amendments apply, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

''(c) ELIGIBLE GOVERNMENT CONTRACTOR PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible government contractor plan if it is maintained by a corporation or a member of the same affiliated group (as defined by section 1504(a) of the Internal Revenue Code of 1986), whose primary source of revenue is derived from business performed under contracts with the United States that are subject to the Federal Acquisition Regulations (chapter 1 of title 48, CFR) and that are also subject to the Defense Federal Acquisition Regulation Supplement (chapter 2 of title 48, CFR), and whose revenue derived from such business in the previous fiscal year exceeded $5,000,000,000, and whose pension plan costs that are assignable under those contracts are subject to sections 412 and 413 of the Cost Accounting Standards (48 CFR 9904.412 and 9904.413).

''(d) COST ACCOUNTING STANDARDS PENSION HARMONIZATION RULE.—The Cost Accounting Standards Board shall review and revise sections 412 and 413 of the Cost Accounting Standards (48 CFR 9904.412 and 9904.413) to harmonize the minimum required contribution under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] of eligible government contractor plans and government reimbursable pension plan costs not later than January 1, 2010. Any final rule adopted by the Cost Accounting Standards Board shall be deemed the Cost Accounting Standards Pension Harmonization Rule.''

GRANDFATHER RULE FOR CHURCH PLANS WHICH SELF-ANNUITIZE

Pub. L. 109–280, title VIII, §865, Aug. 17, 2006, 120 Stat. 1025, provided that:

''(a) IN GENERAL.—In the case of any plan year ending after the date of the enactment of this Act [Aug. 17, 2006], annuity payments provided with respect to any account maintained for a participant or beneficiary under a qualified church plan shall not fail to satisfy the requirements of section 401(a)(9) of the Internal Revenue Code of 1986 merely because the payments are not made under an annuity contract purchased from an insurance company if such payments would not fail such requirements if provided with respect to a retirement income account described in section 403(b)(9) of such Code.

''(b) QUALIFIED CHURCH PLAN.—For purposes of this section, the term 'qualified church plan' means any money purchase pension plan described in section 401(a) of such Code which—

''(1) is a church plan (as defined in section 414(e) of such Code) with respect to which the election provided by section 410(d) of such Code has not been made, and

''(2) was in existence on April 17, 2002.''

NEW TECHNOLOGIES IN RETIREMENT PLANS

Section 1510 of Pub. L. 105–34 provided that:

''(a) IN GENERAL.—Not later than December 31, 1998, the Secretary of the Treasury and the Secretary of Labor shall each issue guidance which is designed to—

''(1) interpret the notice, election, consent, disclosure, and time requirements (and related recordkeeping requirements) under the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] relating to retirement plans as applied to the use of new technologies by plan sponsors and administrators while maintaining the protection of the rights of participants and beneficiaries, and

''(2) clarify the extent to which writing requirements under the Internal Revenue Code of 1986 relating to retirement plans shall be interpreted to permit paperless transactions.

''(b) APPLICABILITY OF FINAL REGULATIONS.—Final regulations applicable to the guidance regarding new technologies described in subsection (a) shall not be effective until the first plan year beginning at least 6 months after the issuance of such final regulations.''

TREATMENT OF QUALIFIED FOOTBALL COACHES PLAN

Section 1704(k) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, a qualified football coaches plan—

''(A) shall be treated as a multiemployer collectively bargained plan, and

''(B) notwithstanding section 401(k)(4)(B) of such Code, may include a qualified cash and deferred arrangement under section 401(k) of such Code.

''(2) QUALIFIED FOOTBALL COACHES PLAN.—For purposes of this subsection, the term 'qualified football coaches plan' means any defined contribution plan which is established and maintained by an organization—

''(A) which is described in section 501(c) of such Code,

''(B) 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, and

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

''(3) EFFECTIVE DATE.—This subsection shall apply to years beginning after December 22, 1987.''

APPLICABILITY OF SUBSECTION (a)(26)

Section 6065 of Pub. L. 100–647 provided that: ''In the case of plan years beginning before January 1, 1993, section 401(a)(26) of the 1986 Code shall not apply to any governmental plan (within the meaning of section 414(d) of such Code) with respect to employees who were participants in such plan on July 14, 1988.''

COORDINATION OF INTERNAL REVENUE CODE OF 1986 WITH EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Section 9343(a) of Pub. L. 100–203 provided that: ''Except to the extent specifically provided in the Internal Revenue Code of 1986 or as determined by the Secretary of the Treasury, titles I and IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq., 1301 et seq.] are not applicable in interpreting such Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

Section 1465 of title I of Pub. L. 104–188 provided that: ''If any amendment made by this subtitle [subtitle D (§§1401–1465) of title I of Pub. L. 104–188, see Tables for classification] requires an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after January 1, 1998, if—

''(1) during the period after such amendment takes effect and before such first plan year, the plan or contract is operated in accordance with the requirements of such amendment, and

''(2) such amendment applies retroactively to such period.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this section shall be applied by substituting '2000' for '1998'.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

Section 523 of title V of Pub. L. 102–318 provided that: ''If any amendment made by this subtitle [subtitle B (§§521–523) of title V of Pub. L. 102–318, amending this section and sections 55, 62, 72, 219, 402 to 404, 406 to 408, 411, 414, 415, 457, 691, 871, 877, 1441, 3121, 3306, 3402, 3405, 4973, 4980A, 6047, 6652, and 7701 of this title] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1994, if—

''(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

''(2) such plan amendment applies retroactively to such period.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

Section 1140 of title XI of Pub. L. 99–514, as amended by Pub. L. 101–239, title VII, §7861(c), Dec. 19, 1989, 103 Stat. 2431; Pub. L. 104–188, title I, §1704(t)(27), Aug. 20, 1996, 110 Stat. 1888, provided that:

''(a) IN GENERAL.—If any amendment made by this subtitle, subtitle C [subtitles A (§§1101–1147) and C (§§1171–1177) of title XI of Pub. L. 99–514, enacting sections 2057, 4972, 4979, 4980, 4981A, and 6659A of this title, amending this section, sections 38, 56, 72, 106, 108, 117, 120, 127, 129, 132, 133, 219, 274, 402 to 404A, 406 to 411, 414 to 417, 423, 457, 501, 505, 818, 852, 3121, 3306, 3405, 4973 to 4975, 4979A, 6051, 6693, and 7701 of this title, and sections 1052 to 1055 and 1108 of Title 29, Labor, repealing sections 41 and 6699 of this title, and amending provisions set out as a note under section 1001 of Title 29], or title XVIII of this Act [see Tables for classification] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

''(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment or in accordance with an amendment prescribed by the Secretary and adopted by the plan, and

''(2) such plan amendment applies retroactively to the period after such amendment takes effect and such first plan year.

A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this provision.

''(b) MODEL AMENDMENT.—

''(1) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment or amendments which allow a plan to meet the requirements of any amendment made by this subtitle or subtitle C—

''(A) which requires an amendment to such plan, and

''(B) is effective before the first plan year beginning after December 31, 1988.

''(2) ADOPTION BY PLAN.—If a plan adopts the amendment or amendments prescribed under paragraph (1) and operates in accordance with such amendment or amendments, such plan shall not be treated as failing to provide definitely determinable benefits or contributions or to be operated in accordance with the provisions of the plan.

''(c) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, subsection (a) shall be applied by

substituting for the first plan year beginning on or after January 1, 1989, the first plan year beginning after the later of—

''(1) December 31, 1988, or

''(2) the earlier of—

''(A) December 31, 1990, or

''(B) the date on which the last of such collective bargaining agreements terminate (without regard to any extension after February 28, 1986).

For purposes of paragraph (1)(B) [(2)(B)] and any other provision of this title [see Tables for classification], an agreement shall not be treated as terminated merely because the plan is amended pursuant to such agreement to meet the requirements of any amendment made by this title or title XVIII of this Act.''

SECRETARY TO ACCEPT APPLICATIONS WITH RESPECT TO SECTION 401(k) PLANS

Section 1142 of Pub. L. 99–514 provided that: ''The Secretary of the Treasury or his delegate shall, not later than May 1, 1987, begin accepting applications for opinion letters with respect to master and prototype plans for qualified cash or deferred arrangements under section 401(k) of the Internal Revenue Code of 1986.''

TREATMENT OF INDIVIDUALS HAVING BEGINNING DATE AFFECTED BY PUB. L. 99–514

Section 1852(a)(4)(C) of Pub. L. 99–514, as added by Pub. L. 100–647, title I, §1018(t)(3)(A), Nov. 10, 1988, 102 Stat. 3588, provided that: ''An individual whose required beginning date would, but for the amendment made by subparagraph (A) [amending this section], occur after December 31, 1986, but whose required beginning date after such amendment occurs before January 1, 1987, shall be treated as if such individual had become a 5-percent owner during the plan year ending in 1986.''

DISTRIBUTION REQUIREMENTS FOR ACCOUNTS AND ANNUITIES OF AN INSURER IN A REHABILITATION PROCEEDING

Section 553 of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of sections 401(a)(9), 408(a)(6) and (7), and 408(b)(3) and (4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]—

''(1) a trust, custodial account, or annuity or other contract forming part of a pension or profit-sharing plan, or a retirement annuity, or

''(2) a grantor of an individual retirement account or an individual retirement annuity,

shall not be treated as failing to meet the requirements of such sections if such account, annuity, or contract was issued by an insurance company which, on March 15, 1984, was a party to a rehabilitation proceeding under the applicable State insurance law.

''(b) LIMITATION.—Subsection (a) shall apply only during the period during which—

''(1) the insurance company continues to be a party to the proceeding described in subsection (a), and

''(2) distributions under the trust, custodial account, or annuity or other contract may not be made by reason of such proceeding.''

QUALIFICATION REQUIREMENTS MODIFIED IF REGULATIONS NOT ISSUED

Section 524(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—If the Secretary of the Treasury or his delegate does not publish final regulations under section 416 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) before January 1, 1985, the Secretary shall publish before such date plan amendment provisions which may be incorporated in a plan to meet the requirements of section 401(a)(10)(B)(ii) of such Code.

''(2) EFFECT OF INCORPORATION.—If a plan is amended to incorporate the plan amendment provisions described in paragraph (1), such plan shall be treated as meeting the requirements of section 401(a)(10)(B)(ii) of the Internal Revenue Code of 1986 during the period such amendment is in effect but not later than 6 months after the final regulations described in paragraph (1) are published.

''(3) FAILURE BY SECRETARY TO PUBLISH.—If the Secretary of the Treasury or his delegate does not publish plan amendment provisions described in paragraph (1), the plan shall be treated as meeting the requirements of section 401(a)(10)(B) of the Internal Revenue Code of 1986 if—

''(A) such plan is amended to incorporate such requirements by reference, except that

''(B) in the case of any optional requirement under section 416 of such Code, if such amendment does not specify the manner in which such requirement will be met, the employer shall be treated as having elected the requirement with respect to each employee which provides the maximum vested accrued benefit for such employee.''

TRANSITIONAL RULE

Section 135(c)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of cash or deferred arrangements in existence on June 27, 1974—

''(A) the qualification of the plan and the trust under section 401 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954];

''(B) the exemption of the trust under section 501(a) of such Code;

''(C) the taxable year of inclusion in gross income of the employee of any amount so contributed by the employer to the trust; and

''(D) the excludability of the interest of the employee in the trust under sections 2039 and 2517 of such Code,

shall be determined for plan years beginning before January 1, 1980 in a manner consistent with Revenue Ruling 56–497 (1956–2 C.B. 284), Revenue Ruling 63–180 (1963–2 C.B. 189), and Revenue Ruling 68–89 (1968–1 C.B. 402).''

SALARY REDUCTION REGULATIONS

Section 2006 of Pub. L. 93–406, as amended by Pub. L. 94–455, title XV, §1506, Oct. 4, 1976, 90 Stat. 1739; Pub. L. 95–615, §5, Nov. 8, 1978, 92 Stat. 3097; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) INCLUSION OF CERTAIN CONTRIBUTIONS IN INCOME.—Except in the case of plans or arrangements in existence on June 27, 1974, a contribution made before January 1, 1980, to an employees' trust described in section 401(a), 403(a) or 405(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is exempt from tax under section 501(a) of such Code, or under an arrangement which, but for the fact that it was not in existence on June 27, 1974, would be an arrangement described in subsection (b)(2) of this section, shall be treated as a contribution made by an employee if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation.

''(b) ADMINISTRATION IN THE CASE OF CERTAIN QUALIFIED PENSION OR PROFIT-SHARING PLANS, ETC., IN EXISTENCE ON JUNE 27, 1974.—No salary reduction regulations may be issued by the Secretary of the Treasury in final form before January 1, 1980, with respect to an arrangement which was in existence on June 27, 1974, and which, on that date—

''(1) provided for contributions to an employee's trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1986 [subsec. (a) of this section, section 403(a) of this title, or section 405(a) of this title] which is exempt from tax under section 501(a) of such Code [section 501(a) of this title], or

''(2) was maintained as part of an arrangement under which an employee was permitted to elect to

receive part of his compensation in one or more alternative forms if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986 [this title].

''(c) ADMINISTRATION OF LAW WITH RESPECT TO CERTAIN PLANS.—

''(1) ADMINISTRATION IN THE CASE OF PLANS DESCRIBED IN SUBSECTION (b).—Until salary reduction regulations have been issued in final form, the law with respect to plans or arrangements described in subsection (b) shall be administered—

''(A) without regard to the proposed salary reduction regulations (37 FR 25938) and without regard to any other proposed salary reduction regulations, and

''(B) in the manner in which such law was administered before January 1, 1972.

''(2) ADMINISTRATION IN THE CASE OF QUALIFIED PROFIT-SHARING PLANS.—In the case of plans or arrangements described in subsection (b), in applying this section to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with—

''(A) Revenue Ruling 56–497 (1956—2 C.B. 284),

''(B) Revenue Ruling 63–180 (1963—2 C.B. 189), and

''(C) Revenue Ruling 68–89 (1968—1 C.B. 402).

''(d) LIMITATION ON RETROACTIVITY OF FINAL REGULATIONS.—In the case of any salary reduction regulations which become final after December 31, 1979—

''(1) for purposes of chapter 1 of the Internal Revenue Code of 1986 (relating to normal taxes and surtaxes), such regulations shall not apply before January 1, 1980; and

''(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for purposes of chapter 24 of such Code (relating to collection of income tax at source on wages), such regulations shall not apply before the day on which such regulations are issued in final form.

''(e) SALARY REDUCTION REGULATIONS DEFINED.—For purpose of this section, the term 'salary reduction regulations' means regulations dealing with the includibility in gross income (at the time of contribution) of amounts contributed to a plan which includes a trust that qualifies under section 401(a) [subsec. (a) of this section], or a plan described in section 403(a) or 405(a), including plans or arrangements described in subsection (b)(2), if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation, or under an arrangement under which the employee is permitted to elect to receive part of his compensation in one or more alternative forms (if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986).''

Pub. L. 95–615, § 210(b), Nov. 8, 1978, 92 Stat. 3109, provided that: ''Section 5 of this Act [amending this note] shall not apply with respect to any type of plan for any period for which rules for that type of plan are provided by the Revenue Act of 1978 [see Short Title note set out under section 1 of this title].''

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in sections 25B, 45A, 219, 401, 402, 404, 408, 408A, 409, 414 to 416, 457 of this title for certain years were contained in the following:

2010—Internal Revenue Notice 2009–94.
2009—Internal Revenue Notice 2008–102.
2008—Internal Revenue Notice 2007–87.
2007—Internal Revenue Notice 2006–98.
2006—Internal Revenue Notice 2005–75.
2005—Internal Revenue Notice 2004–72.
2004—Internal Revenue Notice 2003–73.
2003—Internal Revenue Notice 2002–71.
2002—Internal Revenue Notice 2001–84.
2001—Internal Revenue Notice 2000–66.
2000—Internal Revenue Notice 99–55.
1999—Internal Revenue Notice 98–53.
1998—Internal Revenue Notice 97–58.
1997—Internal Revenue Notice 96–55.

§ 402. Taxability of beneficiary of employees' trust

(a) Taxability of beneficiary of exempt trust

Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

(b) Taxability of beneficiary of nonexempt trust

(1) Contributions

Contributions to an employees' trust made by an employer during a taxable year of the employer which ends with or within a taxable year of the trust for which the trust is not exempt from tax under section 501(a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section.

(2) Distributions

The amount actually distributed or made available to any distributee by any trust described in paragraph (1) shall be taxable to the distributee, in the taxable year in which so distributed or made available, under section 72 (relating to annuities), except that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(5) (relating to amounts not received as annuities).

(3) Grantor trusts

A beneficiary of any trust described in paragraph (1) shall not be considered the owner of any portion of such trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners).

(4) Failure to meet requirements of section 410(b)

(A) Highly compensated employees

If 1 of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan of which it is a part to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under paragraph (1) or (2) include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee's investment in the contract) as of the close of such taxable year of the trust.

(B) Failure to meet coverage tests

If a trust is not exempt from tax under section 501(a) for any taxable year solely be-