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.
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[405. Repealed.]
406. Employees of foreign affiliates covered by section 3121(*l*) agreements.
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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-

cause such trust is part of a plan which fails to meet the requirements of section 401(a)(26) or 410(b), paragraphs (1) and (2) shall not apply by reason of such failure to any employee who was not a highly compensated employee during—

(i) such taxable year, or

(ii) any preceding period for which service was creditable to such employee under the plan.

(C) Highly compensated employee

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

(c) Rules applicable to rollovers from exempt trusts

(1) Exclusion from income

If—

(A) any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,

(B) the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and

(C) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(2) Maximum amount which may be rolled over

In the case of any eligible rollover distribution, the maximum amount transferred to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)). The preceding sentence shall not apply to such distribution to the extent—

(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), 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

(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).

In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).

(3) Transfer must be made within 60 days of receipt

(A) In general

Except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

(B) Hardship exception

The Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(4) Eligible rollover distribution

For purposes of this subsection, the term ''eligible rollover distribution'' means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include—

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made—

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

If all or any portion of a distribution during 2009 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under section 401(a)(9) had applied during 2009, such distribution shall not be treated as an eligible rollover distribution for purposes of section 401(a)(31) or 3405(c) or subsection (f) of this section.

(5) Transfer treated as rollover contribution under section 408

For purposes of this title, a transfer to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B) resulting in any portion of a distribution being excluded from gross income under paragraph (1) shall be treated as a rollover contribution described in section 408(d)(3).

(6) Sales of distributed property

For purposes of this subsection—

(A) Transfer of proceeds from sale of distributed property treated as transfer of distributed property

The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

(B) Proceeds attributable to increase in value

The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

(C) Designation where amount of distribution exceeds rollover contribution

In any case where part or all of the distribution consists of property other than money—

(i) the portion of the money or other property which is to be treated as attributable to amounts not included in gross income, and

(ii) the portion of the money or other property which is to be treated as included in the rollover contribution,

shall be determined on a ratable basis unless the taxpayer designates otherwise. Any designation under this subparagraph for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.

(D) Nonrecognition of gain or loss

No gain or loss shall be recognized on any sale described in subparagraph (A) to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1).

(7) Special rule for frozen deposits

(A) In general

The 60-day period described in paragraph (3) shall not—

(i) include any period during which the amount transferred to the employee is a frozen deposit, or

(ii) end earlier than 10 days after such amount ceases to be a frozen deposit.

(B) Frozen deposits

For purposes of this subparagraph, the term ''frozen deposit'' means any deposit which may not be withdrawn because of—

(i) the bankruptcy or insolvency of any financial institution, or

(ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State.

A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (3) (without regard to this paragraph) such deposit is described in the preceding sentence.

(8) Definitions

For purposes of this subsection—

(A) Qualified trust

The term ''qualified trust'' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(B) Eligible retirement plan

The term ''eligible retirement plan'' means—

(i) an individual retirement account described in section 408(a),

(ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),

(iii) a qualified trust,

(iv) an annuity plan described in section 403(a),

(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and

(vi) an annuity contract described in section 403(b).

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

(9) Rollover where spouse receives distribution after death of employee

If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee.

(10) Separate accounting

Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.

(11) Distributions to inherited individual retirement plan of nonspouse beneficiary

(A) In general

If, with respect to any portion of a distribution from an eligible retirement plan described in paragraph (8)(B)(iii) of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

(i) the transfer shall be treated as an eligible rollover distribution,

(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

(B) Certain trusts treated as beneficiaries

For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(d) Taxability of beneficiary of certain foreign situs trusts

For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).

(e) Other rules applicable to exempt trusts

(1) Alternate payees

(A) Alternate payee treated as distributee

For purposes of subsection (a) and section 72, an alternate payee who is the spouse or former spouse of the participant shall be treated as the distributee of any distribution or payment made to the alternate payee under a qualified domestic relations order (as defined in section 414(p)).

(B) Rollovers

If any amount is paid or distributed to an alternate payee who is the spouse or former spouse of the participant by reason of any qualified domestic relations order (within the meaning of section 414(p)), subsection (c) shall apply to such distribution in the same manner as if such alternate payee were the employee.

(2) Distributions by United States to nonresident aliens

The amount includible under subsection (a) in the gross income of a nonresident alien with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as—

(A) the aggregate basic pay paid by the United States to such employee for such services, reduced by the amount of such basic pay which was not includible in gross income by reason of being from sources without the United States, bears to

(B) the aggregate basic pay paid by the United States to such employee for such services.

In the case of distributions under the civil service retirement laws, the term ''basic pay'' shall have the meaning provided in section 8331(3) of title 5, United States Code.

(3) Cash or deferred arrangements

For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) or which is part of a salary reduction agreement under section 403(b) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

(4) Net unrealized appreciation

(A) Amounts attributable to employee contributions

For purposes of subsection (a) and section 72, in the case of a distribution other than a lump sum distribution, the amount actually distributed to any distributee from a trust described in subsection (a) shall not include any net unrealized appreciation in securities of the employer corporation attributable to amounts contributed by the employee (other than deductible employee contributions within the meaning of section 72(*o*)(5)). This subparagraph shall not apply to a distribution to which subsection (c) applies.

(B) Amounts attributable to employer contributions

For purposes of subsection (a) and section 72, in the case of any lump sum distribution which includes securities of the employer corporation, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation. In accordance with rules prescribed by the Secretary, a taxpayer may elect, on the return of tax on which a lump sum distribution is required to be included, not to have this subparagraph apply to such distribution.

(C) Determination of amounts and adjustments

For purposes of subparagraphs (A) and (B), net unrealized appreciation and the resulting adjustments to basis shall be determined in accordance with regulations prescribed by the Secretary.

(D) Lump-sum distribution

For purposes of this paragraph—

(i) In general

The term ''lump-sum distribution'' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

(I) on account of the employee's death,

(II) after the employee attains age 59½,

(III) on account of the employee's separation from service, or

(IV) after the employee has become disabled (within the meaning of section 72(m)(7)),

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Subclause (III) of this clause shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and subclause (IV) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this clause, a distribution to two or more trusts shall be treated as a distribution to one recipient. For purposes of this paragraph, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(*o*)(5)).

(ii) Aggregation of certain trusts and plans

For purposes of determining the balance to the credit of an employee under clause (i)—

(I) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all prof-

it-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

(II) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

(iii) Community property laws

The provisions of this paragraph shall be applied without regard to community property laws.

(iv) Amounts subject to penalty

This paragraph shall not apply to amounts described in subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

(v) Balance to credit of employee not to include amounts payable under qualified domestic relations order

For purposes of this paragraph, the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

(vi) Transfers to cost-of-living arrangement not treated as distribution

For purposes of this paragraph, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan.

(vii) Lump-sum distributions of alternate payees

If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this paragraph, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee shall be treated as a lump-sum distribution. For purposes of this clause, the balance to the credit of the alternate payee shall not include any amount payable to the employee.

(E) Definitions relating to securities

For purposes of this paragraph—

(i) Securities

The term ''securities'' means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

(ii) Securities of the employer

The term ''securities of the employer corporation'' includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 424) of the employer corporation.

[(5) Repealed. Pub. L. 104–188, title I, § 1401(b)(13), Aug. 20, 1996, 110 Stat. 1789]

(6) Direct trustee-to-trustee transfers

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

(f) Written explanation to recipients of distributions eligible for rollover treatment

(1) In general

The plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient—

(A) of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B),

(B) of the provision which requires the withholding of tax on the distribution if it is not directly transferred to an eligible retirement plan,

(C) of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution,

(D) if applicable, of the provisions of subsections (d) and (e) of this section, and

(E) of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.

(2) Definitions

For purposes of this subsection—

(A) Eligible rollover distribution

The term ''eligible rollover distribution'' has the same meaning as when used in subsection (c) of this section, paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16). Such term shall include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of subsection (c)(11), or section 403(a)(4)(B), 403(b)(8)(B), or 457(e)(16)(B), if the requirements of subsection (c)(11) were satisfied.

(B) Eligible retirement plan

The term ''eligible retirement plan'' has the meaning given such term by subsection (c)(8)(B).

(g) Limitation on exclusion for elective deferrals

(1) In general

(A) Limitation

Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar

amount. The preceding sentence shall not apply to the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year.

(B) Applicable dollar amount

For purposes of subparagraph (A), the applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	The applicable dollar amount:
2002	$11,000
2003	$12,000
2004	$13,000
2005	$14,000
2006 or thereafter	$15,000.

(C) Catch-up contributions

In addition to subparagraph (A), in the case of an eligible participant (as defined in section 414(v)), gross income shall not include elective deferrals in excess of the applicable dollar amount under subparagraph (B) to the extent that the amount of such elective deferrals does not exceed the applicable dollar amount under section 414(v)(2)(B)(i) for the taxable year (without regard to the treatment of the elective deferrals by an applicable employer plan under section 414(v)).

(2) Distribution of excess deferrals

(A) In general

If any amount (hereinafter in this paragraph referred to as ''excess deferrals'') is included in the gross income of an individual under paragraph (1) (or would be included but for the last sentence thereof) for any taxable year—

(i) not later than the 1st March 1 following the close of the taxable year, the individual may allocate the amount of such excess deferrals among the plans under which the deferrals were made and may notify each such plan of the portion allocated to it, and

(ii) not later than the 1st April 15 following the close of the taxable year, each such plan may distribute to the individual the amount allocated to it under clause (i) (and any income allocable to such amount through the end of such taxable year).

The distribution described in clause (ii) may be made notwithstanding any other provision of law.

(B) Treatment of distribution under section 401(k)

Except to the extent provided under rules prescribed by the Secretary, notwithstanding the distribution of any portion of an excess deferral from a plan under subparagraph (A)(ii), such portion shall, for purposes of applying section 401(k)(3)(A)(ii), be treated as an employer contribution.

(C) Taxation of distribution

In the case of a distribution to which subparagraph (A) applies—

(i) except as provided in clause (ii), such distribution shall not be included in gross income, and

(ii) any income on the excess deferral shall, for purposes of this chapter, be treated as earned and received in the taxable year in which such income is distributed.

No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence.

(D) Partial distributions

If a plan distributes only a portion of any excess deferral and income allocable thereto, such portion shall be treated as having been distributed ratably from the excess deferral and the income.

(3) Elective deferrals

For purposes of this subsection, the term ''elective deferrals'' means, with respect to any taxable year, the sum of—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not includible in gross income for the taxable year under subsection (e)(3) (determined without regard to this subsection),

(B) any employer contribution to the extent not includible in gross income for the taxable year under subsection (h)(1)(B) (determined without regard to this subsection),

(C) any employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), and

(D) any elective employer contribution under section 408(p)(2)(A)(i).

An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations.

(4) Cost-of-living adjustment

In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under paragraph (1)(B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

(5) Disregard of community property laws

This subsection shall be applied without regard to community property laws.

(6) Coordination with section 72

For purposes of applying section 72, any amount includible in gross income for any taxable year under this subsection but which is not distributed from the plan during such taxable year shall not be treated as investment in the contract.

(7) Special rule for certain organizations

(A) In general

In the case of a qualified employee of a qualified organization, with respect to em-

ployer contributions described in paragraph (3)(C) made by such organization, the limitation of paragraph (1) for any taxable year shall be increased by whichever of the following is the least:

(i) $3,000,

(ii) $15,000 reduced by the sum of—

(I) the amounts not included in gross income for prior taxable years by reason of this paragraph, plus

(II) the aggregate amount of designated Roth contributions (as defined in section 402A(c)) permitted for prior taxable years by reason of this paragraph, or

(iii) the excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years (determined in the manner prescribed by the Secretary).

(B) Qualified organization

For purposes of this paragraph, the term ''qualified organization'' means any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches. Such term includes any organization described in section 414(e)(3)(B)(ii). Terms used in this subparagraph shall have the same meaning as when used in section 415(c)(4) (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001).

(C) Qualified employee

For purposes of this paragraph, the term ''qualified employee'' means any employee who has completed 15 years of service with the qualified organization.

(D) Years of service

For purposes of this paragraph, the term ''years of service'' has the meaning given such term by section 403(b).

(8) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions

Except as provided in section 401(k)(3)(D)(ii), any matching contribution described in section 401(m)(4)(A) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) for purposes of this title.

(h) Special rules for simplified employee pensions

For purposes of this chapter—

(1) In general

Except as provided in paragraph (2), contributions made by an employer on behalf of an employee to an individual retirement plan pursuant to a simplified employee pension (as defined in section 408(k))—

(A) shall not be treated as distributed or made available to the employee or as contributions made by the employee, and

(B) if such contributions are made pursuant to an arrangement under section 408(k)(6) under which an employee may elect to have the employer make contributions to the simplified employee pension on behalf of the employee, shall not be treated as distributed or made available or as contributions made by the employee merely because the simplified employee pension includes provisions for such election.

(2) Limitations on employer contributions

Contributions made by an employer to a simplified employee pension with respect to an employee for any year shall be treated as distributed or made available to such employee and as contributions made by the employee to the extent such contributions exceed the lesser of—

(A) 25 percent of the compensation (within the meaning of section 414(s)) from such employer includible in the employee's gross income for the year (determined without regard to the employer contributions to the simplified employee pension), or

(B) the limitation in effect under section 415(c)(1)(A), reduced in the case of any highly compensated employee (within the meaning of section 414(q)) by the amount taken into account with respect to such employee under section 408(k)(3)(D).

(3) Distributions

Any amount paid or distributed out of an individual retirement plan pursuant to a simplified employee pension shall be included in gross income by the payee or distributee, as the case may be, in accordance with the provisions of section 408(d).

(i) Treatment of self-employed individuals

For purposes of this section, except as otherwise provided in subparagraph (A) of subsection (d)(4),[1] the term ''employee'' includes a self-employed individual (as defined in section 401(c)(1)(B)) and the employer of such individual shall be the person treated as his employer under section 401(c)(4).

(j) Effect of disposition of stock by plan on net unrealized appreciation

(1) In general

For purposes of subsection (e)(4), in the case of any transaction to which this subsection applies, the determination of net unrealized appreciation shall be made without regard to such transaction.

(2) Transaction to which subsection applies

This subsection shall apply to any transaction in which—

(A) the plan trustee exchanges the plan's securities of the employer corporation for other such securities, or

(B) the plan trustee disposes of securities of the employer corporation and uses the proceeds of such disposition to acquire securities of the employer corporation within 90 days (or such longer period as the Secretary may prescribe), except that this subpara-

[1] See References in Text note below.

graph shall not apply to any employee with respect to whom a distribution of money was made during the period after such disposition and before such acquisition.

(k) Treatment of simple retirement accounts

Rules similar to the rules of paragraphs (1) and (3) of subsection (h) shall apply to contributions and distributions with respect to a simple retirement account under section 408(p).

(*l*) Distributions from governmental plans for health and long-term care insurance

(1) In general

In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan maintained by the employer described in paragraph (4)(B) to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums for such taxable year.

(2) Limitation

The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed $3,000.

(3) Distributions must otherwise be includible

(A) In general

An amount shall be treated as a distribution for purposes of paragraph (1) only to the extent that such amount would be includible in gross income without regard to paragraph (1).

(B) Application of section 72

Notwithstanding section 72, in determining the extent to which an amount is treated as a distribution for purposes of subparagraph (A), the aggregate amounts distributed from an eligible retirement plan in a taxable year (up to the amount excluded under paragraph (1)) shall be treated as includible in gross income (without regard to subparagraph (A)) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts to the credit of the eligible public safety officer in all eligible retirement plans maintained by the employer described in paragraph (4)(B) were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(4) Definitions

For purposes of this subsection—

(A) Eligible retirement plan

For purposes of paragraph (1), the term ''eligible retirement plan'' means a governmental plan (within the meaning of section 414(d)) which is described in clause (iii), (iv), (v), or (vi) of subsection (c)(8)(B).

(B) Eligible retired public safety officer

The term ''eligible retired public safety officer'' means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions subject to paragraph (1) are made.

(C) Public safety officer

The term ''public safety officer'' shall have the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)).

(D) Qualified health insurance premiums

The term ''qualified health insurance premiums'' means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents (as defined in section 152), by an accident or health plan or qualified long-term care insurance contract (as defined in section 7702B(b)).

(5) Special rules

For purposes of this subsection—

(A) Direct payment to insurer required

Paragraph (1) shall only apply to a distribution if payment of the premiums is made directly to the provider of the accident or health plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.

(B) Related plans treated as 1

All eligible retirement plans of an employer shall be treated as a single plan.

(6) Election described

(A) In general

For purposes of paragraph (1), an election is described in this paragraph if the election is made by an employee after separation from service with respect to amounts not distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums.

(B) Special rule

A plan shall not be treated as violating the requirements of section 401, or as engaging in a prohibited transaction for purposes of section 503(b), merely because it provides for an election with respect to amounts that are otherwise distributable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

(7) Coordination with medical expense deduction

The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

(8) Coordination with deduction for health insurance costs of self-employed individuals

The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(*l*).

(Aug. 16, 1954, ch. 736, 68A Stat. 135; Pub. L. 86–437, §§1, 2(a), Apr. 22, 1960, 74 Stat. 79; Pub. L. 87–792, §4(c), Oct. 10, 1962, 76 Stat. 825; Pub. L. 88–272, title II, §§221(c)(1), 232(e)(1)–(3), Feb. 26, 1964, 78 Stat. 75, 111; Pub. L. 91–172, title III, §321(b)(1), title V, §515(a)(1), Dec. 30, 1969, 83 Stat. 590, 643; Pub. L. 93–406, title II, §§2002(g)(5), 2005(a), (b)(1), (c)(1), (2), Sept. 2, 1974, 88 Stat. 968, 987, 990, 991: Pub. L. 94–267, §1(a), Apr. 15, 1976, 90 Stat. 365; Pub. L. 94–455, title XIV, §1402(b)(1)(C), (2), title XV, §1512(a), title XIX, §§1901(a)(57)(A)–(C)(i), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1731, 1732, 1742, 1773, 1774, 1834; Pub. L. 95–30, title I, §102(b)(4), May 23, 1977, 91 Stat. 137; Pub. L. 95–458, §4(a), (c), Oct. 14, 1978, 92 Stat. 1257, 1259; Pub. L. 95–600, title I, §§101(d)(1), 135(b), 157(f)(1), (g)(1), (h)(1), Nov. 6, 1978, 92 Stat. 2770, 2787, 2806–2808; Pub. L. 96–222, title I, §101(a)(14)(C), (E)(i), Apr. 1, 1980, 94 Stat. 204, 205; Pub. L. 96–608, §2(a), Dec. 28, 1980, 94 Stat. 3551; Pub. L. 97–34, title III, §§311(b)(2), (3)(A), (c), 314(c)(1), Aug. 13, 1981, 95 Stat. 280, 286; Pub. L. 97–448, title I, §§101(b), 103(c)(7), (8)(A), (12)(D), Jan. 12, 1983, 96 Stat. 2366, 2376, 2377; Pub. L. 98–369, div. A, title IV, §491(c)(2), (d)(9)–(11), title V, §522(a)(1), (b)–(d)(8), title VII, §713(c)(3), title X, §1001(b)(3), (e), July 18, 1984, 98 Stat. 848, 849, 868–870, 957, 1011, 1012; Pub. L. 98–397, title II, §§204(c)(1), (3), (4), 207(a), Aug. 23, 1984, 98 Stat. 1448, 1449; Pub. L. 99–272, title XI, §11012(c), Apr. 7, 1986, 100 Stat. 260; Pub. L. 99–514, title I, §104(b)(5), title XI, §§1105(a), 1106(c)(2), 1108(b), 1112(c), 1121(c)(1), 1122(a), (b)(1)(A), (2), (e)(1), (2)(A), (g), title XVIII, §§1852(a)(5)(A), (b)(1)–(7), (c)(5), 1854(f)(2), 1875(c)(1)(A), 1898(a)(2), (3), (c)(1)(A), (7)(A)(i), (e), Oct. 22, 1986, 100 Stat. 2105, 2417, 2423, 2432, 2444, 2465, 2466, 2469, 2470, 2865–2867, 2881, 2894, 2942, 2943, 2951, 2954, 2955; Pub. L. 100–647, title I, §§1011(c)(1)–(6)(B), (11), (h)(4), 1011A(a)(1), (b)(4)(A)–(D), (5)–(8), (10), (c)(9), 1018(t)(8)(A), (C), (u)(1), (6), (7), title VI, §6068(a), Nov. 10, 1988, 102 Stat. 3457–3459, 3464, 3472–3474, 3476, 3589, 3590, 3703; Pub. L. 101–239, title VII, §7811(g)(2), (i)(13), Dec. 19, 1989, 103 Stat. 2409, 2411; Pub. L. 101–508, title XI, §11801(c)(9)(I), Nov. 5, 1990, 104 Stat. 1388–526; Pub. L. 102–318, title V, §§521(a), (b)(9)–(11), 522(c)(1), July 3, 1992, 106 Stat. 300, 310, 311, 315; Pub. L. 103–465, title VII, §732(c), Dec. 8, 1994, 108 Stat. 5005; Pub. L. 104–188, title I, §§1401(a)–(b)(2), (13), 1421(b)(3)(A), (9)(B), 1450(a)(2), 1704(t)(68), Aug. 20, 1996, 110 Stat. 1787–1789, 1796, 1798, 1814, 1891; Pub. L. 105–34, title XV, §1501(a), Aug. 5, 1997, 111 Stat. 1058; Pub. L. 105–206, title VI, §6005(c)(2)(A), July 22, 1998, 112 Stat. 800; Pub. L. 107–16, title VI, §§611(d)(1)–(3)(A), 617(b), (c), 632(a)(3)(G), 636(b)(1), 641(a)(2)(A), (B), (b)(2)–(d), (e)(4)–(6), 643(a), 644(a), 657(b), June 7, 2001, 115 Stat. 97, 98, 105, 114, 117, 119–123, 136; Pub. L. 107–147, title IV, §411(*l*)(3), (*o*)(1), (p)(6), (q)(2), Mar. 9, 2002, 116 Stat. 47, 48, 51; Pub. L. 109–135, title IV, §407(a), Dec. 21, 2005, 119 Stat. 2635; Pub. L. 109–280, title VIII, §§822(a), 829(a)(1), 845(a), Aug. 17, 2006, 120 Stat. 998, 1001, 1013; Pub. L. 110–172, §8(a)(1), Dec. 29, 2007, 121 Stat. 2483; Pub. L. 110–458, title I, §§108(f)(1)–(2)(B), (j), 109(b)(3), title II, §201(b), Dec. 23, 2008, 122 Stat. 5109–5111, 5117.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The civil service retirement laws, referred to in subsec. (e)(2), are classified generally to subchapter III (§8331 et seq.) of chapter 83 of Title 5, Government Organization and Employees.

Section 415(c)(4) (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001), referred to in subsec. (g)(7)(B), means section 415(c)(4) of this title prior to its repeal by Pub. L. 107–16, title VI, §632(a)(3)(E), June 7, 2001, 115 Stat. 114.

Subsection (d), referred to in subsec. (i), was amended generally by Pub. L. 104–188, title I, §1401(a), Aug. 20, 1996, 110 Stat. 1787, and as so amended, no longer contains a par. (4).

AMENDMENTS

2008—Subsec. (c)(4). Pub. L. 110–458, §201(b), inserted concluding provisions.

Subsec. (c)(11)(A). Pub. L. 110–458, §108(f)(1)(A), inserted ''described in paragraph (8)(B)(iii)'' after ''eligible retirement plan'' in introductory provisions.

Subsec. (c)(11)(A)(i). Pub. L. 110–458, §108(f)(2)(B), struck out ''for purposes of this subsection'' after ''eligible rollover distribution''.

Subsec. (c)(11)(B). Pub. L. 110–458, §108(f)(1)(B), struck out ''trust'' before ''designated beneficiary''.

Subsec. (f)(2)(A). Pub. L. 110–458, §108(f)(2)(A), inserted at end ''Such term shall include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of subsection (c)(11), or section 403(a)(4)(B), 403(b)(8)(B), or 457(e)(16)(B), if the requirements of subsection (c)(11) were satisfied.''

Subsec. (g)(2)(A)(ii). Pub. L. 110–458, §109(b)(3), inserted ''through the end of such taxable year'' after ''such amount''.

Subsec. (*l*)(1). Pub. L. 110–458, §108(j)(1)(A), inserted ''maintained by the employer described in paragraph (4)(B)'' after ''an eligible retirement plan'' and struck out ''of the employee, his spouse, or dependents (as defined in section 152)'' after ''qualified health insurance premiums''.

Subsec. (*l*)(3)(B). Pub. L. 110–458, §108(j)(2), substituted ''all amounts to the credit of the eligible public safety officer in all eligible retirement plans maintained by the employer described in paragraph (4)(B) were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible'' for ''all amounts distributed from all eligible retirement plans were treated as 1 contract for purposes of determining the inclusion of such distribution under section 72''.

Subsec. (*l*)(4)(D). Pub. L. 110–458, §108(j)(1)(B), inserted ''(as defined in section 152)'' after ''dependents'' and substituted ''health plan'' for ''health insurance plan''.

Subsec. (*l*)(5)(A). Pub. L. 110–458, §108(j)(1)(C), substituted ''health plan'' for ''health insurance plan''.

2007—Subsec. (g)(7)(A)(ii)(II). Pub. L. 110–172 substituted ''permitted for prior taxable years by reason of this paragraph'' for ''for prior taxable years''. Amendment was executed to subsec. (g)(7)(A)(ii) as amended by Pub. L. 109–135, §407(a)(1), as the probable intent of Congress, notwithstanding Pub. L. 110–172, §8(b), which provided that the amendment take effect as if included in the provisions of Pub. L. 107–16 to which it relates. See 2006 Amendment note and Effective Date of 2007 Amendment note below.

2006—Subsec. (c)(2)(A). Pub. L. 109–280, §822(a), which directed the amendment of section 402(c)(2)(A) by substituting ''or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting'' for ''which is part of a plan which is

a defined contribution plan and which agrees to separately account'' and inserting ''(and earnings thereon)'' after ''so transferred'', without specifying the act to be amended, was executed to this section, which is section 402(c)(2)(A) of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Subsec. (c)(11). Pub. L. 109–280, § 829(a)(1), added par. (11).

Subsec. (*l*). Pub. L. 109–280, § 845(a), added subsec. (*l*).

2005—Subsec. (g)(1)(A). Pub. L. 109–135, § 407(a)(2), inserted ''to'' after ''shall not apply''.

Subsec. (g)(7)(A)(ii). Pub. L. 109–135, § 407(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''$15,000 reduced by amounts not included in gross income for prior taxable years by reason of this paragraph, or''.

2002—Subsec. (c)(2). Pub. L. 107–147, § 411(q)(2), inserted at end: ''In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).''

Subsec. (g)(1)(C). Pub. L. 107–147, § 411(*o*)(1), added subpar. (C).

Subsec. (g)(7)(B). Pub. L. 107–147, § 411(p)(6), substituted ''2001).'' for ''2001.''

Subsec. (h)(2)(A). Pub. L. 107–147, § 411(*l*)(3), substituted ''25 percent'' for ''15 percent''.

2001—Subsec. (c)(2). Pub. L. 107–16, § 643(a), inserted at end ''The preceding sentence shall not apply to such distribution to the extent—

''(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust which is part of a plan which is a defined contribution plan and which 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

''(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).''

Subsec. (c)(3). Pub. L. 107–16, § 644(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.''

Subsec. (c)(4)(C). Pub. L. 107–16, § 636(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''any hardship distribution described in section 401(k)(2)(B)(i)(IV).''

Subsec. (c)(8)(B). Pub. L. 107–16, § 617(c), inserted concluding provisions.

Subsec. (c)(8)(B)(v). Pub. L. 107–16, § 641(a)(2)(A), added cl. (v).

Subsec. (c)(8)(B)(vi). Pub. L. 107–16, § 641(b)(2), added cl. (vi).

Subsec. (c)(9). Pub. L. 107–16, § 641(d), struck out before period at end ''; except that a trust or plan described in clause (iii) or (iv) of paragraph (8)(B) shall not be treated as an eligible retirement plan with respect to such distribution''.

Subsec. (c)(10). Pub. L. 107–16, § 641(a)(2)(B), added par. (10).

Subsec. (f)(1). Pub. L. 107–16, § 641(e)(5), struck out ''from an eligible retirement plan'' after ''rollover distribution'' in introductory provisions.

Subsec. (f)(1)(A). Pub. L. 107–16, § 657(b), inserted before comma at end ''and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B)''.

Pub. L. 107–16, § 641(e)(6), substituted ''an eligible retirement plan'' for ''another eligible retirement plan''.

Subsec. (f)(1)(B). Pub. L. 107–16, § 641(e)(6), substituted ''an eligible retirement plan'' for ''another eligible retirement plan''.

Subsec. (f)(1)(E). Pub. L. 107–16, § 641(c), added subpar. (E).

Subsec. (f)(2)(A). Pub. L. 107–16, § 641(e)(4), substituted '', paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16)'' for ''or paragraph (4) of section 403(a)''.

Subsec. (g)(1). Pub. L. 107–16, § 611(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds $7,000.''

Subsec. (g)(1)(A). Pub. L. 107–16, title VI, § 617(b)(1), inserted at end ''The preceding sentence shall not apply the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year.''

Subsec. (g)(2)(A). Pub. L. 107–16, title VI, § 617(b)(2), inserted ''(or would be included but for the last sentence thereof)'' after ''paragraph (1)''.

Subsec. (g)(4). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (5) as (4) and struck out heading and text of former par. (4). Text read as follows: ''The limitation under paragraph (1) shall be increased (but not to an amount in excess of $9,500) by the amount of any employer contributions for the taxable year described in paragraph (3)(C).''

Subsec. (g)(5). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 107–16, § 611(d)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $7,000 amount under paragraph (1) at the same time and in the same manner as under section 415(d); except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.''

Subsec. (g)(6). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (g)(7). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (8) as (7).

Subsec. (g)(7)(B). Pub. L. 107–16, § 632(a)(3)(G), inserted ''(as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001'' before period at end.

Subsec. (g)(8), (9). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (9) as (8). Former par. (8) redesignated (7).

1998—Subsec. (c)(4)(C). Pub. L. 105–206 added subpar. (C).

1997—Subsec. (g)(9). Pub. L. 105–34 added par. (9).

1996—Subsec. (c)(10). Pub. L. 104–188, § 1401(b)(2), struck out par. (10) which read as follows:

''(10) DENIAL OF AVERAGING FOR SUBSEQUENT DISTRIBUTIONS.—If paragraph (1) applies to any distribution paid to any employee, paragraphs (1) and (3) of subsection (d) shall not apply to any distribution (paid after such distribution) of the balance to the credit of the employee under the plan under which the preceding distribution was made (or under any other plan which, under subsection (d)(4)(C), would be aggregated with such plan).''

Subsec. (d). Pub. L. 104–188, § 1401(a), amended subsec. (d) generally, substituting provisions relating to taxability of beneficiary of certain foreign situs trusts for former provisions relating to tax on lump sum distributions.

Subsec. (e)(3). Pub. L. 104–188, § 1450(a)(2), inserted ''or which is part of a salary reduction agreement under section 403(b)'' after ''section 401(k)(2))''.

Subsec. (e)(4)(D). Pub. L. 104–188, § 1401(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows:

''(D) LUMP SUM DISTRIBUTION.—For purposes of this paragraph, the term 'lump sum distribution' has the meaning given such term by subsection (d)(4)(A) (without regard to subsection (d)(4)(F)).''

Subsec. (e)(5). Pub. L. 104–188, § 1401(b)(13), struck out par. (5) which read as follows:

''(5) TAXABILITY OF BENEFICIARY OF CERTAIN FOREIGN SITUS TRUSTS.—For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under sec-

tion 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).''

Subsec. (g)(3)(A). Pub. L. 104–188, §1704(t)(68), substituted ''subsection (e)(3)'' for ''subsection (a)(8)''.

Subsec. (g)(3)(D). Pub. L. 104–188, §1421(b)(9)(B), added subpar. (D).

Subsec. (k). Pub. L. 104–188, §1421(b)(3)(A), added subsec. (k).

1994—Subsec. (g)(5). Pub. L. 103–465 inserted before period at end ''; except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500''.

1992—Subsecs. (a) to (d). Pub. L. 102–318, §521(a), amended subsecs. (a) to (d) generally, substituting present provisions for former provisions which in subsec. (a) related to taxability of beneficiaries of exempt trusts, in subsec. (b) related to taxability of beneficiaries of nonexempt trusts, in subsec. (c) related to taxability of beneficiaries of certain foreign situs trusts, and subsec. (d) which had been previously repealed.

Subsec. (e). Pub. L. 102–318, §521, amended subsec. (e) generally, substituting provisions relating to other rules applicable to exempt trusts for provisions relating to tax on lump sum distributions.

Subsec. (e)(6). Pub. L. 102–318, §522(c)(1), added par. (6).

Subsec. (f). Pub. L. 102–318, §521(a), amended subsec. (f) generally, substituting present provisions for provisions requiring a different time when explanation was to be provided and a different content of explanation to be given and using different definitions for ''eligible rollover distribution'' and ''eligible retirement plan''.

Subsec. (g)(1). Pub. L. 102–318, §521(b)(9), substituted ''subsections (e)(3)'' for ''subsections (a)(8)''.

Subsec. (i). Pub. L. 102–318, §521(b)(10), substituted ''subsection (d)(4)'' for ''subsection (e)(4)''.

Subsec. (j)(1). Pub. L. 102–318, §521(b)(11), substituted ''(e)(4)'' for ''(a)(1) or (e)(4)(J)''.

1990—Subsec. (a)(3)(B). Pub. L. 101–508, §11801(c)(9)(I)(i), substituted ''section 424'' for ''section 425''.

Subsec. (a)(6)(B)(i). Pub. L. 101–508, §11801(c)(9)(I)(ii), substituted ''section 424(f)'' for ''section 425(f)''.

1989—Subsec. (e)(7). Pub. L. 101–239, §7811(i)(13), added par. (7).

Subsec. (g)(3). Pub. L. 101–239, §7811(g)(2), inserted ''involving a one-time irrevocable election'' after ''similar arrangement'' in last sentence.

1988—Subsec. (a)(1). Pub. L. 100–647, §1011A(b)(8)(A), substituted ''paragraph (4)'' for ''paragraphs (2) and (4)''.

Subsec. (a)(4). Pub. L. 100–647, §1011A(b)(8)(B), struck out ''or (2)'' after ''under paragraph (1)''.

Subsec. (a)(5)(D)(i). Pub. L. 100–647, §1011A(b)(4)(C), inserted at end ''Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of subclauses (I) and (II).''

Pub. L. 100–647, §1011A(b)(4)(A), repealed amendment by Pub. L. 99–514, §1122(e)(1), which had amended cl. (i) generally, and provided that the Internal Revenue Code of 1986 shall be applied and administered as if such amendment had not been enacted. See 1986 Amendment note and Effective Date of 1988 Amendment note below.

Subsec. (a)(5)(D)(i)(I). Pub. L. 100–647, §1011A(b)(4)(B), inserted ''is payable as provided in clause (i), (iii), or (iv) of subsection (e)(4)(A) (without regard to the second sentence thereof) and'' after ''(I) such distribution''.

Subsec. (a)(5)(D)(iii). Pub. L. 100–647, §1011A(b)(4)(D), struck out ''10-year'' after ''Denial of'' in heading.

Subsec. (a)(5)(F). Pub. L. 100–647, §1011A(a)(1), substituted ''resulting in any portion of a distribution being excluded from gross income under subparagraph (A)'' for ''described in subparagraph (A)''.

Subsec. (a)(6)(C). Pub. L. 100–647, §1011A(b)(8)(C), struck out ''paragraph (2) of subsection (a), and'' after ''paragraph (5)(A) applies,''.

Subsec. (a)(6)(E)(ii). Pub. L. 100–647, §1011A(b)(8)(D), substituted ''then paragraphs (1) and (3) of subsection (e) shall'' for ''then paragraph (2) of subsection (a), and paragraphs (1) and (3) of subsection (e), shall''.

Subsec. (a)(6)(G). Pub. L. 100–647, §1018(t)(8)(A), redesignated subpar. (G), relating to treatment of potential future vesting, as (I).

Subsec. (a)(6)(H)(ii). Pub. L. 100–647, §1011A(b)(5), inserted at end ''A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (5)(C) (without regard to this subparagraph) such deposit is described in the preceding sentence.''

Subsec. (a)(6)(I). Pub. L. 100–647, §1018(t)(8)(A), redesignated subpar. (G), relating to treatment of potential future vesting, as (I).

Subsec. (b)(2)(A). Pub. L. 100–647, §1011(h)(4), added subpar. (A) and struck out former subpar. (A) which related to trust which is not exempt from tax under section 501(a) because plan fails to meet requirements of section 410(b).

Subsec. (b)(2)(B). Pub. L. 100–647, §1011(h)(4), added subpar. (B) and struck out former subpar. (B) which related to failure of plan to meet requirements of section 410(b) for more than 1 taxable year.

Subsec. (e)(1)(A). Pub. L. 100–647, §1011A(b)(8)(E), struck out ''ordinary income portion of a'' after ''subparagraph (B)) on the''.

Subsec. (e)(1)(B). Pub. L. 100–647, §1011A(b)(10), inserted at end ''For purposes of the preceding sentence, in determining the amount of tax under section 1(c), section 1(g) shall be applied without regard to paragraph (2)(B) thereof.''

Pub. L. 100–647, §1018(u)(1), made technical correction to directory language of Pub. L. 99–514, §104(b)(5). See 1986 Amendment note below.

Pub. L. 100–647, §1018(u)(6), related to execution of amendment by Pub. L. 99–514, §1122(b)(2)(B), see 1986 Amendment note below.

Subsec. (e)(3). Pub. L. 100–647, §1018(u)(7), related to execution of amendment by Pub. L. 99–514, §1122(b)(2)(C), see 1986 Amendment note below.

Subsec. (e)(4)(A). Pub. L. 100–647, §1011A(b)(8)(F), in concluding provisions, substituted ''A'' for ''Except for purposes of subsection (a)(2) and section 403(a)(2), a'', and struck out ''subsection (a)(2) of this section, and subsection (a)(2) of section 403,'' before ''the balance to''.

Subsec. (e)(4)(B)(i). Pub. L. 100–647, §1011A(b)(6), substituted ''employee'' for ''taxpayer''.

Subsec. (e)(4)(I). Pub. L. 100–647, §1011A(c)(9), struck out ''clause (ii) of'' after ''amounts described in''.

Subsec. (e)(4)(J). Pub. L. 100–647, §1011A(b)(7), amended last sentence generally. Prior to amendment, last sentence read as follows: ''To the extent provided by the Secretary, a taxpayer may elect before any distribution not to have this paragraph apply with respect to such distribution.''

Subsec. (e)(4)(L). Pub. L. 100–647, §1011A(b)(8)(G), struck out subpar. (L) which related to election to treat pre-1974 participation as post-1973 participation.

Subsec. (e)(4)(M). Pub. L. 100–647, §1011A(b)(8)(H), struck out '', subsection (a)(2) of this section, and section 403(a)(2)'' after ''of this subsection''.

Subsec. (e)(4)(O). Pub. L. 100–647, §6068(a), added subpar. (O).

Subsec. (e)(5). Pub. L. 100–647, §1011A(b)(8)(I), struck out ''and paragraph (2) of subsection (a)'' after ''of this subsection''.

Subsec. (e)(6)(C). Pub. L. 100–647, §1011A(b)(8)(J), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For purposes of this paragraph, special lump sum treatment applies to any distribution if any portion of such distribution—

''(i) is taxed under this subsection by reason of an election under paragraph (4)(B), or

''(ii) is treated as long-term capital gain under subsection (a)(2) of this section or section 403(a)(2).''

Subsec. (f)(1). Pub. L. 100–647, §1018(t)(8)(C), substituted ''an eligible'' for ''a eligible''.

Subsec. (g). Pub. L. 100–647, §1011(c)(6)(B), redesignated subsec. (g), relating to effect of disposition of stock by plan on net unrealized appreciation, as (j).

Pub. L. 100–647, §1011(c)(6)(A), redesignated subsec. (g), relating to treatment of self-employed individuals, as (i).

Subsec. (g)(2). Pub. L. 100–647, §1011(c)(2), substituted ''Distribution'' for ''Required distribution'' in heading.

Subsec. (g)(2)(C). Pub. L. 100–647, §1011(c)(1), struck out ''(and no tax shall be imposed under section 72(t))'' after ''in gross income'', in cl. (i), substituted ''such income is distributed'' for ''such excess deferral is made'' in cl. (ii), and inserted at end ''No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence.''

Subsec. (g)(2)(D). Pub. L. 100–647, §1011(c)(3), added subpar. (D).

Subsec. (g)(3). Pub. L. 100–647, §1011(c)(4), substituted ''this subsection'' for ''this paragraph''.

Pub. L. 100–647, §1011(c)(11), inserted at end ''An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations.''

Subsec. (g)(8)(A)(iii). Pub. L. 100–647, §1011(c)(5)(A), inserted ''(determined in the manner prescribed by the Secretary)'' after ''prior taxable years''.

Subsec. (g)(8)(D). Pub. L. 100–647, §1011(c)(5)(B), added subpar. (D).

Subsec. (i). Pub. L. 100–647, §1011(c)(6)(A), redesignated subsec. (g), relating to treatment of self-employed individuals, as (i).

Subsec. (j). Pub. L. 100–647, §1011(c)(6)(B), redesignated subsec. (g), relating to effect of disposition of stock by plan on net unrealized appreciation, as (j).

1986—Subsec. (a)(2). Pub. L. 99–514, §1122(b)(1)(A), struck out par. (2) relating to capital gains treatment for portion of lump sum distribution.

Subsec. (a)(5)(D)(i). Pub. L. 99–514, §1122(e)(1), amended cl. (i) generally, to read as follows: ''Subparagraph (A) shall apply to a partial distribution only if the employee elects to have subparagraph (A) apply to such distribution and such distribution would be a lump sum distribution if subsection (e)(4)(A) were applied—

''(I) by substituting '50 percent of the balance to the credit of an employee' for 'the balance to the credit of an employee',

''(II) without regard to clause (ii) thereof, the second sentence thereof, and subparagraph (B) of subsection (e)(4).

Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of this clause.'' This amendment was repealed by Pub. L. 100–647, §1011A(b)(4)(A). See 1988 Amendment note above.

Pub. L. 99–514, §1852(b)(2), inserted at end ''For purposes of subclause (I), the balance to the credit of the employee shall not include any accumulated deductible employee contributions (within the meaning of section 72(*o*)(5)).''

Subsec. (a)(5)(D)(ii). Pub. L. 99–514, §1852(b)(5), substituted ''a trust or plan described in subclause (III) or (IV)'' for ''a plan described in subclause (IV) or (V)''.

Subsec. (a)(5)(D)(iii). Pub. L. 99–514, §1122(b)(2)(A), struck out ''and capital gains treatment'' in heading and amended text generally. Prior to amendment, cl. (iii) read as follows: ''If an election under clause (i) is made with respect to any partial distribution paid to any employee—

''(I) paragraph (2) of this subsection,

''(II) paragraphs (1) and (3) of subsection (e), and

''(III) paragraph (2) of section 403(a),

shall not apply to any distribution (paid after such partial distribution) of the balance to the credit of such employee under the plan under which such partial distribution was made (or under any other plan which, under subsection (e)(4)(C), would be aggregated with such plan).''

Subsec. (a)(5)(E)(v). Pub. L. 99–514, §1852(b)(1), substituted ''of all or any portion of'' for ''of any portion of''.

Subsec. (a)(5)(F). Pub. L. 99–514, §1121(c)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) heading read ''Special rules'' and text read as follows:

''(i) Transfer treated as rollover contribution under section 408

''For purposes of this title, a transfer resulting in any portion of a distribution being excluded from gross income under subparagraph (A) to an eligible retirement plan described in subclause (I) or (II) of subparagraph (E)(iv) shall be treated as a rollover contribution described in section 408(d)(3).

''(ii) 5-percent owners

''An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if the employee is a 5-percent owner at the time such distribution is made. For purposes of the preceding sentence, the term '5-percent owner' means any individual who is a 5-percent owner (as defined in section 416(i)(1)(B)) at any time during the 5 plan years preceding the plan year in which the distribution is made.''

Pub. L. 99–514, §1852(b)(6), in cl. (i) substituted ''a transfer resulting in any portion of a distribution being excluded from gross income under subparagraph (A)'' for ''a transfer described in subparagraph (A)''.

Pub. L. 99–514, §1875(c)(1)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii), key employees, read as follows: ''An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan. For purposes of the preceding sentence, the terms 'key employee' and 'top-heavy plan' have the same respective meanings as when used in section 416.''

Subsec. (a)(5)(G). Pub. L. 99–514, §1852(a)(5)(A), added subpar. (G).

Subsec. (a)(6)(D)(v). Pub. L. 99–514, §1852(b)(7), substituted ''(7)'' for ''(7)(B)''.

Subsec. (a)(6)(F). Pub. L. 99–514, §1898(c)(7)(A)(i), substituted ''paragraph (5)'' for ''paragraph (5)(A)''.

Subsec. (a)(6)(G). Pub. L. 99–514, §1898(a)(3), added subpar. (G) relating to treatment of potential future vesting.

Pub. L. 99–272 added subpar. (G) relating to payments from certain pension plan termination trusts.

Subsec. (a)(6)(H). Pub. L. 99–514, §1122(e)(2)(A), added subpar. (H).

Subsec. (a)(7). Pub. L. 99–514, §1852(b)(4), inserted ''; except that a trust or plan described in subclause (III) or (IV) of paragraph (5)(E)(iv) shall not be treated as an eligible retirement plan with respect to such distribution'' after ''the spouse were the employee''.

Subsec. (a)(9). Pub. L. 99–514, §1898(c)(1)(A), substituted ''any alternate payee who is the spouse or former spouse of the participant shall be treated'' for ''the alternate payee shall be treated''.

Subsec. (b). Pub. L. 99–514, §1112(c), designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Pub. L. 99–514, §1852(c)(5), substituted ''section 72(e)(5)'' for ''section 72(e)(1)''.

Subsec. (e)(1)(B). Pub. L. 99–514, §1122(b)(2)(B), and Pub. L. 100–647, §1018(u)(6), redesignated subpar. (C) as (B), substituted ''Amount of tax'' for ''Initial separate tax'' in heading and ''The amount of tax imposed by subparagraph (A)'' for ''The initial separate tax'', and struck out former subpar. (B) which related to computation of tax on lump sum distributions.

Pub. L. 99–514, §104(b)(5), as amended by Pub. L. 100–647, §1018(u)(1), struck out ''the zero bracket amount applicable to such individual for the taxable year plus'' after ''amount equal to''.

Pub. L. 99–514, §1122(a)(2)(A), (B), substituted ''5'' for ''10'' and ''⅕'' for ''one-tenth''.

Subsec. (e)(1)(C) to (E). Pub. L. 99–514, §1122(b)(2)(B)(i), redesignated subpars. (C) to (E) as (B) to (D), respectively.

Subsec. (e)(3). Pub. L. 99–514, §1122(b)(2)(C), and Pub. L. 100-647, §1018(u)(7), substituted ''total taxable amount'' for ''ordinary income portion''.

Subsec. (e)(4)(B). Pub. L. 99–514, §1122(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distribution under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to two or more trusts, the election under this subparagraph shall be made by the personal representative of the employee.''

Subsec. (e)(4)(E). Pub. L. 99–514, §1122(b)(2)(D), struck out subpar. (E) defining ''ordinary income portion'' with respect to a lump sum distribution.

Subsec. (e)(4)(F). Pub. L. 99–514, §1852(b)(3)(B), struck out subpar. (F) defining ''employee''. See subsec. (g) of this section relating to treatment of self-employed individuals.

Subsec. (e)(4)(H). Pub. L. 99–514, §1122(b)(2)(E), struck out ''(but not for purposes of subsection (a)(2) or section 403(a)(2)(A))'' after ''For purposes of this subsection''.

Subsec. (e)(4)(J). Pub. L. 99–514, §1122(g), inserted at end ''To the extent provided by the Secretary, a taxpayer may elect before any distribution not to have this paragraph apply with respect to such distribution.''

Subsec. (e)(4)(N). Pub. L. 99–514, §1106(c)(2), added subpar. (N).

Subsec. (e)(6). Pub. L. 99–514, §1898(a)(2), added par. (6).

Subsec. (f)(1). Pub. L. 99–514, §1898(e)(1), substituted ''eligible rollover distribution'' for ''qualifying rollover distribution''.

Subsec. (f)(2). Pub. L. 99–514, §1898(e)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of this subsection, the terms 'qualifying rollover distribution' and 'eligible retirement plan' have the respective meanings given such terms by subsection (a)(5)(E).''

Subsec. (g). Pub. L. 99–514, §1854(f)(2), added subsec. (g) relating to effect of disposition of stock by plan on net unrealized appreciation.

Pub. L. 99–514, §1852(b)(3)(A), added subsec. (g) relating to treatment of self-employed individuals.

Pub. L. 99–514, §1105(a), added subsec. (g) relating to limitation on exclusion for elective deferrals.

Subsec. (h). Pub. L. 99–514, §1108(b), added subsec. (h).

1984—Subsec. (a)(2). Pub. L. 98–369, §1001(b)(3), substituted ''6 months'' for ''1 year''.

Subsec. (a)(5)(A)(i). Pub. L. 98–369, §522(a)(1), substituted ''any portion of the balance to the credit of an employee in a qualified trust is paid to him'' for ''the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution''.

Subsec. (a)(5)(B). Pub. L. 98–369, §522(d)(1)(A), (2), substituted ''qualified total distribution'' for ''qualifying rollover distribution'', and inserted ''In the case of any partial distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to subparagraph (A)).''

Subsec. (a)(5)(D). Pub. L. 98–369, §522(b), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(5)(D)(iv)(III)–(V). Pub. L. 98–369, §491(d)(9), struck out subcl. (III), which included a retirement bond described in section 409 within term ''eligible retirement plan'' and redesignated former subcls. (IV) and (V) and (III) and (IV), respectively.

Subsec. (a)(5)(E). Pub. L. 98–369, §522(b), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (a)(5)(E)(i). Pub. L. 98–369, §522(d)(1)(B), substituted ''qualified total distribution'' for ''qualifying rollover distribution'' in heading and text.

Subsec. (a)(5)(E)(ii)(II). Pub. L. 98–369, §522(d)(3), substituted ''gross income (determined without regard to this paragraph)'' for ''gross income''.

Subsec. (a)(5)(E)(v). Pub. L. 98–369, §522(d)(4), substituted provision dealing with partial distribution for provision dealing with rollover of partial distributions of deductible employee contributions permitted.

Subsec. (a)(5)(F). Pub. L. 98–369, §522(b), redesignated subpar. (E) as (F).

Subsec. (a)(5)(F)(i). Pub. L. 98–369, §522(d)(5), substituted ''subparagraph (E)(iv)'' for ''subparagraph (D)(iv)''.

Pub. L. 98–369, §491(d)(10), substituted ''or (II)'' for '', (II), or (III)''.

Subsec. (a)(5)(F)(ii). Pub. L. 98–369, §522(d)(5), substituted ''subparagraph (E)(iv)'' for ''subparagraph (D)(iv)''.

Pub. L. 98–369, §491(d)(11), substituted ''(III) or (IV)'' for ''(IV) and (V)''.

Pub. L. 98–369, §713(c)(3), substituted ''Key employees'' for ''Self-employed individuals and owner-employees'' in heading and ''attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan'' for ''attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan'' in text, and inserted sentence adopting the meaning of ''key employee'' and ''top-heavy plan'' used in section 416.

Subsec. (a)(6)(A), (B). Pub. L. 98–369, §522(d)(6), substituted ''paragraph (5)(E)(i)'' for ''paragraph (5)(D)(i)''.

Subsec. (a)(6)(D)(iii), (iv). Pub. L. 98–369, §522(d)(7), substituted ''employee contributions (or, in the case of a partial distribution, the amount not includible in gross income)'' for ''employee contributions''.

Subsec. (a)(6)(E)(i). Pub. L. 98–369, §522(d)(1)(C), (8), substituted ''qualified total distribution'' for ''qualifying rollover distribution'', and ''paragraph (5)(D) or (5)(E)(i)(II)'' for ''paragraph (5)(D)(i)(II)''.

Subsec. (a)(6)(F). Pub. L. 98–397, §204(c)(3), added subpar. (F).

Subsec. (a)(7). Pub. L. 98–369, §522(c), substituted provisions relating to rollover where spouse receives distributions after death of employee for provisions dealing with rollover where spouse receives lump-sum distribution at death of employee.

Subsec. (a)(9). Pub. L. 98–397, §204(c)(1), added par. (9).

Subsec. (e)(4)(L). Pub. L. 98–369, §1001(b)(3), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (e)(4)(M). Pub. L. 98–397, §204(c)(4), added subpar. (M).

Subsec. (e)(5). Pub. L. 98–369, §491(c)(2), added par. (5).

Subsec. (f). Pub. L. 98–397, §207(a), added subsec. (f).

1983—Subsec. (a)(5)(D)(v). Pub. L. 97–448, §103(c)(8)(A), added cl. (v).

Subsec. (e)(1)(C). Pub. L. 97–448, §101(b), substituted ''the zero bracket amount applicable to such an individual for the taxable year'' for ''$2,300''.

Subsec. (e)(4)(A). Pub. L. 97–448, §103(c)(7), substituted ''this subsection, subsection (a)(2) of this section, and subsection (a)(2) of section 403'' for ''this section and section 403'' in last sentence.

Subsec. (e)(4)(J). Pub. L. 97–448, §103(c)(12)(D), amended Pub. L. 97–34, §311(c)(2) [see 1981 Amendment note below], by substituting ''section 72(*o*)(5)'' for ''section 77(*o*)(5)'' in last sentence of subpar. (j).

1981—Subsec. (a)(1). Pub. L. 97–34, §311(c)(1), inserted ''(other than deductible employee contributions within the meaning of section 72(*o*)(5))''.

Pub. L. 97–34, § 314(c)(1), struck out ''or made available'' after ''distributed'' in three places.

Subsec. (a)(5). Pub. L. 97–34, § 311(b)(3)(A), inserted ''(other than accumulated deductible employee contributions within the meaning of section 72(*o*)(5))'' after ''contributions'' in subpar. (B) and added subcl. (III) in subpar. (D).

Subsec. (e)(4). Pub. L. 97–34, § 311(b)(2), (c)(2), added to subpar. (A) provision that for purposes of sections 402 and 403, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(*o*)(5)), and added subpar. (J) provision making subpar. (J) inapplicable to distributions of accumulated deductible employee contributions (within the meaning of section 77(*o*)(5)). See 1983 Amendment note above.

1980—Subsec. (a)(6)(D)(iii). Pub. L. 96–222, § 101(a)(14)(E)(i), substituted ''may designate'' for ''many designate''.

Subsec. (a)(6)(E). Pub. L. 96–608 added subpar. (E).

Subsec. (a)(7)(A)(i). Pub. L. 96–222, § 101(a)(14)(C), substituted ''qualifying rollover distribution attributable to an employee is paid to the spouse of the employee after'' for ''lump-sum distribution from a qualified trust is paid to the spouse of the employee on account of''.

1978—Subsec. (a)(5). Pub. L. 95–458, § 4(a), among other changes, substituted provision permitting tax-free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5)(D)(i)(II). Pub. L. 95–600, § 157(h)(1), substituted ''subparagraphs (B) and (H) of subsection (e)(4)'' for ''subsection (e)(4)(B)''.

Subsec. (a)(6). Pub. L. 95–458, § 4(c), in provision preceding subpar. (A) struck out ''For purposes of paragraph (5)(A)(i)'', in subpar. (A) substituted ''For purposes of paragraph (5)(D)(i), a complete'' for ''A complete'', in subpar. (B) inserted ''For purposes of paragraph (5)(D)(i)—'' after ''assets.—'' in provision preceding cl. (i), and added subpar. (C).

Subsec. (a)(6)(D). Pub. L. 95–600, § 157(f)(1), added subpar. (D).

Subsec. (a)(7). Pub. L. 95–600, § 157(g)(1), added par. (7).

Subsec. (a)(8). Pub. L. 95–600, § 135(b), added par. (8).

Subsec. (e)(1)(C). Pub. L. 95–600, § 101(d)(1), substituted ''$2,300'' for ''$2,200''.

1977—Subsec. (e)(1)(C). Pub. L. 95–30 substituted ''amount equal to $2,200 plus one-tenth of the excess of'' for ''amount equal to one-tenth of the excess of'' in provisions preceding cl. (i).

1976—Subsec. (a)(1). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §§ 1402(b)(1)(C), 1906(b)(13)(A), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977 and struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(4). Pub. L. 94–455, § 1901(a)(57)(A), substituted ''basic pay'' for ''basic salary'', ''civil service retirement laws'' for ''Civil Service Retirement Act (5 U.S.C. 2251)'', and ''section 8331(3) of title 5, United States Code'' for ''section 1(d) of such Act''.

Subsec. (a)(5). Pub. L. 94–267, § 1(a)(2), substituted ''a payment'' for ''the lump-sum distribution''.

Subsec. (a)(5)(A). Pub. L. 94–267, § 1(a)(1), restructured provision by adding cl. (i) and designating existing provision as cl. (ii).

Subsec. (a)(6). Pub. L. 94–267, § 1(a)(3), added par. (6).

Subsec. (a)(6)(A). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, § 1901(a)(57)(B), struck out subsec. (d) which related to certain trust agreements made before Oct. 21, 1942.

Subsec. (e)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4)(A). Pub. L. 94–455, § 1901(a)(57)(C)(i), substituted ''Except for purposes of subsection (a)(2) and section 403(a)(2)'' for ''For purposes of this subparagraph''.

Subsec. (e)(4)(B), (J). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4)(L). Pub. L. 94–455, § 1402(b)(2), substituted ''1 year'' for ''9 months''.

Pub. L. 94–455, §§ 1402(b)(1)(C), 1512(a), added subsec. (e)(4)(L) to be applicable to distributions and payments after Dec. 31, 1975, in taxable years beginning after Dec. 31, 1975, and provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1974—Subsec. (a)(2). Pub. L. 93–406, § 2005(b)(1), substituted provisions covering capital gains treatment of portions of lump sum distributions determined through the application of a fraction formula susceptible of producing a phaseout of capital gains treatment for provisions covering capital gains treatment of portions of lump sum distributions determined on a fixed formula.

Subsec. (a)(3)(C). Pub. L. 93–406, § 2005(c)(1), struck out subsec. (a)(3)(C) which defined ''total distribution payable''.

Subsec. (a)(5). Pub. L. 93–406, §§ 2002(g)(5), 2005(c)(2), substituted provisions covering rollover amounts for provisions covering limitation on capital gains treatment.

Subsec. (e). Pub. L. 93–406, § 2005(a), substituted provisions covering tax on lump sum distributions for provisions covering plan termination distributions made after Dec. 31, 1953, and before Jan. 1, 1955.

1969—Subsec. (a)(5). Pub. L. 91–172, § 515(a)(1), added par. (5).

Subsec. (b). Pub. L. 91–172, § 321(b)(1), substituted provision for inclusion of contributions made by an employer to a nonexempt trust 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'' for prior provision for inclusion in the ''gross income of an employee for the taxable year in which the contribution is made to the trust in the case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made'', and provided 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)(1) (relating to amount not received as annuities) and that a beneficiary of any such trust shall not be considered the owner of any portion of such trust under subpart E of part I of subch. J (relating to grantors and others treated as substantial owners).

1964—Subsec. (a)(1). Pub. L. 88–272, § 232(e)(1), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

Subsec. (a)(3)(B). Pub. L. 88–272, § 221(c)(1), substituted ''subsections (e) and (f) of section 425'' for ''section 421(d)(2) and (3)''.

Subsecs. (b), (d). Pub. L. 88–272, § 232(e)(2), (3), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

1962—Subsec. (a)(2). Pub. L. 87–792 inserted sentence providing that this paragraph shall not apply to distributions paid to any distributee to the extent such distributions are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

1960—Subsec. (a)(1). Pub. L. 86–437, § 2(a), substituted ''paragraphs (2) and (4)'' for ''paragraph (2)''.

Subsec. (a)(4). Pub. L. 86–437, § 1, added par. (4).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, § 108(f)(2)(C), Dec. 23, 2008, 122 Stat. 5109, provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to plan years beginning after December 31, 2009.''

Amendment by sections 108(f)(1)–(2)(B), (j) and 109(b)(3) 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.

Amendment by section 201(b) of Pub. L. 110–458 applicable to calendar years beginning after December 31, 2008, with provisions relating to pension plan or contract amendments, see section 201(c) of Pub. L. 110–458, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §8(b), Dec. 29, 2007, 121 Stat. 2484, provided that: ''The amendments made by this section [amending this section and section 3121 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §822(b), Aug. 17, 2006, 120 Stat. 998, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 109–280, title VIII, §829(b), Aug. 17, 2006, 120 Stat. 1002, 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, 2006.''

Pub. L. 109–280, title VIII, §845(c), Aug. 17, 2006, 120 Stat. 1015, provided that: ''The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions in taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §407(c), Dec. 21, 2005, 119 Stat. 2635, provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] 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(d)(1)–(3)(A) 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.

Pub. L. 107–16, title VI, §617(f), June 7, 2001, 115 Stat. 106, provided that: ''The amendments made by this section [enacting section 402A of this title and amending this section and sections 408A, 6047, and 6051 of this title] shall apply to taxable years beginning after December 31, 2005.''

Amendment by section 632(a)(3)(G) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, §636(b)(2), June 7, 2001, 115 Stat. 117, provided that: ''The amendment made by this subsection [amending this section] shall apply to distributions made after December 31, 2001.''

Pub. L. 107–16, title VI, §641(f), June 7, 2001, 115 Stat. 121, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 72, 219, 401, 403, 408, 415, 457, 3401, 3405, and 4973 of this title] shall apply to distributions after December 31, 2001.

''(2) REASONABLE NOTICE.—No penalty shall be imposed on a plan for the failure to provide the information required by the amendment made by subsection (c) [amending this section] with respect to any distribution made before the date that is 90 days after the date on which the Secretary of the Treasury issues a safe harbor rollover notice after the date of the enactment of this Act [June 7, 2001], if the administrator of such plan makes a reasonable attempt to comply with such requirement.

''(3) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as a note below] shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of any amendment made by this section.''

Amendment by section 643(a) of Pub. L. 107–16 applicable to distributions made after Dec. 31, 2001, see section 643(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

Pub. L. 107–16, title VI, §644(c), June 7, 2001, 115 Stat. 123, provided that: ''The amendments made by this section [amending this section and section 408 of this title] shall apply to distributions after December 31, 2001.''

Amendment by section 657(b) of Pub. L. 107–16 applicable to distributions made after Mar. 28, 2005, see section 657(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, §6005(c)(2)(C), July 22, 1998, 112 Stat. 800, provided that: ''The amendments made by this paragraph [amending this section and section 403 of this title] shall apply to distributions after December 31, 1998.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1501(c)(1) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1401(c) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 55, 62, 401, 406, 407, 691, 871, 877, and 4980A of this title] shall apply to taxable years beginning after December 31, 1999.

''(2) RETENTION OF CERTAIN TRANSITION RULES.—The amendments made by this section shall not apply to any distribution for which the taxpayer is eligible to elect the benefits of section 1122(h)(3) or (5) of the Tax Reform Act of 1986 [Pub. L. 99–514, set out below]. Notwithstanding the preceding sentence, individuals who elect such benefits after December 31, 1999, shall not be eligible for 5-year averaging under section 402(d) of the Internal Revenue Code of 1986 (as in effect immediately before such amendments).''

Amendment by section 1421(b)(3)(A), (9)(B) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1450(a)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1450(a)(3) of Pub. L. 104–188, set out in a Modifications of Subsection (b) of This Section note under section 403 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable 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, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 521(e) of Pub. L. 102–318 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 55, 62, 72, 219, 401, 403, 406 to 408, 411, 414, 415, 457, 691, 871, 877, 1441, 3121, 3306, 3405, 4973, 4980A, and 7701 of this title] shall apply to distributions after December 31, 1992.

''(2) SPECIAL RULE FOR PARTIAL DISTRIBUTIONS.—For purposes of section 402(a)(5)(D)(i)(II) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section), a distribution before January 1, 1993, which is made before or at the same time as a series of periodic payments shall not be treated as one of such series if it is not substantially equal in amount to other payments in such series.''

Amendment by section 522(c)(1) of Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7811(i)(13) of Pub. L. 101–239 provided that the amendment made by that section is effective with respect to taxable years ending after Dec. 19, 1989 (or, at the election of the taxpayer, beginning after Dec. 31, 1986).

Amendment by section 7811(g)(2) 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.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(c)(1)–(6)(B), (11), (h)(4), 1011A(a)(1), (b)(4)(A)–(D), (5)–(8), (10), (c)(9), and 1018(t)(8)(A), (C), (u)(1), (6), (7) 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 6068(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1984.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 104(b)(5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Section 1105(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(c)(8), (9), Nov. 10, 1988, 102 Stat. 3458, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) DEFERRALS UNDER 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 amendment made by subsection (a) shall not apply to contributions made pursuant to such an agreement for taxable years beginning before the earlier of—

''(A) the date on which such agreement terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1989.

Such contributions shall be taken into account for purposes of applying the amendment made by this section to other plans.

''(3) DISTRIBUTIONS MADE BEFORE PLAN AMENDMENT.—

''(A) IN GENERAL.—If a plan amendment is required to allow the plan to make any distribution described in section 402(g)(2)(A)(ii) 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 under section 401 of this title] 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 402(g)(2)(A)(ii) 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.

''(4) SPECIAL RULE FOR TAXABLE YEARS OF PARTNERSHIPS WHICH INCLUDE JANUARY 1, 1987.—In the case of the taxable year of any partnership which begins before January 1, 1987, and ends after January 1, 1987, elective deferrals (within the meaning of section 402(g)(3) of the Internal Revenue Code of 1986) made on behalf of a partner for such taxable year shall, for purposes of section 402(g)(3) of such Code, be treated as having been made ratably during such taxable year.

''(5) CASH OR DEFERRED ARRANGEMENTS.—The amendments made by this section [amending this section and section 6051 of this title] shall not apply to employer contributions made during 1987 and attributable to services performed during 1986 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) if, under the terms of such arrangement as in effect on August 16, 1986—

''(A) the employee makes an election with respect to such contribution before January 1, 1987, and

''(B) the employer identifies the amount of such contribution before January 1, 1987.

''(6) REPORTING REQUIREMENTS.—The amendments made by subsection (b) [amending section 6051 of this title] shall apply to calendar years beginning after December 31, 1986.''

Amendment by section 1106(c)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1106(i) of Pub. L. 99–514, set out as a note under section 415 of this title.

Amendment by section 1108(b) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1112(c) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1121(c)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Section 1122(h) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(b)(11)–(15), Nov. 10, 1988, 102 Stat. 3474, 3475, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 72, 403, and 408 of this title] shall apply to amounts distributed after December 31, 1986, in taxable years ending after such date.

''(2) SUBSECTION (c).—

''(A) SUBSECTION (c)(1).—The amendment made by subsection (c)(1) [amending section 72 of this title] shall apply to individuals whose annuity starting date is after July 1, 1986.

''(B) SUBSECTION (c)(2).—The amendment made by subsection (c)(2) [amending section 72 of this title] shall apply to individuals whose annuity starting date is after December 31, 1986, except that section 72(b)(3) of the Internal Revenue Code of 1986 (as added by such subsection) shall apply to individuals whose annuity starting date is after July 1, 1986.

''(C) SPECIAL RULE FOR AMOUNTS NOT RECEIVED AS ANNUITIES.—In the case of any plan not described in section 72(e)(8)(D) of the Internal Revenue Code of 1986 (as added by subsection (c)(3)), the amendments made by subsection (c)(3) [amending section 72 of this title] shall apply to amounts received after July 1, 1986.

''(3) SPECIAL RULE FOR INDIVIDUALS WHO ATTAINED AGE 50 BEFORE JANUARY 1, 1986.—

''(A) IN GENERAL.—In the case of a lump sum distribution to which this paragraph applies—

''(i) the existing capital gains provisions shall continue to apply, and

''(ii) the requirement of subparagraph (B) of section 402(e)(4) of the Internal Revenue Code of 1986 (as amended by subsection (a)) that the distribution be received after attaining age 59½ shall not apply.

''(B) COMPUTATION OF TAX.—If subparagraph (A) applies to any lump sum distribution of any taxpayer for any taxable year, the tax imposed by section 1 of the Internal Revenue Code of 1986 on such taxpayer for such taxable year shall be equal to the sum of—

''(i) the tax imposed by such section 1 on the taxable income of the taxpayer (reduced by the portion of such lump sum distribution to which clause (ii) applies), plus

''(ii) 20 percent of the portion of such lump sum distribution to which the existing capital gains provisions continue to apply by reason of this paragraph.

''(C) LUMP SUM DISTRIBUTIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any lump sum distribution if—

''(i) such lump sum distribution is received by an employee who has attained age 50 before January 1, 1986 or by an individual, estate, or trust with respect to such an employee, and

''(ii) the taxpayer makes an election under this paragraph.

Not more than 1 election may be made under this paragraph with respect to an employee. An election under this subparagraph shall be treated as an election under section 402(e)(4)(B) of such Code for purposes of such Code.

''(4) 5-YEAR PHASE-OUT OF CAPITAL GAINS TREATMENT.—

''(A) Notwithstanding the amendment made by subsection (b) [amending this section and section 403 of this title], if the taxpayer elects the application of this paragraph with respect to any distribution after December 31, 1986, and before January 1, 1992, the phase-out percentage of the amount which would have been treated, without regard to this subparagraph, as long-term capital gain under the existing capital gains provisions shall be treated as long-term capital gain.

''(B) For purposes of this paragraph—

''In the case of distributions during calendar year:	**The phase-out percentage is:**
1987	100
1988	95
1989	75
1990	50
1991	25.

''(C) No more than 1 election may be made under this paragraph with respect to an employee. An election under this paragraph shall be treated as an election under section 402(e)(4)(B) of the Internal Revenue Code of 1986 for purposes of such Code.

''(5) ELECTION OF 10-YEAR AVERAGING.—An employee who has attained age 50 before January 1, 1986, and elects the application of paragraph (3) or section 402(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act) may elect to have such section applied by substituting '10 times' for '5 times' and '1/10' for '1/5' in subparagraph (B) thereof. For purposes of the preceding sentence, section 402(e)(1) of such Code shall be applied by using the rate of tax in effect under section 1 of the Internal Revenue Code of 1954 for taxable years beginning during 1986 and by including in gross income the zero bracket amount in effect under section 63(d) of such Code for such years. This paragraph shall also apply to an individual, estate, or trust which receives a distribution with respect to an employee described in this paragraph.

''(6) EXISTING CAPITAL GAIN PROVISIONS.—For purposes of paragraphs (3) and (4), the term 'existing capital gains provisions' means the provisions of paragraph (2) of section 402(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) and paragraph (2) of section 403(a) of such Code (as so in effect).

''(7) SUBSECTION (d).—The amendments made by subsection (d) [amending section 403 of this title] shall apply to taxable years beginning after December 31, 1985.

''(8) FROZEN DEPOSITS.—The amendments made by subsection (e)(2) [amending this section and section 408 of this title] shall apply to amounts transferred to an employee before, on, or after the date of the enactment of this Act [Oct. 22, 1986], except that in the case of an amount transferred on or before such date, the 60-day period referred to in section 402(a)(5)(C) of the Internal Revenue Code of 1986 shall not expire before the 60th day after the date of the enactment of this Act.

''(9) SPECIAL RULE FOR STATE PLANS.—In the case of a plan maintained by a State which on May 5, 1986, permitted withdrawal by the employee of employee contributions (other than as an annuity), section 72(e) of the Internal Revenue Code of 1986 shall be applied—

''(A) without regard to the phrase 'before separation from service' in paragraph (8)(D), and

''(B) by treating any amount received (other than as an annuity) before or with the 1st annuity payment as having been received before the annuity starting date.''

Amendment by section 1852(a)(5)(A), (b)(1)–(7), (c)(5) 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 1854(f)(4)(C) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(c)(6)(C), Nov. 10, 1988, 102 Stat. 3458, provided that: ''The amendments made by paragraph (2) [amending this section] shall apply to any transaction occurring after December 31, 1984, except that in the case of any transaction occurring before the date of the enactment of this Act [Oct. 22, 1986], the period under which proceeds are required to be invested under section 402(j) of the Internal Revenue Code of 1954 [now 1986] (as added by paragraph (2)) shall not end before the earlier of 1 year after the date of such transaction or 180 days after the date of the enactment of this Act.''

Section 1875(c)(1)(B) of Pub. L. 99–514 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986]. Such amendments shall apply also to distributions after 1983 and on or before the date of the enactment of this Act to individuals who are not 5-percent owners (as defined in section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 [now 1986] (as amended by this paragraph)).''

Amendment by section 1898(a)(2), (3), (c)(7)(A)(i), (e) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1898(c)(1)(A) of Pub. L. 99–514 applicable to payments made after Oct. 22, 1986, see section 1898(c)(1)(C) of Pub. L. 99–514, set out as a note under section 72 of this title.

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 204 of Pub. L. 98–397 effective Jan. 1, 1985, and amendment by section 207 of Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, 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.

Amendment by section 491(d)(9)–(11) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Section 491(f)(2) of Pub. L. 98–369 provided that: ''The amendment made by subsection (c) [amending this section and section 405 of this title] shall apply to redemptions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Section 522(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, § 1852(b)(9), Oct. 22, 1986, 100 Stat. 2867, provided that: ''The amendments made by this section [amending this section and sections 403, 408, and 409 of this title] shall apply to distributions made after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date.

Section 713(c)(4) of Pub. L. 98–369, as added by Pub. L. 99–514, title XVIII, § 1875(c)(2), Oct. 22, 1986, 100 Stat. 2894, provided that: ''The amendment made by paragraph (3) [amending this section] shall apply to distributions after July 18, 1984.''

Amendment by section 1001(b)(3) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

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 1981 AMENDMENT

Amendment by section 311(b)(2), (3)(A), (c) of Pub. L. 97–34, applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

Section 314(c)(2) of Pub. L. 97–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 2(b) of Pub. L. 96–608, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to payments made in taxable years beginning after December 31, 1978.

''(2) TRANSITIONAL RULE.—In the case of any payment made before January 1, 1982, in a taxable year beginning after December 31, 1978, which is treated as a qualifying rollover distribution (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) by reason of the amendment made by subsection (a), the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1981.''

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

Amendment by section 101(d) of Pub. L. 95–600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95–600, set out as a note under section 1 of this title.

Amendment by section 135(b) of Pub. L. 95–600 applicable to plan years beginning after December 31, 1979, see section 135(c)(1) of Pub. L. 95–600, set out as a note under section 401 of this title.

Section 157(h)(3)(A) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 101(a)(14)(A), Apr. 1, 1980, 94 Stat. 204, provided that: ''The amendments made by this subsection [amending this section and section 408 of this title] shall apply to payments made in taxable years beginning after December 31, 1977.''

Section 157(f)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to qualifying rollover distributions (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) completed after December 31, 1978, in taxable years ending after such date.''

Section 157(g)(4) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and sections 403 and 408 of this title] shall apply to lump-sum distributions completed after December 31, 1978, in taxable years ending after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT; CERTAIN ROLLOVERS VALIDATED

Section 4(d) of Pub. L. 95–458, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending this section and section 403 of this title] shall apply with respect to taxable years beginning after December 31, 1974.

''(2) VALIDATION OF CERTAIN ATTEMPTED ROLLOVERS.—If the taxpayer—

''(A) attempted to comply with the requirements of section 402(a)(5) or 403(a)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning before the date of the enactment of this Act, [Oct. 14, 1978], and

''(B) failed to meet the requirements of such section that all property received in the distribution be transferred,

such section (as amended by this section) shall be applied by treating any transfer of property made on or before December 31, 1978, as if it were made on or before the 60th day after the day on which the taxpayer received such property. For purposes of the preceding sentence, a transfer of money shall be treated as a transfer of property received in a distribution to the extent that the amount of the money transferred does not exceed the highest fair market value of the property distributed during the 60-day period beginning on the date on which the taxpayer received such property.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Section 1512(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to distributions and payments made after December 31, 1975, in taxable years beginning after such date.''

Section 1901(a)(57)(C)(ii) of Pub. L. 94–455 provided that: ''The amendment made by clause (i) [amending this section] shall apply with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.''

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4,

1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2002(i)(3) of Pub. L. 93–406, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (g)(5) and (6) [amending this section and section 403 of this title] shall apply on and after the date of enactment of this Act [Sept. 2, 1974] with respect to contributions to an employees' trust described in section 401(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 an annuity plan described in section 403(a) of such Code.''

Section 2005(d) of Pub. L. 93–406 provided that: ''The amendments made by this section [amending this section and sections 46, 50A, 56, 62, 72, 101, 122, 403, 405, 406, 407, 871, 877, 901, 1304, and 1348 of this title] shall apply only with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 321(b)(1) of Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

Section 515(d) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and sections 72, 403, 405, 406, 407 and 1304 of this title] shall apply to taxable years ending after December 31, 1969.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 221(c)(1) of Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

Amendment by section 232(e)(1)–(3) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

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.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3 of Pub. L. 86–437 provided that: ''The amendments made by this Act [amending this section and section 871 of this title] shall apply only with respect to taxable years beginning after December 31, 1959.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CLARIFICATION OF DISQUALIFICATION RULES RELATING TO ACCEPTANCE OF ROLLOVER CONTRIBUTIONS

Section 1509 of Pub. L. 105–34 provided that: ''The Secretary of the Treasury or his delegate shall clarify that, under the Internal Revenue Service regulations protecting pension plans from disqualification by reason of the receipt of invalid rollover contributions under section 402(c) of the Internal Revenue Code of 1986, in order for the administrator of the plan receiving any such contribution to reasonably conclude that the contribution is a valid rollover contribution it is not necessary for the distributing plan to have a determination letter with respect to its status as a qualified plan under section 401 of such Code.''

MODEL EXPLANATION

Section 521(d) of Pub. L. 102–318 provided that: ''The Secretary of the Treasury or his delegate shall develop a model explanation which a plan administrator may provide to a recipient in order to meet the requirements of section 402(f) of the Internal Revenue Code of 1986.''

INCORPORATION BY REFERENCE OF SUBSECTION (g) LIMITATIONS

Section 1011(c)(10) of Pub. L. 100–647 provided that: ''Notwithstanding any other provision of law, a plan may incorporate by reference the dollar limitations under section 402(g) of the Internal Revenue Code of 1986.''

APPLICABILITY OF SUBSECTION (a)(5)(F)(ii)

Section 1011A(a)(5) of Pub. L. 100–647 provided that: ''Section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 shall not apply to distributions after October 22, 1986, and before the 1st taxable year beginning after 1986 which are attributable to benefits which accrued before January 1, 1985.''

APPLICABILITY OF SUBSECTION (a)(5)(D)(i)(II)

Section 1011A(b)(4)(E) of Pub. L. 100–647 provided that: ''Section 402(a)(5)(D)(i)(II) of the 1986 Code (as in effect after the amendment made by subparagraph (A)) shall not apply to distributions after December 31, 1986, and before March 31, 1988.''

ELECTION TO TREAT CERTAIN LUMP SUM DISTRIBUTIONS RECEIVED DURING 1987 AS RECEIVED DURING 1986

Section 1124 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(d), Nov. 10, 1988, 102 Stat. 3476, provided that:

''(a) IN GENERAL.—If an employee dies, separates from service, or becomes disabled before 1987 and an individual, trust, or estate receives a lump-sum distribution with respect to such employee after December 31, 1986, and before March 16, 1987, on account of such death, separation from service, or disability, then, for purposes of the Internal Revenue Code of 1986, such individual, estate, or trust may treat such distribution as if it were received in 1986.

''(b) SPECIAL RULE FOR TERMINATED PLAN.—In the case of an individual, estate, or trust who receives with respect to an employee a distribution from a terminated plan which was maintained by a corporation organized under the laws of the State of Nevada, the principal place of business of which is Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986, the individual, estate, or trust may treat a lump sum distribution received from such plan before June 30, 1987, as if it were received in 1986.

''(c) LUMP SUM DISTRIBUTION.—For purposes of this section, the term 'lump sum distribution' has the meaning given such term by section 402(e)(4)(A) of the Internal Revenue Code of 1986, without regard to subparagraph (B) or (H) of section 402(e)(4) of such Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L.

104–188 require 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 Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN DISTRIBUTIONS FROM QUALIFIED TERMINATED PLAN

Section 551 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 the Internal Revenue Code [of] 1986 [formerly I.R.C. 1954], if—

''(1) a distribution was made from a qualified terminated plan to an employee on December 16, 1976, and on January 6, 1977, such employee transferred all of the property received in such distribution to an individual retirement account (within the meaning of section 408(a) of such Code) established for the benefit of such employee, and

''(2) the remaining balance to the credit of such employee in such qualified terminated plan was distributed to such employee on January 21, 1977, and all the property received by such employee in such distribution was transferred by such employee to such individual retirement account on January 21, 1977,

then such distributions shall be treated as qualifying rollover distributions (within the meaning of section 402(a)(5) of such Code) and shall not be includible in the gross income of such employee for the taxable year in which paid.

''(b) QUALIFIED TERMINATED PLAN.—For purposes of this section, the term 'qualified terminated plan' means a pension plan—

''(1) with respect to which a notice of sufficiency was issued by the Pension Benefit Guaranty Corporation on December 2, 1976, and

''(2) which was terminated by corporate action on February 20, 1976.

''(c) REFUND OR CREDIT OF OVERPAYMENT BARRED BY STATUTE OF LIMITATIONS.—Notwithstanding section 6511(a) of the Internal Revenue Code of 1986 or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of enactment of this Act [July 18, 1984]. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period.''

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES

Section 157(h)(3)(B) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 101(a)(14)(A), (D), Apr. 1, 1980, 94 Stat. 204, 205; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any payment made during 1978 which is described in section 402(a)(5)(A) or 403(a)(4)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by reason of the amendments made by this subsection [amending sections 402 and 408 of this title], the applicable period specified in section 402(a)(5)(C) of such Code (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B) of such code) shall not expire before the close of December 31, 1980.''

TRANSITIONAL RULES RELATING TO PERIOD FOR ROLLOVER CONTRIBUTION

Section 1(d) of Pub. L. 94–267, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—

''(A) PERIOD FOR ROLLOVER CONTRIBUTION.—In the case of a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] or section 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act [Apr. 15, 1976] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to distributions of the balance to the credit of the employee) which is contributed by an employee after the date of the enactment of this Act [Apr. 15, 1976] to a trust, plan, account, annuity, or bond described in section 402(a)(5)(B) or 403(a)(4)(B) of such Code, the applicable period specified in section 402(a)(5)(B) or 403(a)(4)(B) of such Code (relating to rollover distributions to another plan or retirement account) shall not expire before December 31, 1976.

''(B) TIME OF CONTRIBUTION.—

(i) GENERAL RULE.—If the initial portion of a payment the applicable period for which is determined under subparagraph (A) is contributed before December 31, 1976, by an individual to a trust, plan, account, annuity, or bond described in subparagraph (A) and the remaining portion of such payment is contributed by such individual to such a trust, plan, account, annuity, or bond not later than 30 days after the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 of the Internal Revenue Code of 1986 with respect to the contribution, then, for purposes of subparagraph (A) and sections 402(a)(5) and 403(a)(4) of such Code, at the election of the individual (made in accordance with regulations prescribed by the Secretary or his delegate), such remaining portion shall be considered to have been contributed on the date the initial portion of the payment was contributed. For purposes of this subparagraph, the initial portion of a payment is the amount by which such payment exceeds the amount of the tax imposed on such payment by chapter 1 of such Code (determined without regard to this subparagraph). [chapter 1 of this title]

''(ii) REGULATIONS.—For purposes of this subparagraph, the tax imposed on a payment by chapter 1 of the Internal Revenue Code of 1986, and the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 with respect to a contribution, shall be determined under regulations prescribed by the Secretary of the Treasury or his delegate.

''(C) PERIOD OF LIMITATIONS.—If an individual has made the election provided by subparagraph (B), then—

''(i) the period provided by the Internal Revenue Code of 1986 for the assessment of any deficiency for the taxable year in which the payment described in subparagraph (A) was made and each subsequent taxable year for which tax is determined by reference to the treatment of such payment under such Code or the status under such Code of any trust, plan, account, annuity, or bond described in subparagraph (A) shall, to the extent attributable to such treatment, not expire before the expiration of 3 years from the date the Sec-

retary of the Treasury or his delegate is notified by the individual (in such manner as the Secretary of the Treasury or his delegate may prescribe) that such individual has made (or failed to make) the contribution of the remaining portion of the payment within the period specified in subparagraph (B)(i), and

''(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) of such Code or the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(2) ROLLOVER CONTRIBUTION FOR CERTAIN PROPERTY SOLD.—Sections 402(a)(5)(C) and 403(a)(4)(C) of the Internal Revenue Code of 1986 (relating to the requirement that rollover amount must consist of property received in a distribution) shall not apply with respect to that portion of the property received in a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act [Apr. 15, 1976] or 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] of such Code which is sold or exchanged by the employee on or before the date of the enactment of this Act, [Apr. 15, 1976], if the employee transfers an amount of cash equal to the proceeds received from the sale or exchange of such property in excess of the amount considered contributed by the employee (within the meaning of section 402(a)(4)(D)(i) of such Code).

''(3) NONRECOGNITION OF GAIN OR LOSS.—For purposes of the Internal Revenue Code of 1986 [this title] no gain or loss shall be recognized with respect to the sale or exchange of property described in paragraph (2) if the proceeds of such sale or exchange are transferred by an employee in accordance with this subsection and the applicable provisions of section 402(a)(5) or 403(a)(4) of such Code.''

§ 402A. Optional treatment of elective deferrals as Roth contributions

(a) General rule

If an applicable retirement plan includes a qualified Roth contribution program—

(1) any designated Roth contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income, and

(2) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

(b) Qualified Roth contribution program

For purposes of this section—

(1) In general

The term ''qualified Roth contribution program'' means a program under which an employee may elect to make designated Roth contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make under the applicable retirement plan.

(2) Separate accounting required

A program shall not be treated as a qualified Roth contribution program unless the applicable retirement plan—

(A) establishes separate accounts (''designated Roth accounts'') for the designated Roth contributions of each employee and any earnings properly allocable to the contributions, and

(B) maintains separate recordkeeping with respect to each account.

(c) Definitions and rules relating to designated Roth contributions

For purposes of this section—

(1) Designated Roth contribution

The term ''designated Roth contribution'' means any elective deferral which—

(A) is excludable from gross income of an employee without regard to this section, and

(B) the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.

(2) Designation limits

The amount of elective deferrals which an employee may designate under paragraph (1) shall not exceed the excess (if any) of—

(A) the maximum amount of elective deferrals excludable from gross income of the employee for the taxable year (without regard to this section), over

(B) the aggregate amount of elective deferrals of the employee for the taxable year which the employee does not designate under paragraph (1).

(3) Rollover contributions

(A) In general

A rollover contribution of any payment or distribution from a designated Roth account which is otherwise allowable under this chapter may be made only if the contribution is to—

(i) another designated Roth account of the individual from whose account the payment or distribution was made, or

(ii) a Roth IRA of such individual.

(B) Coordination with limit

Any rollover contribution to a designated Roth account under subparagraph (A) shall not be taken into account for purposes of paragraph (1).

(d) Distribution rules

For purposes of this title—

(1) Exclusion

Any qualified distribution from a designated Roth account shall not be includible in gross income.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term ''qualified distribution'' has the meaning given such term by section 408A(d)(2)(A) (without regard to clause (iv) thereof).

(B) Distributions within nonexclusion period

A payment or distribution from a designated Roth account shall not be treated as a qualified distribution if such payment or distribution is made within the 5-taxable-year period beginning with the earlier of—

(i) the first taxable year for which the individual made a designated Roth contribution to any designated Roth account established for such individual under the same applicable retirement plan, or

(ii) if a rollover contribution was made to such designated Roth account from a designated Roth account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated Roth contribution to such previously established account.

(C) Distributions of excess deferrals and contributions and earnings thereon

The term ''qualified distribution'' shall not include any distribution of any excess deferral under section 402(g)(2) or any excess contribution under section 401(k)(8), and any income on the excess deferral or contribution.

(3) Treatment of distributions of certain excess deferrals

Notwithstanding section 72, if any excess deferral under section 402(g)(2) attributable to a designated Roth contribution is not distributed on or before the 1st April 15 following the close of the taxable year in which such excess deferral is made, the amount of such excess deferral shall—

(A) not be treated as investment in the contract, and

(B) be included in gross income for the taxable year in which such excess is distributed.

(4) Aggregation rules

Section 72 shall be applied separately with respect to distributions and payments from a designated Roth account and other distributions and payments from the plan.

(e) Other definitions

For purposes of this section—

(1) Applicable retirement plan

The term ''applicable retirement plan'' means—

(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a), and

(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

(2) Elective deferral

The term ''elective deferral'' means any elective deferral described in subparagraph (A) or (C) of section 402(g)(3).

(Added Pub. L. 107–16, title VI, § 617(a), June 7, 2001, 115 Stat. 103.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 402 of this title.

§ 403. Taxation of employee annuities

(a) Taxability of beneficiary under a qualified annuity plan

(1) Distributee taxable under section 72

If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).

(2) Special rule for health and long-term care insurance

To the extent provided in section 402(*l*), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

(3) Self-employed individuals

For purposes of this subsection, the term ''employee'' includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(4) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7) and (11) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

(5) Direct trustee-to-trustee transfer

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

(b) Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school

(1) General rule

If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1) (A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing, or

(iii) for the minister described in section 414(e)(5)(A) by the minister or by an employer,

(B) such annuity contract is not subject to subsection (a),

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), and

(E) in the case of a contract purchased under a salary reduction agreement, the contract meets the requirements of section 401(a)(30),

then contributions and other additions by such employer for such annuity contract shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such contributions and additions (when expressed as an annual addition (within the meaning of section 415(c)(2))) does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to contributions and other additions by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.

(2) Special rule for health and long-term care insurance

To the extent provided in section 402(*l*), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

(3) Includible compensation

For purposes of this subsection, the term ''includible compensation'' means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service, and which precedes the taxable year by no more than five years. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies. Such term includes—

(A) any elective deferral (as defined in section 402(g)(3)), and

(B) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

(4) Years of service

In determining the number of years of service for purposes of this subsection, there shall be included—

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) Application to more than one annuity contract

If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

[(6) Repealed. Pub. L. 107–147, title IV, §411(p)(2), Mar. 9, 2002, 116 Stat. 50]

(7) Custodial accounts for regulated investment company stock

(A) Amounts paid treated as contributions

For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if—

(i) the amounts are to be invested in regulated investment company stock to be held in that custodial account, and

(ii) under the custodial account no such amounts may be paid or made available to any distributee (unless such amount is a distribution to which section 72(t)(2)(G) applies) before the employee dies, attains age 59½, has a severance from employment, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), encounters financial hardship.

(B) Account treated as plan

For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

(C) Regulated investment company

For purposes of this paragraph, the term ''regulated investment company'' means a domestic corporation which is a regulated investment company within the meaning of section 851(a).

(8) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such dis-

tribution to an eligible retirement plan described in section 402(c)(8)(B), and

(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7), (9), and (11) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.

(9) Retirement income accounts provided by churches, etc.

(A) Amounts paid treated as contributions

For purposes of this title—

(i) a retirement income account shall be treated as an annuity contract described in this subsection, and

(ii) amounts paid by an employer described in paragraph (1)(A) to a retirement income account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained.

(B) Retirement income account

For purposes of this paragraph, the term ''retirement income account'' means a defined contribution program established or maintained by a church, or a convention or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under section 403(b) for an employee described in paragraph (1) or his beneficiaries.

(10) Distribution requirements

Under regulations prescribed by the Secretary, this subsection shall not apply to any annuity contract (or to any custodial account described in paragraph (7) or retirement income account described in paragraph (9)) unless requirements similar to the requirements of sections 401(a)(9) and 401(a)(31) are met (and requirements similar to the incidental death benefit requirements of section 401(a) are met) with respect to such annuity contract (or custodial account or retirement income account). Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.

(11) Requirement that distributions not begin before age 59½, severance from employment, death, or disability

This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

(A) when the employee attains age 59½, has a severance from employment, dies, or becomes disabled (within the meaning of section 72(m)(7)),

(B) in the case of hardship, or

(C) for distributions to which section 72(t)(2)(G) applies.

Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

(12) Nondiscrimination requirements

(A) In general

For purposes of paragraph (1)(D), a plan meets the nondiscrimination requirements of this paragraph if—

(i) with respect to contributions not made pursuant to a salary reduction agreement, such plan meets the requirements of paragraphs (4), (5), (17), and (26) of section 401(a), section 401(m), and section 410(b) in the same manner as if such plan were described in section 401(a), and

(ii) all employees of the organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations. For purposes of clause (ii), there may be excluded any employee who is a participant in an eligible deferred compensation plan (within the meaning of section 457) or a qualified cash or deferred arrangement of the organization or another annuity contract described in this subsection. Any nonresident alien described in section 410(b)(3)(C) may also be excluded. Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week.

(B) Church

For purposes of paragraph (1)(D), the term ''church'' has the meaning given to such term by section 3121(w)(3)(A). Such term shall include any qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(C) State and local governmental plans

For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) (other than those relating to section 401(a)(17)) shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).

(13) Trustee-to-trustee transfers to purchase permissive service credit

No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

(14) Death benefits under USERRA-qualified active military service

This subsection shall not apply to an annuity contract unless such contract meets the requirements of section 401(a)(37).

(c) Taxability of beneficiary under nonqualified annuities or under annuities purchased by exempt organizations

Premiums paid by an employer for an annuity contract which is not subject to subsection (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 such contract shall be substituted for the fair market value of the property for purposes of applying such section. The preceding sentence shall not apply to that portion of the premiums paid which is excluded from gross income under subsection (b). In the case of any portion of any contract which is attributable to premiums to which this subsection applies, the amount actually paid or made available under such contract to any beneficiary which is attributable to such premiums shall be taxable to the beneficiary (in the year in which so paid or made available) under section 72 (relating to annuities).

(Aug. 16, 1954, ch. 736, 68A Stat. 137; Pub. L. 85–866, title I, §23(a)–(c), Sept. 2, 1958, 72 Stat. 1620–1622; Pub. L. 87–370, §3(a), Oct. 4, 1961, 75 Stat. 801; Pub. L. 87–792, §4(d), Oct. 10, 1962, 76 Stat. 825; Pub. L. 88–272, title II, §232(e)(4)–(6), Feb. 26, 1964, 78 Stat. 111; Pub. L. 91–172, title III, §321(b)(2), title V, §515(a)(2), Dec. 30, 1969, 83 Stat. 591, 644; Pub. L. 93–406, title II, §§1022(e), 2002(g)(6), 2004(c)(4), 2005(b)(2), Sept. 2, 1974, 88 Stat. 940, 969, 986, 991; Pub. L. 94–267, §1(b), Apr. 15, 1976, 90 Stat. 366; Pub. L. 94–455, title XIV, §1402(b)(1)(D), (2), title XV, §1504(a), title XIX, §§1901(a)(58), (b)(8)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1731, 1732, 1738, 1774, 1794, 1834; Pub. L. 95–458, §4(b), Oct. 14, 1978, 92 Stat. 1259; Pub. L. 95–600, title I, §§154(a), 156(a), (b), 157(g)(2), Nov. 6, 1978, 92 Stat. 2801, 2802, 2808; Pub. L. 96–222, title I, §101(a)(12), (13)(C), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §311(b)(3)(B), Aug. 13, 1981, 95 Stat. 280; Pub. L. 97–248, title II, §251(a), (b), (c)(3), Sept. 3, 1982, 96 Stat. 529–531; Pub. L. 97–448, title I, §103(c)(8)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–21, title I, §122(c)(4), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title IV, §491(d)(12), title V, §§521(c), 522(a)(2), (3), (d)(9)–(11), title X, §1001(b)(4), (e), July 18, 1984, 98 Stat. 849, 867, 869–871, 1011, 1012; Pub. L. 99–514, title XI, §§1120(a), (b), 1122(b)(1)(B), (d), 1123(c), title XVIII, §1852(a)(3)(A), (B), (5)(B), (b)(10), Oct. 22, 1986, 100 Stat. 2463, 2466, 2469, 2474, 2865, 2867; Pub. L. 100–647, title I, §1011(c)(7)(B), (12), (m)(1), (2), title VI, §6052(a)(1), Nov. 10, 1988, 102 Stat. 3458, 3459, 3471, 3696; Pub. L. 101–508, title XI, §11701(k), Nov. 5, 1990, 104 Stat. 1388–513; Pub. L. 102–318, title V, §§521(b)(12), (13), 522(a)(3), (c)(2), (3), July 3, 1992, 106 Stat. 311, 314, 315; Pub. L. 104–188, title I, §§1450(c)(1), 1704(t)(69), Aug. 20, 1996, 110 Stat. 1815, 1891; Pub. L. 105–34, title XV, §§1504(a)(1), 1505(c), title XVI, §1601(d)(6)(B), Aug. 5, 1997, 111 Stat. 1063, 1064, 1090; Pub. L. 105–206, title VI, §6005(c)(2)(B), July 22, 1998, 112 Stat. 800; Pub. L. 106–554, §1(a)(7) [title III, §314(e)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§632(a)(2), 641(b)(1), (e)(7), 642(b)(1), 646(a)(2), 647(a), June 7, 2001, 115 Stat. 113, 120, 121, 126, 127; Pub. L. 107–147, title IV, §411(p)(1)–(3), Mar. 9, 2002, 116 Stat. 49, 50; Pub. L. 108–311, title IV, §§404(e), 408(a)(11), Oct. 4, 2004, 118 Stat. 1188, 1191; Pub. L. 109–135, title IV, §412(w), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–280, title VIII, §§827(b)(2), (3), 829(a)(2), (3), 845(b)(1), (2), Aug. 17, 2006, 120 Stat. 1000, 1002, 1015; Pub. L. 110–245, title I, §104(c)(2), June 17, 2008, 122 Stat. 1627.)

AMENDMENTS

2008—Subsec. (b)(14). Pub. L. 110–245 added par. (14).

2006—Subsec. (a)(2). Pub. L. 109–280, §845(b)(1), added par. (2).

Subsec. (a)(4)(B). Pub. L. 109–280, §829(a)(2), inserted ''and (11)'' after ''(7)''.

Subsec. (b)(2). Pub. L. 109–280, §845(b)(2), added par. (2).

Subsec. (b)(7)(A)(ii). Pub. L. 109–280, §827(b)(2), inserted ''(unless such amount is a distribution to which section 72(t)(2)(G) applies)'' after ''distributee''.

Subsec. (b)(8)(B). Pub. L. 109–280, §829(a)(3), substituted '', (9), and (11)'' for ''and (9)''.

Subsec. (b)(11)(C). Pub. L. 109–280, §827(b)(3), added subpar. (C).

2005—Subsec. (b)(9)(B). Pub. L. 109–135 inserted ''or'' before ''a convention''.

2004—Subsec. (a)(4)(B). Pub. L. 108–311, §404(e), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A).''

Subsec. (b)(7)(A)(ii). Pub. L. 108–311, §408(a)(11), substituted ''3121(a)(5)(D)'' for ''3121(a)(1)(D)''.

2002—Subsec. (b)(1). Pub. L. 107–147, §411(p)(1), inserted concluding provisions and struck out former concluding provisions which read as follows: ''then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.''

Subsec. (b)(3). Pub. L. 107–147, §411(p)(3), in first sentence, inserted '', and which precedes the taxable year by no more than five years'' before period at end and, in second sentence, struck out ''or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated'' after ''this subsection applies''.

Subsec. (b)(6). Pub. L. 107–147, § 411(p)(2), struck out heading and text of par. (6). Text read as follows: ''For purposes of this subsection and section 72(f) (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.''

2001—Subsec. (b)(1). Pub. L. 107–16, § 642(b)(1), substituted ''section 408(d)(3)(A)(ii)'' for ''section 408(d)(3)(A)(iii)'' in concluding provisions.

Pub. L. 107–16, § 632(a)(2)(A), substituted ''the applicable limit under section 415'' for ''the exclusion allowance for such taxable year'' in concluding provisions.

Subsec. (b)(2). Pub. L. 107–16, § 632(a)(2)(B), struck out par. (2), which described exclusion allowance for purposes of subsec. (b) providing general criteria, determination under section 415 rules, number of years of service for duly ordained, commissioned, or licensed ministers or lay employees, and alternative exclusion allowance for such ministers or lay employees.

Subsec. (b)(3). Pub. L. 107–16, § 632(a)(2)(C), inserted ''or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated'' before period at end of second sentence.

Subsec. (b)(7)(A)(ii). Pub. L. 107–16, § 646(a)(2)(A), substituted ''has a severance from employment'' for ''separates from service''.

Subsec. (b)(8)(A)(ii). Pub. L. 107–16, § 641(b)(1), substituted ''such distribution to an eligible retirement plan described in section 402(c)(8)(B), and'' for ''such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and''.

Subsec. (b)(8)(B). Pub. L. 107–16, § 641(e)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Rules similar to the rules of paragraphs (2) through (7) of section 402(c) (including paragraph (4)(C) thereof) shall apply for purposes of subparagraph (A).''

Subsec. (b)(11). Pub. L. 107–16, § 646(a)(2)(B), substituted ''severance from employment'' for ''separation from service'' in heading.

Subsec. (b)(11)(A). Pub. L. 107–16, § 646(a)(2)(A), substituted ''has a severance from employment'' for ''separates from service''.

Subsec. (b)(13). Pub. L. 107–16, § 647(a), added par. (13).

2000—Subsec. (b)(3)(B). Pub. L. 106–554 substituted ''section 125, 132(f)(4), or'' for ''section 125 or''.

1998—Subsec. (b)(8)(B). Pub. L. 105–206 inserted ''(including paragraph (4)(C) thereof)'' after ''section 402(c)''.

1997—Subsec. (b)(1)(A)(iii). Pub. L. 105–34, § 1601(d)(6)(B), added cl. (iii).

Subsec. (b)(3). Pub. L. 105–34, § 1504(a)(1), inserted at end ''Such term includes—'' and subpars. (A) and (B).

Subsec. (b)(12)(C). Pub. L. 105–34, § 1505(c), added subpar. (C).

1996—Subsec. (b)(1)(E). Pub. L. 104–188, § 1450(c)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30),''.

Subsec. (b)(10). Pub. L. 104–188, § 1704(t)(69), substituted ''a direct'' for ''an direct'' in last sentence.

1992—Subsec. (a)(4)(A)(i). Pub. L. 102–318, § 521(b)(12)(A), inserted before comma at end ''in an eligible rollover distribution (within the meaning of section 402(c)(4))''.

Subsec. (a)(4)(B). Pub. L. 102–318, § 521(b)(12)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Rules similar to the rules of subparagraphs (B) through (G) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).''

Subsec. (a)(5). Pub. L. 102–318, § 522(c)(2), added par. (5).

Subsec. (b)(8)(A)(i). Pub. L. 102–318, § 521(b)(13)(A), inserted before comma at end ''in an eligible rollover distribution (within the meaning of section 402(c)(4))''.

Subsec. (b)(8)(B) to (D). Pub. L. 102–318, § 521(b)(13)(B), added subpar. (B) and struck out former subpars. (B) to (D), which related to special rules for partial distributions, applicability of certain similar rules, and eligibility for rollover treatment of required distributions.

Subsec. (b)(10). Pub. L. 102–318, § 522(a)(3), (c)(3), substituted ''sections 401(a)(9) and 401(a)(31)'' for ''section 401(a)(9)'' and inserted at end ''Any amount transferred in an direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.''

1990—Subsec. (b)(12)(A). Pub. L. 101–508 inserted ''involving a one-time irrevocable election'' after ''similar arrangement'' in second sentence.

1988—Subsec. (b)(1)(D). Pub. L. 100–647, § 1011(m)(1)(B), substituted ''paragraph (12)'' for ''paragraph (10)''.

Subsec. (b)(1)(E). Pub. L. 100–647, § 1011(c)(7)(B), added subpar. (E).

Subsec. (b)(10). Pub. L. 100–647, § 1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12). Pub. L. 100–647, § 1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12)(A). Pub. L. 100–647, § 1011(m)(2), inserted ''(17),'' after ''paragraphs (4), (5),'' and '', section 401(m),'' after ''of section 401(a)'' in cl. (i).

Pub. L. 100–647, § 1011(c)(12), inserted after cl. (ii) ''For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations.''

Pub. L. 100–647, § 6052(a)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''For purposes of this subparagraph, students who normally work less than 20 hours per week may (subject to the conditions applicable under section 410(b)(4)) be excluded.''

1986—Subsec. (a)(1). Pub. L. 99–514, § 1122(d)(1), substituted ''Distributee taxable under section 72'' for ''General rule'' in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).''

Subsec. (a)(2). Pub. L. 99–514, § 1122(b)(1)(B), struck out par. (2) which read as follows:

''(A) General rule

''If—

''(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

''(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

''(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribu-

tion shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

''(B) Cross reference

''For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).''

Subsec. (a)(4)(B). Pub. L. 99–514, §1852(a)(5)(B)(i), substituted ''through (G)'' for ''through (F)''.

Subsec. (b)(1). Pub. L. 99–514, §1122(d)(2), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities)''.

Subsec. (b)(1)(D). Pub. L. 99–514, §1120(a), added subpar. (D).

Subsec. (b)(7)(A)(ii). Pub. L. 99–514, §1123(c)(2), inserted ''in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)),'' after ''section 72(m)(7)), or''.

Subsec. (b)(7)(D). Pub. L. 99–514, §1852(a)(3)(B), struck out subpar. (D) ''Distribution requirements'' which read as follows: ''For purposes of determining when the interest of an employee in a custodial account must be distributed, such account shall be treated in the same manner as an annuity contract.''

Subsec. (b)(8)(C). Pub. L. 99–514, §1852(b)(10), inserted ''and'' before ''(F)(i)''.

Subsec. (b)(8)(D). Pub. L. 99–514, §1852(a)(5)(B)(ii), added subpar. (D).

Subsec. (b)(10). Pub. L. 99–514, §1120(b), added par. (10) relating to nondiscrimination requirements.

Pub. L. 99–514, §1852(a)(3)(A), added par. (10) relating to distribution requirements.

Subsec. (b)(11). Pub. L. 99–514, §1123(c)(1), added par. (11).

Subsec. (c). Pub. L. 99–514, §1122(d)(3), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The amount actually paid or made available to any beneficiary under such contract shall be taxable to him in the year in which so paid or made available under section 72 (relating to annuities).''

1984—Subsec. (a)(2)(A). Pub. L. 98–369, §1001(b)(4), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (a)(4)(A)(i). Pub. L. 98–369, §522(a)(2), substituted ''any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him,'' for ''the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in a qualifying rollover distribution.''

Subsec. (a)(4)(B). Pub. L. 98–369, §522(d)(9), substituted ''(B) through (F)'' for ''(B) through (E)''.

Subsec. (b)(1). Pub. L. 98–369, §491(d)(12), struck out ''or 409(b)(3)(C)'' after ''408(d)(3)(A)(iii)''.

Subsec. (b)(7)(D). Pub. L. 98–369, §521(c), added subpar. (D).

Subsec. (b)(8)(A)(i). Pub. L. 98–369, §522(a)(3), substituted ''any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him'' for ''the balance to the credit of an employee is paid to him in a qualifying distribution''.

Subsec. (b)(8)(B). Pub. L. 98–369, §522(d)(10), substituted provisions relating to special rules for partial distributions for provisions relating to definition of qualifying distributions.

Subsec. (b)(8)(C). Pub. L. 98–369, §522(d)(11), substituted ''(F)(i)'' for ''(D)(v), and (E)(i)''.

1983—Subsec. (b)(3). Pub. L. 98–21 substituted ''section 911'' for ''sections 105(d) and 911''.

Subsec. (b)(8)(C). Pub. L. 97–448 substituted ''subparagraphs (B), (C), (D)(v), and (E)(i) of section 402(a)(5)'' for ''subparagraphs (B), (C), and (E)(i) of section 402(a)(5)''.

1982—Subsec. (b)(2)(B). Pub. L. 97–248, §251(a)(1), (c)(3), substituted ''home health service agencies, and certain churches, etc.'' for ''and home health service agencies'', and ''(under section 415 without regard to section 415(c)(8))'' for ''(under section 415)''.

Subsec. (b)(2)(C), (D). Pub. L. 97–248, §251(a)(2), added subpars. (C) and (D).

Subsec. (b)(9). Pub. L. 97–248, §251(b), added par. (9).

1981—Subsec. (b)(8)(B)(i). Pub. L. 97–34 inserted '', or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(*o*)(5))'' after ''subsection (a)''.

1980—Subsec. (b). Pub. L. 96–222 substituted in par. (1) ''409(b)(3)(C)'' for ''409(d)(3)(C)'', and in par. (7)(A) ''which satisfies'' for ''which satisfied''.

1978—Subsec. (a)(4). Pub. L. 95–600, §157(g)(2), in subpar. (B) substituted ''paragraphs (6) and (7)'' for ''paragraph (6)''.

Pub. L. 95–458, among other changes, substituted provision permitting tax free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5). Pub. L. 95–458 struck out par. (5) which related to special rules concerning time of termination of a profit-sharing plan and the treatment of the sale of a corporate subsidiary or assets as payment or distribution on account of termination of a plan of which an annuity trust was a part.

Subsec. (b)(1). Pub. L. 95–600, §156(b), inserted provision relating to application of rules of this subsection to amounts contributed by an employer for a taxable year.

Subsec. (b)(7)(A). Pub. L. 95–600, §154(a), struck out ''the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account'' after ''contract for his employee if'', and added cls. (i) and (ii).

Subsec. (b)(8). Pub. L. 95–600, §156(a), added par. (8).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b) (1)(D), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (a)(4). Pub. L. 94–455, §1901(a)(58), reenacted provisions following subpar. (C) without substantive change.

Pub. L. 94–267, §1(b)(2), substituted ''a payment'' for ''the lump-sum distribution''.

Subsec. (a)(4)(A). Pub. L. 94–267, §1(b)(1), restructured provisions by adding cl. (i) and designating existing provision as cl. (ii).

Subsec. (a)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Pub. L. 94–267, §1(b)(3), added par. (5).

Subsec. (b)(1)(A)(ii). Pub. L. 94–455, §1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))''.

Subsec. (b)(4)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(7)(C). Pub. L. 94–455, §1504(a), struck out '', and which issues only redeemable stock'' after ''regulated investment company within the meaning of section 851(a)''.

1974—Subsec. (a)(2). Pub. L. 93–406, §2005(b)(2), substituted ''a lump sum distribution (as defined in section 4002(e)(4)(A)) is paid to the recipient'' for ''the total amounts payable by reason of an employee's death or other separation from the service, or by reason of the death of an employee after the employee's separation from the service, are paid to the payee within one taxable year of the payee'' as cl. (iii) of subpar. (A), substituted ''so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For pur-

poses of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph'' for ''then the amount of such payments, to the extent exceeding the amount contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore paid to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. This subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1)'' following cl. (iii) of subpar. (A), substituted provisions setting out a cross reference to section 402(e) for provisions defining ''total amounts'' as subpar. (B), and struck out subpar. (C) setting out limitations on capital gains treatment.

Subsec. (a)(4). Pub. L. 93–406, § 2002(g)(6), added par. (4).

Subsec. (b)(2). Pub. L. 93–406, § 2004(c)(4), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(7). Pub. L. 93–406, § 1022(e), added par. (7).

1969—Subsec. (a)(2)(C). Pub. L. 91–172, § 515(a)(2), added subpar. (C).

Subsec. (c). Pub. L. 91–172, § 321(b)(2), consolidated provisions of subsec. (c) providing for taxability of beneficiary under a nonqualified annuity, the employees gross income to include amount contributed by employer for annuity contract in the year in which amount is contributed, the amount to be included as provided in section 72 of this title and of subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, the gross income to include amount contributed by employer after Dec. 31, 1957, in the year of change from forfeitable to nonforfeitable rights, the new provisions including premiums paid by an employer in accordance with section 83, except that value of the contract shall be substituted for fair market value of the property for purposes of applying such section 83, such provision not to be applicable to that portion of premiums paid which is excluded from gross income under subsec. (b) of this section.

Subsec. (d). Pub. L. 91–172, § 321(b)(2), struck out subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, gross income of the employee to include (amount contributed by employer after Dec. 31, 1957), in year of change from forfeitable to nonforfeitable rights. See subsec. (c) of this section.

1964—Subsecs. (a)(1), (b)(1), (c). Pub. L. 88–272, § 232(e)(4)–(6), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

1962—Subsec. (a)(2)(A). Pub. L. 87–792, § 4(d)(1), (2), substituted ''described in paragraph (1)'' for ''which meets the requirements of section 401(a)(3), (4), (5), and (6)'' in cl. (i), and inserted sentence at end thereof providing that this subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

Subsec. (a)(3). Pub. L. 87–792, § 4(d)(3), added par. (3).

1961—Subsec. (b). Pub. L. 87–370, § 3(a)(3), inserted ''or public school'' in heading.

Subsec. (b)(1)(A). Pub. L. 87–370, § 3(a)(1), included annuity contracts purchased for an employee, other than one described in clause (i) of this subpar., who performs services for an educational institution, as defined in section 151(e)(4) of this title, by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of either.

Subsec. (b)(3). Pub. L. 87–370, § (3)(a)(2), substituted ''the employer described in paragraph (1)(A)'' for ''the employer described in section 501(c)(3) and exempt from tax under section 501(a)''.

1958—Subsec. (a)(1). Pub. L. 85–866, § 23(b), substituted ''which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section),'' for ''with respect to which the employer's contribution is deductible under section 404(a)(2), or if an annuity contract is purchased for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),''.

Subsecs. (b) to (d). Pub. L. 85–866, § 23(a), added subsec. (b), redesignated former subsec. (b) as (c), and added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 827(b)(2), (3) 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.

Amendment by section 829(a)(2), (3) of Pub. L. 109–280 applicable to distributions after Dec. 31, 2006, see section 829(b) of Pub. L. 109–280, set out as a note under section 402 of this title.

Amendment by section 845(b)(1), (2) of Pub. L. 109–280 applicable to distributions in taxable years beginning after Dec. 31, 2006, see section 845(c) of Pub. L. 109–280, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(e) of Pub. L. 108–311 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 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

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 632(a)(2) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Amendment by section 641(b)(1), (e)(7) 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.

Amendment by section 642(b)(1) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 642(c) of Pub. L. 107–16, set out as a note under section 408 of this title.

Amendment by section 646(a)(2) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 646(b) of Pub. L. 107–16, set out as a note under section 401 of this title.

Pub. L. 107–16, title VI, § 647(c), June 7, 2001, 115 Stat. 127, provided that: ''The amendments made by this section [amending this section and section 457 of this title] shall apply to trustee-to-trustee transfers after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997,

Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6005 of Pub. L. 105–206 applicable to distributions after Dec. 31, 1998, see section 6005(c)(2)(C) of Pub. L. 105–206, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1504(a)(2) of Pub. L. 105–34 provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1997.''

Amendment by section 1505(c) of Pub. L. 105–34 applicable to taxable years beginning on or after Aug. 5, 1997, with certain governmental plans treated as satisfying requirements for all taxable years beginning before Aug. 5, 1997, see section 1505(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1601(d)(6)(B) 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, 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

Section 1450(c)(2) of Pub. L. 104–188 provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1995, except a contract shall not be required to meet any change in any requirement by reason of such amendment before the 90th day after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(12), (13) 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.

Amendment by section 522(a)(3), (c)(2), (3) of Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(B) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of Pub. L. 100–647, set out as a note under section 401 of this title.

Amendment by section 1011(c)(12), (m)(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 6052(a)(2) of Pub. L. 100–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendment made by section 1120(b) of the Reform Act [Pub. L. 99–514].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1120(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(m)(3), Nov. 10, 1988, 102 Stat. 3471, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to years beginning after December 31, 1988.

''(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, 1991, or

''(B) 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).''

Amendment by section 1122(b)(1)(B), (d) of Pub. L. 99–514 applicable, except as otherwise provided, to amounts distributed after Dec. 31, 1986, in taxable years ending after such date, see section 1122(h) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1123(c) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, but only with respect to distributions from contracts described in subsec. (b) of this section which are attributable to assets other than assets held as of the close of the last year beginning before Jan. 1, 1989, with certain exceptions and transition rule, see section 1123(e) of Pub. L. 99–514, as amended, set out as a note under section 72 of this title.

Section 1852(a)(3)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section] shall apply to benefits accruing after December 31, 1986, in taxable years ending after such date.''

Amendment by section 1852(a)(5)(B), (b)(10) 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.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(12) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 521(c) of Pub. L. 98–369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 522 of Pub. L. 98–369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98–369, set out as a note under section 402 of this title.

Amendment by section 1001(b)(4) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 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 251(e) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and section 415 of this title, and enacting a provision set out as a note below] shall apply to taxable years beginning after December 31, 1981.

''(2) RETIREMENT INCOME ACCOUNTS.—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1974.

''(3) SECTION 415 AMENDMENTS.—The amendments made by subsection (c) [amending section 415 of this title] shall apply to years beginning after December 31, 1981.

''(4) CORRECTION PERIOD.—The amendment made by subsection (d) [enacting provisions set out below] shall take effect on July 1, 1982.

''(5) SPECIAL RULE FOR EXISTING DEFINED BENEFIT ARRANGEMENTS.—Any defined benefit arrangement which is established by a church or a convention or association of churches (including an organization described in section 414(e)(3)(B)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and which is in effect on the date of the enactment of this Act [Sept. 3, 1982] shall not be treated as failing to meet the requirements of section 403(b)(2) of such Code merely because it is a defined benefit arrangement.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

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 AMENDMENTS

Section 154(b) of Pub. L. 95–600 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.''

Section 156(d) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 101(a)(13)(A), Apr. 1, 1980, 94 Stat. 204, provided that: ''The amendments made by this section [amending this section and sections 219, 220, 408, 409, 2039, and 4973] shall apply to distributions or transfers made after December 31, 1977, in taxable years beginning after such date.''

Amendment by section 157(g)(2) of Pub. L. 95–600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95–600, set out as a note under section 402 of this title.

Amendment by Pub. L. 95–458 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 4(d) of Pub. L. 95–458, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Section 1504(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975.''

Amendment by section 1901(a)(58), (b)(8)(A) 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.

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 1022(e) of Pub. L. 93–406 provided that the amendment made by that section is effective Jan. 1, 1974.

Amendment by section 2002(g)(6) of Pub. L. 93–406 applicable on and after Sept. 2, 1974, with respect to contributions to an employees' trust described in section 401(a) which is exempt from tax under section 501(a) or an annuity plan described in section 403(a), see section 2002(i)(3) of Pub. L. 93–406, set out as a note under section 402 of this title.

Amendment by section 2004(c)(4) 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; Transition Provisions note under section 415 of this title.

Amendment by section 2005(b)(2) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 321(b)(2) of Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

Amendment by section 515(a)(2) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

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.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 3(b) of Pub. L. 87–370 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

EFFECTIVE DATES OF 1958 AMENDMENT

Section 23(g) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending this section and section 101 of this title] shall apply with respect to taxable years beginning after December 31, 1957. The amendments made by subsection (e) [amending section 2039 of this title] shall apply with respect to estates of decedents dying after December 31, 1957. The amendments made by subsection (f) [amending section 2517 of this title] shall apply with respect to calendar years after 1957.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1120 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

ELECTION TO MODIFY SECTION 403(b) EXCLUSION ALLOWANCE TO CONFORM TO SECTION 415 MODIFICATION

Pub. L. 107–16, title VI, § 632(b)(3), June 7, 2001, 115 Stat. 115, provided that: ''In the case of taxable years beginning after December 31, 1999, and before January 1, 2002, a plan may disregard the requirement in the

regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 that contributions to a defined benefit pension plan be treated as previously excluded amounts for purposes of the exclusion allowance.''

MODIFICATIONS OF SUBSECTION (b) OF THIS SECTION

Section 1601(d)(4) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, §6016(a)(2), July 22, 1998, 112 Stat. 822, provided that:

''(A) Paragraphs (7)(A)(ii) and (11) of section 403(b) of the Internal Revenue Code of 1986 shall not apply with respect to a distribution from a contract described in section 1450(b)(1) of such Act [Pub. L. 104–188, set out below] to the extent that such distribution is not includible in income by reason of—

''(i) in the case of distributions before January 1, 1998, section 403(b)(8) or (b)(10) of such Code (determined after the application of section 1450(b)(2) of such Act [Pub. L. 104–188, set out below]), and

''(ii) in the case of distributions on and after such date, such section 403(b)(10).

''(B) This paragraph shall apply as if included in section 1450 of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, set out below].''

Section 1450(a), (b) of Pub. L. 104–188 provided that:

''(a) MULTIPLE SALARY REDUCTION AGREEMENTS PERMITTED.—

''(1) GENERAL RULE.—For purposes of section 403(b) of the Internal Revenue Code of 1986, the frequency that an employee is permitted to enter into a salary reduction agreement, the salary to which such an agreement may apply, and the ability to revoke such an agreement shall be determined under the rules applicable to cash or deferred elections under section 401(k) of such Code.

''(2) CONSTRUCTIVE RECEIPT.—[Amended section 402 of this title.]

''(3) EFFECTIVE DATE.—This subsection shall apply to taxable years beginning after December 31, 1995.

''(b) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—

''(1) IN GENERAL.—In the case of any contract purchased in a plan year beginning before January 1, 1995, section 403(b) of the Internal Revenue Code of 1986 shall be applied as if any reference to an employer described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from tax under section 501 of such Code included a reference to an employer which is an Indian tribal government (as defined by section 7701(a)(40) of such Code), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), 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.

''(2) ROLLOVERS.—Solely for purposes of applying section 403(b)(8) of such Code to a contract to which paragraph (1) applies, a qualified cash or deferred arrangement under section 401(k) of such Code shall be treated as if it were a plan or contract described in clause (ii) of section 403(b)(8)(A) of such Code.''

SAMPLING TO DETERMINE WHETHER PLAN MEETS SUBSECTION (b)(12) REQUIREMENTS

Section 6052(b) of Pub. L. 100–647 provided that: ''In the case of plan years beginning in 1989, 1990, or 1991, determinations as to whether a plan meets the requirements of section 403(b)(12) of the 1986 Code may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if—

''(1) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

''(2) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require 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 Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CORRECTION PERIOD FOR CHURCH PLANS

Section 251(d) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''A church plan (within the meaning of section 414(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) shall not be treated as not meeting the requirements of section 401 or 403 of such Code if—

''(1) by reason of any change in any law, regulation, ruling, or otherwise such plan is required to be amended to meet such requirements, and

''(2) such plan is so amended at the next earliest church convention or such other time as the Secretary of the Treasury or his delegate may prescribe.''

TRANSITIONAL RULE FOR MAKING SECTION 403(b)(8) ROLLOVER IN THE CASE OF PAYMENTS DURING 1978

Section 101(a)(13)(B) of Pub. L. 96–222, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any payment made during 1978 in a qualifying distribution described in section 403(b)(8) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1980.''

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES

Applicable period specified in section 402(a)(5)(C) of this title shall not expire before close of Dec. 31, 1980 in case of any payment described in subsec. (a)(4)(A) of this section or section 402(a)(5)(A) of this title, see section 157(h)(3)(B) of Pub. L. 95–600, set out as a note under section 402 of this title.

§404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan

(a) General rule

If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the fol-

lowing limitations as to the amounts deductible in any year:

(1) Pension trusts

(A) In general

In the taxable year when paid, if the contributions are paid into a pension trust (other than a trust to which paragraph (3) applies), and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (*o*), and in the case of any other plan in an amount determined as follows:

(i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan),

(ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years,

(iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize the unfunded costs attributable to such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under section 431, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 431.

(B) Special rule in case of certain amendments

In the case of a multiemployer plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph (in such manner and at such time as may be provided under regulations prescribed by the Secretary), if the full funding limitation determined under section 431(c)(6) for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under section 431(c)(6)(A)(ii) exceeds the amount determined under section 431(c)(6)(A)(i), and if the funding method and the actuarial assumptions used are those used for such year under section 431, the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of—

(i) the full funding limitation for such year determined by applying section 431(c)(6) but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present value of all unamortized liabilities resulting from such amendment, or

(ii) the normal cost under the plan reduced by the amount necessary to amortize in equal annual installments over 10 years (until fully amortized) the decrease described in clause (i).

In the case of any election under this subparagraph, the amount deductible under the limitations of this paragraph with respect to any of the plan years following the plan year for which such election was made shall be determined as provided under such regulations as may be prescribed by the Secretary to carry out the purposes of this subparagraph.

(C) Certain collectively-bargained plans

In the case of a plan which the Secretary of Labor finds to be collectively bargained, established or maintained by an employer doing business in not less than 40 States and engaged in the trade or business of furnishing or selling services described in section 168(i)(10)(C), with respect to which the rates have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof, and in the case of any employer which is a member of a controlled group with such employer, subparagraph (B) shall be applied by substituting for the words ''plan amendment'' the words ''plan amendment or increase in benefits payable under title II of the Social Security Act''. For the purposes of this subparagraph, the term ''controlled group'' has the meaning provided by section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C).

(D) Amount determined on basis of unfunded current liability

In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the excess (if any) of—

(i) 140 percent of the current liability of the plan determined under section 431(c)(6)(D), over

(ii) the value of the plan's assets determined under section 431(c)(2).

(E) Carryover

Any amount paid in a taxable year in excess of the amount deductible in such year

under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations.

(2) Employees' annuities

In the taxable year when paid, in an amount determined in accordance with paragraph (1), if the contributions are paid toward the purchase of retirement annuities, or retirement annuities and medical benefits as described in section 401(h), and such purchase is part of a plan which meets the requirements of section 401(a)(3), (4), (5), (6), (7), (8), (9), (11), (12), (13), (14), (15), (16), (17),[1] (19), (20), (22), (26), (27), (31), and (37) and, if applicable, the requirements of section 401(a)(10) and of section 401(d), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year toward the purchase of such retirement annuities, or such retirement annuities and medical benefits.

(3) Stock bonus and profit-sharing trusts

(A) Limits on deductible contributions

(i) In general

In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a), in an amount not in excess of the greater of—

(I) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan, or

(II) the amount such employer is required to contribute to such trust under section 401(k)(11) for such year.

(ii) Carryover of excess contributions

Any amount paid into the trust in any taxable year in excess of the limitation of clause (i) (or the corresponding provision of prior law) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this clause in any 1 such succeeding taxable year together with the amount allowable under clause (i) shall not exceed the amount described in subclause (I) or (II) of clause (i), whichever is greater, with respect to such taxable year.

(iii) Certain retirement plans excluded

For purposes of this subparagraph, the term ''stock bonus or profit-sharing trust'' shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in paragraph (1).

(iv) 2 or more trusts treated as 1 trust

If the contributions are made to 2 or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations in this subparagraph.

(v) Defined contribution plans subject to the funding standards

Except as provided by the Secretary, a defined contribution plan which is subject to the funding standards of section 412 shall be treated in the same manner as a stock bonus or profit-sharing plan for purposes of this subparagraph.

(B) Profit-sharing plan of affiliated group

In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of section 1504, if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings or profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return, to that proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution deductible without regard to this subparagraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the members of the group remaining after adjustment for all contributions deductible without regard to this subparagraph. Contributions made under the preceding sentence shall be deductible under subparagraph (A) of this paragraph by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of subparagraph (A) of this paragraph in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made.

(4) Trusts created or organized outside the United States

If a stock bonus, pension, or profit-sharing trust would qualify for exemption under section 501(a) except for the fact that it is a trust created or organized outside the United States, contributions to such a trust by an employer which is a resident, or corporation, or other entity of the United States, shall be deductible under the preceding paragraphs.

(5) Other plans

If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is in-

[1] See References in Text note below.

cludible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee. For purposes of this section, any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee.

(6) Time when contributions deemed made

For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(7) Limitation on deductions where combination of defined contribution plan and defined benefit plan

(A) In general

If amounts are deductible under the foregoing paragraphs of this subsection (other than paragraph (5)) in connection with 1 or more defined contribution plans and 1 or more defined benefit plans or in connection with trusts or plans described in 2 or more of such paragraphs, the total amount deductible in a taxable year under such plans shall not exceed the greater of—

(i) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans, or

(ii) the amount of contributions made to or under the defined benefit plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 with respect to any such defined benefit plans for the plan year which ends with or within such taxable year (or for any prior plan year).

A defined contribution plan which is a pension plan shall not be treated as failing to provide definitely determinable benefits merely by limiting employer contributions to amounts deductible under this section. In the case of a defined benefit plan which is a single employer plan, the amount necessary to satisfy the minimum funding standard provided by section 412 shall not be less than the excess (if any) of the plan's funding target (as defined in section 430(d)(1)) over the value of the plan's assets (as determined under section 430(g)(3)).

(B) Carryover of contributions in excess of the deductible limit

Any amount paid under the plans in any taxable year in excess of the limitation of subparagraph (A) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this subparagraph in any 1 such succeeding taxable year together with the amount allowable under subparagraph (A) shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plans.

(C) Paragraph not to apply in certain cases

(i) Beneficiary test

This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than 1 trust or under a trust and an annuity plan.

(ii) Elective deferrals

If, in connection with 1 or more defined contribution plans and 1 or more defined benefit plans, no amounts (other than elective deferrals (as defined in section 402(g)(3))) are contributed to any of the defined contribution plans for the taxable year, then subparagraph (A) shall not apply with respect to any of such defined contribution plans and defined benefit plans.

(iii) Limitation

In the case of employer contributions to 1 or more defined contribution plans—

(I) if such contributions do not exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans, this paragraph shall not apply to such contributions or to employer contributions to the defined benefit plans to which this paragraph would otherwise apply by reason of contributions to the defined contribution plans, and

(II) if such contributions exceed 6 percent of such compensation, this paragraph shall be applied by only taking into account such contributions to the extent of such excess.

For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions plans to the extent attributable to employer contributions to such plans in such preceding taxable years.

(iv) Guaranteed plans

In applying this paragraph, any single-employer plan covered under section 4021 of the Employee Retirement Income Security Act of 1974 shall not be taken into account.

(v) Multiemployer plans

In applying this paragraph, any multiemployer plan shall not be taken into account.

(D) Insurance contract plans

For purposes of this paragraph, a plan described in section 412(e)(3) shall be treated as a defined benefit plan.

(8) Self-employed individuals

In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), for purposes of this section—

(A) the term ''employee'' includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4);

(B) the term ''earned income'' has the meaning assigned to it by section 401(c)(2);

(C) the contributions to such plan on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall be considered to satisfy the conditions of section 162 or 212 to the extent that such contributions do not exceed the earned income of such individual (determined without regard to the deductions allowed by this section) derived from the trade or business with respect to which such plan is established, and to the extent that such contributions are not allocable (determined in accordance with regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance; and

(D) any reference to compensation shall, in the case of an individual who is an employee within the meaning of section 401(c)(1), be considered to be a reference to the earned income of such individual derived from the trade or business with respect to which the plan is established.

(9) Certain contributions to employee stock ownership plans

(A) Principal payments

Notwithstanding the provisions of paragraphs (3) and (7), if contributions are paid into a trust which forms a part of an employee stock ownership plan (as described in section 4975(e)(7)), and such contributions are, on or before the time prescribed in paragraph (6), applied by the plan to the repayment of the principal of a loan incurred for the purpose of acquiring qualifying employer securities (as described in section 4975(e)(8)), such contributions shall be deductible under this paragraph for the taxable year determined under paragraph (6). The amount deductible under this paragraph shall not, however, exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the employees under such employee stock ownership plan. Any amount paid into such trust in any taxable year in excess of the amount deductible under this paragraph shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the preceding sentence.

(B) Interest payment

Notwithstanding the provisions of paragraphs (3) and (7), if contributions are made to an employee stock ownership plan (described in subparagraph (A)) and such contributions are applied by the plan to the repayment of interest on a loan incurred for the purpose of acquiring qualifying employer securities (as described in subparagraph (A)), such contributions shall be deductible for the taxable year with respect to which such contributions are made as determined under paragraph (6).

(C) S corporations

This paragraph shall not apply to an S corporation.

(D) Qualified gratuitous transfers

A qualified gratuitous transfer (as defined in section 664(g)(1)) shall have no effect on the amount or amounts otherwise deductible under paragraph (3) or (7) or under this paragraph.

(10) Contributions by certain ministers to retirement income accounts

In the case of contributions made by a minister described in section 414(e)(5) to a retirement income account described in section 403(b)(9) and not by a person other than such minister, such contributions—

(A) shall be treated as made to a trust which is exempt from tax under section 501(a) and which is part of a plan which is described in section 401(a), and

(B) shall be deductible under this subsection to the extent such contributions do not exceed the limit on elective deferrals under section 402(g) or the limit on annual additions under section 415.

For purposes of this paragraph, all plans in which the minister is a participant shall be treated as one plan.

(11) Determinations relating to deferred compensation

For purposes of determining under this section—

(A) whether compensation of an employee is deferred compensation; and

(B) when deferred compensation is paid,

no amount shall be treated as received by the employee, or paid, until it is actually received by the employee.

(12) Definition of compensation

For purposes of paragraphs (3), (7), (8), and (9) and subsection (h)(1)(C), the term ''compensation'' shall include amounts treated as ''participant's compensation'' under subparagraph (C) or (D) of section 415(c)(3).

(b) Method of contributions, etc., having the effect of a plan; certain deferred benefits

(1) Method of contributions, etc., having the effect of a plan

If—

(A) there is no plan, but

(B) there is a method or arrangement of employer contributions or compensation which has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or other plan deferring the receipt of compensation (including a plan described in paragraph (2)),

subsection (a) shall apply as if there were such a plan.

(2) Plans providing certain deferred benefits

(A) In general

For purposes of this section, any plan providing for deferred benefits (other than com-

pensation) for employees, their spouses, or their dependents shall be treated as a plan deferring the receipt of compensation. In the case of such a plan, for purposes of this section, the determination of when an amount is includible in gross income shall be made without regard to any provisions of this chapter excluding such benefits from gross income.

(B) Exception

Subparagraph (A) shall not apply to any benefit provided through a welfare benefit fund (as defined in section 419(e)).

(c) Certain negotiated plans

If contributions are paid by an employer—

(1) under a plan under which such contributions are held in trust for the purpose of paying (either from principal or income or both) for the benefit of employees and their families and dependents at least medical or hospital care, or pensions on retirement or death of employees; and

(2) such plan was established prior to January 1, 1954, as a result of an agreement between employee representatives and the Government of the United States during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry in which such employer is engaged,

such contributions shall not be deductible under this section nor be made nondeductible by this section, but the deductibility thereof shall be governed solely by section 162 (relating to trade or business expenses). For purposes of this chapter and subtitle B, in the case of any individual who before July 1, 1974, was a participant in a plan described in the preceding sentence—

(A) such individual, if he is or was an employee within the meaning of section 401(c)(1), shall be treated (with respect to service covered by the plan) as being an employee other than an employee within the meaning of section 401(c)(1) and as being an employee of a participating employer under the plan,

(B) earnings derived from service covered by the plan shall be treated as not being earned income within the meaning of section 401(c)(2), and

(C) such individual shall be treated as an employee of a participating employer under the plan with respect to service before July 1, 1975, covered by the plan.

Section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in this subsection. The first and third sentences of this subsection shall have no application with respect to amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501(a).

(d) Deductibility of payments of deferred compensation, etc., to independent contractors

If a plan would be described in so much of subsection (a) as precedes paragraph (1) thereof (as modified by subsection (b)) but for the fact that there is no employer-employee relationship, the contributions or compensation—

(1) shall not be deductible by the payor thereof under this chapter, but

(2) shall (if they would be deductible under this chapter but for paragraph (1)) be deductible under this subsection for the taxable year in which an amount attributable to the contribution or compensation is includible in the gross income of the persons participating in the plan.

(e) Contributions allocable to life insurance protection for self-employed individuals

In the case of a self-employed individual described in section 401(c)(1), contributions which are allocable (determined under regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance shall not be taken into account under paragraph (1), (2), or (3) of subsection (a).

[(f) Repealed. Pub. L. 98–369, div. A, title VII, § 713(b)(3), July 18, 1984, 98 Stat. 957]

(g) Certain employer liability payments considered as contributions

(1) In general

For purposes of this section, any amount paid by an employer under section 4041(b), 4062, 4063, or 4064, or part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which this section applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.

(2) Controlled group deductions

In the case of a payment described in paragraph (1) made by an entity which is liable because it is a member of a commonly controlled group of corporations, trades, or businesses, within the meaning of subsection (b) or (c) of section 414, the fact that the entity did not directly employ participants of the plan with respect to which the liability payment was made shall not affect the deductibility of a payment which otherwise satisfies the conditions of section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income).

(3) Timing of deduction of contributions

(A) In general

Except as otherwise provided in this paragraph, any payment described in paragraph (1) shall (subject to the last sentence of subsection (a)(1)(A)) be deductible under this section when paid.

(B) Contributions under standard terminations

Subparagraph (A) shall not apply (and subsection (a)(1)(A) shall apply) to any payments described in paragraph (1) which are paid to terminate a plan under section 4041(b) of the Employee Retirement Income Security Act of 1974 to the extent such payments result in the assets of the plan being in excess of the total amount of benefits under such plan which are guaranteed by the Pension Benefit Guaranty Corporation under section 4022 of such Act.

(C) Contributions to certain trusts

Subparagraph (A) shall not apply to any payment described in paragraph (1) which is

made under section 4062(c) of such Act and such payment shall be deductible at such time as may be prescribed in regulations which are based on principles similar to the principles of subsection (a)(1)(A).

(4) References to Employee Retirement Income Security Act of 1974

For purposes of this subsection, any reference to a section of the Employee Retirement Income Security Act of 1974 shall be treated as a reference to such section as in effect on the date of the enactment of the Retirement Protection Act of 1994.

(h) Special rules for simplified employee pensions

(1) In general

Employer contributions to a simplified employee pension shall be treated as if they are made to a plan subject to the requirements of this section. Employer contributions to a simplified employee pension are subject to the following limitations:

(A) Contributions made for a year are deductible—

(i) in the case of a simplified employee pension maintained on a calendar year basis, for the taxable year with or within which the calendar year ends, or

(ii) in the case of a simplified employee pension which is maintained on the basis of the taxable year of the employer, for such taxable year.

(B) Contributions shall be treated for purposes of this subsection as if they were made for a taxable year if such contributions are made on account of such taxable year and are made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(C) The amount deductible in a taxable year for a simplified employee pension shall not exceed 25 percent of the compensation paid to the employees during the calendar year ending with or within the taxable year (or during the taxable year in the case of a taxable year described in subparagraph (A)(ii)). The excess of the amount contributed over the amount deductible for a taxable year shall be deductible in the succeeding taxable years in order of time, subject to the 25 percent limit of the preceding sentence.

(2) Effect on certain trusts

For any taxable year for which the employer has a deduction under paragraph (1), the otherwise applicable limitations in subsection (a)(3)(A) shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to participants in the trust subject to subsection (a)(3)(A).

(3) Coordination with subsection (a)(7)

For purposes of subsection (a)(7), a simplified employee pension shall be treated as if it were a separate stock bonus or profit-sharing trust.

[(i) Repealed. Pub. L. 99–514, title XI, § 1171(b)(6), Oct. 22, 1986, 100 Stat. 2513]

(j) Special rules relating to application with section 415

(1) No deduction in excess of section 415 limitation

In computing the amount of any deduction allowable under paragraph (1), (2), (3), (4), (7), or (9) of subsection (a) for any year—

(A) in the case of a defined benefit plan, there shall not be taken into account any benefits for any year in excess of any limitation on such benefits under section 415 for such year, or

(B) in the case of a defined contribution plan, the amount of any contributions otherwise taken into account shall be reduced by any annual additions in excess of the limitation under section 415 for such year.

(2) No advance funding of cost-of-living adjustments

For purposes of clause (i), (ii) or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, there shall not be taken into account any adjustments under section 415(d)(1) for any year before the year for which such adjustment first takes effect.

(k) Deduction for dividends paid on certain employer securities

(1) General rule

In the case of a C corporation, there shall be allowed as a deduction for a taxable year the amount of any applicable dividend paid in cash by such corporation with respect to applicable employer securities. Such deduction shall be in addition to the deductions allowed under subsection (a).

(2) Applicable dividend

For purposes of this subsection—

(A) In general

The term ''applicable dividend'' means any dividend which, in accordance with the plan provisions—

(i) is paid in cash to the participants in the plan or their beneficiaries,

(ii) is paid to the plan and is distributed in cash to participants in the plan or their beneficiaries not later than 90 days after the close of the plan year in which paid,

(iii) is, at the election of such participants or their beneficiaries—

(I) payable as provided in clause (i) or (ii), or

(II) paid to the plan and reinvested in qualifying employer securities, or

(iv) is used to make payments on a loan described in subsection (a)(9) the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

(B) Limitation on certain dividends

A dividend described in subparagraph (A)(iv) which is paid with respect to any employer security which is allocated to a par-

ticipant shall not be treated as an applicable dividend unless the plan provides that employer securities with a fair market value of not less than the amount of such dividend are allocated to such participant for the year which (but for subparagraph (A)) such dividend would have been allocated to such participant.

(3) Applicable employer securities

For purposes of this subsection, the term ''applicable employer securities'' means, with respect to any dividend, employer securities which are held on the record date for such dividend by an employee stock ownership plan which is maintained by—

(A) the corporation paying such dividend, or

(B) any other corporation which is a member of a controlled group of corporations (within the meaning of section 409(*l*)(4)) which includes such corporation.

(4) Time for deduction

(A) In general

The deduction under paragraph (1) shall be allowable in the taxable year of the corporation in which the dividend is paid or distributed to a participant or his beneficiary.

(B) Reinvestment dividends

For purposes of subparagraph (A), an applicable dividend reinvested pursuant to clause (iii)(II) of paragraph (2)(A) shall be treated as paid in the taxable year of the corporation in which such dividend is reinvested in qualifying employer securities or in which the election under clause (iii) of paragraph (2)(A) is made, whichever is later.

(C) Repayment of loans

In the case of an applicable dividend described in clause (iv) of paragraph (2)(A), the deduction under paragraph (1) shall be allowable in the taxable year of the corporation in which such dividend is used to repay the loan described in such clause.

(5) Other rules

For purposes of this subsection—

(A) Disallowance of deduction

The Secretary may disallow the deduction under paragraph (1) for any dividend if the Secretary determines that such dividend constitutes, in substance, an avoidance or evasion of taxation.

(B) Plan qualification

A plan shall not be treated as violating the requirements of section 401, 409, or 4975(e)(7), or as engaging in a prohibited transaction for purposes of section 4975(d)(3), merely by reason of any payment or distribution described in paragraph (2)(A).

(6) Definitions

For purposes of this subsection—

(A) Employer securities

The term ''employer securities'' has the meaning given such term by section 409(*l*).

(B) Employee stock ownership plan

The term ''employee stock ownership plan'' has the meaning given such term by section 4975(e)(7). Such term includes a tax credit employee stock ownership plan (as defined in section 409).

(7) Full vesting

In accordance with section 411, an applicable dividend described in clause (iii)(II) of paragraph (2)(A) shall be subject to the requirements of section 411(a)(1).

(*l*) Limitation on amount of annual compensation taken into account

For purposes of applying the limitations of this section, the amount of annual compensation of each employee taken into account under the plan for any year shall not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B). For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.

(m) Special rules for simple retirement accounts

(1) In general

Employer contributions to a simple retirement account shall be treated as if they are made to a plan subject to the requirements of this section.

(2) Timing

(A) Deduction

Contributions described in paragraph (1) shall be deductible in the taxable year of the employer with or within which the calendar year for which the contributions were made ends.

(B) Contributions after end of year

For purposes of this subsection, contributions shall be treated as made for a taxable year if they are made on account of the taxable year and are made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof).

(n) Elective deferrals not taken into account for purposes of deduction limits

Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3), (7), or (9) of subsection (a) or paragraph (1)(C) of subsection (h) and such elective deferrals shall not be taken into account in applying any such limitation to any other contributions.

(*o*) Deduction limit for single-employer plans

For purposes of subsection (a)(1)(A)—

(1) In general

In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the greater of—

(A) the sum of the amounts determined under paragraph (2) with respect to each plan year ending with or within the taxable year, or

(B) the sum of the minimum required contributions under section 430 for such plan years.

(2) Determination of amount

(A) In general

The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—

(i) the sum of—

(I) the funding target for the plan year,

(II) the target normal cost for the plan year, and

(III) the cushion amount for the plan year, over

(ii) the value (determined under section 430(g)(3)) of the assets of the plan which are held by the plan as of the valuation date for the plan year.

(B) Special rule for certain employers

If section 430(i) does not apply to a plan for a plan year, the amount determined under subparagraph (A)(i) for the plan year shall in no event be less than the sum of—

(i) the funding target for the plan year (determined as if section 430(i) applied to the plan), plus

(ii) the target normal cost for the plan year (as so determined).

(3) Cushion amount

For purposes of paragraph (2)(A)(i)(III)—

(A) In general

The cushion amount for any plan year is the sum of—

(i) 50 percent of the funding target for the plan year, and

(ii) the amount by which the funding target for the plan year would increase if the plan were to take into account—

(I) increases in compensation which are expected to occur in succeeding plan years, or

(II) if the plan does not base benefits for service to date on compensation, increases in benefits which are expected to occur in succeeding plan years (determined on the basis of the average annual increase in benefits over the 6 immediately preceding plan years).

(B) Limitations

(i) In general

In making the computation under subparagraph (A)(ii), the plan's actuary shall assume that the limitations under subsection (*l*) and section 415(b) shall apply.

(ii) Expected increases

In the case of a plan year during which a plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, the plan's actuary may, notwithstanding subsection (*l*), take into account increases in the limitations which are expected to occur in succeeding plan years.

(4) Special rules for plans with 100 or fewer participants

(A) In general

For purposes of determining the amount under paragraph (3) for any plan year, in the case of a plan which has 100 or fewer participants for the plan year, the liability of the plan attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years shall not be taken into account in determining the target liability.

(B) Rule for determining number of participants

For purposes of determining the number of plan participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(d)(3)) shall be treated as one plan, but only participants of such member or employer shall be taken into account.

(5) Special rule for terminating plans

In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall in no event be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).

(6) Actuarial assumptions

Any computation under this subsection for any plan year shall use the same actuarial assumptions which are used for the plan year under section 430.

(7) Definitions

Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.

(Aug. 16, 1954, ch. 736, 68A Stat. 138; Pub. L. 85–866, title I, §24, Sept. 2, 1958, 72 Stat. 1623; Pub. L. 87–792, §3, Oct. 10, 1962, 76 Stat. 819; Pub. L. 87–863, §2(b), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 89–809, title II, §204(a), (b)(2), (3), Nov. 13, 1966, 80 Stat. 1577; Pub. L. 91–172, title III, §321(b)(3), Dec. 30, 1969, 83 Stat. 591; Pub. L. 93–406, title II, §§1013(c), 1016(a)(3), 2001(a), (g)(2)(E), (F), 2004(b), (c)(1), 2007(a), (b), title IV, §4401(a), formerly §4081(a), Sept. 2, 1974, 88 Stat. 921, 929, 952, 957, 986, 993, 994, 1033, renumbered §4401(a), Pub. L. 96–364, title I, §108(a), Sept. 26, 1980, 94 Stat. 1267; Pub. L. 94–267, §1(c)(3), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94–455, title XV, §1502(a)(2), title XIX, §§1901(a)(59), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1737, 1774, 1834; Pub. L. 95–600, title I, §§133(a), (b), 141(f)(9), 152(f), Nov. 6, 1978, 92 Stat. 2783, 2795, 2799; Pub. L. 96–222, title I, §101(a)(10)(E), (J)(ii), Apr. 1, 1980, 94 Stat. 202, 204; Pub. L. 96–364, title II, §205, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 97–34, title III, §§312(a), 331(b), 333(a), Aug. 13, 1981, 95 Stat. 283, 293, 296; Pub. L. 97–248, title II, §§235(f), 237(e)(2), 238(a), 253(b), Sept. 3, 1982, 96 Stat. 507, 512, 533; Pub. L. 98–369, div. A, title IV, §474(r)(14), title V, §§512(a), 542(a), title VII, §713(b)(3), (d)(4)(A), (5), (6), (9), July 18, 1984, 98 Stat. 842, 862, 890, 957, 958; Pub. L. 99–272, title XI, §11011(c)(1), (2), Apr. 7, 1986, 100 Stat. 257, 258; Pub. L. 99–514, title XI, §§1106(d)(2), 1108(c), 1112(d)(2), 1131(a), (b), 1136(b), 1171(b)(6), 1173(a), title XVIII, §§1848(c), 1851(b)(2)(A)–(C)(ii),

1854(b)(2)–(5), 1875(c)(7), Oct. 22, 1986, 100 Stat. 2424, 2433, 2445, 2476, 2477, 2486, 2513, 2515, 2857, 2863, 2878, 2895; Pub. L. 100–203, title IX, § 9307(c), (d), title X, § 10201(b)(2), (3), Dec. 22, 1987, 101 Stat. 1330–357, 1330–387; Pub. L. 100–647, title I, §§ 1011(d)(1), (4), (f)(6), 1011A(e)(4), 1011B(h)(3), (6), 1018(t)(4)(A), (5), title II, § 2005(b), Nov. 10, 1988, 102 Stat. 3459, 3463, 3478, 3491, 3492, 3588, 3589, 3610; Pub. L. 101–239, title VII, §§ 7302(a), 7841(b)(1), Dec. 19, 1989, 103 Stat. 2351, 2428; Pub. L. 101–508, title XI, § 11812(b)(7), Nov. 5, 1990, 104 Stat. 1388–535; Pub. L. 102–318, title V, § 522(a)(2), July 3, 1992, 106 Stat. 314; Pub. L. 103–66, title XIII, § 13212(c)(1), Aug. 10, 1993, 107 Stat. 472; Pub. L. 103–465, title VII, § 751(a)(11), Dec. 8, 1994, 108 Stat. 5022; Pub. L. 104–188, title I, §§ 1316(d)(1), (2), 1421(b)(2), 1431(b)(3), 1461(b), 1704(q)(1), (t)(76), Aug. 20, 1996, 110 Stat. 1786, 1795, 1803, 1823, 1887, 1891; Pub. L. 105–34, title XV, § 1530(c)(2), title XVI, § 1601(d)(2)(C), Aug. 5, 1997, 111 Stat. 1078, 1088; Pub. L. 105–206, title VI, § 6015(d), title VII, § 7001(a), July 22, 1998, 112 Stat. 821, 827; Pub. L. 107–16, title VI, §§ 611(c)(1), 614(a), 616(a)–(b)(2)(A), 632(a)(3)(B), 652(a), 662(a), (b), June 7, 2001, 115 Stat. 97, 102, 103, 114, 129, 142; Pub. L. 107–147, title IV, § 411(*l*)(1), (2), (4), (s), (w), Mar. 9, 2002, 116 Stat. 47, 51, 52; Pub. L. 108–218, title I, § 101(b)(5), Apr. 10, 2004, 118 Stat. 598; Pub. L. 109–280, title VIII, §§ 801(a)–(c)(3), (d), 802(a), 803(a), (b), Aug. 17, 2006, 120 Stat. 992–996; Pub. L. 110–245, title I, § 104(c)(1), June 17, 2008, 122 Stat. 1627; Pub. L. 110–458, title I, § 108(a)–(c), Dec. 23, 2008, 122 Stat. 5108.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 401(a)(17), referred to in subsec. (a)(2), was repealed by Pub. L. 97–248, title II, § 237(b), Sept. 3, 1982, 96 Stat. 511. A new section 401(a)(17) was added by Pub. L. 99–514, title XI, § 1106(d)(1), Oct. 22, 1986, 100 Stat. 2423.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(3)(A)(v)(II), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(1)(D)(iv), (7)(C)(iv), (g)(1), (3)(B), (C), (4), and (*o*)(3)(B)(ii), (5), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. Part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 is classified generally to part 1 (§ 1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29. Sections 4021, 4022, 4041, 4062, 4063, and 4064 of the Employee Retirement Income Security Act of 1974 are classified to sections 1321, 1322, 1341, 1362, 1363, and 1364, 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 date of the enactment of the Retirement Protection Act of 1994, referred to in subsec. (g)(4), is the date of enactment of subtitle F (§§ 750–781) of title VII of Pub. L. 103–465, which was approved Dec. 8, 1994.

AMENDMENTS

2008—Subsec. (a)(1)(D)(i). Pub. L. 110–458, § 108(b), substituted ''431(c)(6)(D)'' for ''431(c)(6)(C)''.

Subsec. (a)(2). Pub. L. 110–245 substituted ''(31), and (37)'' for ''and (31)''.

Subsec. (a)(7)(A). Pub. L. 110–458, § 108(a)(2), in concluding provisions, substituted ''the excess (if any) of the plan's funding target (as defined in section 430(d)(1)) over the value of the plan's assets (as determined under section 430(g)(3))'' for ''the plan's funding shortfall determined under section 430'' in last sentence and struck out second sentence which read as follows: ''For purposes of clause (ii), if paragraph (1)(D) applies to a defined benefit plan for any plan year, the amount necessary to satisfy the minimum funding standard provided by section 412 with respect to such plan for such plan year shall not be less than the unfunded current liability of such plan under section 412(*l*).''

Subsec. (a)(7)(C)(iii). Pub. L. 110–458, § 108(c), amended cl. (iii) generally. Prior to amendment, text read as follows: ''In the case of employer contributions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.''

Subsec. (*o*)(2)(A)(ii). Pub. L. 110–458, § 108(a)(1)(A), substituted ''430(g)(3)'' for ''430(g)(2)''.

Subsec. (*o*)(4)(B). Pub. L. 110–458, § 108(a)(1)(B), substituted ''412(d)(3)'' for ''412(f)(4)''.

2006—Subsec. (a)(1)(A). Pub. L. 109–280, § 801(a)(1), (c)(1), inserted ''in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (*o*), and in the case of any other plan'' after ''section 501(a),'' in introductory provisions and substituted ''431'' for ''412'' in two places in concluding provisions.

Subsec. (a)(1)(B). Pub. L. 109–280, § 801(c)(2), in introductory provisions, substituted ''In the case of a multiemployer plan'' for ''In the case of a plan'', ''431(c)(6)'' for ''412(c)(7)'', ''431(c)(6)(A)(ii)'' for ''412(c)(7)(B)'', ''431(c)(6)(A)(i)'' for ''412(c)(7)(A)'', and ''431'' for ''412'', and, in cl. (i), substituted ''431(c)(6)'' for ''412(c)(7)''.

Subsec. (a)(1)(D). Pub. L. 109–280, § 802(a), amended heading and text of subpar. (D) generally, substituting provisions relating to maximum amount deductible in the case of a defined benefit plan which is a multiemployer plan for provisions relating to maximum amount deductible in the case of any defined benefit plan and stating rule for plans with 100 or less participants, rule for determining number of participants, and rule for terminating plans.

Subsec. (a)(1)(D)(i). Pub. L. 109–280, § 801(d)(1), substituted ''section 412(*l*)(8)(A), except that section 412(*l*)(8)(A) shall be applied for purposes of this clause by substituting '150 percent (140 percent in the case of a multiemployer plan) of current liability' for 'the current liability' in clause (i).'' for ''section 412(*l*)''.

Subsec. (a)(1)(F). Pub. L. 109–280, § 801(d)(2), struck out heading and text of subpar. (F). Text read as follows: ''An employer may elect to disregard subsections (b)(5)(B)(ii)(II) and (*l*)(7)(C)(i)(IV) of section 412 solely for purposes of determining the interest rate used in calculating the maximum amount of the deduction allowable under this paragraph.''

Subsec. (a)(7)(A). Pub. L. 109–280, § 801(c)(3)(A), inserted at end ''In the case of a defined benefit plan which is a single employer plan, the amount necessary to satisfy the minimum funding standard provided by section 412 shall not be less than the plan's funding shortfall determined under section 430.''

Subsec. (a)(7)(C)(iii). Pub. L. 109–280, § 803(a), added cl. (iii).

Subsec. (a)(7)(C)(iv). Pub. L. 109–280, § 801(b), added cl. (iv).

Subsec. (a)(7)(C)(v). Pub. L. 109–280, §803(b), added cl. (v).

Subsec. (a)(7)(D). Pub. L. 109–280, §801(c)(3)(B), added subpar. (D) and struck out heading and text of former subpar. (D). Former text read as follows: ''For purposes of this paragraph, any plan described in section 412(i) shall be treated as a defined benefit plan.''

Subsec. (*o*). Pub. L. 109–280, §801(a)(2), added subsec. (*o*).

2004—Subsec. (a)(1)(F). Pub. L. 108–218 added subpar. (F).

2002—Subsec. (a)(1)(D)(iv). Pub. L. 107–147, §411(s), substituted ''Special rule for terminating plans'' for ''Plans maintained by professional service employers'' in heading.

Subsec. (a)(7)(C). Pub. L. 107–147, §411(*l*)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than 1 trust or under a trust and an annuity plan.''

Subsec. (a)(12). Pub. L. 107–147, §411(*l*)(1), substituted ''(9) and subsection (h)(1)(C),'' for ''(9),''.

Subsec. (k)(1). Pub. L. 107–147, §411(w)(1)(A), struck out ''during the taxable year'' after ''such corporation''.

Subsec. (k)(2)(B). Pub. L. 107–147, §411(w)(1)(B), substituted ''(A)(iv)'' for ''(A)(iii)''.

Subsec. (k)(4)(B), (C). Pub. L. 107–147, §411(w)(1)(C), (D), substituted ''clause (iv)'' for ''clause (iii)'' in subpar. (B), added a new subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (k)(7). Pub. L. 107–147, §411(w)(2), added par. (7).

Subsec. (n). Pub. L. 107–147, §411(*l*)(2), substituted ''subsection (a) or paragraph (1)(C) of subsection (h)'' for ''subsection (a),''.

2001—Subsec. (a)(1)(A). Pub. L. 107–16, §616(a)(2)(B)(i), inserted ''(other than a trust to which paragraph (3) applies)'' after ''pension trust'' in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 107–16, §652(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any defined benefit plan (other than a multiemployer plan) which has more than 100 participants for the plan year, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability determined under section 412(*l*). For purposes of determining whether a plan has more than 100 participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(*l*)(8)(C))) shall be treated as 1 plan, but only employees of such member or employer shall be taken into account.''

Subsec. (a)(3)(A)(i)(I). Pub. L. 107–16, §616(a)(1)(A), substituted ''25 percent'' for ''15 percent''.

Subsec. (a)(3)(A)(v). Pub. L. 107–16, §616(a)(2)(A), amended cl. (v) generally, substituting present provisions for provisions which directed that the limitation of cl. (i) for any taxable year would be increased by the unused pre-87 limitation carryforwards and defined ''unused pre-87 limitation carryforwards''.

Subsec. (a)(3)(B). Pub. L. 107–16, §616(b)(2)(A), struck out at end ''The term 'compensation otherwise paid or accrued during the taxable year to all employees' shall include any amount with respect to which an election under section 415(c)(3)(C) is in effect, but only to the extent that any contribution with respect to such amount is nonforfeitable.''

Subsec. (a)(10)(B). Pub. L. 107–16, §632(a)(3)(B), struck out '', the exclusion allowance under section 403(b)(2),'' after ''deferrals under section 402(g)''.

Subsec. (a)(12). Pub. L. 107–16, §616(b)(1), added par. (12).

Subsec. (h)(1)(C). Pub. L. 107–16, §616(a)(1)(B), substituted ''25 percent'' for ''15 percent'' in two places.

Subsec. (h)(2). Pub. L. 107–16, §616(a)(2)(B)(ii), (iii), substituted ''certain trusts'' for ''stock bonus and profit-sharing trust'' in heading and ''trust subject to subsection (a)(3)(A)'' for ''stock bonus or profit-sharing trust'' in text.

Subsec. (k)(2)(A)(iii), (iv). Pub. L. 107–16, §662(a), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (k)(5)(A). Pub. L. 107–16, §662(b), inserted ''avoidance or'' before ''evasion''.

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

Subsec. (n). Pub. L. 107–16, §614(a), added subsec. (n).

1998—Subsec. (a)(9)(C), (D). Pub. L. 105–206, §6015(d), redesignated subpar. (C), relating to qualified gratuitous transfers, as (D) and inserted heading.

Subsec. (a)(11). Pub. L. 105–206, §7001(a), added par. (11).

1997—Subsec. (a)(3)(A)(i). Pub. L. 105–34, §1601(d)(2)(C)(i), substituted ''not in excess of the greater of—'' and subcls. (I) and (II) for ''not in excess of 15 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan.''

Subsec. (a)(3)(A)(ii). Pub. L. 105–34, §1601(d)(2)(C)(ii), substituted ''the amount described in subclause (I) or (II) of clause (i), whichever is greater, with respect to such taxable year.'' for ''15 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan.''

Subsec. (a)(9)(C). Pub. L. 105–34, §1530(c)(2), added subpar. (C) relating to qualified gratuitous transfers.

1996—Subsec. (a)(2). Pub. L. 104–188, §1704(t)(76), struck out ''(18),'' after ''(17),''.

Subsec. (a)(9)(C). Pub. L. 104–188, §1316(d)(1), added subpar. (C) relating to S corporations.

Subsec. (a)(10). Pub. L. 104–188, §1461(b), added par. (10).

Subsec. (j)(1). Pub. L. 104–188, §1704(q)(1), substituted ''(9)'' for ''(10)'' in introductory provisions.

Subsec. (k)(1). Pub. L. 104–188, §1316(d)(2), substituted ''a C corporation'' for ''a corporation''.

Subsec. (*l*). Pub. L. 104–188, §1431(b)(3), 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. (m). Pub. L. 104–188, §1421(b)(2), added subsec. (m).

1994—Subsec. (g)(4). Pub. L. 103–465 substituted ''the Retirement Protection Act of 1994'' for ''the Single-Employer Pension Plan Amendments Act of 1986''.

1993—Subsec. (*l*). Pub. L. 103–66 substituted ''$150,000'' for ''$200,000'' in first sentence and ''The Secretary shall adjust the $150,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B).'' for ''The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d).''

1992—Subsec. (a)(2). Pub. L. 102–318 substituted ''(27), and (31)'' for ''and (27)''.

1990—Subsec. (a)(1)(C). Pub. L. 101–508 substituted ''section 168(i)(10)(C)'' for ''section 167(*l*)(3)(A)(iii)''.

1989—Subsec. (g)(1). Pub. L. 101–239, §7841(b)(1), inserted ''4041(b),'' after ''under section''.

Subsec. (k). Pub. L. 101–239, §7302(a), amended subsec. (k) generally, substituting ''Deduction for dividends paid on certain employer securities'' for ''Dividends paid deductions'' in heading and pars. (1) to (6) for former pars. (1) and (2) and concluding provisions.

1988—Subsec. (a)(1)(D). Pub. L. 100–647, §2005(b)(3), struck out ''(without regard to any reduction by the credit balance in the funding standard account)'' after ''under section 412(*l*)''.

Pub. L. 100–647, §2005(b)(1), substituted ''For purposes of determining whether a plan has more than 100 participants'' for ''For purposes of this subparagraph''.

Subsec. (a)(7)(A). Pub. L. 100–647, §2005(b)(2), inserted at end ''For purposes of clause (ii), if paragraph (1)(D)

applies to a defined benefit plan for any plan year, the amount necessary to satisfy the minimum funding standard provided by section 412 with respect to such plan for such plan year shall not be less than the unfunded current liability of such plan under section 412(*l*).''

Pub. L. 100–647, § 1011A(e)(4)(A), in introductory provisions, substituted ''foregoing paragraphs'' for ''foregoing provisions'' and inserted ''or in connection with trusts or plans described in 2 or more of such paragraphs'' after ''defined benefit plans''.

Subsec. (a)(8)(D). Pub. L. 100–647, § 1018(t)(5), made technical correction to Pub. L. 99–514, § 1875(c)(7)(B), see 1986 Amendment note below.

Subsec. (h)(1)(C). Pub. L. 100–647, § 1011(f)(6), inserted ''(or during the taxable year in the case of a taxable year described in subparagraph (A)(ii))'' after ''within the taxable year''.

Subsec. (h)(3). Pub. L. 100–647, § 1011A(e)(4)(B), substituted ''Coordination with subsection (a)(7)'' for ''Effect on limit on deductions'' in heading and amended text generally. Prior to amendment, text read as follows: ''For any taxable year for which the employer has a deduction under paragraph (1), the otherwise applicable 25 percent limitations in subsection (a)(7) shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to participants in the stock bonus or profit-sharing trust.''

Subsec. (k). Pub. L. 100–647, § 1011B(h)(3)(A), inserted ''(whether or not allocated to participants)'' after ''to employer securities'' in par. (2)(C).

Pub. L. 100–647, § 1011B(h)(6), substituted ''or as engaging in a prohibited transaction for purposes of section 4975(d)(3) merely by reason of any distribution or payment'' for ''merely by reason of any distribution'' in third sentence.

Pub. L. 100–647, § 1018(t)(4)(A), substituted ''evasion of taxation'' for ''avoidance of taxation'' in fourth sentence.

Pub. L. 100–647, § 1011B(h)(3)(B), inserted at end ''Paragraph (2)(C) shall not apply to dividends from employer securities which are allocated to any participant unless the plan provides that employer securities with a fair market value not less than the amount of such dividends are allocated to such participant for the year which (but for paragraph (2)(C)) such dividends would have been allocated to such participant.''

Subsec. (*l*). 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.''

Pub. L. 100–647, § 1011(d)(1), inserted at end ''For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.''

1987—Subsec. (a)(1)(A)(iii). Pub. L. 100–203, § 9307(d), inserted ''the unfunded costs attributable to'' after ''to amortize''.

Subsec. (a)(1)(D), (E). Pub. L. 100–203, § 9307(c), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (a)(5). Pub. L. 100–203, § 10201(b)(3), inserted at end ''For purposes of this section, any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee.''

Subsec. (b)(2)(B). Pub. L. 100–203, § 10201(b)(2), substituted ''Exception'' for ''Exception for certain benefits'' in heading and amended text generally. Prior to amendment, text read as follows: ''Subparagraph (A) shall not apply to—

''(i) any benefit provided through a welfare benefit fund (as defined in section 419(e)), or

''(ii) any benefit with respect to which an election under section 463 applies.''

1986—Subsec. (a). Pub. L. 99–514, § 1851(b)(2)(C)(i), substituted ''this chapter; but, if they would otherwise be deductible'' for ''section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income); but, if they satisfy the conditions of either of such sections''.

Subsec. (a)(2). Pub. L. 99–514, § 1136(b), substituted ''(26), and (27)'' for ''and (26)''.

Pub. L. 99–514, § 1112(d)(2), substituted ''(22), and (26)'' for ''and (22)''.

Subsec. (a)(3)(A). Pub. L. 99–514, § 1131(a), amended subpar. (A) generally, revising and restating as cls. (i) to (v) provisions formerly contained in single paragraph.

Subsec. (a)(7). Pub. L. 99–514, § 1131(b), amended par. (7) generally, revising and restating as subpars. (A) to (C) provisions formerly contained in single paragraph, and adding subpar. (D).

Subsec. (a)(8)(C). Pub. L. 99–514, § 1875(c)(7)(A), inserted ''(determined without regard to the deductions allowed by this section)''.

Subsec. (a)(8)(D). Pub. L. 99–514, § 1875(c)(7)(B), as amended by Pub. L. 100–647, § 1018(t)(5), struck out ''(determined without regard to the deductions allowed by this section)'' after ''earned income of such individual''.

Pub. L. 99–514, § 1848(c), substituted ''the deduction allowed by this section'' for ''the deductions allowed by this section and section 405(c)''.

Subsec. (b). Pub. L. 99–514, § 1851(b)(2)(B)(i), substituted ''certain'' for ''unfunded'' in heading.

Subsec. (b)(2). Pub. L. 99–514, § 1851(b)(2)(A), (B)(ii), substituted ''certain'' for ''unfunded'' in heading, and in subpar. (B)(ii), substituted ''any benefit'' for ''to any benefit''.

Subsec. (d). Pub. L. 99–514, § 1851(b)(2)(C)(ii), substituted ''under this chapter'' for ''under section 162 or 212'' in pars. (1) and (2).

Subsec. (g)(3). Pub. L. 99–272, § 11011(c)(1), amended par. (3) generally. Prior to the amendment, par. (3), coordination with subsection (a), read as follows: ''Any payment described in paragraph (1) shall (subject to the last sentence of subsection (a)(1)(A)) be deductible under this section when paid.''

Subsec. (g)(4). Pub. L. 99–272, § 11011(c)(2), added par. (4).

Subsec. (h)(1)(A), (B). Pub. L. 99–514, § 1108(c), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) Contributions made for a calendar year are deductible for the taxable year with which or within which the calendar year ends.

''(B) Contributions made within 3½ months after the close of a calendar year are treated as if they were made on the last day of such calendar year if they are made on account of such calendar year.''

Subsec. (i). Pub. L. 99–514, § 1171(b)(6), struck out subsec. (i) relating to the deductibility of unused portions of employee stock ownership credit.

Subsec. (k). Pub. L. 99–514, § 1854(b)(2)(B), struck out ''during the taxable year'' after ''cash by such corporation'' in introductory provisions.

Pub. L. 99–514, § 1854(b)(4), inserted ''The Secretary may disallow the deduction under this subsection for any dividend if the Secretary determines that such dividend constitutes, in substance, an avoidance of taxation.''

Pub. L. 99–514, § 1854(b)(3), inserted ''A plan to which this subsection applies shall not be treated as violating the requirements of section 401, 409, or 4975(e)(7) merely by reason of any distribution described in paragraph (2).''

Pub. L. 99–514, § 1854(b)(2)(A), inserted ''Any deduction under subparagraph (A) or (B) of paragraph (2) shall be allowed in the taxable year of the corporation in which the dividend is paid or distributed to the participant under paragraph (2).''

Pub. L. 99–514, § 1173(a)(2), inserted ''Any deduction under paragraph (2)(C) shall be allowable in the taxable year of the corporation in which the dividend is used to repay the loan described in such paragraph.''

Subsec. (k)(2)(A), (B). Pub. L. 99–514, § 1854(b)(5), inserted ''or their beneficiaries''.

Subsec. (k)(2)(C). Pub. L. 99–514, §1173(a)(1), added subpar. (C).

Subsec. (*l*). Pub. L. 99–514, §1106(d)(2), added subsec. (*l*).

1984—Subsec. (a)(8)(D). Pub. L. 98–369, §713(d)(6), inserted ''(determined without regard to the deductions allowed by this section and section 405(c))''.

Subsec. (a)(9), (10). Pub. L. 98–369, §713(d)(4)(A), struck out par. (9) relating to plans benefiting self-employed individuals and redesignated par. (10) as (9).

Subsec. (b). Pub. L. 98–369, §512(a), amended subsec. (b) generally, inserting heading, redesignating former heading as par. (1) heading, designating existing provisions as par. (1), and in par. (1) as so designated, inserted ''(including a plan described in paragraph (2))'' after ''compensation'' and adding par. (2).

Subsec. (e). Pub. L. 98–369, §713(d)(9), substituted ''under paragraph (1), (2), or (3) of subsection (a)'' for ''under this section''.

Subsec. (f). Pub. L. 98–369, §713(b)(3), repealed subsec. (f) which related to certain loan repayments considered as contributions.

Subsec. (h)(4). Pub. L. 98–369, §713(d)(5), repealed par. (4) which related to effect on self-employed individuals or shareholder-employees.

Subsec. (i). Pub. L. 98–369, §474(r)(14), in par. (1), substituted ''If any portion of the employee stock ownership credit determined under section 41 for any taxable year has not, after the application of section 38(c), been allowed under section 38 for any taxable year, such portion shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which such portion could have been allowed as a credit under section 39'' for ''There shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which an unused employee stock ownership credit carryover (within the meaning of section 44G(b)(2)(A)) may be carried, an amount equal to the portion of such unused credit carryover which expires at the close of such taxable year'', and in par. (2), substituted references to section 41 and 41(c)(3) for references to section 44G and 44G(c)(3), respectively.

Subsec. (k). Pub. L. 98–369, §542(a), added subsec. (k).

1982—Subsec. (a)(2). Pub. L. 97–248, §237(e)(2), substituted ''(8), (9)'' for ''(8)'', and ''401(a)(10) and of section 401(d)'' for ''401(a)(9), (10), (17), and (18) and of section 401(d) (other than paragraph (1))''.

Subsec. (a)(3)(B). Pub. L. 97–248, §253(b), inserted provision that ''compensation otherwise paid or accrued during the taxable year to all employees'' shall include any amount with respect to which an election under section 415(c)(3)(C) is in effect, but only to the extent that any contribution with respect to such amount is nonforfeitable.

Subsec. (e). Pub. L. 97–248, §238(a), amended subsec. (e) generally, substituting provisions relating to contributions allocable to life insurance protection for self-employed individuals, for provisions relating to general requirements, contributions made under more than one plan, contributions allocable to insurance protection, and limitations of not lower than $750 or 100 percent of earned income with respect to special limitations for self-employed individuals.

Subsec. (j). Pub. L. 97–248, §235(f), added subsec. (j).

1981—Subsec. (a)(10). Pub. L. 97–34, §333(a), added par. (10).

Subsec. (e). Pub. L. 97–34, §312(a), substituted in pars. (1) and (2)(A) ''$15,000'' for ''$7,500''.

Subsec. (i). Pub. L. 97–34, §331(b), added subsec. (i).

1980—Subsec. (g). Pub. L. 96–364 redesignated existing provisions as par. (1), inserted applicability to part 1 of subtitle E of title IV of Employee Retirement Income Security Act of 1974, and added pars. (2) and (3).

Subsec. (h). Pub. L. 96–222 inserted ''or shareholder employees'' after ''individuals'' in heading, and in par. (4) ''or described in section 1379(b)(1)'' after ''of subsection (e)'' and ''or a shareholder-employee (as defined in section 1379(d))'' after ''section 401(c)(1)'' and substituted in pars. (2) to (4) ''paragraph (1)'' for ''subparagraph (1)''.

1978—Subsec. (a)(2). Pub. L. 95–600, §141(f)(9), substituted ''(20), and (22)'' for ''and (20)''.

Subsec. (b). Pub. L. 95–600, §133(b), substituted ''other plan'' for ''similar plan''.

Subsec. (d). Pub. L. 95–600, §133(a), added subsec. (d).

Subsec. (h). Pub. L. 95–600, §152(f), added subsec. (h).

1976—Subsecs. (a)(1)(B), (8)(C). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2). Pub. L. 94–267 substituted ''(19), and (20)'' for ''and (19)''.

Subsec. (d). Pub. L. 94–455, §1901(a)(59), struck out subsec. (d) which related to the taxability of the beneficiary under certain forfeitable contracts purchased by exempt organizations.

Subsecs. (e)(2)(B), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4). Pub. L. 94–455, §1502(a)(2), inserted provisions following subpar. (B).

1974—Subsec. (a)(1). Pub. L. 93–406, §1013(c)(1), expanded subpars. (A), (B), and (C) to accommodate the increased minimum funding standards required by section 412.

Subsec. (a)(2). Pub. L. 93–406, §§1016(a)(3), 2001(g)(2)(E), 2004(c)(1), inserted references to the requirements of section 401(a)(11), (12), (13), (14), (15), (16), (17), (18), and (19), and, if applicable, the requirements of section 401(a)(17) and (18).

Subsec. (a)(3)(A). Pub. L. 93–406, §2004(b), inserted '', but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan'' after ''If in any taxable year there is paid into the trust, or a similar trust then in effect, amounts less than the amounts deductible under the preceding sentence, the excess, or if no amount is paid, the amounts deductible, shall be carried forward and be deductible when paid in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any such succeeding taxable year shall not exceed 15 percent of the compensation otherwise paid or accrued during such succeeding taxable year to the beneficiaries under the plan''.

Subsec. (a)(6). Pub. L. 93–406, §1013(c)(2), substituted provisions covering only taxpayers operating on the accrual basis for provisions covering the time when contributions shall be deemed made.

Subsec. (a)(7). Pub. L. 93–406, §1013(c)(3), inserted reference to the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standards provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year) and substituted ''25 percent'' for ''30 percent'' in provision covering amounts paid into trusts or under an annuity plan in any taxable year in excess of the amount allowable with respect to such year.

Subsec. (a)(9)(B)(ii). Pub. L. 93–406, §2001(g)(2)(F), substituted ''the second sentence of paragraph (3)'' for ''paragraph (1)(D), the second and third sentences of paragraph (3), and the second sentence of paragraph (7)''.

Subsec. (c). Pub. L. 93–406, §2008(a), (b), substituted ''or pensions'' for ''and pensions'' in par. (1), substituted ''The first and third sentences of this subsection'' for ''This subsection'' in provisions covering amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501(a), inserted provisions setting out specified treatment to be accorded individuals who before July 1, 1974, were participants in plans described in the subsections, and inserted provision that section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in the subsection.

Subsec. (e)(1). Pub. L. 93–406, §2001(a)(1), substituted ''subject to paragraphs (2) and (4), not exceed $7,500, or

15 percent'' for ''subject to the provisions of paragraph (2), not exceed $2,500, or 10 percent''.

Subsec. (e)(2)(A). Pub. L. 93–406, § 2001(a)(2), substituted ''shall (subject to paragraph (4)) not exceed $7,500, or 15 percent'' for ''shall not exceed $2,500 or 10 percent''.

Subsec. (e)(4). Pub. L. 93–406, § 2001(a)(3), added par. (4).

Subsec. (g). Pub. L. 93–406, § 4081(a), added subsec. (g).

1969—Subsec. (a)(5). Pub. L. 91–172 substituted ''If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee'' for ''In the taxable year when paid, if the plan is not one included in paragraph (1), (2), or (3), if the employees' rights to or derived from such employer's contribution or such compensation are nonforfeitable at the time the contribution or compensation is paid''.

1966—Subsec. (a). Pub. L. 89–809, § 204(a), repealed par. (10) which provided for a special limitation on the amount allowed as a deduction for self-employed individuals.

Subsec. (e). Pub. L. 89–809, § 204(b)(2), (3), struck out references to par. (10) of subsec. (a) wherever appearing.

1962—Subsec. (a)(2). Pub. L. 87–863 inserted '', or retirement annuities and medical benefits as described in section 401(h),'' after ''purchase of retirement annuities'', and '', or such retirement annuities and medical benefits'' after ''such retirement annuities.''

Pub. L. 87–792, § 3(a)(1), substituted ''(5), (6), (7), and (8), and, if applicable, the requirements of section 401(a)(9) and (10) and of section 401(d) (other than paragraph (1)),'' for ''(5), and (6),''.

Subsecs. (a)(8) to (10). Pub. L. 87–792, § 3(a)(2), added pars. (8) to (10).

Subsecs. (e), (f). Pub. L. 87–792, § 3(b), added subsecs. (e) and (f).

1958—Subsec. (a). Pub. L. 85–866 substituted ''income); but, if'' for ''income) but if'' preceding par. (1).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by 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.

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 801(e), Aug. 17, 2006, 120 Stat. 995, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 404A of this title] shall apply to years beginning after December 31, 2007.

''(2) SPECIAL RULES.—The amendments made by subsection (d) [amending this section] shall apply to years beginning after December 31, 2005.''

Pub. L. 109–280, title VIII, § 802(b), Aug. 17, 2006, 120 Stat. 996, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 2007.''

Pub. L. 109–280, title VIII, § 803(d), Aug. 17, 2006, 120 Stat. 996, provided that: ''The amendments made by this section [amending this section and section 4972 of this title] shall apply to contributions for taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–218, title I, § 101(d), Apr. 10, 2004, 118 Stat. 599, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section, sections 412 and 415 of this title, and sections 1082 and 1306 of Title 29, Labor] shall apply to plan years beginning after December 31, 2003.

''(2) LOOKBACK RULES.—For purposes of applying subsections (d)(9)(B)(ii) and (e)(1) of section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(9)(B)(ii), (e)(1)] and subsections (*l*)(9)(B)(ii) and (m)(1) of [former] section 412 of the Internal Revenue Code of 1986 to plan years beginning after December 31, 2003, the amendments made by this section may be applied as if such amendments had been in effect for all prior plan years. The Secretary of the Treasury may prescribe simplified assumptions which may be used in applying the amendments made by this section to such prior plan years.

''(3) TRANSITION RULE FOR SECTION 415 LIMITATION.—In the case of any participant or beneficiary receiving a distribution after December 31, 2003[,] and before January 1, 2005, the amount payable under any form of benefit subject to section 417(e)(3) of the Internal Revenue Code of 1986 and subject to adjustment under section 415(b)(2)(B) of such Code shall not, solely by reason of the amendment made by subsection (b)(4) [amending section 415 of this title], be less than the amount that would have been so payable had the amount payable been determined using the applicable interest rate in effect as of the last day of the last plan year beginning before January 1, 2004.''

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)(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.

Pub. L. 107–16, title VI, § 614(b), June 7, 2001, 115 Stat. 102, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, § 616(c), June 7, 2001, 115 Stat. 103, provided that: ''The amendments made by this section [amending this section and section 4972 of this title] shall apply to years beginning after December 31, 2001.''

Amendment by section 632(a)(3)(B) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, § 652(c), June 7, 2001, 115 Stat. 130, provided that: ''The amendments made by this section [amending this section and section 4972 of this title] shall apply to plan years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, § 662(c), June 7, 2001, 115 Stat. 142, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6015(d) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–206, title VII, § 7001(b), July 22, 1998, 112 Stat. 827, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [July 22, 1998].

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendment made by sub-

section (a) [amending this section] to change its method of accounting for its first taxable year ending after the date of the enactment of this Act [July 22, 1998]—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

''(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 3-taxable year period beginning with such first taxable year.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1530(c)(2) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1601(d)(2)(C) 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, 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 1316(d)(1), (2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104–188, set out as a note under section 170 of this title.

Amendment by section 1421(b)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1431(b)(3) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, see section 1431(d)(2) of Pub. L. 104–188, set out as a note under section 414 of this title.

Section 1461(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and section 1414 of this title] shall apply to years beginning after December 31, 1996.''

Section 1704(q)(2) of Pub. L. 104–188 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 713(d)(4)(A) of the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103–66, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7302(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to employer securities acquired after August 4, 1989.

''(2) SECURITIES ACQUIRED WITH CERTAIN LOANS.—The amendment made by this section shall not apply to employer securities acquired after August 4, 1989, which are acquired—

''(A) with the proceeds of any loan which was made pursuant to a binding written commitment in effect on August 4, 1989, and at all times thereafter before such loan is made, and

''(B) pursuant to a written binding contract (or tender offer registered with the Securities and Exchange Commission) in effect on August 4, 1989, and at all times thereafter before such securities are acquired.''

Section 7841(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to payments made after January 1, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(1), (4), (f)(6), 1011A(e)(4), 1011B(h)(3), (6), and 1018(t)(4)(A), (5) 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 2005(e) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, §7812(d), Dec. 19, 1989, 103 Stat. 2412, provided that: ''The amendments made by this section [amending this section and sections 412, 414, and 4972 of this title and section 1082 of Title 29, Labor] shall take effect as if included in the amendments made by the provisions of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203] to which it relates, except that the amendment made by subsection (a)(1) [amending section 4972 of this title] shall take effect as if included in the amendment made by section 1131(c) of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9307(f), Dec. 22, 1987, 101 Stat. 1330–359, as amended by Pub. L. 101–239, title VII, §7881(d)(3), Dec. 19, 1989, 103 Stat. 2439, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 412 of this title and section 1082 of Title 29, Labor] shall apply to years beginning after December 31, 1987.

''(2) AMORTIZATION OF GAINS AND LOSSES.—Sections 412(b)(2)(B)(iv) and 412(b)(3)(B)(ii) of the Internal Revenue Code of 1986 and sections 302(b)(2)(B)(iv) and 302(b)(3)(B)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(2)(B)(iv), (3)(B)(ii)] (as amended by paragraphs (1)(A) and (2)(A) of subsection (a)) shall apply to gains and losses established in years beginning after December 31, 1987. For purposes of the preceding sentence, any gain or loss determined by a valuation occurring as of January 1, 1988, shall be treated as established in years beginning before 1988, or at the election of the employer, shall be amortized in accordance with Internal Revenue Service Notice 89–52.''

Section 10201(c)(1) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 419 and 461 of this title, and repealing sections 81 and 463 of this title] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1106(d)(2) 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.

Amendment by section 1108(c) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1112(d)(2) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiv-

er of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Section 1131(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(e)(3), Nov. 10, 1988, 102 Stat. 3478, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 4972 of this title and amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULES 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 contributions pursuant to any such agreement for taxable 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).''

Amendment by section 1171(b)(6) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, but this section 404(i) of this title to continue to apply with respect to credits under section 41 of this title attributable to compensation paid or accrued before Jan. 1, 1987 (or under section 38 of this title with respect to qualified investment before Jan. 1, 1983), see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Section 1173(c)(1) of Pub. L. 99–514 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to dividends paid in taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by sections 1848(c), 1851(b)(2)(A)–(C)(ii), and 1854(b)(3)–(5) 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.

Amendment by section 1854(b)(2) of Pub. L. 99–514 not applicable to dividends paid before Jan. 1, 1986, if the taxpayer treated such dividends in a manner inconsistent with such amendment on a return filed with the Secretary before Oct. 22, 1986, see section 1854(b)(6) of Pub. L. 99–514, set out as a note under section 72 of this title.

Section 1875(c)(7)(B) of Pub. L. 99–514 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1984.

Section 11011(c)(3) of Pub. L. 99–272 provided that: ''The amendments made by this subsection [amending this section] shall apply to payments made after January 1, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(14) 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 512(c) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 162 of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) EXCEPTION FOR CERTAIN EXTENDED VACATION PAY PLANS.—In the case of any extended vacation pay plan maintained pursuant to a collective bargaining agreement—

''(A) between employee representatives and 1 or more employers, and

''(B) in effect on June 22, 1984,

the amendments made by this section shall not apply before the date on which such collective bargaining agreement terminates (determined without regard to any extension thereof agreed to after June 22, 1984). For purposes of the preceding sentence, 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 542(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 116 and 3405 of this title] shall apply to taxable years beginning after the date of enactment of this Act [July 18, 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 1982 AMENDMENT

Section 253(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply to taxable years beginning after December 31, 1981.''

Amendment by section 235(f) of Pub. L. 97–248, in the case of any plan which is not in existence on July 1, 1982, applicable to years ending after July 1, 1982, and in the case of any plan which is in existence on July 1, 1982, applicable to years beginning after Dec. 31, 1982, see section 235(g)(1) of Pub. L. 97–248, set out as a note under section 415 of this title.

Amendment by sections 237 and 238 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(a) of Pub. L. 97–34 applicable to plans which include employees within the meaning of section 401(c)(1) of this title 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 331(f)(2) of Pub. L. 97–34 provided that: ''The amendments made by subsections (b) and (c) [amending this section and sections 56, 409A, and 6699 of this title] shall apply to taxable years ending after December 31, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by 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 133(c) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, §101(a)(5), Apr. 1, 1980, 94 Stat. 196; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to deductions for taxable years beginning after December 31, 1978.

''(2) SPECIAL RULE FOR CERTAIN TITLE INSURANCE COMPANIES.—

''(A) IN GENERAL.—In the case of a qualified title insurance company plan, the amendment made by subsection (a) [amending this section] shall apply to deductions for taxable years beginning after December 31, 1979.

''(B) QUALIFIED TITLE INSURANCE COMPANY PLAN.—For purposes of subparagraph (A), the term 'qualified title insurance company plan' means a plan of a qualified title insurance company—

''(i) which defers the payment of amounts credited by such company to separate accounts for members of such company in consideration of their issuance of policies of title insurance, and

''(ii) under which no part of such amounts is payable to or withdrawable by the members until after the period for the adverse possession of real property under applicable State law.

''(C) QUALIFIED TITLE INSURANCE COMPANY.—For purposes of subparagraph (B), the term 'qualified title insurance company' means an unincorporated title insurance company organized as a business trust—

''(i) which is engaged in the business of providing title insurance coverage on interests in and liens upon real property obtained by clients of the members of such company, and

''(ii) which is subject to tax under section 831 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

Amendment by section 141(f)(9) 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.

Amendment by section 152(f) 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 1502(a)(2) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1975, see section 1502(b) of Pub. L. 94–455, set out as a note under section 415 of this title.

Amendment by section 1901(a)(59) 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.

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 1013(c) and 1016(a)(3) 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 1013(c) and 1016(a)(3) 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 2001(i)(1) of Pub. L. 93–406 provided that: ''The amendments made by subsections (a) [amending this section] and (b) [amending section 1379 of this title] apply to taxable years beginning after December 31, 1973.''

Amendment by section 2001(g)(2)(E), (F) of Pub. L. 93–406 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(5) of Pub. L. 93–406, set out as a note under section 72 of this title.

Section 2008(c) of Pub. L. 93–406 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending on or after June 30, 1972.''

Amendment by section 2004(b), (c)(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; Transition Provisions note under section 415 of this title.

Amendment by section 4081(a) of Pub. L. 93–406 effective on Sept. 2, 1974, with exceptions specified in section 1461(b), (c) of Title 29, Labor, see section 1461(a) of Title 29.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1967, see section 204(d) of Pub. L. 89–809, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–863 applicable to taxable years beginning after Oct. 23, 1962, see section 2(c) of Pub. L. 87–863, set out as a note under section 401 of this title.

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.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CLARIFICATION OF TREATMENT OF CONTRIBUTIONS TO MULTIEMPLOYER PLAN

Pub. L. 107–16, title VI, §658, June 7, 2001, 115 Stat. 137, provided that:

''(a) NOT CONSIDERED METHOD OF ACCOUNTING.—For purposes of section 446 of the Internal Revenue Code of 1986, a determination under section 404(a)(6) of such Code regarding the taxable year with respect to which a contribution to a multiemployer pension plan is deemed made shall not be treated as a method of accounting of the taxpayer. No deduction shall be allowed for any taxable year for any contribution to a multiemployer pension plan with respect to which a deduction was previously allowed.

''(b) REGULATIONS.—The Secretary of the Treasury shall promulgate such regulations as necessary to clarify that a taxpayer shall not be allowed an aggregate amount of deductions for contributions to a multiemployer pension plan which exceeds the amount of such contributions made or deemed made under section 404(a)(6) of the Internal Revenue Code of 1986 to such plan.

''(c) EFFECTIVE DATE.—Subsection (a), and any regulations promulgated under subsection (b), shall be effective for years ending after the date of the enactment of this Act [June 7, 2001].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require 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 Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

COORDINATION OF REPEALS OF CERTAIN SECTIONS

Section 713(d)(8) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Sections 404(e) and 1379(b) 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 the Tax Equity and Fiscal Responsibility Act of 1982 [Sept. 3, 1982]) shall not apply to any plan to which section 401(j) of such Code applies (or would apply but for its repeal).''

DEDUCTIBILITY OF PAYMENTS TO PLAN BY CORPORATION OPERATING PUBLIC TRANSPORTATION SYSTEM ACQUIRED BY STATE

Section 408 of Pub. L. 96–364, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) For purposes of subsection (g) of section 404 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to certain employer liability payments considered as contributions), as amended by section 205 of this Act, any payment made to a plan covering employees of a corporation operating a public transportation system shall be treated as a payment described in paragraph (1) of such subsection if—

''(1) such payment is made to fund accrued benefits under the plan in conjunction with an acquisition by a State (or agency or instrumentality thereof) of the stock or assets of such corporation, and

''(2) such acquisition is pursuant to a State public transportation law enacted after June 30, 1979, and before January 1, 1980.

''(b) The provisions of this section shall apply to payments made after June 29, 1980.''

YEAR OF DEDUCTION FOR CERTAIN EMPLOYER CONTRIBUTIONS FOR SEVERANCE PAYMENTS REQUIRED BY FOREIGN LAW

Section 1022(j) of Pub. L. 93–406, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Effective for taxable years beginning after December 31, 1973, if—

''(1) an employer is engaged in a trade or business in a foreign country,

''(2) such employer is required by the laws of that country to make payments, based on periods of service, to its employees or their beneficiaries after the employees' retirement, death, or other separation from the service, and

''(3) such employer establishes a trust (whether organized within or outside the United States) for the purpose of funding the payments required by such law,

then, in determining for purposes of paragraph (5) of section 404(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] the taxable year in which any contribution to or under the plan is includible in the gross income of the nonresident alien employees of such employer, such paragraph (5) shall be treated as not requiring that separate accounts be maintained for such nonresident alien employees.''

§ 404A. Deduction for certain foreign deferred compensation plans

(a) General rule

Amounts paid or accrued by an employer under a qualified foreign plan—

(1) shall not be allowable as a deduction under this chapter, but

(2) if they would otherwise be deductible, shall be allowed as a deduction under this section for the taxable year for which such amounts are properly taken into account under this section.

(b) Rules for qualified funded plans

For purposes of this section—

(1) In general

Except as otherwise provided in this section, in the case of a qualified funded plan contributions are properly taken into account for the taxable year in which paid.

(2) Payment after close of taxable year

For purposes of paragraph (1), a payment made after the close of a taxable year shall be treated as made on the last day of such year if the payment is made—

(A) on account of such year, and

(B) not later than the time prescribed by law for filing the return for such year (including extensions thereof).

(3) Limitations

In the case of a qualified funded plan, the amount allowable as a deduction for the taxable year shall be subject to—

(A) in the case of—

(i) a plan under which the benefits are fixed or determinable, limitations similar to those contained in clauses (ii) and (iii) of subparagraph (A) of section 404(a)(1) (determined without regard to the last sentence of such subparagraph (A)), or

(ii) any other plan, limitations similar to the limitations contained in paragraph (3) of section 404(a), and

(B) limitations similar to those contained in paragraph (7) of section 404(a).

(4) Carryover

If—

(A) the aggregate of the contributions paid during the taxable year reduced by any contributions not allowable as a deduction under paragraphs (1) and (2) of subsection (g), exceeds

(B) the amount allowable as a deduction under subsection (a) (determined without regard to subsection (d)),

such excess shall be treated as an amount paid in the succeeding taxable year.

(5) Amounts must be paid to qualified trust, etc.

In the case of a qualified funded plan, a contribution shall be taken into account only if it is paid—

(A) to a trust (or the equivalent of a trust) which meets the requirements of section 401(a)(2),

(B) for a retirement annuity, or
(C) to a participant or beneficiary.

(c) Rules relating to qualified reserve plans

For purposes of this section—

(1) In general

In the case of a qualified reserve plan, the amount properly taken into account for the taxable year is the reasonable addition for such year to a reserve for the taxpayer's liability under the plan. Unless otherwise required or permitted in regulations prescribed by the Secretary, the reserve for the taxpayer's liability shall be determined under the unit credit method modified to reflect the requirements of paragraphs (3) and (4). All benefits paid under the plan shall be charged to the reserve.

(2) Income item

In the case of a plan which is or has been a qualified reserve plan, an amount equal to that portion of any decrease for the taxable year in the reserve which is not attributable to the payment of benefits shall be included in gross income.

(3) Rights must be nonforfeitable, etc.

In the case of a qualified reserve plan, an item shall be taken into account for a taxable year only if—

(A) there is no substantial risk that the rights of the employee will be forfeited, and

(B) such item meets such additional requirements as the Secretary may by regulations prescribe as necessary or appropriate to ensure that the liability will be satisfied.

(4) Spreading of certain increases and decreases in reserves

There shall be amortized over a 10-year period any increase or decrease to the reserve on account of—

(A) the adoption of the plan or a plan amendment,

(B) experience gains and losses, and[1]

(C) any change in actuarial assumptions,

(D) changes in the interest rate under subsection (g)(3)(B), and

(E) such other factors as may be prescribed by regulations.

(d) Amounts taken into account must be consistent with amounts allowed under foreign law

(1) General rule

In the case of any plan, the amount allowed as a deduction under subsection (a) for any taxable year shall equal—

(A) the lesser of—

(i) the cumulative United States amount, or

(ii) the cumulative foreign amount, reduced by

(B) the aggregate amount determined under this section for all prior taxable years.

(2) Cumulative amounts defined

For purposes of paragraph (1)—

(A) Cumulative United States amount

The term ''cumulative United States amount'' means the aggregate amount determined with respect to the plan under this section for the taxable year and for all prior taxable years to which this section applies. Such determination shall be made for each taxable year without regard to the application of paragraph (1).

(B) Cumulative foreign amount

The term ''cumulative foreign amount'' means the aggregate amount allowed as a deduction under the appropriate foreign tax laws for the taxable year and all prior taxable years to which this section applies.

(3) Effect on earnings and profits, etc.

In determining the earnings and profits and accumulated profits of any foreign corporation with respect to a qualified foreign plan, except as provided in regulations, the amount determined under paragraph (1) with respect to any plan for any taxable year shall in no event exceed the amount allowed as a deduction under the appropriate foreign tax laws for such taxable year.

(e) Qualified foreign plan

For purposes of this section, the term ''qualified foreign plan'' means any written plan of an employer for deferring the receipt of compensation but only if—

(1) such plan is for the exclusive benefit of the employer's employees or their beneficiaries,

(2) 90 percent or more of the amounts taken into account for the taxable year under the plan are attributable to services—

(A) performed by nonresident aliens, and

(B) the compensation for which is not subject to tax under this chapter, and

(3) the employer elects (at such time and in such manner as the Secretary shall by regulations prescribe) to have this section apply to such plan.

(f) Funded and reserve plans

For purposes of this section—

(1) Qualified funded plan

The term ''qualified funded plan'' means a qualified foreign plan which is not a qualified reserve plan.

(2) Qualified reserve plan

The term ''qualified reserve plan'' means a qualified foreign plan with respect to which an election made by the taxpayer is in effect for the taxable year. An election under the preceding sentence shall be made in such manner and form as the Secretary may by regulations prescribe and, once made, may be revoked only with the consent of the Secretary.

(g) Other special rules

(1) No deduction for certain amounts

Except as provided in section 404(a)(5), no deduction shall be allowed under this section for any item to the extent such item is attributable to services—

(A) performed by a citizen or resident of the United States who is a highly compensated employee (within the meaning of section 414(q)), or

(B) performed in the United States the compensation for which is subject to tax under this chapter.

[1] So in original. The word ''and'' probably should not appear.

(2) Taxpayer must furnish information

(A) In general

No deduction shall be allowed under this section with respect to any plan for any taxable year unless the taxpayer furnishes to the Secretary with respect to such plan (at such time as the Secretary may by regulations prescribe)—

(i) a statement from the foreign tax authorities specifying the amount of the deduction allowed in computing taxable income under foreign law for such year with respect to such plan,

(ii) if the return under foreign tax law shows the deduction for plan contributions or reserves as a separate, identifiable item, a copy of the foreign tax return for the taxable year, or

(iii) such other statement, return, or other evidence as the Secretary prescribes by regulation as being sufficient to establish the amount of the deduction under foreign law.

(B) Redetermination where foreign tax deduction is adjusted

If the deduction under foreign tax law is adjusted, the taxpayer shall notify the Secretary of such adjustment on or before the date prescribed by regulations, and the Secretary shall redetermine the amount of the tax for the year or years affected. In any case described in the preceding sentence, rules similar to the rules of subsection (c) of section 905 shall apply.

(3) Actuarial assumptions must be reasonable; full funding

(A) In general

Except as provided in subparagraph (B), principles similar to those set forth in paragraphs (3) and (6) of section 431(c) shall apply for purposes of this section.

(B) Interest rate for reserve plan

(i) In general

In the case of a qualified reserve plan, in lieu of taking rates of interest into account under subparagraph (A), the rate of interest for the plan shall be the rate selected by the taxpayer which is within the permissible range.

(ii) Rate remains in effect so long as it falls within permissible range

Any rate selected by the taxpayer for the plan under this subparagraph shall remain in effect for such plan until the first taxable year for which such rate is no longer within the permissible range. At such time, the taxpayer shall select a new rate of interest which is within the permissible range applicable at such time.

(iii) Permissible range

For purposes of this subparagraph, the term ''permissible range'' means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average rate of interest for long-term corporate bonds in the appropriate country for the 15-year period ending on the last day before the beginning of the taxable year.

(4) Accounting method

Any change in the method (but not the actuarial assumptions) used to determine the amount allowed as a deduction under subsection (a) shall be treated as a change in accounting method under section 446(e).

(5) Section 481 applies to election

For purposes of section 481, any election under this section shall be treated as a change in the taxpayer's method of accounting. In applying section 481 with respect to any such election, the period for taking into account any increase or decrease in accumulated profits, earnings and profits or taxable income resulting from the application of section 481(a)(2) shall be the year for which the election is made and the fourteen succeeding years.

(h) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section (including regulations providing for the coordination of the provisions of this section with section 404 in the case of a plan which has been subject to both of such sections).

(Added Pub. L. 96–603, § 2(a), Dec. 28, 1980, 94 Stat. 3505; amended Pub. L. 99–514, title XI, § 1114(b)(8), title XVIII, § 1851(b)(2)(C)(iii), Oct. 22, 1986, 100 Stat. 2451, 2863; Pub. L. 100–647, title I, § 1012(b)(4), Nov. 10, 1988, 102 Stat. 3496; Pub. L. 109–280, title VIII, § 801(c)(4), Aug. 17, 2006, 120 Stat. 995.)

AMENDMENTS

2006—Subsec. (g)(3)(A). Pub. L. 109–280 substituted ''paragraphs (3) and (6) of section 431(c)'' for ''paragraphs (3) and (7) of section 412(c)''.

1988—Subsec. (d)(3). Pub. L. 100–647 inserted ''except as provided in regulations,'' after ''qualified foreign plan,''.

1986—Subsec. (a). Pub. L. 99–514, § 1851(b)(2)(C)(iii), substituted ''under this chapter'' for ''under section 162, 212, or 404'' in par. (1) and ''they would otherwise be deductible'' for ''they satisfy the conditions of section 162'' in par. (2).

Subsec. (g)(1)(A). Pub. L. 99–514, § 1114(b)(8), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, shareholder, or highly compensated''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to years beginning after Dec. 31, 2007, see section 801(e)(1) of Pub. L. 109–280, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(8) 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.

Amendment by section 1851(b)(2)(C)(iii) of Pub. L. 99–514 effective, except as otherwise provided, as if in-

cluded 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.

EFFECTIVE DATE

Section 2(e) of Pub. L. 96–603, as amended by Pub. L. 97–448, title III, § 305(a), Jan. 12, 1983, 96 Stat. 2399; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] shall apply with respect to employer contributions or accruals for taxable years beginning after December 31, 1979.

''(2) ELECTION TO APPLY AMENDMENTS RETROACTIVELY WITH RESPECT TO FOREIGN SUBSIDIARIES.—

''(A) IN GENERAL.—The taxpayer may elect to have the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] apply retroactively with respect to its foreign subsidiaries.

''(B) SCOPE OF RETROACTIVE APPLICATION.—Any election made under this paragraph shall apply with respect to all foreign subsidiaries of the taxpayer for the taxpayer's open period.

''(C) DISTRIBUTIONS BY FOREIGN SUBSIDIARY MUST BE OUT OF POST-1971 EARNINGS AND PROFITS.—The election under this paragraph shall apply to distributions made by a foreign subsidiary only if made out of accumulated profits (or earnings and profits) earned after December 31, 1970.

''(D) REVOCATION ONLY WITH CONSENT.—An election under this paragraph may be revoked only with the consent of the Secretary of the Treasury or his delegate.

''(E) OPEN PERIOD.—For purposes of this subsection, the term 'open period' means, with respect to any taxpayer, all taxable years which begin before January 1, 1980, and which begin after December 31, 1971, and for which, on December 31, 1980, the making of a refund, or the assessment of a deficiency, was not barred by any law or rule of law.

''(3) ALLOWANCE OF PRIOR DEDUCTIONS IN CASE OF CERTAIN FUNDED BRANCH PLANS.—

''(A) IN GENERAL.—If—

''(i) the taxpayer elects to have this paragraph apply, and

''(ii) the taxpayer agrees to the assessment of all deficiencies (including interest thereon) arising from all erroneous deductions,

then an amount equal to 1/15th of the aggregate of the prior deductions which would have been allowable if the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] applied to taxable years beginning before January 1, 1980, shall be allowed as a deduction for the taxpayer's first taxable year beginning in 1980, and an equal amount shall be allowed for each of the succeeding 14 taxable years.

''(B) PRIOR DEDUCTION.—For purposes of subparagraph (A), the term 'prior deduction' means a deduction with respect to a qualified funded plan (within the meaning of section 404A(f)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) of the taxpayer—

''(i) which the taxpayer claimed for a taxable year (or could have claimed if the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] applied to taxable years beginning before January 1, 1980) beginning before January 1, 1980,

''(ii) which was not allowable, and

''(iii) with respect to which, on December 1, 1980, the assessment of a deficiency was not barred by any law or rule of law.

''(4) TIME AND MANNER FOR MAKING ELECTIONS.—

''(A) TIME.—An election under paragraph (2) or (3) may be made only on or before the due date (including extensions) for filing the taxpayer's return of tax under chapter 1 of the Internal Revenue Code of 1986 [section 1 et seq. of this title] for its first taxable year ending on or after December 31, 1980.

''(B) MANNER.—An election under paragraph (2) may be made only by a statement attached to the taxpayer's return for its first taxable year ending on or after December 31, 1980. An election under paragraph (3) may be made only if the taxpayer, on or before the last day for making the election, files with the Secretary of the Treasury or his delegate such amended return and such other information as the Secretary of the Treasury or his delegate may require, and agrees to the assessment of a deficiency for any closed year falling within the open period, to the extent such deficiency is attributable to the operation of such election.''

[Pub. L. 97–448, title III, § 311(c)(1), Jan. 12, 1983, 96 Stat. 2411, provided that: ''The amendment made by subsection (a) of section 305 [amending par. (2)(E) of this note] shall take effect on December 28, 1980.'']

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 405. Repealed. Pub. L. 98–369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848]

Section, added Pub. L. 87–792, § 5(a), Oct. 10, 1962, 76 Stat. 826; amended Pub. L. 89–97, title I, § 106(d)(5), July 30, 1965, 79 Stat. 337; Pub. L. 91–172, title V, § 515(c)(1), Dec. 30, 1969, 83 Stat. 645; Pub. L. 93–406, title II, §§ 2004(c)(2), 2005(c)(11), Sept. 2, 1974, 88 Stat. 986, 992; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title III, § 313(a), (b)(1), Aug. 13, 1981, 95 Stat. 285, 286; Pub. L. 97–452, § 2(c)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, § 42(a)(6), July 18, 1984, 98 Stat. 557, related to qualified bond purchase plans.

EFFECTIVE DATE OF REPEAL

Repeal applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 62 of this title.

ROLLOVER OF EXISTING BONDS INTO QUALIFIED EMPLOYER PLANS

Pub. L. 98–369, div. A, title IV, § 491(c)(1), (f)(2), July 18, 1984, 98 Stat. 848, 853, provided that, applicable to redemptions after July 18, 1984, in taxable years ending after such date, subsec. (d)(3)(A) of this section, as in effect before its repeal, is amended to read as follows:

''(A) IN GENERAL.—If—

''(i) any qualified bond is redeemed,

''(ii) any portion of the excess of the proceeds from such redemption over the basis of such bond is transferred to an individual retirement plan which is maintained for the benefit of the individual redeeming such bond, or to a qualified trust (as defined in section 402(a)(5)(D)(iii)) for the benefit of such individual, and

''(iii) such transfer is made on or before the 60th day after the individual received the proceeds of such redemption,

then gross income shall not include the proceeds to the extent so transferred and the transfer shall be treated

as a rollover contribution described in section 408(d)(3).''

BONDS UNDER QUALIFIED BOND PURCHASE PLANS REDEEMABLE AT ANY TIME AFTER JULY 18, 1984

Section 491(f)(4) of Pub. L. 98–369 provided that: ''Notwithstanding—

''(A) subparagraph (D) of section 405(b)(1) of the Internal Revenue Code of 1954 (as in effect before its repeal by this section) [see above], and

''(B) the terms of any bond described in subsection (b) of such section 405,

such a bond may be redeemed at any time after the date of the enactment of this Act [July 18, 1984] in the same manner as if the individual redeeming the bond had attained age 59½.''

§ 406. Employees of foreign affiliates covered by section 3121(*l*) agreements

(a) Treatment as employees of American employer

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of an American employer (as defined in section 3121(h)), an individual who is a citizen or resident of the United States and who is an employee of a foreign affiliate (as defined in section 3121(*l*)(6)) of such American employer shall be treated as an employee of such American employer, if—

(1) such American employer has entered into an agreement under section 3121(*l*) which applies to the foreign affiliate of which such individual is an employee;

(2) the plan of such American employer expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its foreign affiliates to which an agreement entered into by such American employer under section 3121(*l*) applies; and

(3) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the foreign affiliate.

(b) Special rules for application of section 401(a)

(1) Nondiscrimination requirements

For purposes of applying section 401(a)(4) and section 410(b) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) if such individual is a highly compensated employee (within the meaning of section 414(q)), he shall be treated as having such capacity with respect to such American employer; and

(B) the determination of whether such individual is a highly compensated employee (as so defined) shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such American employer and by determining such individual's status with regard to such American employer.

(2) Determination of compensation

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) the total compensation of such individual shall be the remuneration paid to such individual by the foreign affiliate which would constitute his total compensation if his services had been performed for such American employer, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary; and

(B) such individual shall be treated as having paid the amount paid by such American employer which is equivalent to the tax imposed by section 3101.

[(c) Repealed. Pub. L. 104–188, title I, § 1401(b)(7), Aug. 20, 1996, 110 Stat. 1789]

(d) Deductibility of contributions

For purposes of applying section 404 with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity plan by an American employer, or by another taxpayer which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such American employer under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such American employer or to any other taxpayer which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the foreign affiliate of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 by the American employer if he were an employee of the American employer, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a foreign affiliate under this subsection shall be deductible for its taxable year with or within which the taxable year of such American employer ends.

(e) Treatment as employee under related provisions

An individual who is treated as an employee of an American employer under subsection (a) shall also be treated as an employee of such American employer, with respect to the plan described in subsection (a)(2), for purposes of applying the following provisions of this title:

(1) Section 72(f) (relating to special rules for computing employees' contributions).

(2) Section 2039 (relating to annuities).

(Added Pub. L. 88–272, title II, § 220(a), Feb. 26, 1964, 78 Stat. 58; amended Pub. L. 91–172, title V, § 515(c)(2), Dec. 30, 1969, 83 Stat. 645; Pub. L. 93–406, title II, §§ 1016(a)(4), 2005(c)(12), Sept. 2, 1974, 88 Stat. 929, 992; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–21, title III, § 321(c), (e)(2)(A)–(D)(i), Apr. 20, 1983, 97 Stat. 119, 120; Pub. L. 98–369, div. A, title IV, § 491(d)(13)–(15), July 18, 1984, 98 Stat. 849; Pub. L. 99–514, title XI, §§ 1112(d)(3), 1114(b)(9)(A), (C), title XVIII, § 1852(e)(2)(C), Oct. 22, 1986, 100

Stat. 2445, 2451, 2868; Pub. L. 100–647, title I, §1011A(b)(1)(C), (16), Nov. 10, 1988, 102 Stat. 3472, 3475; Pub. L. 101–239, title VII, §§7811(g)(3), 7831(f), title X, §10201(b)(1), (2), Dec. 19, 1989, 103 Stat. 2409, 2427, 2472; Pub. L. 102–318, title V, §521(b)(14), July 3, 1992, 106 Stat. 311; Pub. L. 104–188, title I, §§1401(b)(7), 1402(b)(2), Aug. 20, 1996, 110 Stat. 1789, 1790.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188, §1401(b)(7), struck out subsec. (c) which related to treatment of termination of status as deemed employee.

Subsec. (e)(2), (3). Pub. L. 104–188, §1402(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Section 101(b) (relating to employees' death benefits).''

1992—Subsec. (c). Pub. L. 102–318 substituted ''402(d)'' for ''402(e)''.

1989—Subsec. (a). Pub. L. 101–239, §10201(b)(1), substituted ''3121(*l*)(6)'' for ''3121(*l*)(8)''.

Subsec. (b)(1)(A). Pub. L. 101–239, §7831(f), made technical correction to Pub. L. 99–514, §1114(b)(9)(A), see 1986 Amendment note below.

Subsec. (c). Pub. L. 101–239, §7811(g)(3), substituted ''purposes of limitation'' for ''purposes limitation'' in heading.

Subsec. (c)(3). Pub. L. 101–239, §10201(b)(2), substituted ''3121(*l*)(6)(B)'' for ''3121(*l*)(8)(B)''.

1988—Subsec. (c). Pub. L. 100–647, §1011A(b)(16), struck out ''of capital gain provisions and'' after ''service for purposes'' in heading and substituted ''applying section 402(e)'' for ''applying subsections (a)(2) and (e) of section 402, and section 403(a)(2)'' in text.

Subsec. (e). Pub. L. 100–647, §1011A(b)(1)(C), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: ''Section 72(d) (relating to employees' annuities).''

1986—Subsec. (b)(1). Pub. L. 99–514, §1112(d)(3), struck out ''(without regard to paragraph (1)(A) thereof)'' after ''section 410(b)'' in introductory text.

Subsec. (b)(1)(A). Pub. L. 99–514, §1114(b)(9)(A), as amended by Pub. L. 101–239, §7831(f), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a foreign affiliate of such American employer''.

Subsec. (b)(1)(B). Pub. L. 99–514, §1114(b)(9)(C), inserted ''(as so defined)'' after ''employee''.

Subsec. (e)(5). Pub. L. 99–514, §1852(e)(2)(C), struck out par. (5) which read as follows: ''Section 2517 (relating to certain annuities under qualified plans).''

1984—Subsec. (a). Pub. L. 98–369, §491(d)(13), substituted in introductory provision ''or an annuity plan described in section 403(a)'' for '', an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)''.

Subsec. (a)(3). Pub. L. 98–369, §491(d)(14), substituted ''or 403(a)'' for '', 403(a), or 405(a)''.

Subsec. (d). Pub. L. 98–369, §491(d)(15)(A), (B), substituted in introductory provision ''section 404'' for ''sections 404 and 405(c)'', and ''or annuity'' for ''annuity, or bond purchase''.

Subsec. (d)(2). Pub. L. 98–369, §491(d)(15)(C), struck out ''(or section 405(c))'' after ''section 404''.

1983—Pub. L. 98–21, §321(e)(2)(D)(i), substituted ''Employees of foreign affiliates covered by section 3121(*l*) agreements'' for ''Certain employees of foreign subsidiaries'' in section catchline.

Subsec. (a). Pub. L. 98–21, §321(c), amended subsec. (a) generally, substituting ''American employer'' for ''domestic corporation'' in heading and in text wherever appearing, inserting reference to section 3121(h) of this title, inserting ''or resident'' after ''citizen'' wherever appearing, substituting ''foreign affiliate'' for ''foreign subsidiary'' wherever appearing, and ''foreign affiliates'' for ''foreign subsidiaries''.

Subsec. (b). Pub. L. 98–21, §321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing.

Subsec. (c). Pub. L. 98–21, §321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing in provisions preceding par. (1) and in pars. (1) and (2).

Subsec. (c)(3). Pub. L. 98–21, §321(e)(2)(A), (B), substituted ''foreign affiliate by reason of which he is treated as an employee of such American employer, if he becomes an employee of another entity in which such American employer has not less than a 10-percent interest (within the meaning of section 3121(*l*)(8)(B)'' for ''foreign subsidiary by reason of which he is treated as an employee of such domestic corporation, if he becomes an employee of another corporation controlled by such domestic corporation''.

Subsec. (d). Pub. L. 98–21, §321(e)(2)(A), (C), substituted references to an American employer for references to a domestic corporation and reference to an affiliate for a reference to a subsidiary wherever appearing, substituted ''another taxpayer'' for ''another corporation'' in provisions preceding par. (1), and substituted ''any other taxpayer'' for ''any other corporation'' in par. (1).

Subsec. (e). Pub. L. 98–21, §321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation wherever appearing in provisions preceding par. (1).

1976—Subsec. (b)(2)(A). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (b)(1). Pub. L. 93–406, §1016(a)(4), substituted ''section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)'' for ''paragraphs (3)(B) and (4) of section 401(a)''.

Subsec. (c). Pub. L. 93–406, §2005(c)(12), substituted ''subsections (a)(2) and (e) of section 402'' for ''section 72(n), section 402(a)(2)''.

1969—Subsec. (c). Pub. L. 91–172 substituted ''provisions and limitation of tax'' for ''provisions'' in heading, and substituted ''section 72(n), section 402(a)(2),'' for ''section 402(a)(2)'' in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(7) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1402(b)(2) of Pub. L. 104–188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104–188, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(g)(3) 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.

Amendment by section 7831(f) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

Section 10201(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section, section 3121 of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to any agreement in effect under section 3121(*l*) of the Internal Revenue Code of 1986 on or after June 15, 1989, with respect to which no notice of termination is in effect on such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1112(d)(3) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1114(b)(9)(A), (C) 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 1852(e)(2)(E) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section and section 407 of this title and repealing section 2517 of this title] shall apply to transfers after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 321(f) of Pub. L. 98–21 provided that:

''(1)(A) The amendments made by this section [amending this section and sections 407, 1402, 3121, and 6413 of this title and section 410 of Title 42, The Public Health and Welfare] (other than subsection (d) [amending section 407 of this title]) shall apply to agreements entered into after the date of the enactment of this Act [Apr. 20, 1983].

''(B) At the election of any American employer, the amendments made by this section (other than subsection (d)) shall also apply to any agreement entered into on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.

''(2)(A) The amendments made by subsection (d) [amending section 407 of this title] shall apply to plans established after the date of the enactment of this Act [Apr. 20, 1983].

''(B) At the election of any domestic parent corporation the amendments made by subsection (d) shall also apply to any plan established on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1016(a)(4) 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 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; Transition of Rules note under section 410 of this title.

Amendment by section 2005(c)(12) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section 220(d) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) [enacting this section], (b) [enacting section 407 of this title], and (c)(1) [amending the analysis preceding section 401 of this title] shall apply to taxable years ending after December 31, 1963. The amendments made by subsections (c)(2) [amending section 3121 of this title] and (3) [amending section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1962.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require 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 Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 407. Certain employees of domestic subsidiaries engaged in business outside the United States

(a) Treatment as employees of domestic parent corporation

(1) In general

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of a domestic parent corporation, an individual who is a citizen or resident of the United States and who is an employee of a domestic subsidiary (within the meaning of paragraph (2)) of such domestic parent corporation shall be treated as an employee of such domestic parent corporation, if—

(A) the plan of such domestic parent corporation expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its domestic subsidiaries; and

(B) contributions under a funded plan of deferred compensation (whether or not a

plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the domestic subsidiary.

(2) Definitions

For purposes of this section—

(A) Domestic subsidiary

A corporation shall be treated as a domestic subsidiary for any taxable year only if—

(i) such corporation is a domestic corporation 80 percent or more of the outstanding voting stock of which is owned by another domestic corporation;

(ii) 95 percent or more of its gross income for the three-year period immediately preceding the close of its taxable year which ends on or before the close of the taxable year of such other domestic corporation (or for such part of such period during which the corporation was in existence), was derived from sources without the United States; and

(iii) 90 percent or more of its gross income for such period (or such part) was derived from the active conduct of a trade or business.

If for the period (or part thereof) referred to in clauses (ii) and (iii) such corporation has no gross income, the provisions of clauses (ii) and (iii) shall be treated as satisfied if it is reasonable to anticipate that, with respect to the first taxable year thereafter for which such corporation has gross income, the provisions of such clauses will be satisfied.

(B) Domestic parent corporation

The domestic parent corporation of any domestic subsidiary is the domestic corporation which owns 80 percent or more of the outstanding voting stock of such domestic subsidiary.

(b) Special rules for application of section 401(a)

(1) Nondiscrimination requirements

For purposes of applying section 401(a)(4) and section 410(b) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a)—

(A) if such individual is a highly compensated employee (within the meaning of section 414(q)), he shall be treated as having such capacity with respect to such domestic parent corporation; and

(B) the determination of whether such individual is a highly compensated employee (as so defined) shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such domestic parent corporation and by determining such individual's status with regard to such domestic parent corporation.

(2) Determination of compensation

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a), the total compensation of such individual shall be the remuneration paid to such individual by the domestic subsidiary which would constitute his total compensation if his services had been performed for such domestic parent corporation, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary.

[(c) Repealed. Pub. L. 104–188, title I, §1401(b)(8), Aug. 20, 1996, 110 Stat. 1789]

(d) Deductibility of contributions

For purposes of applying section 404 with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity plan by a domestic parent corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such domestic corporation under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such domestic parent corporation or to any other corporation which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the domestic subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 by the domestic parent corporation if he were an employee of the domestic parent corporation, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a domestic subsidiary under this subsection shall be deductible for its taxable year with or within which the taxable year of such domestic parent corporation ends.

(e) Treatment as employee under related provisions

An individual who is treated as an employee of a domestic parent corporation under subsection (a) shall also be treated as an employee of such domestic parent corporation, with respect to the plan described in subsection (a)(1)(A), for purposes of applying the following provisions of this title:

(1) Section 72(f) (relating to special rules for computing employees' contributions).

(2) Section 2039 (relating to annuities).

(Added Pub. L. 88–272, title II, §220(b), Feb. 26, 1964, 78 Stat. 60; amended Pub. L. 91–172, title V, §515(c)(3), Dec. 30, 1969, 83 Stat. 646; Pub. L. 93–406, title II, §§1016(a)(5), 2005(c)(13), Sept. 2, 1974, 88 Stat. 929, 992; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–21, title III, §321(d), Apr. 20, 1983, 97 Stat. 119; Pub. L. 98–369, div. A, title IV, §491(d)(16)–(18), July 18, 1984, 98 Stat. 850; Pub. L. 99–514, title XI, §§1112(d)(3), 1114(b)(9)(B), (C), title XVIII, §1852(e)(2)(D), Oct. 22, 1986, 100 Stat. 2445, 2451, 2868; Pub. L. 100–647, title I, §1011A(b)(1)(C), (16), Nov. 10, 1988, 102 Stat. 3472, 3475; Pub. L. 101–239, title VII, §§7811(g)(3), 7831(f), Dec. 19, 1989, 103 Stat. 2409, 2427; Pub. L. 102–318, title V, §521(b)(15), July 3, 1992, 106 Stat. 311; Pub. L.

104–188, title I, §§1401(b)(8), 1402(b)(2), Aug. 20, 1996, 110 Stat. 1789, 1790.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188, §1401(b)(8), struck out subsec. (c) which related to treatment of termination of status as deemed employee.

Subsec. (e)(2), (3). Pub. L. 104–188, §1402(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Section 101(b) (relating to employees' death benefits).''

1992—Subsec. (c). Pub. L. 102–318 substituted ''402(d)'' for ''402(e)''.

1989—Subsec. (b)(1)(A). Pub. L. 101–239, §7831(f), made technical correction to Pub. L. 99–514, §1114(b)(9)(B), see 1986 Amendment note below.

Subsec. (c). Pub. L. 101–239, §7811(g)(3), substituted ''purposes of limitation'' for ''purposes limitation'' in heading.

1988—Subsec. (c). Pub. L. 100–647, §1011A(b)(16), struck out ''of capital gain provisions and'' after ''service for purposes'' in heading and substituted ''applying section 402(e)'' for ''applying subsections (a)(2) and (e) of section 402, and section 403(a)(2)'' in text.

Subsec. (e). Pub. L. 100–647, §1011A(b)(1)(C), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: ''Section 72(d) (relating to employees' annuities).''

1986—Subsec. (b)(1). Pub. L. 99–514, §1112(d)(3), struck out ''(without regard to paragraph (1)(A) thereof)'' after ''section 410(b)'' in introductory text.

Subsec. (b)(1)(A). Pub. L. 99–514, §1114(b)(9)(B), as amended by Pub. L. 101–239, §7831(f), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a domestic subsidiary''.

Subsec. (b)(1)(B). Pub. L. 99–514, §1114(b)(9)(C), inserted ''(as so defined)'' after ''employee''.

Subsec. (e)(5). Pub. L. 99–514, §1852(e)(2)(D), struck out par. (5) which read as follows: ''Section 2517 (relating to certain annuities under qualified plans).''

1984—Subsec. (a)(1). Pub. L. 98–369, §491(d)(16), substituted ''or an annuity plan described in section 403(a)'' for '', an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)''.

Subsec. (a)(1)(B). Pub. L. 98–369, §491(d)(17), substituted ''or 403(a)'' for '', 403(a), or 405(a)''.

Subsec. (d). Pub. L. 98–369, §491(d)(18)(A), (B), substituted in introductory provision ''section 404'' for ''sections 404 and 405(a)'', and ''or annuity'' for ''annuity, or bond purchase''.

Subsec. (d)(2). Pub. L. 98–369, §491(d)(18)(C), struck out ''(or section 405(c))'' after ''section 404''.

1983—Subsec. (a)(1). Pub. L. 98–21 inserted ''or resident'' after ''citizen'', and inserted ''or residents'' after ''citizens'' in subpar. (A).

1976—Subsec. (b)(2). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (b)(1). Pub. L. 93–406, §1016(a)(5), substituted ''section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)'' for ''paragraphs (3)(B) and (4) of section 401(a)''.

Subsec. (c). Pub. L. 93–406, §2005(c)(13), substituted ''subsections (a)(2) and (e) of section 402'' for ''section 72(n), section 402(a)(2)''.

1969—Subsec. (c). Pub. L. 91–172 substituted ''provisions and limitation of tax'' for ''provisions'' in heading, and substituted ''section 72(n), section 402(a)(2),'' for ''section 402(a)(2)'' in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(8) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1402(b)(2) of Pub. L. 104–188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104–188, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(g)(3) 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.

Amendment by section 7831(f) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1112(d)(3) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1114(b)(9)(B), (C) 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.

Amendment by section 1852(e)(2)(D) of Pub. L. 99–514 applicable to transfers after Oct. 22, 1986, see section 1852(e)(2)(E) of Pub. L. 99–514, set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to plans established after Apr. 20, 1983, except that at the election of any domestic parent corporation such amendment shall also apply to any plan established on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21 set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1016(a)(5) 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 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.

Amendment by section 2005(c)(13) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, see section 220(d) of Pub. L. 88–272, set out as a note under section 406 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require 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 Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 408. Individual retirement accounts

(a) Individual retirement account

For purposes of this section, the term ''individual retirement account'' means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3) in[1] section 402(c), 403(a)(4), 403(b)(8), or 457(e)(16), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A).

(2) The trustee is a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

(3) No part of the trust funds will be invested in life insurance contracts.

(4) The interest of an individual in the balance in his account is nonforfeitable.

(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

(b) Individual retirement annuity

For purposes of this section, the term ''individual retirement annuity'' means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

(1) The contract is not transferable by the owner.

(2) Under the contract—

(A) the premiums are not fixed,

(B) the annual premium on behalf of any individual will not exceed the dollar amount in effect under section 219(b)(1)(A), and

(C) any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

(3) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of the owner.

(4) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed the dollar amount in effect under section 219(b)(1)(A).

(c) Accounts established by employers and certain associations of employees

A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401(c)(1)) for the exclusive benefit of its members or their beneficiaries, shall be treated as an individual retirement account (described in subsection (a)), but only if the written governing instrument creating the trust meets the following requirements:

(1) The trust satisfies the requirements of paragraphs (1) through (6) of subsection (a).

(2) There is a separate accounting for the interest of each employee or member (or spouse of an employee or member).

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

[1] So in original.

(d) Tax treatment of distributions

(1) In general

Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

(2) Special rules for applying section 72

For purposes of applying section 72 to any amount described in paragraph (1)—

(A) all individual retirement plans shall be treated as 1 contract,

(B) all distributions during any taxable year shall be treated as 1 distribution, and

(C) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

For purposes of subparagraph (C), the value of the contract shall be increased by the amount of any distributions during the calendar year.

(3) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii), the term ''eligible retirement plan'' means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).

(B) Limitation

This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account or an individual retirement annuity which was not includible in his gross income because of the application of this paragraph.

(C) Denial of rollover treatment for inherited accounts, etc.

(i) In general

In the case of an inherited individual retirement account or individual retirement annuity—

(I) this paragraph shall not apply to any amount received by an individual from such an account or annuity (and no amount transferred from such account or annuity to another individual retirement account or annuity shall be excluded from gross income by reason of such transfer), and

(II) such inherited account or annuity shall not be treated as an individual retirement account or annuity for purposes of determining whether any other amount is a rollover contribution.

(ii) Inherited individual retirement account or annuity

An individual retirement account or individual retirement annuity shall be treated as inherited if—

(I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and

(II) such individual was not the surviving spouse of such other individual.

(D) Partial rollovers permitted

(i) In general

If any amount paid or distributed out of an individual retirement account or individual retirement annuity would meet the requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause (i) or (ii) of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent it is paid into an eligible plan referred to in such clause not later than the 60th day referred to in such clause.

(ii) Eligible plan

For purposes of clause (i), the term ''eligible plan'' means any account, annuity, contract, or plan referred to in subparagraph (A).

(E) Denial of rollover treatment for required distributions

This paragraph shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).

(F) Frozen deposits

For purposes of this paragraph, rules similar to the rules of section 402(c)(7) (relating to frozen deposits) shall apply.

(G) Simple retirement accounts

In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72(t)(6) applies, this paragraph shall not

apply unless such payment or distribution is paid into another simple retirement account.

(H) Application of section 72

(i) In general

If—

(I) a distribution is made from an individual retirement plan, and

(II) a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

(ii) Applicable rules

In the case of a distribution described in clause (i)—

(I) section 72 shall be applied separately to such distribution,

(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(I) Waiver of 60-day requirement

The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(4) Contributions returned before due date of return

Paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity if—

(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

(B) no deduction is allowed under section 219 with respect to such contribution, and

(C) such distribution is accompanied by the amount of net income attributable to such contribution.

In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such contribution is made.

(5) Distributions of excess contributions after due date for taxable year and certain excess rollover contributions

(A) In general

In the case of any individual, if the aggregate contributions (other than rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed the dollar amount in effect under section 219(b)(1)(A), paragraph (1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount allowable as a deduction under section 219 for the taxable year for which the contribution was paid—

(i) if such distribution is received after the date described in paragraph (4),

(ii) but only to the extent that no deduction has been allowed under section 219 with respect to such excess contribution.

If employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar limitation of the preceding sentence shall be increased by the lesser of the amount of such contributions or the dollar limitation in effect under section 415(c)(1)(A) for such taxable year.

(B) Excess rollover contributions attributable to erroneous information

If—

(i) the taxpayer reasonably relies on information supplied pursuant to subtitle F for determining the amount of a rollover contribution, but

(ii) the information was erroneous,

subparagraph (A) shall be applied by increasing the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.

For purposes of this paragraph, the amount allowable as a deduction under section 219 shall be computed without regard to section 219(g).

(6) Transfer of account incident to divorce

The transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account or annuity for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

(7) Special rules for simplified employee pensions or simple retirement accounts

(A) Transfer or rollover of contributions prohibited until deferral test met

Notwithstanding any other provision of this subsection or section 72(t), paragraph (1) and section 72(t)(1) shall apply to the transfer or distribution from a simplified employee pension of any contribution under a salary reduction arrangement described in subsection (k)(6) (or any income allocable thereto) before a determination as to whether the requirements of subsection (k)(6)(A)(iii) are met with respect to such contribution.

(B) Certain exclusions treated as deductions

For purposes of paragraphs (4) and (5) and section 4973, any amount excludable or excluded from gross income under section 402(h) or 402(k) shall be treated as an amount allowable or allowed as a deduction under section 219.

(8) Distributions for charitable purposes

(A) In general

So much of the aggregate amount of qualified charitable distributions with respect to a taxpayer made during any taxable year which does not exceed $100,000 shall not be includible in gross income of such taxpayer for such taxable year.

(B) Qualified charitable distribution

For purposes of this paragraph, the term ''qualified charitable distribution'' means any distribution from an individual retirement plan (other than a plan described in subsection (k) or (p))—

(i) which is made directly by the trustee to an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and

(ii) which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70½.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A).

(C) Contributions must be otherwise deductible

For purposes of this paragraph, a distribution to an organization described in subparagraph (B)(i) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(D) Application of section 72

Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(E) Denial of deduction

Qualified charitable distributions which are not includible in gross income pursuant to subparagraph (A) shall not be taken into account in determining the deduction under section 170.

(F) Termination

This paragraph shall not apply to distributions made in taxable years beginning after December 31, 2009.

(9) Distribution for health savings account funding

(A) In general

In the case of an individual who is an eligible individual (as defined in section 223(c)) and who elects the application of this paragraph for a taxable year, gross income of the individual for the taxable year does not include a qualified HSA funding distribution to the extent such distribution is otherwise includible in gross income.

(B) Qualified HSA funding distribution

For purposes of this paragraph, the term ''qualified HSA funding distribution'' means a distribution from an individual retirement plan (other than a plan described in subsection (k) or (p)) of the employee to the extent that such distribution is contributed to the health savings account of the individual in a direct trustee-to-trustee transfer.

(C) Limitations

(i) Maximum dollar limitation

The amount excluded from gross income by subparagraph (A) shall not exceed the excess of—

(I) the annual limitation under section 223(b) computed on the basis of the type of coverage under the high deductible health plan covering the individual at the time of the qualified HSA funding distribution, over

(II) in the case of a distribution described in clause (ii)(II), the amount of the earlier qualified HSA funding distribution.

(ii) One-time transfer

(I) In general

Except as provided in subclause (II), an individual may make an election under subparagraph (A) only for one qualified HSA funding distribution during the lifetime of the individual. Such an election, once made, shall be irrevocable.

(II) Conversion from self-only to family coverage

If a qualified HSA funding distribution is made during a month in a taxable year during which an individual has self-only coverage under a high deductible health plan as of the first day of the month, the individual may elect to make an additional qualified HSA funding distribution during a subsequent month in such taxable year during which the individual has family coverage under a high deductible health plan as of the first day of the subsequent month.

(D) Failure to maintain high deductible health plan coverage

(i) In general

If, at any time during the testing period, the individual is not an eligible individual, then the aggregate amount of all contributions to the health savings account of the individual made under subparagraph (A)—

(I) shall be includible in the gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual, and

(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount which is so includible.

(ii) Exception for disability or death

Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7)).

(iii) Testing period

The term ''testing period'' means the period beginning with the month in which the qualified HSA funding distribution is contributed to a health savings account and ending on the last day of the 12th month following such month.

(E) Application of section 72

Notwithstanding section 72, in determining the extent to which an amount is treated as otherwise includible in gross income for purposes of subparagraph (A), the aggregate amount distributed from an individual retirement plan shall be treated as includible in gross income to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts from all individual retirement plans were distributed. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(e) Tax treatment of accounts and annuities

(1) Exemption from tax

Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Loss of exemption of account where employee engages in prohibited transaction

(A) In general

If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph—

(i) the individual for whose benefit any account was established is treated as the creator of such account, and

(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees is treated as a separate individual retirement account.

(B) Account treated as distributing all its assets

In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

(3) Effect of borrowing on annuity contract

If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

(4) Effect of pledging account as security

If, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

(5) Purchase of endowment contract by individual retirement account

If the assets of an individual retirement account or any part of such assets are used to purchase an endowment contract for the benefit of the individual for whose benefit the account is established—

(A) to the extent that the amount of the assets involved in the purchase are not attributable to the purchase of life insurance, the purchase is treated as a rollover contribution described in subsection (d)(3), and

(B) to the extent that the amount of the assets involved in the purchase are attributable to the purchase of life, health, accident, or other insurance, such amounts are treated as distributed to that individual (but the provisions of subsection (f) do not apply).

(6) Commingling individual retirement account amounts in certain common trust funds and common investment funds

Any common trust fund or common investment fund of individual retirement account assets which is exempt from taxation under this subtitle does not cease to be exempt on account of the participation or inclusion of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a).

[(f) Repealed. Pub. L. 99–514, title XI, § 1123(d)(2), Oct. 22, 1986, 100 Stat. 2475]

(g) Community property laws

This section shall be applied without regard to any community property laws.

(h) Custodial accounts

For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in subsection (n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an individual retirement account described in subsection (a). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

(i) Reports

The trustee of an individual retirement account and the issuer of an endowment contract described in subsection (b) or an individual retirement annuity shall make such reports regarding such account, contract, or annuity to the Secretary and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions (and the years to which they relate), distributions aggregating $10 or more in any calendar year, and such other matters as the Secretary may require. The reports required by this subsection—

(1) shall be filed at such time and in such manner as the Secretary prescribes, and

(2) shall be furnished to individuals—

(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

(B) in such manner as the Secretary prescribes.

In the case of a simple retirement account under subsection (p), only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 31 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year.

(j) Increase in maximum limitations for simplified employee pensions

In the case of any simplified employee pension, subsections (a)(1) and (b)(2) of this section shall be applied by increasing the amounts contained therein by the amount of the limitation in effect under section 415(c)(1)(A).

(k) Simplified employee pension defined

(1) In general

For purposes of this title, the term ''simplified employee pension'' means an individual retirement account or individual retirement annuity—

(A) with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met, and

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c)(2) are met.

(2) Participation requirements

This paragraph is satisfied with respect to a simplified employee pension for a year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 21,

(B) has performed service for the employer during at least 3 of the immediately preceding 5 years, and

(C) received at least $450 in compensation (within the meaning of section 414(q)(4)) from the employer for the year.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3). For purposes of any arrangement described in subsection (k)(6), any employee who is eligible to have employer contributions made on the employee's behalf under such arrangement shall be treated as if such a contribution was made.

(3) Contributions may not discriminate in favor of the highly compensated, etc.

(A) In general

The requirements of this paragraph are met with respect to a simplified employee pension for a year if for such year the contributions made by the employer to simplified employee pensions for his employees do not discriminate in favor of any highly compensated employee (within the meaning of section 414(q)).

(B) Special rules

For purposes of subparagraph (A), there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3).

(C) Contributions must bear uniform relationship to total compensation

For purposes of subparagraph (A), and except as provided in subparagraph (D), employer contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)) shall be considered discriminatory unless contributions thereto bear a uniform relationship to the compensation (not in excess of the first $200,000) of each employee maintaining a simplified employee pension.

(D) Permitted disparity

For purposes of subparagraph (C), the rules of section 401(*l*)(2) shall apply to contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)).

(4) Withdrawals must be permitted

A simplified employee pension meets the requirements of this paragraph only if—

(A) employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(B) there is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

(5) Contributions must be made under written allocation formula

The requirements of this paragraph are met with respect to a simplified employee pension only if employer contributions to such pension are determined under a definite written allocation formula which specifies—

(A) the requirements which an employee must satisfy to share in an allocation, and

(B) the manner in which the amount allocated is computed.

(6) Employee may elect salary reduction arrangement

(A) Arrangements which qualify

(i) In general

A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments—

(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

(II) to the employee directly in cash.

(ii) 50 percent of eligible employees must elect

Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer eligible to participate.

(iii) Requirements relating to deferral percentage

Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of—

(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

(II) 1.25.

(iv) Limitations on elective deferrals

Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a)(30) are met.

(B) Exception where more than 25 employees

This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 25 employees who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained) at any time during the preceding year.

(C) Distributions of excess contributions

(i) In general

Rules similar to the rules of section 401(k)(8) shall apply to any excess contribution under this paragraph. Any excess contribution under a simplified employee pension shall be treated as an excess contribution for purposes of section 4979.

(ii) Excess contribution

For purposes of clause (i), the term ''excess contribution'' means, with respect to a highly compensated employee, the excess of elective employer contributions under this paragraph over the maximum amount of such contributions allowable under subparagraph (A)(iii).

(D) Deferral percentage

For purposes of this paragraph, the deferral percentage for an employee for a year shall be the ratio of—

(i) the amount of elective employer contributions actually paid over to the simplified employee pension on behalf of the employee for the year, to

(ii) the employee's compensation (not in excess of the first $200,000) for the year.

(E) Exception for State and local and tax-exempt pensions

This paragraph shall not apply to a simplified employee pension maintained by—

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

(ii) an organization exempt from tax under this title.

(F) Exception where pension does not meet requirements necessary to insure distribution of excess contributions

This paragraph shall not apply with respect to any year for which the simplified employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C), including—

(i) reporting requirements, and

(ii) requirements which, notwithstanding paragraph (4), provide that contributions (and any income allocable thereto) may not be withdrawn from a simplified employee pension until a determination has been made that the requirements of subparagraph (A)(iii) have been met with respect to such contributions.

(G) Highly compensated employee

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

(H) Termination

This paragraph shall not apply to years beginning after December 31, 1996. The preceding sentence shall not apply to a simplified employee pension of an employer if the terms of simplified employee pensions of such employer, as in effect on December 31, 1996, provide that an employee may make the election described in subparagraph (A).

(7) Definitions

For purposes of this subsection and subsection (*l*)—

(A) Employee, employer, or owner-employee

The terms ''employee'', ''employer'', and ''owner-employee'' shall have the respective meanings given such terms by section 401(c).

(B) Compensation

Except as provided in paragraph (2)(C), the term ''compensation'' has the meaning given such term by section 414(s).

(C) Year

The term ''year'' means—

(i) the calendar year, or

(ii) if the employer elects, subject to such terms and conditions as the Secretary may prescribe, to maintain the simplified employee pension on the basis of the employer's taxable year.

(8) Cost-of-living adjustment

The Secretary shall adjust the $450 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the $200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B); except that any increase in the $450 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50.

(9) Cross reference

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

(*l*) Simplified employer reports

(1) In general

An employer who makes a contribution on behalf of an employee to a simplified employee pension shall provide such simplified reports with respect to such contributions as the Secretary may require by regulations. The reports required by this subsection shall be filed at such time and in such manner, and information with respect to such contributions shall be furnished to the employee at such time and in such manner, as may be required by regulations.

(2) Simple retirement accounts

(A) No employer reports

Except as provided in this paragraph, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under subsection (p).

(B) Summary description

The trustee of any simple retirement account established pursuant to a qualified salary reduction arrangement under subsection (p) and the issuer of an annuity established under such an arrangement shall provide to the employer maintaining the arrangement, each year a description containing the following information:

(i) The name and address of the employer and the trustee or issuer.

(ii) The requirements for eligibility for participation.

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

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

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

(C) Employee notification

The employer shall notify each employee immediately before the period for which an election described in subsection (p)(5)(C) may be made of the employee's opportunity to make such election. Such notice shall include a copy of the description described in subparagraph (B).

(m) Investment in collectibles treated as distributions

(1) In general

The acquisition by an individual retirement account or by an individually-directed account under a plan described in section 401(a) of any collectible shall be treated (for purposes of this section and section 402) as a distribution from such account in an amount equal to the cost to such account of such collectible.

(2) Collectible defined

For purposes of this subsection, the term ''collectible'' means—

(A) any work of art,

(B) any rug or antique,

(C) any metal or gem,

(D) any stamp or coin,

(E) any alcoholic beverage, or

(F) any other tangible personal property specified by the Secretary for purposes of this subsection.

(3) Exception for certain coins and bullion

For purposes of this subsection, the term ''collectible'' shall not include—

(A) any coin which is—

(i) a gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31, United States Code,

(ii) a silver coin described in section 5112(e) of title 31, United States Code,

(iii) a platinum coin described in section 5112(k) of title 31, United States Code, or

(iv) a coin issued under the laws of any State, or

(B) any gold, silver, platinum, or palladium bullion of a fineness equal to or exceeding the minimum fineness that a contract market (as described in section 7 of the Commodity Exchange Act, 7 U.S.C. 7)[2] requires for metals which may be delivered in satisfaction of a regulated futures contract,

if such bullion is in the physical possession of a trustee described under subsection (a) of this section.

(n) Bank

For purposes of subsection (a)(2), the term ''bank'' means—

(1) any bank (as defined in section 581),

(2) an insured credit union (within the meaning of paragraph (6) or (7) of section 101 of the Federal Credit Union Act), and

[2] See References in Text note below.

(3) a corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

(*o*) Definitions and rules relating to nondeductible contributions to individual retirement plans

(1) In general

Subject to the provisions of this subsection, designated nondeductible contributions may be made on behalf of an individual to an individual retirement plan.

(2) Limits on amounts which may be contributed

(A) In general

The amount of the designated nondeductible contributions made on behalf of any individual for any taxable year shall not exceed the nondeductible limit for such taxable year.

(B) Nondeductible limit

For purposes of this paragraph—

(i) In general

The term ''nondeductible limit'' means the excess of—

(I) the amount allowable as a deduction under section 219 (determined without regard to section 219(g)), over

(II) the amount allowable as a deduction under section 219 (determined with regard to section 219(g)).

(ii) Taxpayer may elect to treat deductible contributions as nondeductible

If a taxpayer elects not to deduct an amount which (without regard to this clause) is allowable as a deduction under section 219 for any taxable year, the nondeductible limit for such taxable year shall be increased by such amount.

(C) Designated nondeductible contributions

(i) In general

For purposes of this paragraph, the term ''designated nondeductible contribution'' means any contribution to an individual retirement plan for the taxable year which is designated (in such manner as the Secretary may prescribe) as a contribution for which a deduction is not allowable under section 219.

(ii) Designation

Any designation under clause (i) shall be made on the return of tax imposed by chapter 1 for the taxable year.

(3) Time when contributions made

In determining for which taxable year a designated nondeductible contribution is made, the rule of section 219(f)(3) shall apply.

(4) Individual required to report amount of designated nondeductible contributions

(A) In general

Any individual who—

(i) makes a designated nondeductible contribution to any individual retirement plan for any taxable year, or

(ii) receives any amount from any individual retirement plan for any taxable year,

shall include on his return of the tax imposed by chapter 1 for such taxable year and any succeeding taxable year (or on such other form as the Secretary may prescribe for any such taxable year) information described in subparagraph (B).

(B) Information required to be supplied

The following information is described in this subparagraph:

(i) The amount of designated nondeductible contributions for the taxable year.

(ii) The amount of distributions from individual retirement plans for the taxable year.

(iii) The excess (if any) of—

(I) the aggregate amount of designated nondeductible contributions for all preceding taxable years, over

(II) the aggregate amount of distributions from individual retirement plans which was excludable from gross income for such taxable years.

(iv) The aggregate balance of all individual retirement plans of the individual as of the close of the calendar year in which the taxable year begins.

(v) Such other information as the Secretary may prescribe.

(C) Penalty for reporting contributions not made

For penalty where individual reports designated nondeductible contributions not made, see section 6693(b).

(p) Simple retirement accounts

(1) In general

For purposes of this title, the term ''simple retirement account'' means an individual retirement plan (as defined in section 7701(a)(37))—

(A) with respect to which the requirements of paragraphs (3), (4), and (5) are met; and

(B) with respect to which the only contributions allowed are contributions under a qualified salary reduction arrangement.

(2) Qualified salary reduction arrangement

(A) In general

For purposes of this subsection, the term ''qualified salary reduction arrangement'' means a written arrangement of an eligible employer under which—

(i) an employee eligible to participate in the arrangement may elect to have the employer make payments—

(I) as elective employer contributions to a simple retirement account on behalf of the employee, or

(II) to the employee directly in cash,

(ii) the amount which an employee may elect under clause (i) for any year is required to be expressed as a percentage of compensation and may not exceed a total of the applicable dollar amount for any year,

(iii) the employer is required to make a matching contribution to the simple re-

tirement account for any year in an amount equal to so much of the amount the employee elects under clause (i)(I) as does not exceed the applicable percentage of compensation for the year, and

(iv) no contributions may be made other than contributions described in clause (i) or (iii).

(B) Employer may elect 2-percent nonelective contribution

(i) In general

An employer shall be treated as meeting the requirements of subparagraph (A)(iii) for any year if, in lieu of the contributions described in such clause, the employer elects 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 60-day period for such year under paragraph (5)(C).

(ii) Compensation limitation

The compensation taken into account under clause (i) for any year shall not exceed the limitation in effect for such year under section 401(a)(17).

(C) Definitions

For purposes of this subsection—

(i) Eligible employer

(I) In general

The term ''eligible employer'' means, with respect to any year, an employer which had no more than 100 employees who received at least $5,000 of compensation from the employer for the preceding year.

(II) 2-year grace period

An eligible employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to be an eligible employer for any subsequent year shall be treated as an eligible employer for the 2 years following the last year the employer was an eligible employer. If such failure is due to any acquisition, disposition, or similar transaction involving an eligible employer, the preceding sentence shall not apply.

(ii) Applicable percentage

(I) In general

The term ''applicable percentage'' means 3 percent.

(II) Election of lower percentage

An employer may elect to apply a lower percentage (not less than 1 percent) for any year for all employees eligible to participate in the plan for such year if the employer notifies the employees of such lower percentage within a reasonable period of time before the 60-day election period for such year under paragraph (5)(C). An employer may not elect a lower percentage under this subclause for any year if that election would result in the applicable percentage being lower than 3 percent in more than 2 of the years in the 5-year period ending with such year.

(III) Special rule for years arrangement not in effect

If any year in the 5-year period described in subclause (II) is a year prior to the first year for which any qualified salary reduction arrangement is in effect with respect to the employer (or any predecessor), the employer shall be treated as if the level of the employer matching contribution was at 3 percent of compensation for such prior year.

(D) Arrangement may be only plan of employer

(i) In general

An arrangement shall not be treated as a qualified salary reduction arrangement for any year if the employer (or any predecessor employer) maintained a qualified plan with respect to which contributions were made, or benefits were accrued, for service in any year in the period beginning with the year such arrangement became effective and ending with the year for which the determination is being made. If only individuals other than employees described in subparagraph (A) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.

(ii) Qualified plan

For purposes of this subparagraph, the term ''qualified plan'' means a plan, contract, pension, or trust described in subparagraph (A) or (B) of section 219(g)(5).

(E) Applicable dollar amount; cost-of-living adjustment

(i) In general

For purposes of subparagraph (A)(ii), the applicable dollar amount shall be the amount determined in accordance with the following table:

For years beginning in calendar year:	The applicable dollar amount:
2002	$7,000
2003	$8,000
2004	$9,000
2005 or thereafter	$10,000.

(ii) Cost-of-living adjustment

In the case of a year beginning after December 31, 2005, the Secretary shall adjust the $10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph

which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(3) Vesting requirements

The requirements of this paragraph are met with respect to a simple retirement account if the employee's rights to any contribution to the simple retirement account are nonforfeitable. For purposes of this paragraph, rules similar to the rules of subsection (k)(4) shall apply.

(4) Participation requirements

(A) In general

The requirements of this paragraph are met with respect to any simple retirement account for a year only if, under the qualified salary reduction arrangement, all employees of the employer who—

(i) received at least $5,000 in compensation from the employer during any 2 preceding years, and

(ii) are reasonably expected to receive at least $5,000 in compensation during the year,

are eligible to make the election under paragraph (2)(A)(i) or receive the nonelective contribution described in paragraph (2)(B).

(B) Excludable employees

An employer may elect to exclude from the requirement under subparagraph (A) employees described in section 410(b)(3).

(5) Administrative requirements

The requirements of this paragraph are met with respect to any simple retirement account if, under the qualified salary reduction arrangement—

(A) an employer must—

(i) make the elective employer contributions under paragraph (2)(A)(i) not later than the close of the 30-day period following the last day of the month with respect to which the contributions are to be made, and

(ii) make the matching contributions under paragraph (2)(A)(iii) or the nonelective contributions under paragraph (2)(B) not later than the date described in section 404(m)(2)(B),

(B) an employee may elect to terminate participation in such arrangement at any time during the year, except that if an employee so terminates, the arrangement may provide that the employee may not elect to resume participation until the beginning of the next year, and

(C) each employee eligible to participate may elect, during the 60-day period before the beginning of any year (and the 60-day period before the first day such employee is eligible to participate), to participate in the arrangement, or to modify the amounts subject to such arrangement, for such year.

(6) Definitions

For purposes of this subsection—

(A) Compensation

(i) In general

The term ''compensation'' means amounts described in paragraphs (3) and (8) of section 6051(a). For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3).

(ii) Self-employed

In the case of an employee described in subparagraph (B), the term ''compensation'' means net earnings from self-employment determined under section 1402(a) without regard to any contribution under this subsection. The preceding sentence shall be applied as if the term ''trade or business'' for purposes of section 1402 included service described in section 1402(c)(6).

(B) Employee

The term ''employee'' includes an employee as defined in section 401(c)(1).

(C) Year

The term ''year'' means the calendar year.

(7) Use of designated financial institution

A plan shall not be treated as failing to satisfy the requirements of this subsection or any other provision of this title merely because the employer makes all contributions to the individual retirement accounts or annuities of a designated trustee or issuer. The preceding sentence shall not apply unless each plan participant is notified in writing (either separately or as part of the notice under subsection (*l*)(2)(C)) that the participant's balance may be transferred without cost or penalty to another individual account or annuity in accordance with subsection (d)(3)(G).

(8) Coordination with maximum limitation under subsection (a)

In the case of any simple retirement account, subsections (a)(1) and (b)(2) shall be applied by substituting ''the sum of the dollar amount in effect under paragraph (2)(A)(ii) of this subsection and the employer contribution required under subparagraph (A)(iii) or (B)(i) of paragraph (2) of this subsection, whichever is applicable'' for ''the dollar amount in effect under section 219(b)(1)(A)''.

(9) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions

Any matching contribution described in paragraph (2)(A)(iii) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution to a simple retirement account for purposes of this title.

(10) Special rules for acquisitions, dispositions, and similar transactions

(A) In general

An employer which fails to meet any applicable requirement by reason of an acquisition, disposition, or similar transaction shall not be treated as failing to meet such requirement during the transition period if—

(i) the employer satisfies requirements similar to the requirements of section 410(b)(6)(C)(i)(II); and

(ii) the qualified salary reduction arrangement maintained by the employer

would satisfy the requirements of this subsection after the transaction if the employer which maintained the arrangement before the transaction had remained a separate employer.

(B) Applicable requirement

For purposes of this paragraph, the term ''applicable requirement'' means—

(i) the requirement under paragraph (2)(A)(i) that an employer be an eligible employer;

(ii) the requirement under paragraph (2)(D) that an arrangement be the only plan of an employer; and

(iii) the participation requirements under paragraph (4).

(C) Transition period

For purposes of this paragraph, the term ''transition period'' means the period beginning on the date of any transaction described in subparagraph (A) and ending on the last day of the second calendar year following the calendar year in which such transaction occurs.

(q) Deemed IRAs under qualified employer plans

(1) General rule

If—

(A) a qualified employer plan elects to allow employees to make voluntary employee contributions to a separate account or annuity established under the plan, and

(B) under the terms of the qualified employer plan, such account or annuity meets the applicable requirements of this section or section 408A for an individual retirement account or annuity,

then such account or annuity shall be treated for purposes of this title in the same manner as an individual retirement plan and not as a qualified employer plan (and contributions to such account or annuity as contributions to an individual retirement plan and not to the qualified employer plan). For purposes of subparagraph (B), the requirements of subsection (a)(5) shall not apply.

(2) Special rules for qualified employer plans

For purposes of this title, a qualified employer plan shall not fail to meet any requirement of this title solely by reason of establishing and maintaining a program described in paragraph (1).

(3) Definitions

For purposes of this subsection—

(A) Qualified employer plan

The term ''qualified employer plan'' has the meaning given such term by section 72(p)(4)(A)(i); except that such term shall also include an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(B) Voluntary employee contribution

The term ''voluntary employee contribution'' means any contribution (other than a mandatory contribution within the meaning of section 411(c)(2)(C))—

(i) which is made by an individual as an employee under a qualified employer plan which allows employees to elect to make contributions described in paragraph (1), and

(ii) with respect to which the individual has designated the contribution as a contribution to which this subsection applies.

(r) Cross references

(1) For tax on excess contributions in individual retirement accounts or annuities, see section 4963.

(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974.

(Added Pub. L. 93–406, title II, § 2002(b), Sept. 2, 1974, 88 Stat. 959; amended Pub. L. 94–455, title XV, § 1501(b)(2), (5), (10), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1735–1737, 1834; Pub. L. 95–600, title I, §§ 152(a), (b), 156(c)(1), (3), 157(c)(1), (d)(1), (e)(1)(A), (g)(3), (h)(2), title VII, § 703(c)(4), Nov. 6, 1978, 92 Stat. 2797, 2802, 2803, 2805, 2806, 2808, 2939; Pub. L. 96–222, title I, § 101(a)(10)(A), (C), (F), (G), (J)(i), (14)(B), (E)(ii), Apr. 1, 1980, 94 Stat. 201–205; Pub. L. 96–605, title II, § 225(b)(3), (4), Dec. 28, 1980, 94 Stat. 3529; Pub. L. 97–34, title III, §§ 311(g)(1)(A)–(C), (2), (h)(2), 312(b)(2), (c)(5), 313(b)(2), 314(b)(1), Aug. 13, 1981, 95 Stat. 281–284, 286; Pub. L. 97–248, title II, §§ 237(e)(3), 238(d)(3), (4), 243(a), (b)(1)(A), title III, § 335(a)(1), Sept. 3, 1982, 96 Stat. 512, 513, 521, 522, 628; Pub. L. 97–448, title I, § 103(d)(1), (e), Jan. 12, 1983, 96 Stat. 2378; Pub. L. 98–369, div. A, title I, § 147(a), title IV, § 491(d)(19)–(24), title V, §§ 521(b), 522(d)(12), title VII, § 713(c)(2)(B), (f)(2), (5)(B), (g)(2), (j), July 18, 1984, 98 Stat. 687, 850, 867, 871, 957, 959, 960; Pub. L. 99–514, title XI, §§ 1102(a), (b)(2), (c), (e)(2), 1108(a), (d)–(g)(1), (4), (6), 1121(c)(2), 1122(e)(2)(B), 1123(d)(2), 1144(a), title XVIII, §§ 1852(a)(1), (5)(C), (7)(A), 1875(c)(6)(A), (8), 1898(a)(5), Oct. 22, 1986, 100 Stat. 2414–2416, 2431, 2433, 2434, 2465, 2470, 2475, 2490, 2864–2866, 2895, 2944; Pub. L. 100–647, title I, §§ 1011(b)(1)–(3), (c)(7)(C), (f)(1)–(5), (10), (i)(5), 1011A(a)(2)(A), 1018(t)(3)(D), title VI, § 6057(a), Nov. 10, 1988, 102 Stat. 3456, 3458, 3461–3463, 3468, 3472, 3588, 3698; Pub. L. 101–239, title VII, §§ 7811(m)(7), 7841(a)(1), Dec. 19, 1989, 103 Stat. 2412, 2427; Pub. L. 102–318, title V, § 521(b)(16)–(19), July 3, 1992, 106 Stat. 311; Pub. L. 103–66, title XIII, § 13212(b), Aug. 10, 1993, 107 Stat. 472; Pub. L. 103–465, title VII, § 732(d), Dec. 8, 1994, 108 Stat. 5005; Pub. L. 104–188, title I, §§ 1421(a), (b)(3)(B), (5), (6), (c), 1427(b)(3), 1431(c)(1)(B), 1455(b)(1), Aug. 20, 1996, 110 Stat. 1792, 1796–1798, 1802, 1803, 1817; Pub. L. 105–34, title III, §§ 302(d), 304(a), title XV, § 1501(b), title XVI, § 1601(d)(1)(A)–(C)(i), (D)–(G), Aug. 5, 1997, 111 Stat. 829, 831, 1058, 1087, 1088; Pub. L. 105–206, title VI, §§ 6015(a), 6016(a)(1), 6018(b), July 22, 1998, 112 Stat. 820–822; Pub. L. 106–554, § 1(a)(7) [title III, § 319(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title VI, §§ 601(b), 602(a), 611(c)(1), (f)(1), (2), (g)(2), 641(e)(8), 642(a), (b)(2), (3), 643(c), 644(b), June 7, 2001, 115 Stat. 95, 97, 99, 121–123; Pub. L. 107–147, title IV, § 411(i)(1), (j)(1), Mar. 9, 2002, 116 Stat. 46, 47; Pub. L. 108–311, title IV, §§ 404(d), 408(a)(12), (13), Oct. 4, 2004, 118 Stat. 1188, 1191; Pub. L. 109–280, title XII, § 1201(a), Aug. 17, 2006, 120 Stat. 1063; Pub. L. 109–432, div. A, title III, § 307(a), Dec. 20, 2006, 120 Stat. 2951; Pub. L. 110–172, § 3(a), Dec. 29, 2007, 121 Stat. 2474; Pub. L. 110–343, div. C, title II, § 205(a), Oct. 3, 2008, 122 Stat. 3865.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 7 of the Commodity Exchange Act, referred to in subsec. (m)(3)(B), is classified to section 11 of Title 7, Agriculture, and relates to vacation on request of designation as ''contract market''. Section 5 of the Commodity Exchange Act, which is classified to section 7 of Title 7, relates to designation of boards of trade as ''contract markets''.

Paragraph (6) or (7) of section 101 of the Federal Credit Union Act, referred to in subsec. (n)(2), is classified to section 1752(6), (7) of Title 12, Banks and Banking.

AMENDMENTS

2008—Subsec. (d)(8)(F). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2007—Subsec. (d)(8)(D). Pub. L. 110–172 substituted ''all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible'' for ''all amounts distributed from all individual retirement plans were treated as 1 contract under paragraph (2)(A) for purposes of determining the inclusion of such distribution under section 72''.

2006—Subsec. (d)(8). Pub. L. 109–280, which directed the amendment of section 408(d) by adding par. (8), without specifying the act to be amended, was executed by making the addition to this section, which is section 408 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Subsec. (d)(9). Pub. L. 109–432 added par. (9).

2004—Subsec. (a)(1). Pub. L. 108–311, §408(a)(12), substituted ''457(e)(16),'' for ''457(e)(16)''.

Subsec. (n)(2). Pub. L. 108–311, §408(a)(13), substituted ''paragraph (6) or (7) of section 101'' for ''section 101(6)''.

Subsec. (p)(6)(A)(i). Pub. L. 108–311, §404(d), inserted at end ''For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3).''

2002—Subsec. (k)(2)(C). Pub. L. 107–147, §411(j)(1)(A), substituted ''$450'' for ''$300''.

Subsec. (k)(8). Pub. L. 107–147, §411(j)(1)(B), substituted ''$450'' for ''$300'' in two places.

Subsec. (q)(3)(A). Pub. L. 107–147, §411(i)(1), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''The term 'qualified employer plan' has the meaning given such term by section 72(p)(4); except such term shall not include a government plan which is not a qualified plan unless the plan is an eligible deferred compensation plan (as defined in section 457(b)).''

2001—Subsec. (a)(1). Pub. L. 107–16, §641(e)(8), substituted ''403(b)(8), or 457(e)(16)'' for ''or 403(b)(8),''.

Pub. L. 107–16, §601(b)(1), substituted ''on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)'' for ''in excess of $2,000 on behalf of any individual''.

Subsec. (b). Pub. L. 107–16, §601(b)(3), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,000'' in concluding provisions.

Subsec. (b)(2)(B). Pub. L. 107–16, §601(b)(2), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,000''.

Subsec. (d)(3)(A). Pub. L. 107–16, §642(a), inserted ''or'' at end of cl. (i), added cl. (ii) and concluding provisions, and struck out former cls. (ii) and (iii) which read as follows:

''(ii) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution (as defined in section 402) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) or from an annuity plan described in section 403(a) (and any earnings on such contribution), and the entire amount received (including property and other money) is paid (for the benefit of such individual) into another such trust or annuity plan not later than the 60th day on which the individual receives the payment or the distribution; or

''(iii)(I) the entire amount received (including money and other property) represents the entire interest in the account or the entire value of the annuity,

''(II) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an annuity contract described in section 403(b) and any earnings on such rollover, and

''(III) the entire amount thereof is paid into another annuity contract described in section 403(b) (for the benefit of such individual) not later than the 60th day after he receives the payment or distribution.''

Subsec. (d)(3)(D)(i). Pub. L. 107–16, §642(b)(2), substituted ''(i) or (ii)'' for ''(i), (ii), or (iii)''.

Subsec. (d)(3)(G). Pub. L. 107–16, §642(b)(3), reenacted heading without change and amended text of subpar. (G) generally. Prior to amendment, text read as follows: ''This paragraph shall not apply to any amount paid or distributed out of a simple retirement account (as defined in subsection (p)) unless—

''(i) it is paid into another simple retirement account, or

''(ii) in the case of any payment or distribution to which section 72(t)(6) does not apply, it is paid into an individual retirement plan.''

Subsec. (d)(3)(H). Pub. L. 107–16, §643(c), added subpar. (H).

Subsec. (d)(3)(I). Pub. L. 107–16, §644(b), added subpar. (I).

Subsec. (j). Pub. L. 107–16, §601(b)(4), struck out ''$2,000'' before ''amounts''.

Subsec. (k)(3)(C), (6)(D)(ii), (8). Pub. L. 107–16, §611(c)(1), substituted ''$200,000'' for ''$150,000''.

Subsec. (p)(2)(A)(ii). Pub. L. 107–16, §611(f)(1), substituted ''the applicable dollar amount'' for ''$6,000''.

Subsec. (p)(2)(E). Pub. L. 107–16, §611(f)(2), amended heading and text of subpar. (E) generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $6,000 amount under subparagraph (A)(ii) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter ending September 30, 1996, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.''

Subsec. (p)(6)(A)(ii). Pub. L. 107–16, §611(g)(2), inserted at end ''The preceding sentence shall be applied as if the term 'trade or business' for purposes of section 1402 included service described in section 1402(c)(6).''

Subsec. (p)(8). Pub. L. 107–16, §601(b)(5), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,000''.

Subsecs. (q), (r). Pub. L. 107–16, §602(a), added subsec. (q) and redesignated former subsec. (q) as (r).

2000—Subsec. (d)(5). Pub. L. 106–554 amended heading generally. Prior to amendment, heading read as follows: ''Certain distributions of excess contributions after due date for taxable year''.

1998—Subsec. (d)(7). Pub. L. 105–206, §6018(b)(2), inserted ''or simple retirement accounts'' after ''pensions'' in heading.

Subsec. (d)(7)(B). Pub. L. 105–206, §6018(b)(1), inserted ''or 402(k)'' after ''section 402(h)''.

Subsec. (p)(2)(C)(i)(II). Pub. L. 105–206, §6016(a)(1)(C)(i), substituted ''the preceding sentence shall not apply'' for ''the preceding sentence shall apply only in accordance with rules similar to the rules of section 410(b)(6)(C)(i)'' in last sentence.

Subsec. (p)(2)(D)(i). Pub. L. 105–206, §6016(a)(1)(A), struck out ''or (B)'' after ''(A)'' in last sentence.

Subsec. (p)(2)(D)(iii). Pub. L. 105–206, §6016(a)(1)(C)(ii), struck out heading and text of cl. (iii). Text read as follows: ''In the case of an employer who establishes and

maintains a plan under this subsection for 1 or more years and who fails to meet any requirement of this subsection for any subsequent year due to any acquisition, disposition, or similar transaction involving another such employer, rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this subsection.''

Subsec. (p)(8), (9). Pub. L. 105–206, § 6015(a), redesignated par. (8), relating to matching contributions on behalf of self-employed individuals not treated as elective employer contributions, as (9).

Subsec. (p)(10). Pub. L. 105–206, § 6016(a)(1)(B), added par. (10).

1997—Subsec. (i). Pub. L. 105–34, § 1601(d)(1)(A), substituted ''31 days'' for ''30 days'' in concluding provisions.

Pub. L. 105–34, § 302(d), struck out ''under regulations'' after ''may require'' in introductory provisions and struck out ''in such regulations'' after ''prescribes'' in pars. (1) and (2)(B).

Subsec. (k)(6)(H). Pub. L. 105–34, § 1601(d)(1)(B), substituted ''of an employer if the terms of simplified employee pensions of such employer'' for ''if the terms of such pension''.

Subsec. (*l*)(2)(B). Pub. L. 105–34, § 1601(d)(1)(C)(i), inserted ''and the issuer of an annuity established under such an arrangement'' after ''under subsection (p)'' in introductory provisions and ''or issuer'' after ''trustee'' in cl. (i).

Subsec. (m)(3). Pub. L. 105–34, § 304(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''In the case of an individual retirement account, paragraph (2) shall not apply to—

''(A) any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31,

''(B) any silver coin described in section 5112(e) of title 31, or

''(C) any coin issued under the laws of any State.''

Subsec. (p)(2)(D)(i). Pub. L. 105–34, § 1601(d)(1)(E), inserted at end ''If only individuals other than employees described in subparagraph (A) or (B) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.''

Subsec. (p)(2)(D)(iii). Pub. L. 105–34, § 1601(d)(1)(F), added cl. (iii).

Subsec. (p)(5). Pub. L. 105–34, § 1601(d)(1)(G), substituted ''simple'' for ''simplified'' in introductory provisions.

Subsec. (p)(8). Pub. L. 105–34, § 1601(d)(1)(D), added par. (8) relating to coordination with maximum limitation under subsection (a).

Pub. L. 105–34, § 1501(b), added par. (8) relating to matching contributions on behalf of self-employed individuals not treated as elective employer contributions.

1996—Subsec. (d)(3)(G). Pub. L. 104–188, § 1421(b)(3)(B), added subpar. (G).

Subsec. (d)(5)(A). Pub. L. 104–188, § 1427(b)(3), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,250'' in introductory provisions.

Subsec. (i). Pub. L. 104–188, § 1455(b)(1), inserted ''aggregating $10 or more in any calendar year'' after ''distributions'' in introductory provisions.

Pub. L. 104–188, § 1421(b)(6), inserted at end ''In the case of a simple retirement account under subsection (p), only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 30 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year.''

Subsec. (k)(2)(C). Pub. L. 104–188, § 1431(c)(1)(B), substituted ''section 414(q)(4)'' for ''section 414(q)(7)''.

Subsec. (k)(6)(H). Pub. L. 104–188, § 1421(c), added subpar. (H).

Subsec. (*l*). Pub. L. 104–188, § 1421(b)(5), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsecs. (p), (q). Pub. L. 104–188, § 1421(a), added subsec. (p) and redesignated former subsec. (p) as (q).

1994—Subsec. (k)(8). Pub. L. 103–465 inserted before period at end ''; except that any increase in the $300 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50''.

1993—Subsec. (k)(3)(C), (6)(D)(ii). Pub. L. 103–66, § 13212(b)(1), substituted ''$150,000'' for ''$200,000''.

Subsec. (k)(8). Pub. L. 103–66, § 13212(b)(2), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $300 amount in paragraph (2)(C) and the $200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time and in the same manner as under section 415(d), except that in the case of years beginning after 1988, the $200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17).''

1992—Subsec. (a)(1). Pub. L. 102–318, § 521(b)(16), substituted ''402(c)'' for ''402(a)(5), 402(a)(7)''.

Subsec. (d)(3)(A)(ii). Pub. L. 102–318, § 521(b)(17), amended clause (ii) generally. Prior to amendment, clause (ii) read as follows: ''the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity and no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a), or an annuity plan described in section 403(a) and any earnings on such sums and the entire amount thereof is paid into another such trust (for the benefit of such individual) or annuity plan not later than the 60th day on which he receives the payment or distribution; or''.

Subsec. (d)(3)(B). Pub. L. 102–318, § 521(b)(18), struck out at end ''Clause (ii) of subparagraph (A) shall not apply to any amount paid or distributed out of an individual retirement account or an individual retirement annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B)).''

Subsec. (d)(3)(F). Pub. L. 102–318, § 521(b)(19), substituted ''402(c)(7)'' for ''402(a)(6)(H)''.

1989—Subsecs. (a)(6), (b)(3). Pub. L. 101–239, § 7811(m)(7), struck out ''(without regard to subparagraph (C)(ii) thereof)'' after ''section 401(a)(9)''.

Subsec. (d)(6). Pub. L. 101–239, § 7841(a)(1), substituted ''his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2)'' for ''his former spouse under a divorce decree or under a written instrument incident to such divorce''.

1988—Subsec. (d)(2)(C). Pub. L. 100–647, § 1011(b)(1), substituted ''in which the taxable year begins'' for ''with or within which the taxable year ends''.

Subsec. (d)(3)(A). Pub. L. 100–647, § 1011A(a)(2)(A), struck out at end ''Clause (ii) shall not apply during the 5-year period beginning on the date of the qualified total distribution referred to in such clause if the individual was treated as a 5-percent owner with respect to such distribution under section 402(a)(5)(F)(ii).''

Subsec. (d)(3)(E). Pub. L. 100–647, § 1018(t)(3)(D), substituted ''paragraph'' for ''subparagraph''.

Subsec. (d)(4). Pub. L. 100–647, § 1011(b)(2), substituted ''Contributions'' for ''Excess contributions'' in heading, struck out ''to the extent that such contribution exceeds the amount allowable as a deduction under section 219'' after ''individual retirement annuity'' in introductory provisions, and substituted ''such contribution'' for ''such excess contribution'' in subpars. (B) and (C) and in last sentence.

Subsec. (d)(5). Pub. L. 100–647, § 1011(b)(3), substituted ''shall be computed without regard to section 219(g)'' for ''(after application of section 408(*o*)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(*o*)(2)(B)'' in last sentence.

Subsec. (d)(7). Pub. L. 100–647, § 1011(f)(5), added par. (7).

Subsec. (k)(3)(B). Pub. L. 100–647, §1011(i)(5), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of subparagraph (A)—

''(i) there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3), and

''(ii) an individual shall be considered a shareholder if he owns (with the application of section 318) more than 10 percent of the value of the stock of the employer.''

Subsec. (k)(3)(C). Pub. L. 100–647, §1011(f)(3)(C), struck out ''total'' before ''compensation''.

Subsec. (k)(6)(A). Pub. L. 100–647, §1011(f)(1), substituted ''Arrangements which qualify'' for ''In general'' in heading and amended text generally. Prior to amendment, text read as follows: ''A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension—

''(i) an employee may elect to have the employer make payments—

''(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

''(II) to the employee directly in cash,

''(ii) an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer, and

''(iii) the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product derived by multiplying the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate by 1.25.''

Subsec. (k)(6)(A)(iv). Pub. L. 100–647, §1011(c)(7)(C), added cl. (iv).

Subsec. (k)(6)(B). Pub. L. 100–647, §1011(f)(2), inserted ''who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained)'' after ''than 25 employees''.

Subsec. (k)(6)(D)(ii). Pub. L. 100–647, §1011(f)(3)(A), substituted ''(not in excess of the first $200,000)'' for ''(within the meaning of section 414(s))''.

Subsec. (k)(6)(F), (G). Pub. L. 100–647, §1011(f)(4), added subpar. (f) and redesignated former subpar. (F) as (G).

Subsec. (k)(7)(B). Pub. L. 100–647, §1011(f)(3)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'compensation' means, in the case of an employee within the meaning of section 401(c)(1), earned income within the meaning of section 401(c)(2).''

Subsec. (k)(8). Pub. L. 100–647, §1011(f)(3)(D), (10), substituted ''paragraphs (3)(C) and (6)(D)(ii)'' for ''paragraph (3)(C)'' and inserted '', except that in the case of years beginning after 1988, the $200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17)'' after ''under section 415(d)''.

Subsec. (m)(3). Pub. L. 100–647, §6057(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In the case of an individual retirement account, paragraph (2) shall not apply to any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31 or any silver coin described in section 5112(e) of title 31.''

Subsec. (*o*)(4)(B)(iv). Pub. L. 100–647, §1011(b)(1), substituted ''in which the taxable year begins'' for ''with or within which the taxable year ends''.

1986—Subsecs. (a)(6), (b)(3). Pub. L. 99–514, §1852(a)(1), substituted ''(without regard to subparagraph (C)(ii) thereof) and the incidental death benefit requirements of section 401(a)'' for ''(relating to required distributions)''.

Subsec. (c)(1). Pub. L. 99–514, §1852(a)(7)(A), substituted ''paragraphs (1) through (6)'' for ''paragraphs (1) through (7)''.

Subsec. (d)(1). Pub. L. 99–514, §1102(c), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity shall be included in gross income by the payee or distributee, as the case may be, for the taxable year in which the payment or distribution is received. Notwithstanding any other provision of this title (including chapters 11 and 12), the basis any person in such an account or annuity is zero.''

Subsec. (d)(2). Pub. L. 99–514, §1102(c), substituted ''Special rules for applying section 72'' for ''Distributions of annuity contracts'' in heading and amended par. generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) does not apply to any annuity contract which meets the requirements of paragraphs (1), (3), (4), and (5) of subsection (b) and which is distributed from an individual retirement account. Section 72 applies to any such annuity contract, and for purposes of section 72 the investment in such contract is zero.''

Subsec. (d)(3)(A). Pub. L. 99–514, §1875(c)(8)(C), inserted at end ''Clause (ii) shall not apply during the 5-year period beginning on the date of the qualified total distribution referred to in such clause if the individual was treated as a 5-percent owner with respect to such distribution under section 402(a)(5)(F)(ii).''

Subsec. (d)(3)(A)(ii). Pub. L. 99–514, §1875(c)(8)(A), (B), struck out ''(other than a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)'' after ''section 501(a)'' and struck out ''(other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)'' after ''section 403(a)''.

Pub. L. 99–514, §1121(c)(2), made amendment identical to Pub. L. 99–514, §1875(c)(8)(A), (B), see above.

Subsec. (d)(3)(E). Pub. L. 99–514, §1852(a)(5)(C), added subpar. (E).

Subsec. (d)(3)(F). Pub. L. 99–514, §1122(e)(2)(B), added subpar. (F).

Subsec. (d)(5). Pub. L. 99–514, §1102(b)(2), inserted at end ''For purposes of this paragraph, the amount allowable as a deduction under section 219 (after application of section 408(*o*)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(*o*)(2)(B).''

Subsec. (d)(5)(A). Pub. L. 99–514, §1875(c)(6)(A), substituted ''the dollar limitation in effect under section 415(c)(1)(A) for such taxable year'' for ''$15,000''.

Subsec. (f). Pub. L. 99–514, §1123(d)(2), struck out subsec. (f) which related to additional tax on certain amounts included in gross income before age 59½.

Subsec. (i). Pub. L. 99–514, §1102(e)(2), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.''

Subsec. (k)(2). Pub. L. 99–514, §1108(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''This paragraph is satisfied with respect to a simplified employee pension for a calendar year only if for such year the employer contributes to the simplified employee pension of each employee who—

''(A) has attained age 21, and

''(B) has performed service for the employer during at least 3 of the immediately preceding 5 calendar years.

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

Subsec. (k)(2)(A). Pub. L. 99–514, §1898(a)(5), substituted ''age 21'' for ''age 25''.

Subsec. (k)(3)(A). Pub. L. 99–514, §1108(g)(4), substituted ''year'' for ''calendar year''.

Pub. L. 99–514, §1108(g)(1)(A), substituted ''any highly compensated employee (within the meaning of section 414(q))'' for ''any employee who is—

''(i) an officer,

''(ii) a shareholder,

''(iii) a self-employed individual, or

''(iv) highly compensated''.

Subsec. (k)(3)(C). Pub. L. 99–514, §1108(g)(1)(B), inserted ''and except as provided in subparagraph (D),''

and ''(other than contributions under an arrangement described in paragraph (6))'', and struck out end sentence which read as follows: ''The Secretary shall annually adjust the $200,000 amount contained in the preceding sentence at the same time and in the same manner as he adjusts the dollar amount contained in section 415(c)(1)(A).''

Subsec. (k)(3)(D), (E). Pub. L. 99–514, § 1108(g)(1)(C), added subpar. (D) and struck out former subpar. (D), treatment of certain contributions and taxes, which read ''Except as provided in this subparagraph, employer contributions do not meet the requirements of this paragraph unless such contributions meet the requirements of this paragraph without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contribution Act), title II of the Social Security Act, or any other Federal or State law. If the employer does not maintain an integrated plan at any time during the taxable year, OASDI contributions (as defined in section 401(*l*)(2)) may, for purposes of this paragraph, be taken into account as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension.'', and former subpar. (E), integrated plan defined, which read ''For purposes of subparagraph (D), the term 'integrated plan' means a plan which meets the requirements of section 401(a) or 403(a) but would not meet such requirements if contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law were not taken into account.''

Subsec. (k)(6). Pub. L. 99–514, § 1108(a), added par. (6).

Subsec. (k)(7)(C). Pub. L. 99–514, § 1108(f), added subpar. (C).

Subsec. (k)(8). Pub. L. 99–514, § 1108(e), added par. (8).

Subsec. (k)(9). Pub. L. 99–514, § 1108(g)(6), added par. (9).

Subsec. (m)(3). Pub. L. 99–514, § 1144(a), added par. (3).

Subsecs. (*o*), (p). Pub. L. 99–514, § 1102(a), added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

1984—Subsec. (a)(1). Pub. L. 98–369, § 491(d)(19), substituted ''or 403(b)(8)'' for ''403(b)(8), 405(d)(3), or 409(b)(3)(C)''.

Subsec. (a)(6). Pub. L. 98–369, § 521(b)(1), added par. (6) and struck out former par. (6) which provided that the entire interest of an individual for whose benefit the trust is maintained will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, commencing before the close of such taxable year, in accordance with regulations prescribed by the Secretary, over (A) the life of such individual or the lives of such individual and his spouse, or (B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse.

Subsec. (a)(7). Pub. L. 98–369, § 521(b)(1), struck out par. (7) which provided that if (A) an individual for whose benefit the trust is maintained dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (6) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (6).

Subsec. (b)(3). Pub. L. 98–369, § 521(b)(2), added par. (3) and struck out former par. (3) which provided that the entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, in accordance with regulations prescribed by the Secretary, over (A) the life of such owner or the lives of such owner and his spouse, or (B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

Subsec. (b)(4), (5). Pub. L. 98–369, § 521(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which provided that if (A) the owner dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

Subsec. (d)(3)(A)(i). Pub. L. 98–369, § 491(d)(20), struck out ''or retirement bond'' before ''for the benefit''.

Subsec. (d)(3)(A)(ii). Pub. L. 98–369, § 522(d)(12), substituted ''rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust'' for ''rollover contribution from an employee's trust''.

Subsec. (d)(3)(B). Pub. L. 98–369, § 491(d)(21), substituted ''or an individual retirement annuity'' for '', individual retirement annuity, or a retirement bond''.

Subsec. (d)(3)(C), (D). Pub. L. 98–369, § 713(g)(2), designated the subpar. (C), as added by section 335(a)(1) of Pub. L. 97–248, relating to permitting partial rollovers, as subpar. (D).

Subsec. (d)(3)(D)(ii). Pub. L. 98–369, § 491(d)(22), struck out ''bond,'' after ''annuity,''.

Subsec. (d)(6). Pub. L. 98–369, § 491(d)(23), substituted ''or an individual retirement annuity'' for '', individual retirement annuity, or retirement bond'', and ''or annuity'' for '', annuity, or bond''.

Subsec. (h). Pub. L. 98–369, § 713(c)(2)(B), substituted ''(as defined in subsection (n))'' for ''(as defined in section 401(d)(1))''.

Subsec. (i). Pub. L. 98–369, § 147(a), inserted ''(and the years to which they relate)''.

Subsec. (k)(1). Pub. L. 98–369, § 713(f)(2), amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

Subsec. (k)(3)(C). Pub. L. 98–369, § 713(f)(5)(B), inserted provision which required annual adjustment of the $200,000 amount concurrently with the dollar amount adjustment in section 415(c)(1)(A).

Subsec. (k)(3)(D). Pub. L. 98–369, § 713(j), substituted in penultimate sentence ''OASDI contributions (as defined in section 401(*l*)(2)'' for ''taxes paid under section 3111 (relating to tax on employers) with respect to an employee'' and ''as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension'' for ''as a contribution by the employer to an employee's simplified pension'' and struck out third sentence which provided ''If contributions are made to the simplified employee pension of an owner-employee, the preceding sentence shall not apply unless taxes paid by all such owner-employees under chapter 2, and the taxes which would be payable under chapter 2 by such owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees.''

Subsec. (k)(3)(E). Pub. L. 98–369, § 491(d)(24), substituted ''or 403(a)'' for '', 403(a), or 405(a)''.

1983—Subsec. (j). Pub. L. 97–448, § 103(d)(1)(B), substituted ''$17,000'' for ''$15,000'' in provisions preceding par. (1).

Subsec. (k)(3)(C)(ii). Pub. L. 97–448, § 103(d)(1)(A), inserted ''(other than an employee within the meaning of section 401(c)(1))'' after ''a simplified employee pension on behalf of each employee''.

Subsecs. (m), (n). Pub. L. 97–448, §103(e)(1), amended directory language of Pub. L. 97–34, §314(b)(1), thereby correcting subsec. designations. See 1981 Amendment note below for subsecs. (m) and (n).

1982—Subsec. (a)(2). Pub. L. 97–248, §237(e)(3)(A), substituted reference to subsection (n) of this section, for reference to section 401(d)(1).

Subsec. (a)(7). Pub. L. 97–248, §243(a)(1), amended par. (7) generally, designating existing provisions as subpars. (A) and (B), in subpar. (B), as so designated, striking out ''if'' before ''distribution'', in provisions following subpar. (B) substituting ''will be distributed within 5 years after his death (or the death of the surviving spouse)'' for ''will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries'', and substituting ''shall not apply'' for ''does not apply''.

Subsec. (b)(4). Pub. L. 97–248, §243(a)(2), amended par. (4) generally, designating existing provisions, as subpars. (A) and (B), in subpar. (B), as so redesignated, striking out ''if'' before ''distribution'', in provisions following subpar. (B) substituting ''will be distributed within 5 years after his death (or the death of the surviving spouse)'' for ''will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries'', and substituting ''shall not apply'' for ''shall have no application''.

Subsec. (d)(3)(C). Pub. L. 97–248, §243(b)(1)(A), added subpar. (C) relating to denial of rollover treatment for inherited accounts.

Pub. L. 97–248, §335(a)(1), added subpar. (C) relating to permitting partial rollovers.

Subsec. (j). Pub. L. 97–248, §238(d)(3), amended subsec. (j) generally, substituting provisions increasing amount by the amount of the limitation in effect under section 415(c)(1)(A), for provisions increasing amount by substituting ''$15,000'' for ''$2,000''.

Subsec. (k)(1). Pub. L. 97–248, §238(d)(4)(B), struck out reference to par. (6) of this subsection.

Subsec. (k)(3)(C). Pub. L. 97–248, §238(d)(4)(C), amended subpar. (C) generally, striking out cl. ''(i)'' designation and cl. (ii) which related to taking into account compensation in excess of $100,000 with respect to a simplified employee pension.

Subsec. (k)(6). Pub. L. 97–248, §238(d)(4)(A), struck out par. (6) which related to prohibition on employer maintaining plan to which section 401(j) applies.

Subsecs. (n), (*o*). Pub. L. 97–248, §237(e)(3)(B), added subsec. (n) and redesignated former subsec. (n) as (*o*).

1981—Subsec. (a)(1). Pub. L. 97–34, §313(b)(2), inserted reference to section 405(d)(3).

Pub. L. 97–34, §311(g)(1)(A), substituted ''$2,000'' for ''$1,500''.

Subsec. (b). Pub. L. 97–34, §311(g)(1)(B), substituted in par. (2)(B) and provision following par. (5) ''$2,000'' for ''$1,500''.

Subsec. (d)(4). Pub. L. 97–34, §311(h)(2), substituted section ''219'' for ''219 or 220'' in provision preceding subpar. (A) and in subpar. (B).

Subsec. (d)(5)(A). Pub. L. 97–34, §312(c)(5), substituted ''$15,000'' for ''$7,500''.

Pub. L. 97–34, §311(g)(2), (h)(2), substituted ''$2,250'' for ''$1,750'' and ''219'' for ''219 or 220'' in two places.

Subsec. (j). Pub. L. 97–34, §312(c)(5), substituted ''$15,000'' for ''$7,500''.

Pub. L. 97–34, §311(g)(1)(C), substituted ''$2,000'' for ''$1,500''.

Subsec. (k)(3)(C). Pub. L. 97–34, §312(b)(2), designated provision relating to compensation bearing a uniform relationship to total compensation as cl. (i), and in cl. (i) as so designated, substituted ''$200,000'' for ''$100,000'', and added cl. (ii).

Subsecs. (m), (n). Pub. L. 97–34, §314(b)(1), as amended by Pub. L. 97–448, §103(e)(1), added subsec. (m) and redesignated former subsec. (m) as (n).

1980—Subsec. (a)(1). Pub. L. 96–222, §101(a)(14)(B), inserted reference to section 402(a)(7).

Subsec. (d)(5). Pub. L. 96–222, §101(a)(10)(C), (14)(E)(ii), in subpar. (A) inserted provisions requiring that if employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar amount of the preceding sentence be increased by the lessor of the amount of such contributions or $7,500 and restructured subpar. (B).

Subsec. (j)(3). Pub. L. 96–222, §101(a)(10)(J)(i), struck out par. (3) which made reference to paragraph (5) of subsection (b).

Subsec. (k). Pub. L. 96–222, §101(a)(10)(A), (F), (G), substituted in par. (1) ''(5), and (6)'' for ''and (5)'' and in par. (3)(D) ''If the employer does not maintain an integrated plan at any time during the taxable year, taxes paid'' for ''Taxes paid'', inserted in par. (2) provisions requiring that for purposes of this paragraph there be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(2) and pars. (3)(E) and (6), and redesignated former par. (6) as (7).

Subsec. (k)(2), (3)(B)(i). Pub. L. 96–605, §225(b)(3), (4), substituted ''section 410(b)(3)'' for ''section 410(b)(2)''.

1978—Subsec. (a)(1). Pub. L. 95–600, §156(c)(3), inserted reference to section 403(b)(8).

Subsec. (b)(2). Pub. L. 95–600, §157(d)(1), (e)(1)(A), designated existing provisions as subpars. (B) and (C) and added subpar. (A), and in subpar. (B) as so designated, inserted ''on behalf of any individual'' after ''annual premium'', respectively.

Subsec. (d)(3)(A)(iii). Pub. L. 95–600, §156(c)(1), added cl. (iii).

Subsec. (d)(3)(B). Pub. L. 95–600, §157(g)(3), (h)(2), inserted provision relating to the applicability of clause (ii) of subparagraph (A) to any amount paid or distributed out of an individual retirement account or annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) and substituted ''1-year period'' for ''3-year period''.

Subsec. (d)(4). Pub. L. 95–600, §703(c)(4), amended Pub. L. 94–455, §1501(b)(5). See 1976 Amendment note below.

Subsec. (d)(5), (6). Pub. L. 95–600, §157(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsecs. (j) to (m). Pub. L. 95–600, §152(a), added subsecs. (j) to (*l*) and redesignated former subsec. (j) as (m).

1976—Subsecs. (a)(2), (6), (b). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2). Pub. L. 94–455, §1501(b)(2), substituted ''member (or spouse of an employee or member)'' for ''member''.

Subsec. (d)(1). Pub. L. 94–455, §1501(b)(10), substituted ''Notwithstanding any other provision of this title (including chapters 11 and 12), the basis'' for ''The basis''.

Subsec. (d)(4). Pub. L. 94–455, §1501(b)(5), as amended by Pub. L. 95–600, §703(c)(4), inserted reference to section 220 and substituted ''In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such excess contribution is made'' for ''Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which received''.

Subsecs. (h), (i). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §205(b), Oct. 3, 2008, 122 Stat. 3865, provided that: ''The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to taxable years beginning after Dec. 31, 2006, see section 307(c) of Pub. L. 109–432, set out as a note under section 223 of this title.

Pub. L. 109–280, title XII, § 1201(c)(1), Aug. 17, 2006, 120 Stat. 1066, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(d) of Pub. L. 108–311 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 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

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 601(b) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 601(c) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 219 of this title.

Pub. L. 107–16, title VI, § 602(c), June 7, 2001, 115 Stat. 96, provided that: ''The amendments made by this section [amending this section and section 1003 of Title 29, Labor] shall apply to plan years beginning after December 31, 2002.''

Amendment by section 611(c)(1), (f)(1), (2), (g)(2) 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)(8) 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, § 642(c), June 7, 2001, 115 Stat. 122, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and section 403 of this title] shall apply to distributions after December 31, 2001.

''(2) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as a note under section 402 of this title] shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of the amendments made by this section.''

Amendment by section 643(c) of Pub. L. 107–16 applicable to distributions made after Dec. 31, 2001, see section 643(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

Amendment by section 644(b) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 644(c) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018(b) of Pub. L. 105–206 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 6018(h) of Pub. L. 105–206, set out as a note under section 23 of this title.

Amendment by sections 6015(a) and 6016(a)(1) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 302(d) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105–34, set out as a note under section 219 of this title.

Section 304(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 1501(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to years beginning after December 31, 1996.''

Amendment by section 1601(d)(1)(A)–(C)(i), (D)–(G) 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, 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 1421(a), (b)(3)(B), (5), (6), (c) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1427(b)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1427(c) of Pub. L. 104–188, set out as a note under section 219 of this title.

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, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104–188, set out as a note under section 414 of this title.

Section 1455(e) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 6047, 6652, 6693, and 6724 of this title] shall apply to returns, reports, and other statements the due date for which (determined without regard to extensions) is after December 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable 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, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103–66, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(m)(7) 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 7841(a)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 414 of this title] shall apply to transfers after the date of the enactment of this Act [Dec. 19, 1989] in taxable years ending after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(C) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of Pub. L. 100–647, set out as a note under section 401 of this title.

Section 1011A(a)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to rollover contributions made in taxable years beginning after December 31, 1986.''

Amendment by sections 1011(b)(1)–(3), (f)(1)–(5), (10), (i)(5) and 1018(t)(3)(D) 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 6057(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(a), (b)(2), (c), (e)(2) of Pub. L. 99–514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1108(a), (d)–(g)(1), (4), (6) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, except that section 408(k)(3)(D) and (E) of the Internal Revenue Code of 1954 (as in effect before the amendments made by section 1108 of Pub. L. 99–514) shall continue to apply for years beginning after Dec. 31, 1986, and before Jan. 1, 1989, except that employer contributions under an arrangement under section 408(k)(6) of the Internal Revenue Code of 1986 (as added by section 1108 of Pub. L. 99–514) may not be integrated under section 408(k)(3)(D) and (E) of the Internal Revenue Code of 1954, see section 1108(h) of Pub. L. 99–514, as amended, set out as a note under section 219 of this title.

Amendment by section 1121(c)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1122(e)(2)(B) of Pub. L. 99–514 applicable, except as otherwise provided, to amounts distributed after Dec. 31, 1986, in taxable years ending after such date, see section 1122(h) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1123(d)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1123(e) of Pub. L. 99–514, set out as a note under section 72 of this title.

Section 1144(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to acquisitions after December 31, 1986.''

Amendment by sections 1852(a)(1), (5)(C), (7)(A) and 1875(c)(8) 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.

Amendment by section 1875(c)(6)(A) of Pub. L. 99–514 effective as if included in the amendments made by section 238 of Pub. L. 97–248, see section 1875(c)(12) of Pub. L. 99–514, set out as a note under section 62 of this title.

Section 1898(a)(5) of Pub. L. 99–514 provided that the amendment made by that section is effective with respect to plan years beginning after Oct. 22, 1986.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 147(a) of Pub. L. 98–369 applicable to contributions made after Dec. 31, 1984, see section 147(d)(1) of Pub. L. 98–369, set out as a note under section 219 of this title.

Amendment by section 491(d)(19)–(24) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 521(b) of Pub. L. 98–369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 522(d)(12) of Pub. L. 98–369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98–369, set out as a note under section 402 of this title.

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 AMENDMENT

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

Amendment by sections 237 and 238 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.

Section 243(c) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title VII, §713(g)(1), July 18, 1984, 98 Stat. 960, provided that: ''The amendments made by this section [amending this section and sections 219 and 409 of this title] shall apply with respect to individuals dying after December 31, 1983.''

Section 335(b) of Pub. L. 97–248 provided that: ''The amendments made by subsection (a) [amending this section and section 409 of this title] shall apply to distributions made after December 31, 1982, in taxable years ending after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(g)(1)(A)–(C), (2), (h)(2) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i) of Pub. L. 97–34, set out as a note under section 219 of this title.

Amendment by section 312(b)(2), (c)(5) of Pub. L. 97–34 applicable to plans which include employees within the meaning of section 401(c)(1) with respect to taxable years beginning after Dec. 31, 1981, see section 312(f) of Pub. L. 97–34, set out as a note under section 72 of this title.

Amendment by section 313(b)(2) of Pub. L. 97–34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97–34, set out as a note under section 219 of this title.

Section 314(b)(2) of Pub. L. 97–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to property acquired after December 31, 1981, in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–605 applicable with respect to plan years beginning after Dec. 31, 1980, see section 225(c) of Pub. L. 96–605, set out as a note under section 401 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 152(h) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and sections 219, 401, 404, 414, and 415 of this title] shall apply to taxable years beginning after December 31, 1978.''

Amendment by section 156(c)(1), (3) of Pub. L. 95–600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95–600, set out as a note under section 403 of this title.

Section 157(c)(2)(A) of Pub. L. 95–600 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to distributions in taxable years beginning after December 31, 1975.''

Section 157(d)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts issued after the date of the enactment of this Act [Nov. 6, 1978].''

Amendment by section 157(h)(2) of Pub. L. 95–600 applicable to payments made in taxable years beginning after Dec. 31, 1977, see section 157(h)(3)(A) of Pub. L. 95–600, set out as a note under section 402 of this title.

Section 157(e)(2) of Pub. L. 95–600 provided that: ''The amendments made by paragraph (1) [amending this section and section 409 of this title] shall apply to taxable years beginning after December 31, 1976.''

Amendment by section 157(g)(3) of Pub. L. 95–600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95–600, set out as a note under section 402 of this title.

Amendment by section 703(c)(4) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1976, see section 703(c)(5) of Pub. L. 95–600, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(2), (5), (10) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1974, see section 2002(i)(1) of Pub. L. 93–406, set out as a note under section 219 of this title.

DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS

Pub. L. 109–280, title VIII, § 830, Aug. 17, 2006, 120 Stat. 1002, provided that:

''(a) IN GENERAL.—The Secretary of the Treasury (or the Secretary's delegate) shall make available a form (or modify existing forms) for use by individuals to direct that a portion of any refund of overpayment of tax imposed by chapter 1 of the Internal Revenue Code of 1986 be paid directly to an individual retirement plan (as defined in section 7701(a)(37) of such Code) of such individual.

''(b) EFFECTIVE DATE.—The form required by subsection (a) shall be made available for taxable years beginning after December 31, 2006.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require 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 Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR CONTRIBUTIONS FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1978

Section 157(c)(2)(B) 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 contributions for taxable years beginning before January 1, 1978, paragraph (5) of section 408(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied as if such paragraph did not contain any dollar limitation.''

EXCHANGE OF FIXED PREMIUM ANNUITY OR ENDOWMENT CONTRACT ISSUED ON OR BEFORE NOV. 6, 1978, FOR INDIVIDUAL RETIREMENT ANNUITY

Section 157(d)(3) 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 any annuity or endowment contract issued on or before the date of the enactment of this Act [Nov. 6, 1978] which would be an individual retirement annuity within the meaning of section 408(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by paragraph (1) [amending subsec. (b)(2) of this section]) but for the fact that the premiums under the contract are fixed, at the election of the taxpayer an exchange before January 1, 1981, of that contract for an individual retirement annuity within the meaning of such section 408(b) (as amended by paragraph (1)) shall be treated as a nontaxable exchange which does not constitute a distribution.''

§ 408A. Roth IRAs

(a) General rule

Except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan.

(b) Roth IRA

For purposes of this title, the term ''Roth IRA'' means an individual retirement plan (as defined in section 7701(a)(37)) which is designated (in such manner as the Secretary may prescribe) at the time of establishment of the plan as a Roth IRA. Such designation shall be made in such manner as the Secretary may prescribe.

(c) Treatment of contributions

(1) No deduction allowed

No deduction shall be allowed under section 219 for a contribution to a Roth IRA.

(2) Contribution limit

The aggregate amount of contributions for any taxable year to all Roth IRAs maintained for the benefit of an individual shall not exceed the excess (if any) of—

(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year (computed without regard to subsection (d)(1) or (g) of such section), over

(B) the aggregate amount of contributions for such taxable year to all other individual retirement plans (other than Roth IRAs) maintained for the benefit of the individual.

(3) Limits based on modified adjusted gross income

(A) Dollar limit

The amount determined under paragraph (2) for any taxable year shall not exceed an amount equal to the amount determined under paragraph (2)(A) for such taxable year, reduced (but not below zero) by the amount which bears the same ratio to such amount as—

(i) the excess of—

(I) the taxpayer's adjusted gross income for such taxable year, over

(II) the applicable dollar amount, bears to

(ii) $15,000 ($10,000 in the case of a joint return or a married individual filing a separate return).

The rules of subparagraphs (B) and (C) of section 219(g)(2) shall apply to any reduction under this subparagraph.

(B) Definitions

For purposes of this paragraph—

(i) adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and

(ii) the applicable dollar amount is—

(I) in the case of a taxpayer filing a joint return, $150,000,

(II) in the case of any other taxpayer (other than a married individual filing a separate return), $95,000, and

(III) in the case of a married individual filing a separate return, zero.

(C) Marital status

Section 219(g)(4) shall apply for purposes of this paragraph.

(D) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, the dollar amounts in subclauses (I) and (II) of subparagraph (B)(ii) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2005'' for ''calendar year 1992'' in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(4) Contributions permitted after age 70½

Contributions to a Roth IRA may be made even after the individual for whom the account is maintained has attained age 70½.

(5) Mandatory distribution rules not to apply before death

Notwithstanding subsections (a)(6) and (b)(3) of section 408 (relating to required distributions), the following provisions shall not apply to any Roth IRA:

(A) Section 401(a)(9)(A).

(B) The incidental death benefit requirements of section 401(a).

(6) Rollover contributions

(A) In general

No rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution.

(B) Coordination with limit

A qualified rollover contribution shall not be taken into account for purposes of paragraph (2).

(7) Time when contributions made

For purposes of this section, the rule of section 219(f)(3) shall apply.

(d) Distribution rules

For purposes of this title—

(1) Exclusion

Any qualified distribution from a Roth IRA shall not be includible in gross income.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term ''qualified distribution'' means any payment or distribution—

(i) made on or after the date on which the individual attains age 59½,

(ii) made to a beneficiary (or to the estate of the individual) on or after the death of the individual,

(iii) attributable to the individual's being disabled (within the meaning of section 72(m)(7)), or

(iv) which is a qualified special purpose distribution.

(B) Distributions within nonexclusion period

A payment or distribution from a Roth IRA shall not be treated as a qualified distribution under subparagraph (A) if such payment or distribution is made within the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual.

(C) Distributions of excess contributions and earnings

The term ''qualified distribution'' shall not include any distribution of any contribution described in section 408(d)(4) and any net income allocable to the contribution.

(3) Rollovers from an eligible retirement plan other than a Roth IRA

(A) In general

Notwithstanding sections 402(c), 403(b)(8), 408(d)(3), and 457(e)(16), in the case of any distribution to which this paragraph applies—

(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

(ii) section 72(t) shall not apply, and

(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

(B) Distributions to which paragraph applies

This paragraph shall apply to a distribution from an eligible retirement plan (as defined by section 402(c)(8)(B)) maintained for the benefit of an individual which is contributed to a Roth IRA maintained for the benefit of such individual in a qualified rollover contribution. This paragraph shall not apply to a distribution which is a qualified rollover contribution from a Roth IRA or a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A)[1]

(C) Conversions

The conversion of an individual retirement plan (other than a Roth IRA) to a Roth IRA shall be treated for purposes of this paragraph as a distribution to which this paragraph applies.

(D) Additional reporting requirements

Trustees of Roth IRAs, trustees of individual retirement plans, persons subject to section 6047(d)(1), or all of the foregoing persons, whichever is appropriate, shall include such additional information in reports required under section 408(i) or 6047 as the Secretary may require to ensure that amounts required to be included in gross income under subparagraph (A) are so included.

(E) Special rules for contributions to which 2-year averaging applies

In the case of a qualified rollover contribution to a Roth IRA of a distribution to which subparagraph (A)(iii) applied, the following rules shall apply:

(i) Acceleration of inclusion

(I) In general

The amount otherwise required to be included in gross income for any taxable year beginning in 2010 or the first taxable year in the 2-year period under subparagraph (A)(iii) shall be increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

(II) Limitation on aggregate amount included

The amount required to be included in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 2-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.

(ii) Death of distributee

(I) In general

If the individual required to include amounts in gross income under such subparagraph dies before all of such amounts are included, all remaining amounts shall be included in gross income for the taxable year which includes the date of death.

(II) Special rule for surviving spouse

If the spouse of the individual described in subclause (I) acquires the individual's entire interest in any Roth IRA to which such qualified rollover contribution is properly allocable, the spouse may elect to treat the remaining amounts described in subclause (I) as includible in the spouse's gross income in the taxable years of the spouse ending with or within the taxable years of such individual in which such amounts would otherwise have been includible. Any such election may not be made or changed after the due date for the spouse's taxable year which includes the date of death.

(F) Special rule for applying section 72

(i) In general

If—

(I) any portion of a distribution from a Roth IRA is properly allocable to a qualified rollover contribution described in this paragraph; and

(II) such distribution is made within the 5-taxable year period beginning with the taxable year in which such contribution was made,

then section 72(t) shall be applied as if such portion were includible in gross income.

(ii) Limitation

Clause (i) shall apply only to the extent of the amount of the qualified rollover contribution includible in gross income under subparagraph (A)(i).

(4) Aggregation and ordering rules

(A) Aggregation rules

Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans.

(B) Ordering rules

For purposes of applying this section and section 72 to any distribution from a Roth IRA, such distribution shall be treated as made—

[1] So in original. Probably should be followed by a period.

(i) from contributions to the extent that the amount of such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate contributions to the Roth IRA; and

(ii) from such contributions in the following order:

(I) Contributions other than qualified rollover contributions to which paragraph (3) applies.

(II) Qualified rollover contributions to which paragraph (3) applies on a first-in, first-out basis.

Any distribution allocated to a qualified rollover contribution under clause (ii)(II) shall be allocated first to the portion of such contribution required to be included in gross income.

(5) Qualified special purpose distribution

For purposes of this section, the term ''qualified special purpose distribution'' means any distribution to which subparagraph (F) of section 72(t)(2) applies.

(6) Taxpayer may make adjustments before due date

(A) In general

Except as provided by the Secretary, if, on or before the due date for any taxable year, a taxpayer transfers in a trustee-to-trustee transfer any contribution to an individual retirement plan made during such taxable year from such plan to any other individual retirement plan, then, for purposes of this chapter, such contribution shall be treated as having been made to the transferee plan (and not the transferor plan).

(B) Special rules

(i) Transfer of earnings

Subparagraph (A) shall not apply to the transfer of any contribution unless such transfer is accompanied by any net income allocable to such contribution.

(ii) No deduction

Subparagraph (A) shall apply to the transfer of any contribution only to the extent no deduction was allowed with respect to the contribution to the transferor plan.

(7) Due date

For purposes of this subsection, the due date for any taxable year is the date prescribed by law (including extensions of time) for filing the taxpayer's return for such taxable year.

(e) Qualified rollover contribution

For purposes of this section—

(1) In general

The term ''qualified rollover contribution'' means a rollover contribution—

(A) to a Roth IRA from another such account,

(B) from an eligible retirement plan, but only if—

(i) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

(ii) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

(2) Military death gratuity

(A) In general

The term ''qualified rollover contribution'' includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

(B) Annual limit on number of rollovers not to apply

Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by the[2] subparagraph (A).

(C) Application of section 72

For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.

(f) Individual retirement plan

For purposes of this section—

(1) a simplified employee pension or a simple retirement account may not be designated as a Roth IRA; and

(2) contributions to any such pension or account shall not be taken into account for purposes of subsection (c)(2)(B).

(Added Pub. L. 105–34, title III, § 302(a), Aug. 5, 1997, 111 Stat. 825; amended Pub. L. 105–206, title VI, § 6005(b)(1)–(7), (9), title VII, § 7004(a), July 22, 1998, 112 Stat. 796–800, 833; Pub. L. 105–277, div. J, title IV, § 4002(j), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title VI, § 617(e)(1), June 7, 2001, 115 Stat. 106; Pub. L. 109–222, title V, § 512(a), (b), May 17, 2006, 120 Stat. 365; Pub. L. 109–280, title VIII, §§ 824(a), (b), 833(c), Aug. 17, 2006, 120 Stat. 998, 1004; Pub. L. 110–245, title I, § 109(a), (b), June 17, 2008, 122 Stat. 1631, 1632; Pub. L. 110–458, title I, § 108(d), (h), Dec. 23, 2008, 122 Stat. 5109.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Internal

[2] So in original. The word ''the'' probably should not appear.

Revenue Notices listed in a table under section 401 of this title.

AMENDMENTS

2008—Subsec. (c)(3)(B). Pub. L. 110–458, § 108(d)(1), in introductory provisions, struck out second ''an'' before ''eligible'' and ''other than a Roth IRA'' before ''during any taxable year'', and inserted as concluding provisions ''This subparagraph shall not apply to a qualified rollover contribution from a Roth IRA or to a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A).''

Subsec. (c)(3)(C), (E). Pub. L. 110–458, § 108(h)(1), redesignated subpar. (C) relating to inflation adjustment as subpar. (E).

Subsec. (d)(3)(B). Pub. L. 110–458, § 108(d)(2), struck out ''(other than a Roth IRA)'' after ''section 402(c)(8)(B))'' and inserted at end ''This paragraph shall not apply to a distribution which is a qualified rollover contribution from a Roth IRA or a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A)''.

Subsec. (e). Pub. L. 110–245, § 109(b), amended subsec. (e), as in effect after amendment by section 824(a) of Pub. L. 109–280, by amending text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution—

''(1) to a Roth IRA from another such account,

''(2) from an eligible retirement plan, but only if—

''(A) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

''(B) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.''

Pub. L. 110–245, § 109(a), amended subsec. (e), as in effect before amendment by section 824(a) of Pub. L. 109–280, by reenacting heading without change and amending text to read as follows: ''For purposes of this section—

''(1) IN GENERAL.—The term 'qualified rollover contribution' means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). Such term includes a rollover contribution described in section 402A(c)(3)(A). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

''(2) MILITARY DEATH GRATUITY.—

''(A) IN GENERAL.—The term 'qualified rollover contribution' includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

''(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

''(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

''(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by subparagraph (A).

''(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.'' See 2006 Amendment note below.

2006—Subsec. (c)(3)(B). Pub. L. 109–222, § 512(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B). Prior to amendment, text read as follows: ''A taxpayer shall not be allowed to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during any taxable year if, for the taxable year of the distribution to which such contribution relates—

''(i) the taxpayer's adjusted gross income exceeds $100,000, or

''(ii) the taxpayer is a married individual filing a separate return.

This subparagraph shall not apply to a qualified rollover contribution from a Roth IRA or to a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A).'' See Effective Date of 2006 Amendment note below.

Pub. L. 109–280, § 824(b)(1), substituted ''eligible retirement plan'' for ''IRA'' in heading and ''an eligible retirement plan (as defined by section 402(c)(8)(B))'' for ''individual retirement plan'' in introductory provisions. See Effective Date of 2006 Amendment note below.

Subsec. (c)(3)(B)(i). Pub. L. 109–222, § 512(a)(2), substituted ''except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and'' for ''except that—

''(I) any amount included in gross income under subsection (d)(3) shall not be taken into account; and

''(II) any amount included in gross income by reason of a required distribution under a provision described in paragraph (5) shall not be taken into account for purposes of subparagraph (B)(i), and''.

Subsec. (c)(3)(C). Pub. L. 109–222, § 512(a)(1), redesignated subpar. (D), relating to marital status, as (C). Former subpar. (C) redesignated (B). See Effective Date of 2006 Amendment note below.

Pub. L. 109–280, § 833(c), added subpar. (C) relating to inflation adjustment.

Subsec. (c)(3)(D), (E). Pub. L. 110–458, § 108(h)(2), redesignated subpar. (E) as (D) and substituted ''subparagraph (B)(ii)'' for ''subparagraph (C)(ii)''.

Subsec. (d)(3). Pub. L. 109–280, § 824(b)(2)(E), substituted ''an eligible retirement plan'' for ''an IRA'' in heading.

Subsec. (d)(3)(A). Pub. L. 109–280, § 824(b)(2)(A), substituted ''sections 402(c), 403(b)(8), 408(d)(3), and 457(e)(16)'' for ''section 408(d)(3)'' in introductory provisions.

Subsec. (d)(3)(A)(iii). Pub. L. 109–222, § 512(b)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''unless the taxpayer elects not to have this clause apply for any taxable year, any amount required to be included in gross income for such taxable year by reason of this paragraph for any distribution before January 1, 1999, shall be so included ratably over the 4-taxable year period beginning with such taxable year.''

Subsec. (d)(3)(B). Pub. L. 109–280, § 824(b)(2)(B), substituted ''eligible retirement plan (as defined by section 402(c)(8)(B))'' for ''individual retirement plan''.

Subsec. (d)(3)(D). Pub. L. 109–280, § 824(b)(2)(C), (D), substituted ''persons subject to section 6047(d)(1), or all of the foregoing persons'' for ''or both'' and inserted ''or 6047'' after ''408(i)''.

Subsec. (d)(3)(E). Pub. L. 109–222, § 512(b)(2)(B), substituted ''2-year'' for ''4-year'' in heading.

Subsec. (d)(3)(E)(i). Pub. L. 109–222, § 512(b)(2)(A), amended cl. (i) generally. Prior to amendment, text read as follows:

''(I) IN GENERAL.—The amount required to be included in gross income for each of the first 3 taxable years in the 4-year period under subparagraph (A)(iii) shall be

increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

''(II) LIMITATION ON AGGREGATE AMOUNT INCLUDED.—The amount required to be included in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 4-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.''

Subsec. (e). Pub. L. 109–280, §824(a), reenacted heading without change and amended text of subsec. (e) generally. Prior to amendments by Pub. L. 109–280, §824(a), and Pub. L. 110–245, §109(a), text read as follows: ''For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.'' See 2008 Amendment note above.

2001—Subsec. (e). Pub. L. 107–16 inserted ''Such term includes a rollover contribution described in section 402A(c)(3)(A).'' after first sentence.

1998—Subsec. (c)(3)(A). Pub. L. 105–206, §6005(b)(1), substituted ''shall not exceed an amount equal to the amount determined under paragraph (2)(A) for such taxable year, reduced'' for ''shall be reduced'' in introductory provisions.

Subsec. (c)(3)(A)(ii). Pub. L. 105–206, §6005(b)(2)(A), inserted ''or a married individual filing a separate return'' after ''joint return''.

Subsec. (c)(3)(B). Pub. L. 105–206, §6005(b)(2)(B)(i), inserted '', for the taxable year of the distribution to which such contribution relates'' after ''if'' in introductory provisions.

Subsec. (c)(3)(B)(i). Pub. L. 105–206, §6005(b)(2)(B)(ii), struck out ''for such taxable year'' after ''gross income''.

Subsec. (c)(3)(C)(i). Pub. L. 105–206, §7004(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and''.

Pub. L. 105–206, §6005(b)(2)(C), struck out ''and the deduction under section 219 shall be taken into account'' after ''taken into account''.

Subsec. (c)(3)(C)(i)(II). Pub. L. 105–277 substituted '', and'' for period at end.

Subsec. (d)(1). Pub. L. 105–206, §6005(b)(5)(B), substituted ''Exclusion'' for ''General rules'' in heading and amended text generally. Prior to amendment, text read as follows:

''(A) EXCLUSIONS FROM GROSS INCOME.—Any qualified distribution from a Roth IRA shall not be includible in gross income.

''(B) NONQUALIFIED DISTRIBUTIONS.—In applying section 72 to any distribution from a Roth IRA which is not a qualified distribution, such distribution shall be treated as made from contributions to the Roth IRA to the extent that such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate amount of contributions to the Roth IRA.''

Subsec. (d)(2)(B). Pub. L. 105–206, §6005(b)(3)(A), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: ''A payment or distribution shall not be treated as a qualified distribution under subparagraph (A) if—

''(i) it is made within the 5-taxable year period beginning with the 1st taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual, or

''(ii) in the case of a payment or distribution properly allocable (as determined in the manner prescribed by the Secretary) to a qualified rollover contribution from an individual retirement plan other than a Roth IRA (or income allocable thereto), it is made within the 5-taxable year period beginning with the taxable year in which the rollover contribution was made.''

Subsec. (d)(2)(C). Pub. L. 105–206, §6005(b)(3)(B), added subpar. (C).

Subsec. (d)(3)(A). Pub. L. 105–206, §6005(b)(4)(A), added cl. (iii) and concluding provisions and struck out former cl. (iii) which read as follows: ''in the case of a distribution before January 1, 1999, any amount required to be included in gross income by reason of this paragraph shall be so included ratably over the 4-taxable year period beginning with the taxable year in which the payment or distribution is made.''

Subsec. (d)(3)(D). Pub. L. 105–206, §6005(b)(6)(B), redesignated subpar. (E) as (D) and struck out heading and text of former subpar. (D). Text read as follows: ''If, no later than the due date for filing the return of tax for any taxable year (without regard to extensions), an individual transfers, from an individual retirement plan (other than a Roth IRA), contributions for such taxable year (and any earnings allocable thereto) to a Roth IRA, no such amount shall be includible in gross income to the extent no deduction was allowed with respect to such amount.''

Subsec. (d)(3)(E). Pub. L. 105–206, §6005(b)(6)(B), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Subsec. (d)(3)(F). Pub. L. 105–206, §6005(b)(6)(B), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 105–206, §6005(b)(4)(B), added subpar. (F).

Subsec. (d)(3)(G). Pub. L. 105–206, §6005(b)(6)(B), redesignated subpar. (G) as (F).

Pub. L. 105–206, §6005(b)(4)(B), added subpar. (G).

Subsec. (d)(4). Pub. L. 105–206, §6005(b)(5)(A), substituted ''Aggregation and ordering rules'' for ''Coordination with individual retirement accounts'' in heading and amended text generally. Prior to amendment, text read as follows: ''Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans.''

Subsec. (d)(6). Pub. L. 105–206, §6005(b)(6)(A), added par. (6).

Subsec. (d)(7). Pub. L. 105–206, §6005(b)(7), added par. (7).

Subsec. (f). Pub. L. 105–206, §6005(b)(9), added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §108(h)(2), Dec. 23, 2008, 122 Stat. 5109, amended this section ''[i]n the case of taxable years beginning after December 31, 2009''.

Amendment by 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. 110–245, title I, §109(d), June 17, 2008, 122 Stat. 1633, provided that:

''(1) IN GENERAL.—Except as provided by paragraphs (2) and (3), the amendments made by this section [amending this section and section 530 of this title] shall apply with respect to deaths from injuries occurring on or after the date of the enactment of this Act [June 17, 2008].

''(2) APPLICATION OF AMENDMENTS TO DEATHS FROM INJURIES OCCURRING ON OR AFTER OCTOBER 7, 2001, AND BEFORE ENACTMENT.—The amendments made by this section shall apply to any contribution made pursuant to section 408A(e)(2) or 530(d)(5) of the Internal Revenue Code of 1986, as amended by this Act, with respect to amounts received under section 1477 of title 10, United States Code, or under section 1967 of title 38 of such Code, for deaths from injuries occurring on or after October 7, 2001, and before the date of the enactment of

this Act if such contribution is made not later than 1 year after the date of the enactment of this Act.

''(3) PENSION PROTECTION ACT CHANGES.—Section 408A(e)(1) of the Internal Revenue Code of 1986 (as in effect after the amendments made by subsection (b)) shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 824(b)(1), Aug. 17, 2006, 120 Stat. 998, provided that the amendment made by section 824(b)(1) amends this section as in effect before the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109–222. See below.

Pub. L. 109–280, title VIII, § 824(c), Aug. 17, 2006, 120 Stat. 999, provided that: ''The amendments made by this section [amending this section] shall apply to distributions after December 31, 2007.''

Amendment by section 833(c) of Pub. L. 109–280 applicable to taxable years beginning after 2006, see section 833(d) of Pub. L. 109–280, set out as a note under section 25B of this title.

Pub. L. 109–222, title V, § 512(c), May 17, 2006, 120 Stat. 366, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 4002(k) of Pub. L. 105–277, set out as a note under section 1 of this title.

Amendment by section 6005(b)(1)–(7), (9) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–206, title VII, § 7004(b), July 22, 1998, 112 Stat. 833, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 219 of this title.

ROLLOVER OF AMOUNTS RECEIVED IN AIRLINE CARRIER BANKRUPTCY TO ROTH IRAS

Pub. L. 110–458, title I, § 125, Dec. 23, 2008, 122 Stat. 5115, provided that:

''(a) GENERAL RULE.—If a qualified airline employee receives any airline payment amount and transfers any portion of such amount to a Roth IRA within 180 days of receipt of such amount (or, if later, within 180 days of the date of the enactment of this Act [Dec. 23, 2008]), then such amount (to the extent so transferred) shall be treated as a qualified rollover contribution described in section 408A(e) of the Internal Revenue Code of 1986, and the limitations described in section 408A(c)(3) of such Code shall not apply to any such transfer.

''(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) AIRLINE PAYMENT AMOUNT.—

''(A) IN GENERAL.—The term 'airline payment amount' means any payment of any money or other property which is payable by a commercial passenger airline carrier to a qualified airline employee—

''(i) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007, and

''(ii) in respect of the qualified airline employee's interest in a bankruptcy claim against the carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount.

The amount of such payment shall be determined without regard to any requirement to deduct and withhold tax from such payment under sections 3102(a) and 3402(a).

''(B) EXCEPTION.—An airline payment amount shall not include any amount payable on the basis of the carrier's future earnings or profits.

''(2) QUALIFIED AIRLINE EMPLOYEE.—The term 'qualified airline employee' means an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which—

''(A) is a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust exempt from tax under section 501(a) of such Code, and

''(B) was terminated or became subject to the restrictions contained in paragraphs (2) and (3) of section 402(b) of the Pension Protection Act of 2006 [Pub. L. 109–280, 26 U.S.C. 430 note].

''(3) REPORTING REQUIREMENTS.—If a commercial passenger airline carrier pays 1 or more airline payment amounts, the carrier shall, within 90 days of such payment (or, if later, within 90 days of the date of the enactment of this Act [Dec. 23, 2008]), report—

''(A) to the Secretary of the Treasury, the names of the qualified airline employees to whom such amounts were paid, and

''(B) to the Secretary and to such employees, the years and the amounts of the payments.

Such reports shall be in such form, and contain such additional information, as the Secretary may prescribe.

''(c) EFFECTIVE DATE.—This section shall apply to transfers made after the date of the enactment of this Act [Dec. 23, 2008] with respect to airline payment amounts paid before, on, or after such date.''

§ 409. Qualifications for tax credit employee stock ownership plans

(a) Tax credit employee stock ownership plan defined

Except as otherwise provided in this title, for purposes of this title, the term ''tax credit employee stock ownership plan'' means a defined contribution plan which—

(1) meets the requirements of section 401(a),

(2) is designed to invest primarily in employer securities, and

(3) meets the requirements of subsections (b), (c), (d), (e), (f), (g), (h), and (*o*) of this section.

(b) Required allocation of employer securities

(1) In general

A plan meets the requirements of this subsection if—

(A) the plan provides for the allocation for the plan year of all employer securities transferred to it or purchased by it (because of the requirements of section 41(c)(1)(B))[1] to the accounts of all participants who are entitled to share in such allocation, and

(B) for the plan year the allocation to each participant so entitled is an amount which

[1] See References in Text note below.

bears substantially the same proportion to the amount of all such securities allocated to all such participants in the plan for that year as the amount of compensation paid to such participant during that year bears to the compensation paid to all such participants during that year.

(2) Compensation in excess of $100,000 disregarded

For purposes of paragraph (1), compensation of any participant in excess of the first $100,000 per year shall be disregarded.

(3) Determination of compensation

For purposes of this subsection, the amount of compensation paid to a participant for any period is the amount of such participant's compensation (within the meaning of section 415(c)(3)) for such period.

(4) Suspension of allocation in certain cases

Notwithstanding paragraph (1), the allocation to the account of any participant which is attributable to the basic employee plan credit or the credit allowed under section 41[1] (relating to the employee stock ownership credit) may be extended over whatever period may be necessary to comply with the requirements of section 415.

(c) Participants must have nonforfeitable rights

A plan meets the requirements of this subsection only if it provides that each participant has a nonforfeitable right to any employer security allocated to his account.

(d) Employer securities must stay in the plan

A plan meets the requirements of this subsection only if it provides that no employer security allocated to a participant's account under subsection (b) (or allocated to a participant's account in connection with matched employer and employee contributions) may be distributed from that account before the end of the 84th month beginning after the month in which the security is allocated to the account. To the extent provided in the plan, the preceding sentence shall not apply in the case of—

(1) death, disability, separation from service, or termination of the plan;

(2) a transfer of a participant to the employment of an acquiring employer from the employment of the selling corporation in the case of a sale to the acquiring corporation of substantially all of the assets used by the selling corporation in a trade or business conducted by the selling corporation, or

(3) with respect to the stock of a selling corporation, a disposition of such selling corporation's interest in a subsidiary when the participant continues employment with such subsidiary.

This subsection shall not apply to any distribution required under section 401(a)(9) or to any distribution or reinvestment required under section 401(a)(28).

(e) Voting rights

(1) In general

A plan meets the requirements of this subsection if it meets the requirements of paragraph (2) or (3), whichever is applicable.

(2) Requirements where employer has a registration-type class of securities

If the employer has a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant or beneficiary in the plan is entitled to direct the plan as to the manner in which securities of the employer which are entitled to vote and are allocated to the account of such participant or beneficiary are to be voted.

(3) Requirement for other employers

If the employer does not have a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant or beneficiary in the plan is entitled to direct the plan as to the manner in which voting rights under securities of the employer which are allocated to the account of such participant or beneficiary are to be exercised with respect to any corporate matter which involves the voting of such shares with respect to the approval or disapproval of any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all assets of a trade or business, or such similar transaction as the Secretary may prescribe in regulations.

(4) Registration-type class of securities defined

For purposes of this subsection, the term, ''registration-type class of securities'' means—

(A) a class of securities required to be registered under section 12 of the Securities Exchange Act of 1934, and

(B) a class of securities which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(H) of such section 12.

(5) 1 vote per participant

A plan meets the requirements of paragraph (3) with respect to an issue if—

(A) the plan permits each participant 1 vote with respect to such issue, and

(B) the trustee votes the shares held by the plan in the proportion determined after application of subparagraph (A).

(f) Plan must be established before employer's due date

(1) In general

A plan meets the requirements of this subsection only if it is established on or before the due date (including any extension of such date) for the filing of the employer's tax return for the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan.

(2) Special rule for first year

A plan which otherwise meets the requirements of this section shall not be considered to have failed to meet the requirements of section 401(a) merely because it was not established by the close of the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan.

(g) Transferred amounts must stay in plan even though investment credit is redetermined or recaptured

A plan meets the requirement of this subsection only if it provides that amounts which

are transferred to the plan (because of the requirements of section 48(n)(1) or 41(c)(1)(B))[2] shall remain in the plan (and, if allocated under the plan, shall remain so allocated) even though part or all of the employee plan credit or the credit allowed under section 41[2] (relating to employee stock ownership credit) is recaptured or redetermined. For purposes of the preceding sentence, the references to section 48(n)(1)[2] and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Reform Act of 1984.

(h) Right to demand employer securities; put option

(1) In general

A plan meets the requirements of this subsection if a participant who is entitled to a distribution from the plan—

(A) has a right to demand that his benefits be distributed in the form of employer securities, and

(B) if the employer securities are not readily tradable on an established market, has a right to require that the employer repurchase employer securities under a fair valuation formula.

(2) Plan may distribute cash in certain cases

(A) In general

A plan which otherwise meets the requirements of this subsection or of section 4975(e)(7) shall not be considered to have failed to meet the requirements of section 401(a) merely because under the plan the benefits may be distributed in cash or in the form of employer securities.

(B) Exception for certain plans restricted from distributing securities

(i) In general

A plan to which this subparagraph applies shall not be treated as failing to meet the requirements of this subsection or section 401(a) merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that the participant entitled to a distribution has a right to receive the distribution in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of paragraph (1)(B).

(ii) Applicable plans

This subparagraph shall apply to a plan which otherwise meets the requirements of this subsection or section 4975(e)(7) and which is established and maintained by—

(I) an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a), or

(II) an S corporation.

(3) Special rule for banks

In the case of a plan established and maintained by a bank (as defined in section 581) which is prohibited by law from redeeming or purchasing its own securities, the requirements of paragraph (1)(B) shall not apply if the plan provides that participants entitled to a distribution from the plan shall have a right to receive a distribution in cash.

(4) Put option period

An employer shall be deemed to satisfy the requirements of paragraph (1)(B) if it provides a put option for a period of at least 60 days following the date of distribution of stock of the employer and, if the put option is not exercised within such 60-day period, for an additional period of at least 60 days in the following plan year (as provided in regulations promulgated by the Secretary).

(5) Payment requirement for total distribution

If an employer is required to repurchase employer securities which are distributed to the employee as part of a total distribution, the requirements of paragraph (1)(B) shall be treated as met if—

(A) the amount to be paid for the employer securities is paid in substantially equal periodic payments (not less frequently than annually) over a period beginning not later than 30 days after the exercise of the put option described in paragraph (4) and not exceeding 5 years, and

(B) there is adequate security provided and reasonable interest paid on the unpaid amounts referred to in subparagraph (A).

For purposes of this paragraph, the term ''total distribution'' means the distribution within 1 taxable year to the recipient of the balance to the credit of the recipient's account.

(6) Payment requirement for installment distributions

If an employer is required to repurchase employer securities as part of an installment distribution, the requirements of paragraph (1)(B) shall be treated as met if the amount to be paid for the employer securities is paid not later than 30 days after the exercise of the put option described in paragraph (4).

(7) Exception where employee elected diversification

Paragraph (1)(A) shall not apply with respect to the portion of the participant's account which the employee elected to have reinvested under section 401(a)(28)(B) or subparagraph (B) or (C) of section 401(a)(35).

(i) Reimbursement for expenses of establishing and administering plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to meet such requirements merely because it provides that—

(1) Expenses of establishing plan

As reimbursement for the expenses of establishing the plan, the employer may withhold from amounts due the plan for the taxable year for which the plan is established (or the plan may pay) so much of the amounts paid or incurred in connection with the establishment of the plan as does not exceed the sum of—

[2] See References in Text note below.

(A) 10 percent of the first $100,000 which the employer is required to transfer to the plan for that taxable year under section 41(c)(1)(B),[3] and

(B) 5 percent of any amount so required to be transferred in excess of the first $100,000; and

(2) Administrative expenses

As reimbursement for the expenses of administering the plan, the employer may withhold from amounts due the plan (or the plan may pay) so much of the amounts paid or incurred during the taxable year as expenses of administering the plan as does not exceed the lesser of—

(A) the sum of—

(i) 10 percent of the first $100,000 of the dividends paid to the plan with respect to stock of the employer during the plan year ending with or within the employer's taxable year, and

(ii) 5 percent of the amount of such dividends in excess of $100,000 or

(B) $100,000.

(j) Conditional contributions to the plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to satisfy such requirements (or as failing to satisfy the requirements of section 401(a) of this title or of section 403(c)(1) of the Employee Retirement Income Security Act of 1974) merely because of the return of a contribution (or a provision permitting such a return) if—

(1) the contribution to the plan is conditioned on a determination by the Secretary that such plan meets the requirements of this section,

(2) the application for a determination described in paragraph (1) is filed with the Secretary not later than 90 days after the date on which an employee plan credit is claimed, and

(3) the contribution is returned within 1 year after the date on which the Secretary issues notice to the employer that such plan does not satisfy the requirements of this section.

(k) Requirements relating to certain withdrawals

Notwithstanding any other law or rule of law—

(1) the withdrawal from a plan which otherwise meets the requirements of this section by the employer of an amount contributed for purposes of the matching employee plan credit shall not be considered to make the benefits forfeitable, and

(2) the plan shall not, by reason of such withdrawal, fail to be for the exclusive benefit of participants or their beneficiaries,

if the withdrawn amounts were not matched by employee contributions or were in excess of the limitations of section 415. Any withdrawal described in the preceding sentence shall not be considered to violate the provisions of section 403(c)(1) of the Employee Retirement Income Security Act of 1974. For purposes of this subsection, the reference to the matching employee plan credit shall refer to such credit as in effect before the enactment of the Tax Reform Act of 1984.

***(l)* Employer securities defined**

For purposes of this section—

(1) In general

The term ''employer securities'' means common stock issued by the employer (or by a corporation which is a member of the same controlled group) which is readily tradable on an established securities market.

(2) Special rule where there is no readily tradable common stock

If there is no common stock which meets the requirements of paragraph (1), the term ''employer securities'' means common stock issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of—

(A) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and

(B) that class of common stock of the employer (or of any other such corporation) having the greatest dividend rights.

(3) Preferred stock may be issued in certain cases

Noncallable preferred stock shall be treated as employer securities if such stock is convertible at any time into stock which meets the requirements of paragraph (1) or (2) (whichever is applicable) and if such conversion is at a conversion price which (as of the date of the acquisition by the tax credit employee stock ownership plan) is reasonable. For purposes of the preceding sentence, under regulations prescribed by the Secretary, preferred stock shall be treated as noncallable if after the call there will be a reasonable opportunity for a conversion which meets the requirements of the preceding sentence.

(4) Application to controlled group of corporations

(A) In general

For purposes of this subsection, the term ''controlled group of corporations'' has the meaning given to such term by section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of section 1563).

(B) Where common parent owns at least 50 percent of first tier subsidiary

For purposes of subparagraph (A), if the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock and at least 50 percent of each class of nonvoting stock in a first tier subsidiary, such subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the first tier subsidiary were the common parent) shall be treated as includible corporations.

(C) Where common parent owns 100 percent of first tier subsidiary

For purposes of subparagraph (A), if the common parent owns directly stock possess-

[3] See References in Text note below.

ing all of the voting power of all classes of stock and all of the nonvoting stock, in a first tier subsidiary, and if the first tier subsidiary owns directly stock possessing at least 50 percent of the voting power of all classes of stock, and at least 50 percent of each class of nonvoting stock, in a second tier subsidiary of the common parent, such second tier subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the second tier subsidiary were the common parent) shall be treated as includible corporations.

(5) Nonvoting common stock may be acquired in certain cases

Nonvoting common stock of an employer described in the second sentence of section 401(a)(22) shall be treated as employer securities if an employer has a class of nonvoting common stock outstanding and the specific shares that the plan acquires have been issued and outstanding for at least 24 months.

(m) Nonrecognition of gain or loss on contribution of employer securities to tax credit employee stock ownership plan

No gain or loss shall be recognized to the taxpayer with respect to the transfer of employer securities to a tax credit employee stock ownership plan maintained by the taxpayer to the extent that such transfer is required under section 41(c)(1)(B),[4] or subparagraph (A) or (B) of section 48(n)(1).[4]

(n) Securities received in certain transactions

(1) In general

A plan to which section 1042 applies and an eligible worker-owned cooperative (within the meaning of section 1042(c)) shall provide that no portion of the assets of the plan or cooperative attributable to (or allocable in lieu of) employer securities acquired by the plan or cooperative in a sale to which section 1042 applies may accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a))—

(A) during the nonallocation period, for the benefit of—

(i) any taxpayer who makes an election under section 1042(a) with respect to employer securities,,,[5]

(ii) any individual who is related to the taxpayer (within the meaning of section 267(b)), or

(B) for the benefit of any other person who owns (after application of section 318(a)) more than 25 percent of—

(i) any class of outstanding stock of the corporation which issued such employer securities or of any corporation which is a member of the same controlled group of corporations (within the meaning of subsection (*l*)(4)) as such corporation, or

(ii) the total value of any class of outstanding stock of any such corporation.

For purposes of subparagraph (B), section 318(a) shall be applied without regard to the employee trust exception in paragraph (2)(B)(i).

(2) Failure to meet requirements

If a plan fails to meet the requirements of paragraph (1)—

(A) the plan shall be treated as having distributed to the person described in paragraph (1) the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation,

(B) the provisions of section 4979A shall apply, and

(C) the statutory period for the assessment of any tax imposed by section 4979A shall not expire before the date which is 3 years from the later of—

(i) the 1st allocation of employer securities in connection with a sale to the plan to which section 1042 applies, or

(ii) the date on which the Secretary is notified of such failure.

(3) Definitions and special rules

For purposes of this subsection—

(A) Lineal descendants

Paragraph (1)(A)(ii) shall not apply to any individual if—

(i) such individual is a lineal descendant of the taxpayer, and

(ii) the aggregate amount allocated to the benefit of all such lineal descendants during the nonallocation period does not exceed more than 5 percent of the employer securities (or amounts allocated in lieu thereof) held by the plan which are attributable to a sale to the plan by any person related to such descendants (within the meaning of section 267(c)(4)) in a transaction to which section 1042 applied.

(B) 25-percent shareholders

A person shall be treated as failing to meet the stock ownership limitation under paragraph (1)(B) if such person fails such limitation—

(i) at any time during the 1-year period ending on the date of sale of qualified securities to the plan or cooperative, or

(ii) on the date as of which qualified securities are allocated to participants in the plan or cooperative.

(C) Nonallocation period

The term ''nonallocation period'' means the period beginning on the date of the sale of the qualified securities and ending on the later of—

(i) the date which is 10 years after the date of sale, or

(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale.

(*o*) Distribution and payment requirements

A plan meets the requirements of this subsection if—

(1) Distribution requirement

(A) In general

The plan provides that, if the participant and, if applicable pursuant to sections

[4] See References in Text note below.

[5] So in original.

401(a)(11) and 417, with the consent of the participant's spouse elects, the distribution of the participant's account balance in the plan will commence not later than 1 year after the close of the plan year—

(i) in which the participant separates from service by reason of the attainment of normal retirement age under the plan, disability, or death, or

(ii) which is the 5th plan year following the plan year in which the participant otherwise separates from service, except that this clause shall not apply if the participant is reemployed by the employer before distribution is required to begin under this clause.

(B) Exception for certain financed securities

For purposes of this subsection, the account balance of a participant shall not include any employer securities acquired with the proceeds of the loan described in section 404(a)(9) until the close of the plan year in which such loan is repaid in full.

(C) Limited distribution period

The plan provides that, unless the participant elects otherwise, the distribution of the participant's account balance will be in substantially equal periodic payments (not less frequently than annually) over a period not longer than the greater of—

(i) 5 years, or

(ii) in the case of a participant with an account balance in excess of $800,000, 5 years plus 1 additional year (but not more than 5 additional years) for each $160,000 or fraction thereof by which such balance exceeds $800,000.

(2) Cost-of-living adjustment

The Secretary shall adjust the dollar amounts under paragraph (1)(C) at the same time and in the same manner as under section 415(d).

(p) Prohibited allocations of securities in an S corporation

(1) In general

An employee stock ownership plan holding employer securities consisting of stock in an S corporation shall provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person.

(2) Failure to meet requirements

(A) In general

If a plan fails to meet the requirements of paragraph (1), the plan shall be treated as having distributed to any disqualified person the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation.

(B) Cross reference

For excise tax relating to violations of paragraph (1) and ownership of synthetic equity, see section 4979A.

(3) Nonallocation year

For purposes of this subsection—

(A) In general

The term ''nonallocation year'' means any plan year of an employee stock ownership plan if, at any time during such plan year—

(i) such plan holds employer securities consisting of stock in an S corporation, and

(ii) disqualified persons own at least 50 percent of the number of shares of stock in the S corporation.

(B) Attribution rules

For purposes of subparagraph (A)—

(i) In general

The rules of section 318(a) shall apply for purposes of determining ownership, except that—

(I) in applying paragraph (1) thereof, the members of an individual's family shall include members of the family described in paragraph (4)(D), and

(II) paragraph (4) thereof shall not apply.

(ii) Deemed-owned shares

Notwithstanding the employee trust exception in section 318(a)(2)(B)(i), an individual shall be treated as owning deemed-owned shares of the individual.

Solely for purposes of applying paragraph (5), this subparagraph shall be applied after the attribution rules of paragraph (5) have been applied.

(4) Disqualified person

For purposes of this subsection—

(A) In general

The term ''disqualified person'' means any person if—

(i) the aggregate number of deemed-owned shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned shares of stock in the S corporation, or

(ii) in the case of a person not described in clause (i), the number of deemed-owned shares of such person is at least 10 percent of the number of deemed-owned shares of stock in such corporation.

(B) Treatment of family members

In the case of a disqualified person described in subparagraph (A)(i), any member of such person's family with deemed-owned shares shall be treated as a disqualified person if not otherwise treated as a disqualified person under subparagraph (A).

(C) Deemed-owned shares

(i) In general

The term ''deemed-owned shares'' means, with respect to any person—

(I) the stock in the S corporation constituting employer securities of an employee stock ownership plan which is allocated to such person under the plan, and

(II) such person's share of the stock in such corporation which is held by such

plan but which is not allocated under the plan to participants.

(ii) Person's share of unallocated stock

For purposes of clause (i)(II), a person's share of unallocated S corporation stock held by such plan is the amount of the unallocated stock which would be allocated to such person if the unallocated stock were allocated to all participants in the same proportions as the most recent stock allocation under the plan.

(D) Member of family

For purposes of this paragraph, the term ''member of the family'' means, with respect to any individual—

(i) the spouse of the individual,

(ii) an ancestor or lineal descendant of the individual or the individual's spouse,

(iii) a brother or sister of the individual or the individual's spouse and any lineal descendant of the brother or sister, and

(iv) the spouse of any individual described in clause (ii) or (iii).

A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance shall not be treated as such individual's spouse for purposes of this subparagraph.

(5) Treatment of synthetic equity

For purposes of paragraphs (3) and (4), in the case of a person who owns synthetic equity in the S corporation, except to the extent provided in regulations, the shares of stock in such corporation on which such synthetic equity is based shall be treated as outstanding stock in such corporation and deemed-owned shares of such person if such treatment of synthetic equity of 1 or more such persons results in—

(A) the treatment of any person as a disqualified person, or

(B) the treatment of any year as a nonallocation year.

For purposes of this paragraph, synthetic equity shall be treated as owned by a person in the same manner as stock is treated as owned by a person under the rules of paragraphs (2) and (3) of section 318(a). If, without regard to this paragraph, a person is treated as a disqualified person or a year is treated as a nonallocation year, this paragraph shall not be construed to result in the person or year not being so treated.

(6) Definitions

For purposes of this subsection—

(A) Employee stock ownership plan

The term ''employee stock ownership plan'' has the meaning given such term by section 4975(e)(7).

(B) Employer securities

The term ''employer security'' has the meaning given such term by section 409(*l*).

(C) Synthetic equity

The term ''synthetic equity'' means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.

(7) Regulations and guidance

(A) In general

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(B) Avoidance or evasion

The Secretary may, by regulation or other guidance of general applicability, provide that a nonallocation year occurs in any case in which the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of this subsection.

(q) Cross references

(1) For requirements for allowance of employee plan credit, see section 48(n).[6]

(2) For assessable penalties for failure to meet requirements of this section, or for failure to make contributions required with respect to the allowance of an employee plan credit or employee stock ownership credit, see section 6699.[6]

(3) For requirements for allowance of an employee stock ownership credit, see section 41.[6]

(Added Pub. L. 95–600, title I, § 141(a), Nov. 6, 1978, 92 Stat. 2787, § 409A; amended Pub. L. 96–222, title I, § 101(a)(7)(D)–(F), (I), (J), (L)(i)(VI), (ii)(I), (II), (iii)(V), (v)(VI), (VII), Apr. 1, 1980, 94 Stat. 198–200; Pub. L. 96–605, title II, § 224(a), Dec. 28, 1980, 94 Stat. 3528; Pub. L. 97–34, title III, §§ 331(c)(1), 334, 336, 337(a), Aug. 13, 1981, 95 Stat. 293, 297, 298; Pub. L. 97–448, title I, § 103(h), (i), Jan. 12, 1983, 96 Stat. 2379; renumbered § 409 and amended Pub. L. 98–369, div. A, title IV, §§ 474(r)(15), 491(e)(1), July 18, 1984, 98 Stat. 843, 852; Pub. L. 99–514, title XI, §§ 1172(b)(1), 1174(a)(1), (b)(1), (2), (c)(1)(A), 1176(b), title XVIII, §§ 1852(a)(4)(B), 1854(a)(3)(A), (f)(1), (3)(C), 1899A(11), Oct. 22, 1986, 100 Stat. 2514, 2516, 2517, 2520, 2865, 2873, 2881, 2882, 2958; Pub. L. 100–647, title I, §§ 1011B(g)(1), (2), (i)(1), (3), (j)(3), (5), (k)(3), 1018(t)(4)(B), (C), (H), Nov. 10, 1988, 102 Stat. 3490, 3492, 3493, 3588, 3589; Pub. L. 101–239, title VII, §§ 7304(a)(2)(A), (B), 7811(h)(1), Dec. 19, 1989, 103 Stat. 2352, 2353, 2409; Pub. L. 105–34, title XV, § 1506(a), Aug. 5, 1997, 111 Stat. 1064; Pub. L. 107–16, title VI, § 656(a), June 7, 2001, 115 Stat. 131; Pub. L. 107–147, title IV, § 411(j)(2), Mar. 9, 2002, 116 Stat. 47; Pub. L. 109–280, title IX, § 901(a)(2)(B), Aug. 17, 2006, 120 Stat. 1029.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 41, referred to in subsecs. (b)(1)(A), (4), (g), (i)(1)(A), (m), and (p), which related to employee stock

[6] See References in Text note below.

ownership credit, was repealed by Pub. L. 99–514, title XI, §1171(a), Oct. 22, 1986, 100 Stat. 2513. Section 30 of this title, relating to credit for increasing research activities, was renumbered section 41.

Section 12 of the Securities Exchange Act of 1934, referred to in subsec. (e)(4), is classified to section 78*l* of Title 15, Commerce and Trade.

Section 403(c)(1) of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (j) and (k), is classified to section 1103(c)(1) of Title 29, Labor.

The enactment of the Tax Reform Act of 1984, referred to in subsecs. (g) and (k), means the enactment of div. A of Pub. L. 98–369, which was approved July 18, 1984.

Subsec. (n) of section 48, referred to in subsecs. (g), (m), and (p)(1), was repealed by section 474(*o*)(15) of Pub. L. 98–369.

Section 6699, referred to in subsec. (p)(2), was repealed by Pub. L. 99–514, title XI, §1171(b)(7)(A), Oct. 22, 1986, 100 Stat. 2513.

PRIOR PROVISIONS

A prior section 409, added Pub. L. 93–406, title II, §2002(c), Sept. 2, 1974, 88 Stat. 964; amended Pub. L. 94–455, title XV, §1501(b)(6), title XIX, §§1901(a)(60), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1736, 1774, 1834; Pub. L. 95–600, title I, §§156(c)(2), (3), 157(e)(1)(B), Nov. 6, 1978, 92 Stat. 2803, 2806; Pub. L. 96–222, title I, §101(a)(14)(B), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §311(g)(1)(D), (3), Aug. 13, 1981, 95 Stat. 281; Pub. L. 97–248, title II, §243(b)(1)(B), title III, §335(a)(2), Sept. 3, 1982, 96 Stat. 523, 628; Pub. L. 97–452, §2(c)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, §42(a)(7), title V, §522(d)(13), July 18, 1984, 98 Stat. 557, 871, related to retirement bonds, prior to repeal by Pub. L. 98–369, div. A, title IV, §491(b), (f)(1), July 18, 1984, 98 Stat. 848, 853, applicable to obligations issued after Dec. 31, 1983.

AMENDMENTS

2006—Subsec. (h)(7). Pub. L. 109–280 inserted ''or subparagraph (B) or (C) of section 401(a)(35)'' before period at end.

2002—Subsec. (*o*)(1)(C)(ii). Pub. L. 107–147 substituted ''$800,000'' for ''$500,000'' in two places and ''$160,000'' for ''$100,000''.

2001—Subsecs. (p), (q). Pub. L. 107–16 added subsec. (p) and redesignated former subsec. (p) as (q).

1997—Subsec. (h)(2). Pub. L. 105–34 designated existing provisions as subpar. (A), inserted subpar. heading, struck out ''In the case of an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a), a plan which otherwise meets the requirements of this subsection or section 4975(e)(7) shall not be considered to have failed to meet the requirements of this subsection or of section 401(a) merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that participants entitled to a distribution from the plan shall have a right to receive such distribution in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of paragraph (1)(B).'' after ''employer securities.'', and added subpar. (B).

1989—Subsec. (*l*)(5). Pub. L. 101–239, §7811(h)(1), substituted ''the second sentence'' for ''the last sentence''.

Subsec. (n)(1). Pub. L. 101–239, §7304(a)(2)(A)(i), struck out ''or section 2057'' after ''section 1042'' in two places in introductory provisions.

Subsec. (n)(1)(A)(i). Pub. L. 101–239, §7304(a)(2)(A)(ii), struck out ''or any decedent if the executor of the estate of such decedent makes a qualified sale to which section 2057 applies'' after ''employer securities,''.

Subsec. (n)(1)(A)(ii). Pub. L. 101–239, §7304(a)(2)(A)(iii), struck out ''or the decedent'' after ''the taxpayer''.

Subsec. (n)(2)(C)(i), (3)(A)(ii). Pub. L. 101–239, §7304(a)(2)(B), struck out ''or section 2057'' after ''section 1042''.

1988—Subsec. (d). Pub. L. 100–647, §1011B(j)(3), inserted ''or to any distribution or reinvestment required under section 401(a)(28)'' after ''under section 401(a)(9)''.

Subsec. (e)(5). Pub. L. 100–647, §1018(t)(4)(H), substituted ''paragraph (3)'' for ''paragraph (2) or (3)''.

Subsec. (h)(2). Pub. L. 100–647, §1018(t)(4)(B), substituted ''paragraph (1)(B)'' for ''section 409(*o*)''.

Subsec. (h)(7). Pub. L. 100–647, §1011B(j)(5), added par. (7).

Subsec. (*l*)(4), (5). Pub. L. 100–647, §1011B(k)(3), redesignated par. (4), relating to nonvoting common stock may be acquired in certain cases, as (5).

Subsec. (n)(1). Pub. L. 100–647, §1011B(g)(1), made technical amendment to directory language of Pub. L. 99–514, §1172(b)(1). See 1986 Amendment note below.

Subsec. (n)(2)(C)(i), (3)(A)(ii). Pub. L. 100–647, §1011B(g)(2), inserted ''or section 2057'' after ''which section 1042''.

Subsec. (n)(3)(C). Pub. L. 100–647, §1018(t)(4)(C), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The term 'nonallocation period' means the 10-year period beginning on the later of—

''(i) the date of the sale of the qualified securities, or

''(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale.''

Subsec. (*o*)(1)(A). Pub. L. 100–647, §1011B(i)(3), substituted ''if the participant and, if applicable pursuant to sections 401(a)(11) and 417, with the consent of the participant's spouse elects'' for ''unless the participant otherwise elects''.

Subsec. (*o*)(1)(A)(ii). Pub. L. 100–647, §1011B(i)(1), substituted ''distribution is required to begin under this clause'' for ''such year''.

1986—Subsec. (a)(3). Pub. L. 99–514, §1174(b)(2), inserted reference to subsec. (*o*).

Subsec. (d). Pub. L. 99–514, §1899A(11), substituted ''participant's'' for ''participants's''.

Pub. L. 99–514, §1852(a)(4)(B), inserted at end ''This subsection shall not apply to any distribution required under section 401(a)(9).''

Subsec. (d)(1). Pub. L. 99–514, §1174(a)(1), substituted ''separation from service, or termination of the plan'' for ''or separation from service''.

Subsec. (e)(2). Pub. L. 99–514, §1854(f)(1)(C), (D), inserted ''or beneficiary'' after ''participant'' in two places and substituted ''securities of the employer'' for ''employer securities''.

Subsec. (e)(3). Pub. L. 99–514, §1854(f)(1)(B)–(D), inserted ''or beneficiary'' after ''participant'' in two places and substituted ''securities of the employer'' for ''employer securities'' and ''any corporate matter which involves the voting of such shares with respect to the approval or disapproval of any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all assets of a trade or business, or such similar transaction as the Secretary may prescribe in regulations'' for ''a corporate matter which (by law or charter) must be decided by more than a majority vote of outstanding common shares voted''.

Subsec. (e)(5). Pub. L. 99–514, §1854(f)(1)(A), added par. (5).

Subsec. (h)(2). Pub. L. 99–514, §1854(f)(3)(C), inserted '', except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of section 409(*o*)''.

Subsec. (h)(5), (6). Pub. L. 99–514, §1174(c)(1)(A), added pars. (5) and (6).

Subsec. (*l*)(4). Pub. L. 99–514, §1176(b), added par. (4) relating to acquisition of nonvoting common stock.

Subsec. (n). Pub. L. 99–514, §1854(a)(3)(A), added subsec. (n). Former subsec. (n) redesignated (*o*).

Subsec. (n)(1). Pub. L. 99–514, §1172(b)(1), as amended by Pub. L. 100–647, §1011B(g)(1), inserted ''or section 2057'' in two places in introductory provisions, ''or any decedent if the executor of the estate of such decedent

makes a qualified sale to which section 2057 applies,'' in subpar. (A)(i), and ''or the decedent'' in subpar. (A)(ii).

Subsec. (*o*). Pub. L. 99–514, § 1174(b)(1), added subsec. (*o*). Former subsec. (*o*) redesignated (p).

Pub. L. 99–514, § 1854(a)(3)(A), redesignated former subsec. (n) as (*o*).

Subsec. (p). Pub. L. 99–514, § 1174(b)(1), redesignated former subsec. (*o*) as (p).

1984—Subsec. (b)(1)(A). Pub. L. 98–369, § 474(r)(15)(A), (B), substituted ''41'' for ''44G'' and struck out ''48(n)(1)(A) or'' after ''requirements of section''.

Subsec. (b)(4). Pub. L. 98–369, § 474(r)(15)(A), substituted ''41'' for ''44G''.

Subsec. (g). Pub. L. 98–369, § 474(r)(15)(A), (C), substituted ''41'' for ''44G'' in two places, and inserted provision directing that, for purposes of the preceding sentence, the references to section 48(n)(1) and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Reform Act of 1984.

Subsec. (i)(1)(A). Pub. L. 98–369, § 474(r)(15)(A), (D), substituted ''41'' for ''44G'', and struck out ''48(n)(1) or'' after ''taxable year under section''.

Subsec. (k). Pub. L. 98–369, § 474(r)(15)(E), inserted provision requiring that, for purposes of this subsection, the reference to the matching employee plan credit refer to such credit as in effect before the enactment of the Tax Reform Act of 1984.

Subsec. (m). Pub. L. 98–369, § 474(r)(15)(A), substituted ''41'' for ''44G''.

Subsec. (n)(3). Pub. L. 98–369, § 474(r)(15)(A), substituted ''41'' for ''44G''.

1983—Subsec. (d)(2). Pub. L. 97–448, § 103(i), struck out provisions covering the sale of substantially all of the stock of a subsidiary of the employer.

Subsec. (h)(2). Pub. L. 97–448, § 103(h), substituted ''the requirements of this subsection or of section 401(a)'' for ''the requirements of section 401(a)''.

1981—Subsec. (b). Pub. L. 97–34, § 331(c)(1)(A), (B), inserted in par. (1)(A) reference to section 44G(c)(1)(B), and inserted in par. (4) ''or the credit allowed under section 44G (relating to the employee stock ownership credit)'' after ''basic employee plan credit''.

Subsec. (d). Pub. L. 97–34, § 337, designated provision relating to death, disability, or separation from service as par. (1) and added pars. (2) and (3).

Subsec. (g). Pub. L. 97–34, § 331(c)(1)(C), (D), inserted reference to section 44G(c)(1)(B) and inserted ''or the credit allowed under section 44G (relating to employee stock ownership credit)'' after ''employee plan credit''.

Subsec. (h)(2). Pub. L. 97–34, § 334, substituted ''this subsection'' for ''this section'' and inserted provision respecting receipt of distributions in cash where employer's charter or bylaws restrict ownership of substantially all outstanding employer securities to employees or to a section 401(a) trust where a participant is not permitted to exercise the right described in par. (1)(A).

Subsec. (h)(3), (4). Pub. L. 97–34, § 336, added pars. (3) and (4).

Subsec. (i)(1)(A). Pub. L. 97–34, § 331(c)(1)(E), inserted reference to section 44G(c)(1)(B).

Subsec. (m). Pub. L. 97–34, § 331(c)(1)(F), inserted reference to section 44G(c)(1)(B).

Subsec. (n)(2), (3). Pub. L. 97–34, § 331(c)(1)(G), (H), inserted ''or employee stock ownership credit'' after ''employee plan credit'' in par. (2) and added par. (3).

1980—Pub. L. 96–222, § 101(a)(7)(L)(v)(VII), substituted ''tax credit employee stock ownership plans'' for ''ESOPS'' in section catchline.

Subsec. (a). Pub. L. 96–222, § 101(a)(7)(L)(ii)(I), (v)(VI), substituted in heading and in text ''tax credit employee stock ownership plan'' for ''ESOP''.

Subsec. (b)(4). Pub. L. 96–222, § 101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit''.

Subsec. (d). Pub. L. 96–222, § 101(a)(7)(F), inserted ''(or allocated to a participant's account in connection with matched employer and employee contributions)'' after ''under subsection (b)''.

Subsec. (f)(1). Pub. L. 96–222, § 101(a)(7)(I)(i), substituted ''only if it is established on or before the due date (including any extension of such date) for the filing of the employer's tax return for the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan'' for ''for a plan year only if it is established on or before the due date for the filing of the employer's tax return for the taxable year (including any extension of such date) in which or with which the plan year ends''.

Subsec. (f)(2). Pub. L. 96–222, § 101(a)(7)(I)(ii), (L)(v)(VII), substituted ''employee plan'' for ''ESOP'' and inserted ''with respect to the plan'' after ''by the employer''.

Subsec. (g). Pub. L. 96–222, § 101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit''.

Subsec. (h)(2). Pub. L. 96–222, § 101(a)(7)(E), inserted ''or of section 4975(e)(7)'' after ''the requirements of this section''.

Subsecs. (j)(2), (k)(1). Pub. L. 96–222, § 101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit''.

Subsec. (*l*)(2)(B). Pub. L. 96–222, § 101(a)(7)(J)(i), substituted ''class of common stock'' for ''class of stock''.

Subsec. (*l*)(3). Pub. L. 96–222, § 101(a)(7)(J)(ii), (L)(ii)(II), substituted ''as employer securities'' for ''as meeting the requirements of paragraph (1)'', ''paragraph (1) or (2)'' for ''paragraph (2)'', and ''tax credit employee stock ownership plan'' for ''ESOP'' and inserted provisions requiring preferred stock to be treated as noncallable if after the call there will be a reasonable opportunity for a conversion which meets the requirements of the preceding sentence.

Subsec. (*l*)(4). Pub. L. 96–605 substituted in heading ''Application to controlled group of corporations'' for ''Controlled group of corporations defined'' and in subpar. (B) heading ''Where common parent owns at least'' for ''Common parent may own only'' and added subpar. (C).

Subsec. (m). Pub. L. 96–222, § 101(a)(7)(D), (L)(i), substituted provisions relating to nonrecognition of gain or loss on contribution of employer securities to a tax credit employee stock ownership plan for provisions relating to contributions of stock of a controlling corporation.

Subsec. (n). Pub. L. 96–222, § 101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit'' in pars. (1) and (2).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2006, with special rules for collectively bargained agreements and certain employer securities held in an ESOP, see section 901(c) of Pub. L. 109–280, set out as a note under section 401 of this title.

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

Pub. L. 107–16, title VI, § 656(d), June 7, 2001, 115 Stat. 135, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 4975 and 4979A of this title] shall apply to plan years beginning after December 31, 2004.

''(2) EXCEPTION FOR CERTAIN PLANS.—In the case of any—

''(A) employee stock ownership plan established after March 14, 2001, or

''(B) employee stock ownership plan established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of the Internal Revenue Code of 1986 is not in effect on such date,

the amendments made by this section shall apply to plan years ending after March 14, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1506(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section, section 4975 of this title, and section 1108 of Title 29, Labor] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7304(a)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and sections 4978 and 4979A of this title and repealing sections 2057 and 4978A of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by section 7811(h)(1) 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.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1172(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [enacting section 2057 of this title and amending this section and section 4979A of this title] shall apply to sales after the date of the enactment of this Act [Oct. 22, 1986] with respect to which an election is made by the executor of an estate who is required to file the return of the tax imposed by the Internal Revenue Code of 1986 on a date (including extensions) after the date of the enactment of this Act.''

Section 1174(a)(2) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011B(i)(2), Nov. 10, 1988, 102 Stat. 3492, provided that: ''The amendment made by this subsection [amending this section] shall apply to distributions after December 31, 1984.''

Section 1174(b)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986.''

Section 1174(c)(1)(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, except that a plan may elect to have such amendment apply to all distributions after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by section 1176(b) of Pub. L. 99–514 applicable to acquisitions of securities after Dec. 31, 1986, see section 1176(c) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1852(a)(4)(B) 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 1854(a)(3)(C) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(t)(4)(G), Nov. 10, 1988, 102 Stat. 3588, provided that:

''(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section and section 1042 of this title] shall apply to sales of securities after the date of the enactment of this Act [Oct. 22, 1986].

''(ii) A taxpayer or executor may elect to have section 1042(b)(3) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subparagraph (B)) apply to sales before the date of the enactment of this Act as if such section included the last sentence of section 409(n)(1) of the Internal Revenue Code of 1986 (as added by subparagraph (A)).''

Section 1854(f)(4)(A), (B) of Pub. L. 99–514 provided that:

''(A) The amendments made by paragraph (1)(A) and (3) [amending this section and sections 1042 and 4975 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].''

''(B) The amendments made by subparagraphs (B), (C), and (D) of paragraph (1) [amending this section] shall apply after December 31, 1986, to stock acquired after December 31, 1979.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(15) 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.

Redesignation of section 409A as 409 by section 491(e)(1) of Pub. L. 98–369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

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 1981 AMENDMENT

Amendment by section 331(c)(1) of Pub. L. 97–34 applicable to taxable years ending after Dec. 31, 1982, see section 331(f)(2) of Pub. L. 97–34, set out as a note under section 404 of this title.

Section 337(b) of Pub. L. 97–34, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply to distributions described in section 409A(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (or any corresponding provision of prior law) made after March 29, 1975.''

Amendment by sections 334 and 336 of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 224(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to qualified investment for taxable years beginning after December 31, 1978.''

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

Section 141(g) of Pub. L. 95–600, as added by Pub. L. 96–222, title I, §101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197; amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (h) [set out as an Effective Date of 1978 Amendment note under section 4975 of this title], the amendments made by this section [enacting sections 409A [now 409] and 6699 of this title and amending sections 46, 48, 56, 401, 404, 415, 805, 1504, and 4975 of this title] shall apply with respect to qualified investment for taxable years beginning after December 31, 1978.

''(2) ELECTION TO HAVE AMENDMENTS APPLY DURING 1978.—At the election of the taxpayer, paragraph (1) shall be applied by substituting 'December 31, 1977' for 'December 31, 1978'; except that in the case of a plan in existence before December 31, 1978, any such election shall not affect the required allocation of employer securities attributable to qualified investment for tax-

able years beginning before January 1, 1979. An election under the preceding sentence shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made, shall be irrevocable.

''(3) VOTING RIGHT PROVISIONS.—Section 409A(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) [now section 409] shall apply to plans to which section 409A of such Code applies, beginning with the first day of such application.

''(4) RIGHT TO DEMAND EMPLOYER SECURITIES, ETC.—Paragraphs (1)(A) and (2) of section 409A(h) of the Internal Revenue Code of 1986 (as added by subsection (a)) [now section 409] shall apply to distributions after December 31, 1978, made by a plan to which section 409A of such Code applies.

''(5) SUBSECTION (f)(7).—The amendment made by subsection (f)(7) [amending section 415 of this title] shall apply to years beginning after December 31, 1978.

''(6) RETROACTIVE APPLICATION OF AMENDMENT MADE BY SUBSECTION (d).—In determining the regular tax deduction under section 56(c) of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1979, the amount of the credit allowable under section 38 of such Code shall be determined without regard to section 46(a)(2)(B) of such Code (as in effect before the enactment of the Energy Tax Act of 1978 [Nov. 9, 1978]).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans

(a) Rules relating to constructive receipt

(1) Plan failures

(A) Gross income inclusion

(i) In general

If at any time during a taxable year a nonqualified deferred compensation plan—

(I) fails to meet the requirements of paragraphs (2), (3), and (4), or

(II) is not operated in accordance with such requirements,

all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

(ii) Application only to affected participants

Clause (i) shall only apply with respect to all compensation deferred under the plan for participants with respect to whom the failure relates.

(B) Interest and additional tax payable with respect to previously deferred compensation

(i) In general

If compensation is required to be included in gross income under subparagraph (A) for a taxable year, the tax imposed by this chapter for the taxable year shall be increased by the sum of—

(I) the amount of interest determined under clause (ii), and

(II) an amount equal to 20 percent of the compensation which is required to be included in gross income.

(ii) Interest

For purposes of clause (i), the interest determined under this clause for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

(2) Distributions

(A) In general

The requirements of this paragraph are met if the plan provides that compensation deferred under the plan may not be distributed earlier than—

(i) separation from service as determined by the Secretary (except as provided in subparagraph (B)(i)),

(ii) the date the participant becomes disabled (within the meaning of subparagraph (C)),

(iii) death,

(iv) a specified time (or pursuant to a fixed schedule) specified under the plan at the date of the deferral of such compensation,

(v) to the extent provided by the Secretary, a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or

(vi) the occurrence of an unforeseeable emergency.

(B) Special rules

(i) Specified employees

In the case of any specified employee, the requirement of subparagraph (A)(i) is met only if distributions may not be made before the date which is 6 months after the date of separation from service (or, if earlier, the date of death of the employee). For purposes of the preceding sentence, a specified employee is a key employee (as defined in section 416(i) without regard to paragraph (5) thereof) of a corporation any stock in which is publicly traded on an established securities market or otherwise.

(ii) Unforeseeable emergency

For purposes of subparagraph (A)(vi)—

(I) In general

The term ''unforeseeable emergency'' means a severe financial hardship to the participant resulting from an illness or accident of the participant, the participant's spouse, or a dependent (as defined in section 152(a)) of the participant, loss

of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

(II) Limitation on distributions

The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

(C) Disabled

For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or

(ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the participant's employer.

(3) Acceleration of benefits

The requirements of this paragraph are met if the plan does not permit the acceleration of the time or schedule of any payment under the plan, except as provided in regulations by the Secretary.

(4) Elections

(A) In general

The requirements of this paragraph are met if the requirements of subparagraphs (B) and (C) are met.

(B) Initial deferral decision

(i) In general

The requirements of this subparagraph are met if the plan provides that compensation for services performed during a taxable year may be deferred at the participant's election only if the election to defer such compensation is made not later than the close of the preceding taxable year or at such other time as provided in regulations.

(ii) First year of eligibility

In the case of the first year in which a participant becomes eligible to participate in the plan, such election may be made with respect to services to be performed subsequent to the election within 30 days after the date the participant becomes eligible to participate in such plan.

(iii) Performance-based compensation

In the case of any performance-based compensation based on services performed over a period of at least 12 months, such election may be made no later than 6 months before the end of the period.

(C) Changes in time and form of distribution

The requirements of this subparagraph are met if, in the case of a plan which permits under a subsequent election a delay in a payment or a change in the form of payment—

(i) the plan requires that such election may not take effect until at least 12 months after the date on which the election is made,

(ii) in the case of an election related to a payment not described in clause (ii), (iii), or (vi) of paragraph (2)(A), the plan requires that the payment with respect to which such election is made be deferred for a period of not less than 5 years from the date such payment would otherwise have been made, and

(iii) the plan requires that any election related to a payment described in paragraph (2)(A)(iv) may not be made less than 12 months prior to the date of the first scheduled payment under such paragraph.

(b) Rules relating to funding

(1) Offshore property in a trust

In the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, for purposes of section 83 such assets shall be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors—

(A) at the time set aside if such assets (or such trust or other arrangement) are located outside of the United States, or

(B) at the time transferred if such assets (or such trust or other arrangement) are subsequently transferred outside of the United States.

This paragraph shall not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such jurisdiction.

(2) Employer's financial health

In the case of compensation deferred under a nonqualified deferred compensation plan, there is a transfer of property within the meaning of section 83 with respect to such compensation as of the earlier of—

(A) the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer's financial health, or

(B) the date on which assets are so restricted,

whether or not such assets are available to satisfy claims of general creditors.

(3) Treatment of employer's defined benefit plan during restricted period

(A) In general

If—

(i) during any restricted period with respect to a single-employer defined benefit plan, assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary) or transferred to such a trust or other arrangement for purposes of paying deferred compensation of an applicable covered employee under a nonqualified deferred compensation plan of the plan sponsor or member of a controlled group which includes the plan sponsor, or

(ii) a nonqualified deferred compensation plan of the plan sponsor or member of a controlled group which includes the plan sponsor provides that assets will become restricted to the provision of benefits under the plan to an applicable covered employee in connection with such restricted period (or other similar financial measure determined by the Secretary) with respect to the defined benefit plan, or assets are so restricted,

such assets shall, for purposes of section 83, be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors. Clause (i) shall not apply with respect to any assets which are so set aside before the restricted period with respect to the defined benefit plan.

(B) Restricted period

For purposes of this section, the term ''restricted period'' means, with respect to any plan described in subparagraph (A)—

(i) any period during which the plan is in at-risk status (as defined in section 430(i));[1]

(ii) any period the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, and

(iii) the 12-month period beginning on the date which is 6 months before the termination date of the plan if, as of the termination date, the plan is not sufficient for benefit liabilities (within the meaning of section 4041 of the Employee Retirement Income Security Act of 1974).

(C) Special rule for payment of taxes on deferred compensation included in income

If an employer provides directly or indirectly for the payment of any Federal, State, or local income taxes with respect to any compensation required to be included in gross income by reason of this paragraph—

(i) interest shall be imposed under subsection (a)(1)(B)(i)(I) on the amount of such payment in the same manner as if such payment was part of the deferred compensation to which it relates,

(ii) such payment shall be taken into account in determining the amount of the additional tax under subsection (a)(1)(B)(i)(II) in the same manner as if such payment was part of the deferred compensation to which it relates, and

(iii) no deduction shall be allowed under this title with respect to such payment.

(D) Other definitions

For purposes of this section—

(i) Applicable covered employee

The term ''applicable covered employee'' means any—

(I) covered employee of a plan sponsor,

(II) covered employee of a member of a controlled group which includes the plan sponsor, and

(III) former employee who was a covered employee at the time of termination of employment with the plan sponsor or a member of a controlled group which includes the plan sponsor.

(ii) Covered employee

The term ''covered employee'' means an individual described in section 162(m)(3) or an individual subject to the requirements of section 16(a) of the Securities Exchange Act of 1934.

(4) Income inclusion for offshore trusts and employer's financial health

For each taxable year that assets treated as transferred under this subsection remain set aside in a trust or other arrangement subject to paragraph (1), (2), or (3), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

(5) Interest on tax liability payable with respect to transferred property

(A) In general

If amounts are required to be included in gross income by reason of paragraph (1), (2), or (3) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the sum of—

(i) the amount of interest determined under subparagraph (B), and

(ii) an amount equal to 20 percent of the amounts required to be included in gross income.

(B) Interest

For purposes of subparagraph (A), the interest determined under this subparagraph for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the amounts so required to be included in gross income by paragraph (1), (2), or (3) been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such amounts are not subject to a substantial risk of forfeiture.

[1] So in original. The semicolon probably should be a comma.

(c) No inference on earlier income inclusion or requirement of later inclusion

Nothing in this section shall be construed to prevent the inclusion of amounts in gross income under any other provision of this chapter or any other rule of law earlier than the time provided in this section. Any amount included in gross income under this section shall not be required to be included in gross income under any other provision of this chapter or any other rule of law later than the time provided in this section.

(d) Other definitions and special rules

For purposes of this section:

(1) Nonqualified deferred compensation plan

The term ''nonqualified deferred compensation plan'' means any plan that provides for the deferral of compensation, other than—

(A) a qualified employer plan, and

(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

(2) Qualified employer plan

The term ''qualified employer plan'' means—

(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5) (without regard to subparagraph (A)(iii)),

(B) any eligible deferred compensation plan (within the meaning of section 457(b)), and

(C) any plan described in section 415(m).

(3) Plan includes arrangements, etc.

The term ''plan'' includes any agreement or arrangement, including an agreement or arrangement that includes one person.

(4) Substantial risk of forfeiture

The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(5) Treatment of earnings

References to deferred compensation shall be treated as including references to income (whether actual or notional) attributable to such compensation or such income.

(6) Aggregation rules

Except as provided by the Secretary, rules similar to the rules of subsections (b) and (c) of section 414 shall apply.

(e) Regulations

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

(1) providing for the determination of amounts of deferral in the case of a nonqualified deferred compensation plan which is a defined benefit plan,

(2) relating to changes in the ownership and control of a corporation or assets of a corporation for purposes of subsection (a)(2)(A)(v),

(3) exempting arrangements from the application of subsection (b) if such arrangements will not result in an improper deferral of United States tax and will not result in assets being effectively beyond the reach of creditors,

(4) defining financial health for purposes of subsection (b)(2), and

(5) disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.

(Added Pub. L. 108–357, title VIII, §885(a), Oct. 22, 2004, 118 Stat. 1634; amended Pub. L. 109–135, title IV, §403(hh)(2), Dec. 21, 2005, 119 Stat. 2631; Pub. L. 109–280, title I, §116(a), (b), Aug. 17, 2006, 120 Stat. 856, 858; Pub. L. 110–458, title I, §101(e), Dec. 23, 2008, 122 Stat. 5100.)

REFERENCES IN TEXT

Section 4041 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(3)(B)(iii), is classified to section 1341 of Title 29, Labor.

Section 16(a) of the Securities Exchange Act of 1934, referred to in subsec. (b)(3)(D)(ii), is classified to section 78p(a) of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 409A was renumbered section 409 of this title.

AMENDMENTS

2008—Subsec. (b)(3)(A)(ii). Pub. L. 110–458 inserted ''to an applicable covered employee'' after ''under the plan''.

2006—Subsec. (b)(3). Pub. L. 109–280, §116(a), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4), (5). Pub. L. 109–280 redesignated pars. (3) and (4) as (4) and (5), respectively, and substituted ''paragraph (1), (2), or (3)'' for ''paragraph (1) or (2)'' wherever appearing.

2005—Subsec. (a)(4)(C)(ii). Pub. L. 109–135 struck out ''first'' after ''requires that the''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title I, §116(c), Aug. 17, 2006, 120 Stat. 858, provided that: ''The amendments made by this section [amending this section] shall apply to transfers or other reservation of assets after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 109–135, title IV, §403(hh)(3)(A), Dec. 21, 2005, 119 Stat. 2631, provided that: ''Notwithstanding section 885(d)(1) of the American Jobs Creation Act of 2004 [Pub. L. 108–357, set out below], subsection (b) of section 409A of the Internal Revenue Code of 1986 shall take effect on January 1, 2005.''

Pub. L. 108–357, title VIII, §885(d), Oct. 22, 2004, 118 Stat. 1640, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 3401, 6041, and 6051 of this title] shall apply to amounts deferred after December 31, 2004.

''(2) SPECIAL RULES.—

''(A) EARNINGS.—The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.

''(B) MATERIAL MODIFICATIONS.—For purposes of this subsection, amounts deferred in taxable years beginning before January 1, 2005, shall be treated as amounts deferred in a taxable year beginning on or after such date if the plan under which the deferral is made is materially modified after October 3, 2004, unless such modification is pursuant to the guidance issued under subsection (f) [set out as a note below].

''(3) EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION.—The amendments made by this section shall not apply to any nonelective deferred compensation to which section 457 of the Internal Revenue Code of 1986 does not apply by reason of section 457(e)(12) of such Code, but only if such compensation is provided under a nonqualified deferred compensation plan—

''(A) which was in existence on May 1, 2004,

''(B) which was providing nonelective deferred compensation described in such section 457(e)(12) on such date, and

''(C) which is established or maintained by an organization incorporated on July 2, 1974.

If, after May 1, 2004, a plan described in the preceding sentence adopts a plan amendment which provides a material change in the classes of individuals eligible to participate in the plan, this paragraph shall not apply to any nonelective deferred compensation provided under the plan on or after the date of the adoption of the amendment.''

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§ 101–107) and B (§§ 111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

GUIDANCE RELATING TO CONFORMANCE WITH FUNDING RULES

Pub. L. 109–135, title IV, § 403(hh)(3)(B), Dec. 21, 2005, 119 Stat. 2631, provided that: ''Not later than 90 days after the date of the enactment of this Act [Dec. 21, 2005], the Secretary of the Treasury shall issue guidance under which a nonqualified deferred compensation plan which is in violation of the requirements of section 409A(b) of such Code shall be treated as not having violated such requirements if such plan comes into conformance with such requirements during such limited period as the Secretary may specify in such guidance.''

GUIDANCE RELATING TO CHANGE OF OWNERSHIP OR CONTROL

Pub. L. 108–357, title VIII, § 885(e), Oct. 22, 2004, 118 Stat. 1640, provided that: ''Not later than 90 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue guidance on what constitutes a change in ownership or effective control for purposes of section 409A of the Internal Revenue Code of 1986, as added by this section.''

GUIDANCE RELATING TO TERMINATION OF CERTAIN EXISTING ARRANGEMENTS

Pub. L. 108–357, title VIII, § 885(f), Oct. 22, 2004, 118 Stat. 1641, as amended by Pub. L. 109–135, title IV, § 403(hh)(4), Dec. 21, 2005, 119 Stat. 2632, provided that: ''Not later than 60 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue guidance providing a limited period during which a nonqualified deferred compensation plan adopted before January 1, 2005, may, without violating the requirements of paragraphs (2), (3), and (4) of section 409A(a) of the Internal Revenue Code of 1986 (as added by this section), be amended—

''(1) to provide that a participant may terminate participation in the plan, or cancel an outstanding deferral election with regard to amounts deferred after December 31, 2004, but only if amounts subject to the termination or cancellation are includible in income of the participant as earned (or, if later, when no longer subject to substantial risk of forfeiture), and

''(2) to conform to the requirements of such section 409A with regard to amounts deferred after December 31, 2004.''

SUBPART B—SPECIAL RULES

Sec.
410. Minimum participation standards.
411. Minimum vesting standards.
412. Minimum funding standards.
413. Collectively bargained plans.[1]
414. Definitions and special rules.
415. Limitations on benefits and contribution under qualified plans.
416. Special rules for top-heavy plans.
417. Definitions and special rules for purposes of minimum survivor annuity requirements.

AMENDMENTS

1984—Pub. L. 98–397, title II, § 203(c), Aug. 23, 1984, 98 Stat. 1445, added item 417.

1982—Pub. L. 97–248, title II, § 240(d), Sept. 3, 1982, 96 Stat. 520, added item 416.

1974—Pub. L. 93–406, title II, § 1011, Sept. 2, 1974, 88 Stat. 898, added subpart heading and analysis of sections.

§ 410. Minimum participation standards

(a) Participation

(1) Minimum age and service conditions

(A) General rule

A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

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

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

(B) Special rules for certain plans

(i) In the case of any plan which provides that after not more than 2 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting ''2 years of service'' for ''1 year of service''.

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii) by an employer which is exempt from tax under section 501(a) which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (i) of subparagraph (A) shall be

[1] So in original. Does not conform to section catchline.