''(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.

applied by substituting ''26'' for ''21''. This clause shall not apply to any plan to which clause (i) applies.

(2) Maximum age conditions

A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part excludes from participation (on the basis of age) employees who have attained a specified age.

(3) Definition of year of service

(A) General rule

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

(B) Seasonal industries

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

(C) Hours of service

For purposes of this subsection, the term ''hour of service'' means a time of service determined under regulations prescribed by the Secretary of Labor.

(D) Maritime industries

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

(4) Time of participation

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

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

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

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

(5) Breaks in service

(A) General rule

Except as otherwise provided in subparagraphs (B), (C), and (D), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of paragraph (1).

(B) Employees under 2-year 100 percent vesting

In the case of any employee who has any 1-year break in service (as defined in section 411(a)(6)(A)) under a plan to which the service requirements of clause (i) of paragraph (1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(C) 1-year break in service

In computing an employee's period of service for purposes of paragraph (1) in the case of any participant who has any 1-year break in service (as defined in section 411(a)(6)(A)), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in paragraph (3)) after his return.

(D) Nonvested participants

(i) In general

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

(I) 5, or

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

(ii) Years of service not taken into account

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

(iii) Nonvested participant defined

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

(E) Special rule for maternity or paternity absences

(i) General rule

In the case of each individual who is absent from work for any period—

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

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

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

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

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service (as defined in section 411(a)(6)(A)) has occurred, the hours described in clause (ii).

(ii) Hours treated as hours of service

The hours described in this clause are—

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

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

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

(iii) Year to which hours are credited

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

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

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

(iv) Year defined

For purposes of this subparagraph, the term ''year'' means the period used in computations pursuant to paragraph (3).

(v) Information required to be filed

A plan shall not fail to satisfy the requirements of this subparagraph solely because it provides that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

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

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

(b) Minimum coverage requirements

(1) In general

A trust shall not constitute a qualified trust under section 401(a) unless such trust is designated by the employer as part of a plan which meets 1 of the following requirements:

(A) The plan benefits at least 70 percent of employees who are not highly compensated employees.

(B) The plan benefits—

(i) a percentage of employees who are not highly compensated employees which is at least 70 percent of

(ii) the percentage of highly compensated employees benefiting under the plan.

(C) The plan meets the requirements of paragraph (2).

(2) Average benefit percentage test

(A) In general

A plan shall be treated as meeting the requirements of this paragraph if—

(i) the plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated employees, and

(ii) the average benefit percentage for employees who are not highly compensated employees is at least 70 percent of the average benefit percentage for highly compensated employees.

(B) Average benefit percentage

For purposes of this paragraph, the term ''average benefit percentage'' means, with respect to any group, the average of the benefit percentages calculated separately with respect to each employee in such group (whether or not a participant in any plan).

(C) Benefit percentage

For purposes of this paragraph—

(i) In general

The term ''benefit percentage'' means the employer-provided contribution or benefit of an employee under all qualified plans maintained by the employer, expressed as a percentage of such employee's compensation (within the meaning of section 414(s)).

(ii) Period for computing percentage

At the election of an employer, the benefit percentage for any plan year shall be computed on the basis of contributions or benefits for—

(I) such plan year, or

(II) any consecutive plan year period (not greater than 3 years) which ends with such plan year and which is specified in such election.

An election under this clause, once made, may be revoked or modified only with the consent of the Secretary.

(D) Employees taken into account

For purposes of determining who is an employee for purposes of determining the average benefit percentage under subparagraph (B)—

(i) except as provided in clause (ii), paragraph (4)(A) shall not apply, or

(ii) if the employer elects, paragraph (4)(A) shall be applied by using the lowest age and service requirements of all qualified plans maintained by the employer.

(E) Qualified plan

For purposes of this paragraph, the term ''qualified plan'' means any plan which (without regard to this subsection) meets the requirements of section 401(a).

(3) Exclusion of certain employees

For purposes of this subsection, there shall be excluded from consideration—

(A) employees who are included in a unit of employees covered by an agreement which

the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers,

(B) in the case of a trust established or maintained pursuant to an agreement which the Secretary of Labor finds to be a collective bargaining agreement between air pilots represented in accordance with title II of the Railway Labor Act and one or more employers, all employees not covered by such agreement, and

(C) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

Subparagraph (A) shall not apply with respect to coverage of employees under a plan pursuant to an agreement under such subparagraph. For purposes of subparagraph (B), management pilots who are not represented in accordance with title II of the Railway Labor Act shall be treated as covered by a collective bargaining agreement described in such subparagraph if the management pilots manage the flight operations of air pilots who are so represented and the management pilots are, pursuant to the terms of the agreement, included in the group of employees benefitting under the trust described in such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard an aircraft in flight (other than management pilots described in the preceding sentence).

(4) Exclusion of employees not meeting age and service requirements

(A) In general

If a plan—

(i) prescribes minimum age and service requirements as a condition of participation, and

(ii) excludes all employees not meeting such requirements from participation,

then such employees shall be excluded from consideration for purposes of this subsection.

(B) Requirements may be met separately with respect to excluded group

If employees not meeting the minimum age or service requirements of subsection (a)(1) (without regard to subparagraph (B) thereof) are covered under a plan of the employer which meets the requirements of paragraph (1) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets the requirements of paragraph (1).

(C) Requirements not treated as being met before entry date

An employee shall not be treated as meeting the age and service requirements described in this paragraph until the first date on which, under the plan, any employee with the same age and service would be eligible to commence participation in the plan.

(5) Line of business exception

(A) In general

If, under section 414(r), an employer is treated as operating separate lines of business for a year, the employer may apply the requirements of this subsection for such year separately with respect to employees in each separate line of business.

(B) Plan must be nondiscriminatory

Subparagraph (A) shall not apply with respect to any plan maintained by an employer unless such plan benefits such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated employees.

(6) Definitions and special rules

For purposes of this subsection—

(A) Highly compensated employee

The term ''highly compensated employee'' has the meaning given such term by section 414(q).

(B) Aggregation rules

An employer may elect to designate—

(i) 2 or more trusts,

(ii) 1 or more trusts and 1 or more annuity plans, or

(iii) 2 or more annuity plans,

as part of 1 plan intended to qualify under section 401(a) to determine whether the requirements of this subsection are met with respect to such trusts or annuity plans. If an employer elects to treat any trusts or annuity plans as 1 plan under this subparagraph, such trusts or annuity plans shall be treated as 1 plan for purposes of section 401(a)(4).

(C) Special rules for certain dispositions or acquisitions

(i) In general

If a person becomes, or ceases to be, a member of a group described in subsection (b), (c), (m), or (o) of section 414, then the requirements of this subsection shall be treated as having been met during the transition period with respect to any plan covering employees of such person or any other member of such group if—

(I) such requirements were met immediately before each such change, and

(II) the coverage under such plan is not significantly changed during the transition period (other than by reason of the change in members of a group) or such plan meets such other requirements as the Secretary may prescribe by regulation.

(ii) Transition period

For purposes of clause (i), the term ''transition period'' means the period—

(I) beginning on the date of the change in members of a group, and

(II) ending on the last day of the 1st plan year beginning after the date of such change.

(D) Special rule for certain employee stock ownership plans

A trust which is part of a tax credit employee stock ownership plan which is the only plan of an employer intended to qualify under section 401(a) shall not be treated as not a qualified trust under section 401(a) solely because it fails to meet the requirements of this subsection if—

(i) such plan benefits 50 percent or more of all the employees who are eligible under a nondiscriminatory classification under the plan, and

(ii) the sum of the amounts allocated to each participant's account for the year does not exceed 2 percent of the compensation of that participant for the year.

(E) Eligibility to contribute

In the case of contributions which are subject to section 401(k) or 401(m), employees who are eligible to contribute (or elect to have contributions made on their behalf) shall be treated as benefiting under the plan (other than for purposes of paragraph (2)(A)(ii)).

(F) Employers with only highly compensated employees

A plan maintained by an employer which has no employees other than highly compensated employees for any year shall be treated as meeting the requirements of this subsection for such year.

(G) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(c) Application of participation standards to certain plans

(1) The provisions of this section (other than paragraph (2) of this subsection) shall not apply to—

(A) a governmental plan (within the meaning of section 414(d)),

(B) a church plan (within the meaning of section 414(e)) with respect to which the election provided by subsection (d) of this section has not been made,

(C) a plan which has not at any time after September 2, 1974, provided for employer contributions, and

(D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) if no part of the contributions to or under such plan are made by employers of participants in such plan.

(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section for purposes of section 401(a), except that in the case of a plan described in subparagraph (B), (C), or (D) of paragraph (1), this paragraph shall apply only if such plan meets the requirements of section 401(a)(3) (as in effect on September 1, 1974).

(d) Election by church to have participation, vesting, funding, etc., provisions apply

(1) In general

If the church or convention or association of churches which maintains any church plan makes an election under this subsection (in such form and manner as the Secretary may by regulations prescribe), then the provisions of this title relating to participation, vesting, funding, etc. (as in effect from time to time) shall apply to such church plan as if such provisions did not contain an exclusion for church plans.

(2) Election irrevocable

An election under this subsection with respect to any church plan shall be binding with respect to such plan, and, once made, shall be irrevocable.

(Added Pub. L. 93–406, title II, § 1011, Sept. 2, 1974, 88 Stat. 898; amended Pub. L. 94–455, title XIX, §§ 1901(a)(61), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1774, 1834; Pub. L. 96–605, title II, § 225(a), Dec. 28, 1980, 94 Stat. 3529; Pub. L. 97–34, title I, § 111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 98–397, title II, § 202(a), (d)(1), (e)(1), Aug. 23, 1984, 98 Stat. 1436–1438; Pub. L. 99–509, title IX, § 9203(a)(2), Oct. 21, 1986, 100 Stat. 1979; Pub. L. 99–514, title XI, §§ 1112(a), 1113(c), (d)(A), Oct. 22, 1986, 100 Stat. 2440, 2447; Pub. L. 100–647, title I, § 1011(h)(1), (2), (11), title III, § 3021(a)(13)(B), Nov. 10, 1988, 102 Stat. 3464, 3467, 3631; Pub. L. 101–239, title VII, § 7841(d)(6), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 105–34, title XV, § 1505(a)(3), Aug. 5, 1997, 111 Stat. 1063; Pub. L. 109–280, title IV, § 402(h)(1), Aug. 17, 2006, 120 Stat. 927.)

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (b)(3), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended. Title II of the Railway Labor Act was added by act Apr. 10, 1936, ch. 166, 49 Stat. 1189, and is classified generally to subchapter II (§ 181 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–280, in concluding provisions, substituted ''For purposes of subparagraph (B), management pilots who are not represented in accordance with title II of the Railway Labor Act shall be treated as covered by a collective bargaining agreement described in such subparagraph if the management pilots manage the flight operations of air pilots who are so represented and the management pilots are, pursuant to the terms of the agreement, included in the group of employees benefitting under the trust described in such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard an aircraft in flight (other than management pilots described in the preceding sentence).'' for ''Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard aircraft in flight.''

1997—Subsec. (c)(2). Pub. L. 105–34 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a), if such plan meets the requirements of section 401(a)(3) as in effect on September 1, 1974.''

1989—Subsec. (a)(2). Pub. L. 101–239 struck out comma before period at end.

1988—Subsec. (b)(4)(B). Pub. L. 100–647, §1011(h)(1), substituted ''not meeting'' for ''do not meet'' and struck out ''and'' before ''are covered''.

Subsec. (b)(4)(C). Pub. L. 100–647, §1011(h)(11), added subpar. (C).

Subsec. (b)(6)(C)(i)(II). Pub. L. 100–647, §3021(a)(13)(B), inserted ''or such plan meets such other requirements as the Secretary may prescribe by regulation'' after ''of a group)''.

Subsec. (b)(6)(F), (G). Pub. L. 100–647, §1011(h)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

1986—Subsec. (a)(1)(B)(i). Pub. L. 99–514, §1113(c), substituted ''2 years of service'' for ''3 years of service'' in two places.

Subsec. (a)(2). Pub. L. 99–509 substituted a period for ''unless—

''(A) the plan is a—

''(i) defined benefit plan, or

''(ii) target benefit plan (as defined under regulations prescribed by the Secretary), and

''(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.''

Subsec. (a)(5)(B). Pub. L. 99–514, §1113(d)(A), substituted ''2-year'' for ''3-year'' in heading.

Subsec. (b). Pub. L. 99–514, §1112(a), substituted ''Minimum coverage requirements'' for ''Eligibility'' as subsec. (b) heading and amended subsec. generally, revising and restating as pars. (1) to (6) provisions formerly contained in pars. (1) to (3).

1984—Subsec. (a)(1)(A)(i). Pub. L. 98–397, §202(a)(1), substituted ''21'' for ''25''.

Subsec. (a)(1)(B)(ii). Pub. L. 98–397, §202(a)(2), substituted '' '26' for '21' '' for '' '30' for '25' ''.

Subsec. (a)(5)(D). Pub. L. 98–397, §202(d)(1), amended subpar. (D) generally.

Subsec. (a)(5)(E). Pub. L. 98–397, §202(e)(1), added subpar. (E).

1981—Subsec. (b)(3)(C). Pub. L. 97–34 substituted ''section 911(d)(2)'' for ''section 911(b)''.

1980—Subsec. (b)(2), (3). Pub. L. 96–605 added par. (2), redesignated former par. (2) as (3) and substituted ''paragraphs (1) and (2)'' for ''paragraph (1)''.

1976—Subsec. (a)(2)(A)(ii). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(5)(C), (D). Pub. L. 94–455, §1901(a)(61)(A), substituted ''purposes of paragraph (1)'' for ''purposes of subsection (a)(1)''.

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

Subsec. (c)(1)(C). Pub. L. 94–455, §1901(a)(61)(B), substituted ''September 2, 1974,'' for ''the date of the enactment of the Employee Retirement Income Security Act of 1974''.

Subsec. (c)(2). Pub. L. 94–455, §1901(a)(61)(C), substituted ''September 1, 1974'' for ''the day before the date of the enactment of this section''.

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

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to years beginning before, on, or after Aug. 17, 2006, see section 402(h)(2) of Pub. L. 109–280, set out as a Special Funding Rules for Certain Plans Maintained by Commercial Airlines note under section 430 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(h)(1), (2), (11) 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.

Amendment by section 3021(a)(13)(B) of Pub. L. 100–647 effective as if included in the amendments by section 1151 of Pub. L. 99–514, see section 3021(d)(1) of Pub. L. 100–647, set out as a note under section 129 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1112(a) 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 1113(c), (d)(A) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and not applicable to employees who do not have 1 hour of service in any plan year to which the amendment applies, see section 1113(f) of Pub. L. 99–514, as amended, set out as a note under section 411 of this title.

Amendment by Pub. L. 99–509 applicable only with respect to plan years beginning on or after January 1, 1988, and only with respect to service performed on or after such date, see section 9204(b) of Pub. L. 99–509, set out as an Effective and Termination Dates of 1986 Amendments note under section 623 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–605 applicable with respect to plan years beginning after December 31, 1980, see section 225(c) of Pub. L. 96–605, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(61) 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.

EFFECTIVE DATE; TRANSITIONAL RULES

Section 1017 of Pub. L. 93–406, as amended by Pub. L. 94–12, title IV, §402, Mar. 29, 1975, 89 Stat. 47; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this part [part 1 (§§1011–1017) of subtitle A of title II of Pub. L. 93–406, enacting this section and sections 411, 412, 413, 414, and 4971 of this title, amending sections 275, 401, 404, 406, 407, 805, 6161, 6201, 6204, 6211, 6212, 6213, 6214, 6344, 6501, 6503, 6512, 6601, 6653, 6659 [now 6662], 6676, 6677, 6679, 6682, 6688, 6861, 6862, and 7422 of this title and enacting provisions set out as notes under this section and sections 411 and 412 of this title] shall apply for plan years beginning after the date of the enactment of this Act [Sept. 2, 1974].

''(b) EXISTING PLANS.—Except as otherwise provided in subsections (c) through (i), in the case of a plan in existence on January 1, 1974, the amendments made by this part shall apply for plan years beginning after December 31, 1975.

''(c) EXISTING PLANS UNDER COLLECTIVE BARGAINING AGREEMENTS.—

''(1) APPLICATION OF VESTING RULES TO CERTAIN PLAN PROVISIONS.—

''(A) WAIVER OF APPLICATION.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, during the special temporary waiver period the plan shall not be treated as not meeting the requirements of section 411(b)(1) or (2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] solely by reason of a supplementary or special plan provision (within the meaning of subparagraph (D)).

''(B) SPECIAL TEMPORARY WAIVER PERIOD.—For purposes of this paragraph, the term 'special temporary waiver period' means plan years beginning after December 31, 1975, and before the earlier of—

''(i) 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 [Sept. 2, 1974]), or

''(ii) January 1, 1981.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act [see Short Title note set out under section 1001 of Title 29, Labor] shall not be treated as a termination of such collective bargaining agreement.

''(C) DETERMINATION BY SECRETARY OF LABOR REQUIRED.—Subparagraph (A) shall not apply unless the Secretary of Labor determines that the participation and vesting rules in effect on the date of the enactment of this Act [Sept. 2, 1974] are not less favorable to the employees, in the aggregate than the rules provided under sections 410 and 411 of the Internal Revenue Code of 1986.

''(D) SUPPLEMENTARY OR SPECIAL PLAN PROVISIONS.—For purposes of this paragraph, the term 'supplementary or special plan provision' means any plan provision which—

''(i) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant, or

''(ii) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

''(2) APPLICATION OF FUNDING RULES.—

''(A) IN GENERAL.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, section 412 of the Internal Revenue Code of 1986, and other amendments made by this part to the extent such amendments relate to such section 412, shall not apply during the special temporary waiver period (as defined in paragraph (1)(B)).

''(B) WAIVER OF UNDERFUNDING.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, if by reason of subparagraph (A) the requirements of section 401(a)(7) of the Internal Revenue Code of 1986 apply without regard to the amendment of such section 401(a)(7) by section 1016(a)(2)(C) of this Act [Pub. L. 93–406], the plan shall not be treated as not meeting such requirements solely by reason of the application of the amendments made by sections 1011 and 1012 of this Act [enacting this section and section 411 of this title] or related amendments made by this part.

''(C) LABOR ORGANIZATION CONVENTIONS.—In the case of a plan maintained by a labor organization, which is exempt from tax under section 501(c)(5) of the Internal Revenue Code of 1986 exclusively for the benefit of its employees and their beneficiaries, section 412 of such Code and other amendments made by this part to the extent such amendments relate to such section 412, shall be applied by substituting for the term 'December 31, 1975' in subsection (b), the earlier of—

''(i) the date on which the second convention of such labor organization held after the date of the enactment of this Act [Sept. 2, 1974] ends, or

''(ii) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subparagraph (A) or (B) be substituted.

''(d) EXISTING PLANS MAY ELECT NEW PROVISIONS.—In the case of a plan in existence on January 1, 1974, the provisions of the Internal Revenue Code of 1986 relating to participation, vesting, funding, and form of benefit (as in effect from time to time) shall apply in the case of the plan year (which begins after the date of the enactment of this Act [Sept. 2, 1974] but before the applicable effective date determined under subsection (b) or (c)) selected by the plan administrator and to all subsequent plan years, if the plan administrator elects (in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe) to have such provisions so apply. Any election made under this subsection, once made, shall be irrevocable.

''(e) CERTAIN DEFINITIONS AND SPECIAL RULES.—Section 414 of the Internal Revenue Code of 1986 (other than subsections (b) and (c) of such section 414), as added by section 1015(a) of this Act [Pub. L. 93–406], shall take effect on the date of the enactment of this Act [Sept. 2, 1974].

''(f) TRANSITIONAL RULES WITH RESPECT TO BREAKS IN SERVICE.—

''(1) PARTICIPATION.—In the case of a plan to which section 410 of the Internal Revenue Code of 1986 [this section] applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 410 first becomes effective with respect to such plan) provides that any employee's participation in the plan would commence at any date later than the later of—

''(A) the date on which his participation would commence under the break in service rules of section 410(a)(5) of such Code, or

''(B) the date on which his participation would commence under the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code.

''(2) VESTING.—In the case of a plan to which section 411 of the Internal Revenue Code of 1986 applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 411 first becomes effective with respect to such plan) provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

''(A) the break in service rules of section 411(a)(6) of such Code, or

''(B) the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code. Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

''(g) 3-YEAR DELAY FOR CERTAIN PROVISIONS.—Subparagraphs (B) and (C) of section 404(a)(1) shall apply only in the case of plan years beginning on or after 3

years after the date of the enactment of this Act [Sept. 2, 1974].

''(h)(1) Except as provided in paragraph (2), section 413 of the Internal Revenue Code of 1986 shall apply to plan years beginning after December 31, 1953.

''(2)(A) For plan years beginning before the applicable effective date of section 410 of such Code, the provisions of paragraphs (1) and (8) of subsection (b) of such section 413 shall be applied by substituting '401(a)(3)' for '410'.

''(B) For plan years beginning before the applicable effective date of section 411 of such Code, the provisions of subsection (b)(2) of such section 413 shall be applied by substituting '401(a)(7)' for '411(d)(3)'.

''(C)(i) The provisions of subsection (b)(4) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 411 of such Code.

''(ii) The provisions of subsection (b)(5) (other than the second sentence thereof) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 412 of such Code.

''(i) CONTRIBUTIONS TO H.R. 10 PLANS.—Notwithstanding subsections (b) and (c)(2), in the case of a plan in existence on January 1, 1974, the amendment made by section 1013(c)(2) of this Act [amending section 404(a)(6) of this title] shall apply, with respect to a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1986, for plan years beginning after December 31, 1974, but only if the employer (within the meaning of section 401(c)(4) of such Code) elects in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe, to have such amendment so apply. Any election made under this subsection, once made, shall be irrevocable.''

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 1113 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

Secretary of Labor, Secretary of the Treasury, and Equal Employment Opportunity Commission shall each issue before Feb. 1, 1988, final regulations to carry out amendments made by section 9203 of Pub. L. 99–509, see section 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

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.

For provisions directing that if any amendments made by section 9203(a)(2) of Pub. L. 99–509 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 9204 of Pub. L. 99–509, set out as a note under section 623 of Title 29, Labor.

§411. Minimum vesting standards

(a) General rule

A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1), (2), and (11) of this subsection and the requirements of subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).

(1) Employee contributions

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

(2) Employer contributions

(A) Defined benefit plans

(i) In general

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

(ii) 5-year vesting

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

(iii) 3 to 7 year vesting

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

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

(B) Defined contribution plans

(i) In general

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

(ii) 3-year vesting

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

(iii) 2 to 6 year vesting

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

Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60