''(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

5	80
6 or more	100.

(3) Certain permitted forfeitures, suspensions, etc.

For purposes of this subsection—

(A) Forfeiture on account of death

A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 401(a)(11)).

(B) Suspension of benefits upon reemployment of retiree

A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multi-employer plan, by the employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced.

The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term ''employed''.

(C) Effect of retroactive plan amendments

A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 412(d)(2).

(D) Withdrawal of mandatory contribution

(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of subsection (c)(2)(C) on the date of such repayment (computed annually from the date of such withdrawal). The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before September 2, 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant before September 2, 1974 if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after September 2, 1974. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 401(a)(19).

(E) Cessation of contributions under a multiemployer plan

A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because the plan provides that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contribute under the plan may not be payable if the employer ceases contributions to the multiemployer plan.

(F) Reduction and suspension of benefits by a multiemployer plan

A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because—

(i) the plan is amended to reduce benefits under section 418D or under section 4281 of the Employee Retirement Income Security Act of 1974, or

(ii) benefit payments under the plan may be suspended under section 418E or under section 4281 of the Employee Retirement Income Security Act of 1974.

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

A matching contribution (within the meaning of section 401(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 an excess contribution under section 401(k)(8)(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).

(4) Service included in determination of nonforfeitable percentage

In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 18,[1]

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan (as defined under regulations prescribed by the Secretary;

(D) service not required to be taken into account under paragraph (6);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

(F) years of service before the first plan year to which this section applies, if such service would have been disregarded under the rules of the plan with regard to breaks in service as in effect on the applicable date; and

(G) in the case of a multiemployer plan, years of service—

(i) with an employer after—

(I) a complete withdrawal of that employer from the plan (within the meaning of section 4203 of the Employee Retirement Income Security Act of 1974), or

(II) to the extent permitted in regulations prescribed by the Secretary, a partial withdrawal described in section 4205(b)(2)(A)(i) of such Act in conjunction with the decertification of the collective bargaining representative, and

(ii) with any employer under the plan after the termination date of the plan under section 4048 of such Act.

(5) Year of service

(A) General rule

For purposes of this subsection, except as provided in subparagraph (C), the term ''year of service'' means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has completed 1,000 hours of service.

(B) Hours of service

For purposes of this subsection, the term ''hours of service'' has the meaning provided by section 410(a)(3)(C).

(C) 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.

(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 the purposes of this subparagraph.

(6) Breaks in service

(A) Definition of 1-year break in service

For purposes of this paragraph, the term ''1-year break in service'' means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has not completed more than 500 hours of service.

(B) 1 year of service after 1-year break in service

For purposes of paragraph (4), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) 5 consecutive 1-year breaks in service under defined contribution plan

For purposes of paragraph (4), in the case of any participant in a defined contribution plan, or an insured defined benefit plan which satisfies the requirements of subsection (b)(1)(F), who has 5 consecutive 1-year breaks in service, years of service after such 5-year period shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such 5-year period.

(D) Nonvested participants

(i) In general

For purposes of paragraph (4), 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 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.

[1] So in original. The comma probably should be a semicolon.

(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 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 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 (5).

(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.

(7) Accrued benefit

(A) In general

For purposes of this section, the term ''accrued benefit'' means—

(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

(B) Effect of certain distributions

Notwithstanding paragraph (4), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than the dollar limit under section 411(a)(11)(A)) permitted under regulations prescribed by the Secretary, or

(ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Clause (i) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause (ii) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary.

(C) Repayment of subparagraph (B) distributions

For purposes of determining the employee's accrued benefit under a plan, the plan may not disregard service as provided in subparagraph (B) unless the plan provides an opportunity for the participant to repay the full amount of the distribution described in such subparagraph (B) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subparagraph shall apply only in the case of a participant who—

(i) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

(ii) resumes employment covered under the plan, and

(iii) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

The plan provision required under this subparagraph may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(D) Accrued benefit attributable to employee contributions

The accrued benefit of an employee shall not be less than the amount determined under subsection (c)(2)(B) with respect to the employee's accumulated contributions.

(8) Normal retirement age

For purposes of this section, the term ''normal retirement age'' means the earlier of—

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of—

(i) the time a plan participant attains age 65, or

(ii) the 5th anniversary of the time a plan participant commenced participation in the plan.

(9) Normal retirement benefit

For purposes of this section, the term ''normal retirement benefit'' means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to—

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefits commencing before benefits payable under title II of the Social Security Act become payable which—

(i) do not exceed such social security benefits, and

(ii) terminate when such social security benefits commence.

(10) Changes in vesting schedule

(A) General rule

A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) Election of former schedule

A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) unless each participant having not less than 3 years of service is permitted to elect, within a reasonable period after the adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(11) Restrictions on certain mandatory distributions

(A) In general

If the present value of any nonforfeitable accrued benefit exceeds $5,000, a plan meets the requirements of this paragraph only if such plan provides that such benefit may not be immediately distributed without the consent of the participant.

(B) Determination of present value

For purposes of subparagraph (A), the present value shall be calculated in accordance with section 417(e)(3).

(C) Dividend distributions of ESOPS arrangement

This paragraph shall not apply to any distribution of dividends to which section 404(k) applies.

(D) Special rule for rollover contributions

A plan shall not fail to meet the requirements of this paragraph if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term ''rollover contributions'' means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

[(12) Repealed. Pub. L. 109–280, title IX, §904(a)(2), Aug. 17, 2006, 120 Stat. 1049]

(13) Special rules for plans computing accrued benefits by reference to hypothetical account balance or equivalent amounts

(A) In general

An applicable defined benefit plan shall not be treated as failing to meet—

(i) subject to subparagraph (B), the requirements of subsection (a)(2), or

(ii) the requirements of subsection (a)(11) or (c), or the requirements of section 417(e), with respect to accrued benefits derived from employer contributions,

solely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in the hypothetical account described in subparagraph (C) or as an accumulated

percentage of the participant's final average compensation.

(B) 3-year vesting

In the case of an applicable defined benefit plan, such plan shall be treated as meeting the requirements of subsection (a)(2) only 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.

(C) Applicable defined benefit plan and related rules

For purposes of this subsection—

(i) In general

The term ''applicable defined benefit plan'' means a defined benefit plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation.

(ii) Regulations to include similar plans

The Secretary shall issue regulations which include in the definition of an applicable defined benefit plan any defined benefit plan (or any portion of such a plan) which has an effect similar to an applicable defined benefit plan.

(b) Accrued benefit requirements

(1) Defined benefit plans

(A) 3-percent method

A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 3 percent of the normal retirement benefit to which he would be entitled if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) 133⅓ percent rule

A defined benefit plan satisfies the requirements of this paragraph for a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) Fractional rule

A defined benefits plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date on which any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Accrual for service before effective date

Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies, but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to September 2, 1974, or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) First two years of service

Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term ''years of service'' has the meaning provided by section 410(a)(3)(A).

(F) Certain insured defined benefit plans

Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan—

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of subparagraphs (B) and (C) of section 412(e)(3) (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of subparagraphs (D), (E), and (F) of section 412(e)(3) were satisfied.

(G) Accrued benefit may not decrease on account of increasing age or service

Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before entitlement to benefits payable under title II of the Social Security Act which benefits under the plan—

(i) do not exceed such social security benefits, and

(ii) terminate when such social security benefits commence.

(H) Continued accrual beyond normal retirement age

(i) In general

Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age.

(ii) Certain limitations permitted

A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(iii) Adjustments under plan for delayed retirement taken into account

In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

(I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of inservice distribution of benefits, and

(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 401(a)(14)(C), and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to subsection (a)(3)(B), then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The preceding provisions of this clause shall apply in accordance with regulations of the Secretary. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee, with respect to any period of time within a plan year.

(iv) Disregard of subsidized portion of early retirement benefit

A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(v) Coordination with other requirements

The Secretary shall provide by regulation for the coordination of the requirements of this subparagraph with the requirements of subsection (a), sections 404, 410, and 415, and the provisions of this subchapter precluding discrimination in favor of highly compensated employees.

(2) Defined contribution plans

(A) In general

A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account

are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

(B) Application to target benefit plans

The Secretary shall provide by regulation for the application of the requirements of this paragraph to target benefit plans.

(C) Coordination with other requirements

The Secretary may provide by regulation for the coordination of the requirements of this paragraph with the requirements of subsection (a), sections 404, 410, and 415, and the provisions of this subchapter precluding discrimination in favor of highly compensated employees.

(3) Separate accounting required in certain cases

A plan satisfies the requirements of this paragraph if—

(A) in the case of the defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

(4) Year of participation

(A) Definition

For purposes of determining an employee's accrued benefit, the term ''year of participation'' means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 410(a)(5), determined without regard to section 410(a)(5)(E)) as determined under regulations prescribed by the Secretary of Labor which provide for the calculation of such period on any reasonable and consistent basis.

(B) Less than full time service

For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) Less than 1,000 hours of service during year

For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis solely because such service is not taken into account.

(D) 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 participation'' shall be such period as determined under regulations prescribed by the Secretary of Labor.

(E) Maritime industries

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

(5) Special rules relating to age

(A) Comparison to similarly situated younger individual

(i) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.

(ii) Similarly situated

For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(iii) Disregard of subsidized early retirement benefits

In determining the accrued benefit as of any date for purposes of this subparagraph, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

(iv) Accrued benefit

For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.

(B) Applicable defined benefit plans

(i) Interest credits

(I) In general

An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return.

(II) Preservation of capital

An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the plan provides that an interest credit (or equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

(III) Market rate of return

The Secretary may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I).

(ii) Special rule for plan conversions

If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

(iii) Rate of benefit accrual

Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of—

(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

(II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

(iv) Special rules for early retirement subsidies

For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount[2] with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

(v) Applicable plan amendment

For purposes of this subparagraph—

(I) In general

The term ''applicable plan amendment'' means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

(II) Special rule for coordinated benefits

If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

(III) Multiple amendments

The Secretary shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

(IV) Applicable defined benefit plan

For purposes of this subparagraph, the term ''applicable defined benefit plan'' has the meaning given such term by section 411(a)(13).

(vi) Termination requirements

An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan—

(I) if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and

(II) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

(C) Certain offsets permitted

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) solely because the plan provides offsets against benefits under the plan to the extent such offsets are otherwise allowable in applying the requirements of section 401(a).

(D) Permitted disparities in plan contributions or benefits

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(*l*) are met.

(E) Indexing permitted

(i) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides for indexing of accrued benefits under the plan.

[2] So in original. Probably should be ''similar account''.

(ii) Protection against loss

Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

(iii) Indexing

For purposes of this subparagraph, the term ''indexing'' means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

(F) Early retirement benefit or retirement-type subsidy

For purposes of this paragraph, the terms ''early retirement benefit'' and ''retirement-type subsidy'' have the meaning given such terms in subsection (d)(6)(B)(i).

(G) Benefit accrued to date

For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

(c) Allocation of accrued benefits between employer and employee contributions

(1) Accrued benefit derived from employer contributions

For purposes of this section, an employee's accrued benefit derived from employer contributions as of any applicable date is the excess, if any, of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2) Accrued benefit derived from employee contributions

(A) Plans other than defined benefit plans

In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B) Defined benefit plans

In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 417(e)(3) (as of the determination date).

(C) Definition of accumulated contributions

For purposes of this subsection, the term ''accumulated contribution'' means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which subsection (a)(2) does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually—

(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year) for the period beginning with the 1st plan year to which subsection (a)(2) applies (by reason of the applicable effective date) and ending with the date on which the determination is being made, and

(II) at the interest rate which would be used under the plan under section 417(e)(3) (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age.

For purposes of this subparagraph, the term ''mandatory contributions'' means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) Adjustments

The Secretary is authorized to adjust by regulation the conversion factor described in subparagraph (B) from time to time as he may deem necessary. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(3) Actuarial adjustment

For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(d) Special rules

(1) Coordination with section 401(a)(4)

A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401(a)(4) unless—

(A) there has been a pattern of abuse under the plan (such as a dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)), or

(B) there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

(2) Prohibited discrimination

Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4).

(3) Termination or partial termination; discontinuance of contributions

Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that—

(A) upon its termination or partial termination, or

(B) in the case of a plan to which section 412 does not apply, upon complete discontinuance of contributions under the plan,

the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4), may not be used for designated employees in the event of early termination of the plan. For purposes of this paragraph, in the case of the complete discontinuance of contributions under a profit-sharing or stock bonus plan, such plan shall be treated as having terminated on the day on which the plan administrator notifies the Secretary (in accordance with regulations) of the discontinuance.

[(4) Repealed. Pub. L. 99–514, title XI, § 1113(b), Oct. 22, 1986, 100 Stat. 2447]

(5) Treatment of voluntary employee contributions

In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

(6) Accrued benefit not to be decreased by amendment

(A) In general

A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(d)(2), or section 4281 of the Employee Retirement Income Security Act of 1974.

(B) Treatment of certain plan amendments

For purposes of subparagraph (A), a plan amendment which has the effect of—

(i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(ii) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner. The Secretary may by regulations provide that this subparagraph shall not apply to a plan amendment described in clause (ii) (other than a plan amendment having an effect described in clause (i)).

(C) Special rule for ESOPS

For purposes of this paragraph, any—

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

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

shall not be treated as failing to meet the requirements of this paragraph merely because it modifies distribution options in a nondiscriminatory manner.

(D) Plan transfers

(i) In general

A defined contribution plan (in this subparagraph referred to as the ''transferee plan'') shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the ''transferor plan'') to the extent that—

(I) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan,

(II) the terms of both the transferor plan and the transferee plan authorize the transfer described in subclause (I),

(III) the transfer described in subclause (I) was made pursuant to a voluntary

election by the participant or beneficiary whose account was transferred to the transferee plan,

(IV) the election described in subclause (III) was made after the participant or beneficiary received a notice describing the consequences of making the election, and

(V) the transferee plan allows the participant or beneficiary described in subclause (III) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

(ii) Special rule for mergers, etc.

Clause (i) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

(E) Elimination of form of distribution

Except to the extent provided in regulations, a defined contribution plan shall not be treated as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This subparagraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

(i) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated, and

(ii) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.

(e) Application of vesting standards to certain plans

(1) The provisions of this section (other than paragraph (2)) 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 section 410(d) 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), if such plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) as in effect on September 1, 1974.

(Added Pub. L. 93–406, title II, § 1012(a), Sept. 2, 1974, 88 Stat. 901; amended Pub. L. 94–455, title XIX, §§ 1901(a)(62), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1774, 1834; Pub. L. 96–364, title II, § 206, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 98–397, title II, § 202(b), (c), (d)(2), (e)(2), (3), (f), 205, title III, § 301(a)(1), Aug. 23, 1984, 98 Stat. 1437, 1439, 1440, 1449, 1450; Pub. L. 99–509, title IX, §§ 9202(b), 9203(b)(2), Oct. 21, 1986, 100 Stat. 1977, 1979; Pub. L. 99–514, title XI, §§ 1113(a), (b), (d)(B), 1114(b)(10), 1139(a), title XVIII, § 1898(a)(1)(A), (4)(A), (d)(1)(A), (2)(A), (f)(1)(A), Oct. 22, 1986, 100 Stat. 2446, 2447, 2451, 2487, 2941, 2943, 2955, 2956; Pub. L. 100–203, title IX, § 9346(b), Dec. 22, 1987, 101 Stat. 1330–374; Pub. L. 100–647, title I, § 1018(t)(8)(B), Nov. 10, 1988, 102 Stat. 3589; Pub. L. 101–239, title VII, §§ 7861(a)(5)(A), (6)(A), 7871(a)(1), (2), (b)(1), 7881(m)(1), Dec. 19, 1989, 103 Stat. 2430, 2435, 2443; Pub. L. 102–318, title V, § 521(b)(44), July 3, 1992, 106 Stat. 313; Pub. L. 103–465, title VII, § 767(a)(1), Dec. 8, 1994, 108 Stat. 5037; Pub. L. 104–188, title I, § 1442(a), Aug. 20, 1996, 110 Stat. 1808; Pub. L. 105–34, title X, § 1071(a)(1), (2)(A), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–16, title VI, §§ 633(a), 645(a)(1), (b)(1), 648(a)(1), June 7, 2001, 115 Stat. 115, 123, 125, 127; Pub. L. 108–311, title IV, § 408(a)(14), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title I, § 114(b), title VII, 701(b), title IX, §§ 902(d)(2)(A), (B), 904(a), Aug. 17, 2006, 120 Stat. 853, 984, 1038, 1048; Pub. L. 110–458, title I, §§ 101(d)(2)(D), 107(b), 109(b)(2), Dec. 23, 2008, 122 Stat. 5099, 5107, 5111.)

REFERENCES IN TEXT

Section 4281 of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(3)(F)(i), (ii) and (d)(6)(A), is classified to section 1441 of Title 29, Labor.

Section 4203 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(4)(G)(i)(I), is classified to section 1383 of Title 29.

Section 4205(b)(2)(A)(i) of such Act, referred to in subsec. (a)(4)(G)(i)(II), is classified to section 1385(b)(2)(A)(i) of Title 29.

Section 4048 of such Act, referred to in subsec. (a)(4)(G)(ii), is classified to section 1348 of Title 29.

The Social Security Act, referred to in subsecs. (a)(9) and (b)(1)(G), 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.

AMENDMENTS

2008—Subsec. (a)(3)(C). Pub. L. 110–458, § 101(d)(2)(D)(i), substituted ''section 412(d)(2)'' for ''section 412(c)(2)''.

Subsec. (a)(3)(G). 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. (a)(13)(A). Pub. L. 110–458, § 107(b)(2), substituted ''subparagraph (B)'' for ''paragraph (2)'' in cl. (i) and ''subparagraph (C)'' for paragraph (3) in concluding provisions, added cl. (ii), and struck out former cl. (ii) which read as follows: ''the requirements of subsection (c) or section 417(e) with respect to contributions other than employee contributions,''.

Subsec. (b)(5)(A)(iii). Pub. L. 110–458, § 107(b)(1)(A), substituted ''subparagraph'' for ''clause''.

Subsec. (b)(5)(B)(i)(II). Pub. L. 110–458, § 107(b)(3), amended subcl. (II) generally. Prior to amendment, text read as follows: ''An interest credit (or an equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.''

Subsec. (b)(5)(C). Pub. L. 110–458, § 107(b)(1)(B), inserted ''otherwise'' before ''allowable''.

Subsec. (d)(6)(A). Pub. L. 110–458, § 101(d)(2)(D)(ii), substituted ''section 412(d)(2)'' for ''section 412(e)(2)''.

2006—Subsec. (a)(2). Pub. L. 109–280, §904(a)(1), reenacted heading without change and amended text of par. (2) generally, substituting provisions relating to vesting requirements under defined benefit plans and defined contribution plans for provisions relating to 5-year vesting and 3 to 7 year vesting under all plans.

Subsec. (a)(3)(C). Pub. L. 109–280, §114(b)(1), substituted ''412(c)(2)'' for ''412(c)(8)''.

Subsec. (a)(3)(G). Pub. L. 109–280, §902(d)(2)(A), (B), inserted ''or erroneous automatic contribution'' after ''or contribution'' in heading and ''an erroneous automatic contribution under section 414(w),'' after ''402(g)(2)(A),'' in text.

Subsec. (a)(12). Pub. L. 109–280, §904(a)(2), struck out par. (12), which related to faster vesting for matching contributions by employers.

Subsec. (a)(13). Pub. L. 109–280, §701(b)(2), added par. (13).

Subsec. (b)(1)(F). Pub. L. 109–280, §114(b)(2), substituted ''subparagraphs (B) and (C) of section 412(e)(3)'' for ''paragraphs (2) and (3) of section 412(i)'' in cl. (ii) and ''subparagraphs (D), (E), and (F) of section 412(e)(3)'' for ''paragraphs (4), (5), and (6) of section 412(i)'' in concluding provisions.

Subsec. (b)(5). Pub. L. 109–280, §701(b)(1), added par. (5).

Subsec. (d)(6)(A). Pub. L. 109–280, §114(b)(3), substituted ''412(e)(2)'' for ''412(c)(8)''.

2004—Subsec. (a)(12)(B). Pub. L. 108–311 substituted ''6 or more'' for ''6'' in table.

2001—Subsec. (a)(2). Pub. L. 107–16, §633(a)(1), substituted ''Except as provided in paragraph (12), a plan'' for ''A plan'' in introductory provisions.

Subsec. (a)(11)(D). Pub. L. 107–16, §648(a)(1), added subpar. (D).

Subsec. (a)(12). Pub. L. 107–16, §633(a)(2), added par. (12).

Subsec. (d)(6)(B). Pub. L. 107–16, §645(b)(1), inserted after second sentence ''The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner.''

Subsec. (d)(6)(D), (E). Pub. L. 107–16, §645(a)(1), added subpars. (D) and (E).

1997—Subsec. (a)(7)(B)(i). Pub. L. 105–34, §1071(a)(2)(A), substituted ''the dollar limit under section 411(a)(11)(A)'' for ''$3,500''.

Subsec. (a)(11)(A). Pub. L. 105–34, §1071(a)(1), substituted ''$5,000'' for ''$3,500''.

1996—Subsec. (a)(2). Pub. L. 104–188 substituted ''subparagraph (A) or (B)'' for ''subparagraph (A), (B), or (C)'' in introductory provisions and struck out subpar. (C) which read as follows: ''MULTIEMPLOYER PLANS.—A plan satisfies the requirements of this subparagraph if—

''(i) the plan is a multiemployer plan (within the meaning of section 414(f)), and

''(ii) under the plan—

''(I) an employee who is covered pursuant to a collective bargaining agreement described in section 414(f)(1)(B) and who has completed at least 10 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions, and

''(II) the requirements of subparagraph (A) or (B) are met with respect to employees not described in subclause (I).''

1994—Subsec. (a)(11)(B). Pub. L. 103–465 reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows:

''(i) IN GENERAL.—For purposes of subparagraph (A), the present value shall be calculated—

''(I) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

''(II) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under subclause (I)).

In no event shall the present value determined under subclause (II) be less than $25,000.

''(ii) APPLICABLE INTEREST RATE.—For purposes of clause (i), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.''

1992—Subsec. (d)(3). Pub. L. 102–318 inserted at end ''For purposes of this paragraph, in the case of the complete discontinuance of contributions under a profit-sharing or stock bonus plan, such plan shall be treated as having terminated on the day on which the plan administrator notifies the Secretary (in accordance with regulations) of the discontinuance.''

1989—Subsec. (a)(3)(G). Pub. L. 101–239, §7861(a)(5)(A), added subpar. (G).

Subsec. (a)(4)(A). Pub. L. 101–239, §7861(a)(6)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''years of service before age 18, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of paragraph (2), the plan may not disregard any such year of service during which the employee was a participant;''.

Subsec. (a)(7)(D). Pub. L. 101–239, §7881(m)(1)(D), added subpar. (D).

Subsec. (a)(8)(B). Pub. L. 101–239, §7871(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the latest of—

''(i) the time a plan participant attains age 65,

''(ii) in the case of a plan participant who commences participation in the plan within 5 years before attaining normal retirement age under the plan, the 5th anniversary of the time the plan participant commences participation in the plan, or

''(iii) in the case of a plan participant not described in clause (ii), the 10th anniversary of the time the plan participant commences participation in the plan.''

Subsec. (b)(2)(B). Pub. L. 101–239, §7871(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''DISREGARD OF SUBSIDIZED PORTION OF EARLY RETIREMENT BENEFIT.—A plan shall not be treated as failing to meet the requirements of subparagraph (A) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.''

Subsec. (b)(2)(C), (D). Pub. L. 101–239, §7871(a)(1), (2), redesignated subpar. (D) as (C) and substituted ''this paragraph'' for ''this subparagraph''. Former subpar. (C) redesignated (B).

Subsec. (c)(2)(B). Pub. L. 101–239, §7881(m)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(i) IN GENERAL.—In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

''(ii) APPROPRIATE CONVERSION FACTOR.—For purposes of clause (i), the term 'appropriate conversion factor' means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary.''

Subsec. (c)(2)(C)(iii). Pub. L. 101–239, §7881(m)(1)(A), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 for

the 1st month of a plan year) from the beginning of the first plan year to which subsection (a)(2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.''

Subsec. (c)(2)(E). Pub. L. 101–239, § 7881(m)(1)(C), struck out subpar. (E) which read as follows: ''LIMITATION.—The accrued benefit derived from employee contributions shall not exceed the greater of—

''(i) the employee's accrued benefit under the plan, or

''(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.''

1988—Subsec. (a)(11)(A). Pub. L. 100–647 substituted ''nonforfeitable'' for ''vested''.

1987—Subsec. (c)(2)(C)(iii). Pub. L. 100–203, § 9346(b)(1), substituted ''120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year)'' for ''5 percent per annum''.

Subsec. (c)(2)(D). Pub. L. 100–203, § 9346(b)(2), struck out '', the rate of interest described in clause (iii) of subparagraph (C), or both'' before ''from time to time'' in first sentence and struck out second sentence which read as follows: ''The rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973.''

1986—Subsec. (a). Pub. L. 99–514, § 1898(d)(1)(A)(ii), inserted reference to par. (11) in introductory text.

Pub. L. 99–509, § 9202(b)(3), substituted ''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)'' for ''paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b)'' in first sentence.

Subsec. (a)(2). Pub. L. 99–514, § 1113(a), amended par. (2) generally, substituting provisions covering 5-year vesting, 3 to 7 year vesting, and multiemployer plans, for former provisions which had covered 10-year vesting, 5- to 15-year vesting, and the ''rule of 45''.

Subsec. (a)(3)(D)(ii). Pub. L. 99–514, § 1898(a)(4)(A)(i), substituted last sentence for former last sentence which read as follows: ''In the case of a defined contribution plan, the plan provision required under this clause may provide that such repayment must be made before the participant has any one-year break in service commencing after the withdrawal.''

Subsec. (a)(7)(C). Pub. L. 99–514, § 1898(a)(4)(A)(ii), substituted last sentence for former last sentence which read as follows: ''In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has 5 consecutive 1-year breaks in service commencing after such withdrawal.''

Subsec. (a)(8)(B). Pub. L. 99–509, § 9203(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the latter of—

''(i) the time a plan participant attains age 65, or

''(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.''

Subsec. (a)(10)(B). Pub. L. 99–514, § 1113(d)(B), substituted ''3 years'' for ''5 years''.

Subsec. (a)(11)(A). Pub. L. 99–514, § 1898(d)(1)(A)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''If the present value of any accrued benefit exceeds $3,500, such benefit shall not be treated as nonforfeitable if the plan provides that the present value of such benefit could be immediately distributed without the consent of the participant.''

Subsec. (a)(11)(B). Pub. L. 99–514, § 1139(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of subparagraph (A), the present value shall be calculated by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.''

Subsec. (a)(11)(C). Pub. L. 99–514, § 1898(d)(2)(A), added subpar. (C).

Subsec. (b)(1). Pub. L. 99–509, § 9202(b)(1), substituted ''Defined benefit plans'' for ''General rules'' in heading and added subpar. (H).

Subsec. (b)(2) to (4). Pub. L. 99–509, § 9202(b)(2), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d)(1)(A), (B). Pub. L. 99–514, § 1114(b)(10), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, shareholders, or highly compensated''.

Subsec. (d)(4). Pub. L. 99–514, § 1113(b), repealed par. (4) which provided that a class year plan satisfied the requirements of subsec. (a)(2) if it provided that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year were nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made.

Pub. L. 99–514, § 1898(a)(1)(A), substituted ''Classyear'' for ''Class year'' in heading and amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made. For purposes of this section, the term 'class year plan' means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.''

Subsec. (d)(6)(C). Pub. L. 99–514, § 1898(f)(1)(A), added subpar. (C).

1984—Subsec. (a)(4)(A). Pub. L. 98–397, § 202(b), substituted ''18'' for ''22''.

Subsec. (a)(6)(C). Pub. L. 98–397, § 202(c), substituted ''5 consecutive 1-year breaks'' for ''1-year break'', in heading, and in text substituted ''5 consecutive 1-year breaks in service'' for ''any 1-year break in service'' and ''such 5-year period'' for ''such break'' in two places.

Subsec. (a)(6)(D). Pub. L. 98–397, § 202(d)(2), amended subpar. (D) generally.

Subsec. (a)(6)(E). Pub. L. 98–397, § 202(e)(2), added subpar. (E).

Subsec. (a)(7)(B)(i). Pub. L. 98–397, § 205(b), substituted ''$3,500'' for ''$1,750''.

Subsec. (a)(7)(C). Pub. L. 98–397, § 202(f), substituted ''5 consecutive 1-year breaks in service'' for ''any one-year break in service''.

Subsec. (a)(11). Pub. L. 98–397, § 205(a), added par. (11).

Subsec. (b)(3)(A). Pub. L. 98–397, § 202(e)(3), inserted '', determined without regard to section 410(a)(5)(E)''.

Subsec. (d)(6). Pub. L. 98–397, § 301(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

1980—Subsec. (a). Pub. L. 96–364, § 206(1)–(4), in par. (3) added subpars. (E) and (F), and in par. (4) added subpar. (G).

Subsec. (d)(6). Pub. L. 96–364, § 206(5), inserted reference to section 4281 of the Employee Retirement Income Security Act of 1974.

1976—Subsec. (a). Pub. L. 94–455, §§ 1901(a)(62)(A)–(C), 1906(b)(13)(A), substituted ''paragraph (8)'' for ''subsection (a)(8)'' in provisions preceding par. (1), substituted references to Sept. 2, 1974, for references to the date of enactment of the Employee Retirement Income Security Act of 1974 in par. (3)(D)(iii), struck out ''or

his delegate'' after ''Secretary'' in pars. (4)(C) and (7)(B), and substituted ''(B)'' for ''(b)'' in heading of par. (7)(C).

Subsec. (b)(1)(D)(i). Pub. L. 94–455, §1901(a)(62)(D), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974.

Subsecs. (c)(2)(B)(ii), (D), (d)(2), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(1)(C). Pub. L. 94–455, §1901(a)(62)(D), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974.

Subsec. (e)(2). Pub. L. 94–455, §1901(a)(62)(E), substituted reference to Sept. 1, 1974, for reference to the date before the date of enactment of the Employee Retirement Income Security Act of 1974.

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

Amendment by section 114(a) of Pub. L. 109–280 applicable to plan years beginning after 2007, see section 114(g)(1) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Pub. L. 109–280, title VII, §701(e), Aug. 17, 2006, 120 Stat. 991, as amended by Pub. L. 110–458, title I, §107(c)(2), Dec. 23, 2008, 122 Stat. 5107, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 623, 1053, and 1054 of Title 29, Labor] shall apply to periods beginning on or after June 29, 2005.

''(2) PRESENT VALUE OF ACCRUED BENEFIT.—The amendments made by subsections (a)(2) and (b)(2) [amending this section and section 1053 of Title 29] shall apply to distributions made after the date of the enactment of this Act [Aug. 17, 2006].

''(3) VESTING AND INTEREST CREDIT REQUIREMENTS.—In the case of a plan in existence on June 29, 2005, the requirements of clause (i) of section 411(b)(5)(B) of the Internal Revenue Code of 1986, clause (i) of section 204(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(b)(5)(B)], and clause (i) of section 4(i)(10)(B) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(i)(10)(B)] (as added by this Act) and the requirements of 203(f)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(f)(2)] and section 411(a)(13)(B) of the Internal Revenue Code of 1986 (as so added) shall, for purposes of applying the amendments made by subsections (a) and (b) [amending this section and sections 1053 and 1054 of Title 29], apply to years beginning after December 31, 2007, unless the plan sponsor elects the application of such requirements for any period on or after June 29, 2005, and before the first year beginning after December 31, 2007.

''(4) 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 on or before the date of the enactment of this Act [Aug. 17, 2006], the requirements described in paragraph (3) shall, for purposes of applying the amendments made by subsections (a) and (b) [amending this section and sections 1053 and 1054 of Title 29], not apply to plan 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 on or after such date of enactment), or

''(ii) January 1, 2008, or

''(B) January 1, 2010.

''(5) CONVERSIONS.—The requirements of clause (ii) of section 411(b)(5)(B) of the Internal Revenue Code of 1986, clause (ii) of section 204(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(b)(5)(B)], and clause (ii) of section 4(i)(10)(B) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(i)(10)(B)] (as added by this Act), shall apply to plan amendments adopted on or after, and taking effect on or after, June 29, 2005, except that the plan sponsor may elect to have such amendments apply to plan amendments adopted before, and taking effect on or after, such date.

''(6) SPECIAL RULE FOR VESTING REQUIREMENTS.—The requirements of section 203(f)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(f)(2)] and section 411(a)(13)(B) of the Internal Revenue Code of 1986 (as added by this Act)—

''(A) shall not apply to a participant who does not have an hour of service after the effective date of such requirements (as otherwise determined under this subsection); and

''(B) in the case of a plan other than a plan described in paragraph (3) or (4), shall apply to plan years ending on or after June 29, 2005.''

[Pub. L. 110–458, §107(c)(2)(B)(i), which directed insertion of ''the earlier of'' after ''before'' in introductory provisions of section 701(e)(4) of Pub. L. 109–280, set out above, was executed by making the insertion after the second instance of ''before'' to reflect the probable intent of Congress.]

Amendment by section 902(d)(2)(A), (B) of Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109–280, set out as a note under section 401 of this title.

Pub. L. 109–280, title IX, §904(c), Aug. 17, 2006, 120 Stat. 1050, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (4), the amendments made by this section [amending this section and section 1053 of Title 29, Labor] shall apply to contributions for plan years beginning after December 31, 2006.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Aug. 17, 2006], the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan 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 on or after such date of the enactment); or

''(ii) January 1, 2007; or

''(B) January 1, 2009.

''(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

''(4) SPECIAL RULE FOR STOCK OWNERSHIP PLANS.—Notwithstanding paragraph (1) or (2), in the case of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986) which had outstanding on September 26, 2005, a loan incurred for the purpose of acquiring qualifying employer securities (as defined in section 4975(e)(8) of such Code), the amendments made by this section shall not apply to any plan year beginning before the earlier of—

''(A) the date on which the loan is fully repaid, or

''(B) the date on which the loan was, as of September 26, 2005, scheduled to be fully repaid.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §633(c), June 7, 2001, 115 Stat. 116, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this

section and section 1053 of Title 29, Labor] shall apply to contributions for plan years beginning after December 31, 2001.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified by the date of the enactment of this Act [June 7, 2001], the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan 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 on or after such date of the enactment); or

''(ii) January 1, 2002; or

''(B) January 1, 2006.

''(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.''

Pub. L. 107–16, title VI, § 645(a)(3), June 7, 2001, 115 Stat. 125, provided that: ''The amendments made by this subsection [amending this section and section 1054 of Title 29, Labor] shall apply to years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, § 648(c), June 7, 2001, 115 Stat. 128, provided that: ''The amendments made by this section [amending this section, section 457 of this title, and section 1053 of Title 29, Labor] shall apply to distributions after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1071(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section, sections 417 and 457 of this title, and sections 1053 to 1055 of Title 29, Labor] shall apply to plan years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1442(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and section 1053 of Title 29, Labor] shall apply to plan years beginning on or after the earlier of—

''(1) the later of—

''(A) January 1, 1997, or

''(B) the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates (determined without regard to any extension thereof after the date of the enactment of this Act [Aug. 20, 1996]), or

''(2) January 1, 1999.

Such amendments shall not apply to any individual who does not have more than 1 hour of service under the plan on or after the 1st day of the 1st plan year to which such amendments apply.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 767(d) of Pub. L. 103–465, as amended by Pub. L. 104–188, title I, § 1449(a), Aug. 20, 1996, 110 Stat. 1813; Pub. L. 105–34, title XVI, § 1604(b)(3), Aug. 5, 1997, 111 Stat. 1097, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section, sections 415 and 417 of this title, and sections 1053 and 1055 of Title 29, Labor] shall apply to plan years and limitation years beginning after December 31, 1994; except that an employer may elect to treat the amendments made by this section as being effective on or after the date of the enactment of this Act [Dec. 8, 1994].

''(2) NO REDUCTION IN ACCRUED BENEFITS.—A participant's accrued benefit shall not be considered to be reduced in violation of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] merely because (A) the benefit is determined in accordance with section 417(e)(3)(A) of such Code, as amended by this Act, or section 205(g)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1055(g)(3)], as amended by this Act, or (B) the plan applies section 415(b)(2)(E) of such Code, as amended by this Act.

''(3) SECTION 415.—

''(A) EXCEPTION.—A plan that was adopted and in effect before December 8, 1994, shall not be required to apply the amendments made by subsection (b) [amending section 415 of this title] with respect to benefits accrued before the earlier of—

''(i) the later of the date a plan amendment applying the amendments made by subsection (b) is adopted or made effective, or

''(ii) the first day of the first limitation year beginning after December 31, 1999.

Determinations under section 415(b)(2)(E) of the Internal Revenue Code of 1986 before such earlier date shall be made with respect to such benefits on the basis of such section as in effect on December 7, 1994, and the provisions of the plan as in effect on December 7, 1994, but only if such provisions of the plan meet the requirements of such section (as so in effect).

''(B) TIMING OF PLAN AMENDMENT.—A plan that operates in accordance with the amendments made by subsection (b) shall not be treated as failing to satisfy section 401(a) of the Internal Revenue Code of 1986 or as not being operated in accordance with the provisions of the plan until such date as the Secretary of the Treasury provides merely because the plan has not been amended to include the amendments made by subsection (b).''

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 7861(a)(5)(A), (6)(A) 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 7863 of Pub. L. 101–239, set out as a note under section 106 of this title.

Section 7871(a)(4) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1054 of Title 29, Labor] shall take effect as if included in the amendments made by section 9202 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 7871(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1002 of Title 29, Labor] shall take effect as if included in the amendments made by section 9203 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Amendment by section 7881(m)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§ 9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 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 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to plan years beginning after Dec. 31, 1987, with plan amendments not required to be made before first plan year beginning on or after Jan. 1, 1989, if certain conditions are met, see section 9346(c) of Pub. L. 100–203, set out as a note under section 1054 of Title 29, Labor.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1113(f), formerly §1113(e), of Pub. L. 99–514, as redesignated and amended by Pub. L. 101–239, title VII, §7861(a)(3), (4), Dec. 19, 1989, 103 Stat. 2430, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 410 of this title and sections 1052 to 1054 of Title 29, Labor] 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 employees covered by any such agreement in 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.

''(3) PARTICIPATION REQUIRED.—The amendments made by this section shall not apply to any employee who does not have 1 hour of service in any plan year to which the amendments made by this section apply.

''(4) REPEAL OF CLASS YEAR VESTING.—If a plan amendment repealing class year vesting is adopted after October 22, 1986, such amendment shall not apply to any employee for the 1st plan year to which the amendments made by subsections (b) and (e)(2) [amending this section and section 1053 of Title 29] apply (and any subsequent plan year) if—

''(A) such plan amendment would reduce the nonforfeitable right of such employee for such year, and

''(B) such employee has at least 1 hour of service before the adoption of such plan amendment and after the beginning of such 1st plan year.

This paragraph shall not apply to an employee who has 5 consecutive 1-year breaks in service (as defined in section 411(a)(6)(A) of the Internal Revenue Code of 1986) which include the 1st day of the 1st plan year to which the amendments made by subsection (b) and (e)(2) apply. A plan shall not be treated as failing to meet the requirements of section 401(a)(26) of such Code by reason of complying with the provisions of this paragraph.''

Amendment by section 1114(b)(10) 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 1139(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(k), Nov. 10, 1988, 102 Stat. 3483, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 417 of this title and sections 1053 and 1055 of Title 29, Labor] shall apply to distributions in plan years beginning after December 31, 1984, except that such amendments shall not apply to any distributions in plan years beginning after December 31, 1984, and before January 1, 1987, if such distributions were made in accordance with the requirements of the regulations issued under the Retirement Equity Act of 1984 [Pub. L. 98–397, see Short Title of 1984 Amendment note set out under section 1001 of Title 29].

''(2) REDUCTION IN ACCRUED BENEFITS.—

''(A) IN GENERAL.—If a plan—

''(i) adopts a plan amendment before the close of the first plan year beginning on or after January 1, 1989, which provides for the calculation of the present value of the accrued benefits in the manner provided by the amendments made by this section, and

''(ii) the plan reduces the accrued benefits for any plan year to which such plan amendment applies in accordance with such plan amendment,

such reduction shall not be treated as a violation of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)).

''(B) SPECIAL RULE.—In the case of a plan maintained by a corporation incorporated on April 11, 1934, which is headquartered in Tarrant County, Texas—

''(i) such plan may be amended to remove the option of an employee to receive a lump sum distribution (within the meaning of section 402(e)(5) of such Code) if such amendment—

''(I) is adopted within 1 year of the date of the enactment of this Act [Oct. 22, 1986], and

''(II) is not effective until 2 years after the employees are notified of such amendment, and

''(ii) the present value of any vested accrued benefit of such plan determined during the 3-year period beginning on the date of the enactment of this Act shall be determined under the applicable interest rate (within the meaning of section 411(a)(11)(B)(ii) of such Code), except that if such value (as so determined) exceeds $50,000, then the value of any excess over $50,000 shall be determined by using the interest rate specified in the plan as of August 16, 1986.''

Section 1898(a)(1)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section and section 1053 of Title 29, Labor] shall apply to contributions made for plan years beginning after the date of the enactment of this Act [Oct. 22, 1986]; except that, in the case of a plan described in section 302(b) of the Retirement Equity Act of 1984 [section 302(b) of Pub. L. 98–397, set out as a note under section 1001 of Title 29], such amendments shall not apply to any plan year to which the amendments made by such Act [see Short Title of 1984 Amendment note set out under section 1001 of Title 29] do not apply by reason of such section 302(b).''

Amendment by section 1898(a)(4)(A), (d)(1)(A), (2)(A), (f)(1)(A) 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 9202(b) of Pub. L. 99–509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only to employees who have 1 hour of service in any plan year to which amendment applies, with special rule for collectively bargained plans, and amendment by section 9203(b)(2) of Pub. L. 99–509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only with respect to service performed on or after such date, see section 9204(a), (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 1980 AMENDMENT

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.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(62) 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

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, 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.

REGULATIONS

Pub. L. 109–280, title VII, § 702, Aug. 17, 2006, 120 Stat. 992, provided that: ''The Secretary of the Treasury or his delegate shall, not later than 12 months after the date of the enactment of this Act [Aug. 17, 2006], prescribe regulations for the application of the amendments made by, and the provisions of, this title [amending this section and sections 623, 1053, and 1054 of Title 29, Labor, and enacting provisions set out as notes under this section] in cases where the conversion of a plan to an applicable defined benefit plan is made with respect to a group of employees who become employees by reason of a merger, acquisition, or similar transaction.''

Pub. L. 109–280, title XI, § 1102(b), Aug. 17, 2006, 120 Stat. 1056, provided that:

''(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 and under section 205 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1055] to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

''(2) EFFECTIVE DATE.—

''(A) IN GENERAL.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2006.

''(B) REASONABLE NOTICE.—A plan shall not be treated as failing to meet the requirements of section 411(a)(11) of such Code or section 205 of such Act with respect to any description of consequences described in paragraph (1) made within 90 days after the Secretary of the Treasury issues the modifications required by paragraph (1) if the plan administrator makes a reasonable attempt to comply with such requirements.''

Pub. L. 107–16, title VI, § 645(b)(3), June 7, 2001, 115 Stat. 126, provided that: ''Not later than December 31, 2003, the Secretary of the Treasury is directed to issue regulations under section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)], including the regulations required by the amendment made by this subsection [amending this section and section 1054 of Title 29, Labor]. Such regulations shall apply to plan years beginning after December 31, 2003, or such earlier date as is specified by the Secretary of the Treasury.''

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1113 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.

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 sections 9202 and 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.

CONSTRUCTION OF 2006 AMENDMENT

Pub. L. 109–280, title VII, § 701(d), Aug. 17, 2006, 120 Stat. 991, as amended by Pub. L. 110–458, title I, § 107(c)(1), Dec. 23, 2008, 122 Stat. 5107, provided that: ''Nothing in the amendments made by this section [amending this section and sections 623, 1053, and 1054 of Title 29, Labor] shall be construed to create an inference with respect to—

''(1) the treatment of applicable defined benefit plans or conversions to applicable defined benefit plans under sections 204(b)(1)(H) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(b)(1)(H)], 4(i)(1) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(i)(1)], and 411(b)(1)(H) of the Internal Revenue Code of 1986, as in effect before such amendments, or

''(2) the determination of whether an applicable defined benefit plan fails to meet the requirements of sections 203(a)(2), 204(c), or 205(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(a)(2), 1054(c), 1055(g)] or sections 411(a)(2), 411(c), or 417(e) of such Code, as in effect before such amendments, solely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in a hypothetical account or as an accumulated percentage of the participant's final average compensation.

For purposes of this subsection, the term 'applicable defined benefit plan' has the meaning given such term by section 203(f)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1053(f)(3)] and section 411(a)(13)(C) of such Code, as in effect after such amendments.''

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.

PROVISIONS RELATING TO PLAN AMENDMENTS

Pub. L. 109–280, title XI, § 1107, Aug. 17, 2006, 120 Stat. 1063, provided that:

''(a) IN GENERAL.—If this section applies to any pension plan or contract amendment—

''(1) such pension plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

''(2) except as provided by the Secretary of the Treasury, such pension plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] by reason of such amendment.

''(b) AMENDMENTS TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—This section shall apply to any amendment to any pension plan or annuity contract which is made—

''(A) pursuant to any amendment made by this Act [see Tables for classification] or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this Act, and

''(B) on or before the last day of the first plan year beginning on or after January 1, 2009.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting '2011' for '2009'.

''(2) CONDITIONS.—This section shall not apply to any amendment unless—

''(A) during the period—

''(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

''(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

''(B) such plan or contract amendment applies retroactively for such period.''

Pub. L. 108–218, title I, § 101(c), Apr. 10, 2004, 118 Stat. 598, as amended by Pub. L. 109–280, title III, § 301(c), Aug. 17, 2006, 120 Stat. 920; Pub. L. 110–458, title I, § 103(a), Dec. 23, 2008, 122 Stat. 5103, provided that:

''(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment—

''(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i), and

''(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] by reason of such amendment.

''(2) AMENDMENTS TO WHICH SECTION APPLIES.—

''(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

''(i) pursuant to any amendment made by this section [amending sections 404, 412, and 415 of this title and sections 1082 and 1306 of Title 29, Labor], and

''(ii) on or before the last day of the first plan year beginning on or after January 1, 2009.

''(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

''(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

''(ii) such plan or contract amendment applies retroactively for such period.''

Section 1541 of title XV of Pub. L. 105–34 provided that:

''(a) IN GENERAL.—If this section applies to any plan or contract amendment—

''(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

''(2) such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)] by reason of such amendment.

''(b) AMENDMENTS TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

''(A) pursuant to any amendment made by this title [enacting sections 9811 and 9812 of this title, amending sections 101, 401 to 404, 408, 409, 410, 412, 414, 415, 512, 664, 674, 2055, 2056, 4947, 4972, 4975, 4978, 4979A, 4980D, 9801, 9802, and 9831 of this title, sections 1021, 1022, 1024, 1026 to 1028, 1056, 1082, 1107, 1108, and 1132 of Title 29, Labor, and section 1320b–14 of Title 42, The Public Health and Welfare, renumbering sections 9804 to 9806 of this title as sections 9831 to 9833, respectively, of this title, and amending provisions set out as a note under section 412 of this title] or subtitle H of title X [§§1071–1075, amending this section, sections 72, 132, 417, 457, 691, 2013, 2053, 4975, and 6018 of this title, and sections 1053 to 1055 of Title 29 and repealing section 4980A of this title], and

''(B) before the first day of the first plan year beginning on or after January 1, 1999.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting '2001' for '1999'.

''(2) CONDITIONS.—This section shall not apply to any amendment unless—

''(A) during the period—

''(i) beginning on the date the legislative amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative amendment, the effective date specified by the plan), and

''(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect, and

''(B) such plan or contract amendment applies retroactively for such period.''

TRANSITIONAL RULE: CERTAIN PLAN AMENDMENTS ADOPTED OR EFFECTIVE ON OR BEFORE AUGUST 20, 1996

Section 1449(d) of Pub. L. 104–188 provided that: ''In the case of a plan that was adopted and in effect before December 8, 1994, if—

''(1) a plan amendment was adopted or made effective on or before the date of the enactment of this Act [Aug. 20, 1996] applying the amendments made by section 767 of the Uruguay Round Agreements Act [Pub. L. 103–465, see Effective Date of 1994 Amendment note set out above], and

''(2) within 1 year after the date of the enactment of this Act [Aug. 20, 1996], a plan amendment is adopted which repeals the amendment referred to in paragraph (1),

the amendment referred to in paragraph (1) shall not be taken into account in applying section 767(d)(3)(A) of the Uruguay Round Agreements Act, as amended by subsection (a).''

PLAN AMENDMENTS REFLECTING AMENDMENTS BY SECTION 7881(m) OF PUB. L. 101–239 NOT TREATED AS REDUCING ACCRUED BENEFITS

For provisions directing that if during the period beginning Dec. 22, 1987, and ending June 21, 1988, a plan was amended to reflect the amendments by section 9346 of Pub. L. 100–203 and such plan is amended to reflect the amendments by section 7881(m) of Pub. L. 101–239, any plan amendments made to reflect the amendments by section 7881(m) of Pub. L. 101–239 shall not be treated as reducing accrued benefits for purposes of subsection (d)(6) of this section or section 1054(g) of Title 29, Labor, see section 7881(m)(3) of Pub. L. 101–239, set out as a note under section 1054 of Title 29.

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.

For provisions directing that if any amendments made by sections 9202(b) and 9203(b)(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.

ALTERNATE METHODS OF SATISFYING REQUIREMENTS FOR VESTING AND ACCRUED BENEFITS

Pub. L. 93–406, title II, §1012(c), Sept. 2, 1974, 88 Stat. 913, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any plan maintained on January 1, 1974, if, not later than 2 years after the date of the enactment of this Act [Sept. 2, 1974], the plan administrator petitions the Secretary of Labor, the Secretary of Labor may prescribe an alternate method which shall be treated as satisfying the requirements of subsection (a)(2) of section 411 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], or of subsection (b)(1) (other than subparagraph (D) thereof) of such section 411, or of both such provisions for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

''(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation,

''(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

''(3) a waiver or extension of time granted under [former] section 412(d) or (e) would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the plan administrator petitions the Secretary of Labor for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.''

§ 412. Minimum funding standards

(a) Requirement to meet minimum funding standard

(1) In general

A plan to which this section applies shall satisfy the minimum funding standard applicable to the plan for any plan year.

(2) Minimum funding standard

For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

(A) in the case of a defined benefit plan which is not a multiemployer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 430 for the plan for the plan year,

(B) in the case of a money purchase plan which is not a multiemployer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan, and

(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 431 as of the end of the plan year.

(b) Liability for contributions

(1) In general

Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 430(j)) shall be paid by the employer responsible for making contributions to or under the plan.

(2) Joint and several liability where employer member of controlled group

If the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

(3) Multiemployer plans in critical status

Paragraph (1) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 432. This paragraph shall only apply if the plan sponsor adopts a rehabilitation plan in accordance with section 432(e) and complies with such rehabilitation plan (and any modifications of the plan).

(c) Variance from minimum funding standards

(1) Waiver in case of business hardship

(A) In general

If—

(i) an employer is (or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan are) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan), and

(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years[1]

(B) Effects of waiver

If a waiver is granted under subparagraph (A) for any plan year—

(i) in the case of a defined benefit plan which is not a multiemployer plan, the minimum required contribution under section 430 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 430(e), and

(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 431(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 431(b)(2)(C).

(C) Waiver of amortized portion not allowed

The Secretary may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any waived funding deficiency for any preceding plan year.

[1] So in original. Probably should be followed by a period.

(2) Determination of business hardship

For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

(A) the employer is operating at an economic loss,

(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

(C) the sales and profits of the industry concerned are depressed or declining, and

(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(3) Waived funding deficiency

For purposes of this section and part III of this subchapter, the term ''waived funding deficiency'' means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary and not satisfied by employer contributions.

(4) Security for waivers for single-employer plans, consultations

(A) Security may be required

(i) In general

Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement Income Security Act of 1974) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

(ii) Special rules

Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of the Employee Retirement Income Security Act of 1974), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14) of such Act).

(B) Consultation with the Pension Benefit Guaranty Corporation

Except as provided in subparagraph (C), the Secretary shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

(i) provide the Pension Benefit Guaranty Corporation with—

(I) notice of the completed application for any waiver or modification, and

(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

(ii) consider—

(I) any comments of the Corporation under clause (i)(II), and

(II) any views of any employee organization (within the meaning of section 3(4) of the Employee Retirement Income Security Act of 1974) representing participants in the plan which are submitted in writing to the Secretary in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p).

(C) Exception for certain waivers

(i) In general

The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of—

(I) the aggregate unpaid minimum required contributions (within the meaning of section 4971(c)(4)) for the plan year and all preceding plan years, and

(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 430(e)(2),

is less than $1,000,000.

(ii) Treatment of waivers for which applications are pending

The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under this subsection which are pending with respect to such plan were denied.

(5) Special rules for single-employer plans

(A) Application must be submitted before date 2½ months after close of year

In the case of a defined benefit plan which is not a multiemployer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year.

(B) Special rule if employer is member of controlled group

In the case of a defined benefit plan which is not a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

(i) with respect to such employer, and

(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

(6) Advance notice

(A) In general

The Secretary shall, before granting a waiver under this subsection, require each

applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of the Employee Retirement Income Security Act of 1974 and for benefit liabilities.

(B) Consideration of relevant information

The Secretary shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

(7) Restriction on plan amendments

(A) In general

No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 431(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) which reduces the accrued benefit of any participant has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(B) Exception

Subparagraph (A) shall not apply to any plan amendment which—

(i) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

(ii) only repeals an amendment described in subsection (d)(2), or

(iii) is required as a condition of qualification under part I of subchapter D,[2] of chapter 1.

(d) Miscellaneous rules

(1) Change in method or year

If the funding method or a plan year for a plan is changed, the change shall take effect only if approved by the Secretary.

(2) Certain retroactive plan amendments

For purposes of this section, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a temporary substantial business hardship (as determined under subsection (c)(2)) or a substantial business hardship (as so determined) in the case of a multiemployer plan and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 431(d)) is unavailable or inadequate.

(3) Controlled group

For purposes of this section, the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414.

(e) Plans to which section applies

(1) In general

Except as provided in paragraphs (2) and (4), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan under the Employee Retirement Income Security Act of 1974—

(A) such plan included a trust which qualified (or was determined by the Secretary to have qualified) under section 401(a), or

(B) such plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 403(a).

(2) Exceptions

This section shall not apply to—

(A) any profit-sharing or stock bonus plan,

(B) any insurance contract plan described in paragraph (3),

(C) any governmental plan (within the meaning of section 414(d)),

(D) any church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,

(E) any plan which has not, at any time after September 2, 1974, provided for employer contributions, or

(F) any 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.

No plan described in subparagraph (C), (D), or (F) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on September 1, 1974.

(3) Certain insurance contract plans

A plan is described in this paragraph if—

[2] So in original. The comma probably should not appear.

(A) the plan is funded exclusively by the purchase of individual insurance contracts,

(B) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

(C) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

(D) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

(E) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(F) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this paragraph.

(4) Certain terminated multiemployer plans

This section applies with respect to a terminated multiemployer plan to which section 4021 of the Employee Retirement Income Security Act of 1974 applies until the last day of the plan year in which the plan terminates (within the meaning of section 4041A(a)(2) of such Act).

(Added Pub. L. 93–406, title II, §1013(a), Sept. 2, 1974, 88 Stat. 914; amended Pub. L. 94–455, title XIX, §§1901(a)(63), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834; Pub. L. 96–364, title II, §§203, 208(c), Sept. 26, 1980, 94 Stat. 1285, 1289; Pub. L. 98–369, div. A, title IV, §491(d)(25), July 18, 1984, 98 Stat. 850; Pub. L. 99–272, title XI, §§11015(a)(2), (b)(2), 11016(c)(4), Apr. 7, 1986, 100 Stat. 265, 267, 273; Pub. L. 100–203, title IX, §§9301(a), 9303(a), (d)(1), 9304(a)(1), (b)(1), (e)(1), 9305(b)(1), 9306(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), 9307(a)(1), (b)(1), (e)(1), Dec. 22, 1987, 101 Stat. 1330–331, 1330–333, 1330–342 to 1330–344, 1330–348, 1330–351, 1330–352, 1330–354 to 1330–357; Pub. L. 100–647, title II, §2005(a)(2)(A), (d)(1), Nov. 10, 1988, 102 Stat. 3610, 3612; Pub. L. 101–239, title VII, §7881(a)(1)(A), (2)(A), (3)(A), (4)(A), (5)(A), (6)(A), (b)(1)(A), (2)(A), (3)(A), (4)(A), (6)(A), (c)(1), (d)(1)(A), Dec. 19, 1989, 103 Stat. 2435–2439; Pub. L. 103–465, title VII, §§751(a)(1)–(9)(A), (10), 752(a), 753(a), 754(a), 768(a), Dec. 8, 1994, 108 Stat. 5012–5019, 5021–5023, 5040; Pub. L. 105–34, title XV, §1521(a), (c)(1), (3)(A), title XVI, §1604(b)(2)(A), Aug. 5, 1997, 111 Stat. 1069, 1070, 1097; Pub. L. 107–16, title VI, §§651(a), 661(a), June 7, 2001, 115 Stat. 129, 141; Pub. L. 107–147, title IV, §§405(a), 411(v)(1), Mar. 9, 2002, 116 Stat. 42, 52; Pub. L. 108–218, title I, §§101(b)(1)–(3), 102(b), 104(b), Apr. 10, 2004, 118 Stat. 597, 598, 601, 606; Pub. L. 109–135, title IV, §412(x)(1), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–280, title I, §111(a), title II, §212(c), title III, §301(b), Aug. 17, 2006, 120 Stat. 820, 917, 919; Pub. L. 110–458, title I, §§101(a)(2), 102(b)(2)(H), Dec. 23, 2008, 122 Stat. 5093, 5103.)

AMENDMENT OF SECTION

For termination of subsection (b)(3) of this section by section 221(c) of Pub. L. 109–280, see Effective and Termination Dates of 2006 Amendment note below.

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(4)(A), (B)(ii)(II), (6)(A), and (e)(1), (4), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) 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 3, 4001, 4021, and 4041A of the Act are classified to sections 1002, 1301, 1321, and 1341a of Title 29, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The effective date of this section, referred to in subsec. (e)(1), probably means the effective date of Pub. L. 109–280, §111(a), which amended this section. See Effective and Termination Dates of 2006 Amendment note below.

AMENDMENTS

2008—Subsec. (b)(3). Pub. L. 110–458, §102(b)(2)(H), substituted ''the plan sponsor adopts'' for ''the plan adopts''.

Subsec. (c)(1)(A)(i). Pub. L. 110–458, §101(a)(2)(A), substituted ''the plan are'' for ''the plan is''.

Subsec. (c)(7)(A). Pub. L. 110–458, §101(a)(2)(B), inserted ''which reduces the accrued benefit of any participant'' after ''subsection (d)(2)''.

Subsec. (d)(1). Pub. L. 110–458, §101(a)(2)(C), struck out '', the valuation date,'' after ''If the funding method''.

2006—Pub. L. 109–280, §111(a), reenacted heading without change and amended text generally, substituting provisions relating to minimum funding standard requirement, liability for contributions, variance from minimum funding standards, miscellaneous rules, and plans to which section applies, consisting of subsecs. (a) to (e), for provisions relating to general rule for satisfaction of minimum funding standard, funding standard account, special rules, variance from minimum funding standard, extension of amortization periods, requirements relating to waivers and extensions, alternative minimum funding standard, exceptions, certain insurance contract plans, certain terminated multiemployer plans, financial assistance, additional funding requirements for plans which are not multiemployer plans, quarterly contributions requirement, and imposition of lien where failure to make required contributions, consisting of subsecs. (a) to (n).

Subsec. (b)(3). Pub. L. 109–280, §§212(c), 221(c), temporarily added par. (3). See Effective and Termination Dates of 2006 Amendment note below.

Subsec. (b)(5)(B)(ii)(II). Pub. L. 109–280, §301(b)(1), substituted '', 2005, 2006, and 2007'' for ''and 2005'' in heading and ''2008'' for ''2006'' in text.

Subsec. (*l*)(7)(C)(i)(IV). Pub. L. 109–280, §301(b)(2), substituted '', 2005, 2006, and 2007'' for ''and 2005'' in heading and '', 2005, 2006, or 2007'' for ''or 2005'' in text.

2005—Subsec. (m)(4)(B)(i). Pub. L. 109–135 substituted ''subsection (d)'' for ''subsection (c)''.

2004—Subsec. (b)(5)(B)(ii)(I). Pub. L. 108–218, §101(b)(1)(C), inserted ''or (III)'' after ''subclause (II)''.

Subsec. (b)(5)(B)(ii)(II), (III). Pub. L. 108–218, §101(b)(1)(A), (B), added subcl. (II), redesignated former subcl. (II) as (III), and, in subcl. (III), inserted ''or (II)'' after ''permissible under subclause (I)'' and substituted ''such subclause'' for ''subclause (I)'' before period at end.

Subsec. (b)(7)(F). Pub. L. 108–218, § 104(b), added subpar. (F).

Subsec. (*l*)(7)(C)(i)(IV). Pub. L. 108–218, § 101(b)(2), added subcl. (IV).

Subsec. (*l*)(12). Pub. L. 108–218, § 102(b), added par. (12).

Subsec. (m)(7). Pub. L. 108–218, § 101(b)(3), amended heading and text of par. (7) generally, substituting provisions relating to special rule for 2002 for provisions relating to special rules for 2002 and 2004.

2002—Subsec. (c)(9)(B)(ii). Pub. L. 107–147, § 411(v)(1)(A), substituted ''100 percent'' for ''125 percent''.

Subsec. (c)(9)(B)(iv). Pub. L. 107–147, § 411(v)(1)(B), added cl. (iv).

Subsec. (*l*)(7)(C)(i)(III). Pub. L. 107–147, § 405(a)(1), added subcl. (III).

Subsec. (m)(7). Pub. L. 107–147, § 405(a)(2), added par. (7).

2001—Subsec. (c)(7)(A)(i)(I). Pub. L. 107–16, § 651(a)(1), substituted ''in the case of plan years beginning before January 1, 2004, the applicable percentage'' for ''the applicable percentage''.

Subsec. (c)(7)(F). Pub. L. 107–16, § 651(a)(2), reenacted heading and introductory provisions without change and amended table generally, substituting present provisions for provisions which had set out applicable percentage of 155 in the case of any plan year beginning in 1999 or 2000, 160 in the case of any plan year beginning in 2001 or 2002, 165 in the case of any plan year beginning in 2003 or 2004, and 170 in the case of any plan year beginning in 2005 and succeeding years.

Subsec. (c)(9). Pub. L. 107–16, § 661(a), reenacted heading without change and amended text of par. (9) generally. Prior to amendment, text read as follows: ''For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.''

1997—Subsec. (b)(2)(E). Pub. L. 105–34, § 1521(c)(1), added subpar. (E).

Subsec. (c)(7)(A)(i)(I). Pub. L. 105–34, § 1521(a)(A), substituted ''the applicable percentage'' for ''150 percent''.

Subsec. (c)(7)(D). Pub. L. 105–34, § 1521(c)(3)(A), inserted ''and'' at end of cl. (i), substituted a period for '', and'' at end of cl. (ii), and struck out cl. (iii) which read as follows: ''for the treatment under this section of contributions which would be required to be made under the plan but for the provisions of subparagraph (A)(i)(I).''

Subsec. (c)(7)(F). Pub. L. 105–34, § 1521(a)(B), added subpar. (F).

Subsec. (m)(5)(E)(ii)(II). Pub. L. 105–34, § 1604(b)(2)(A), substituted ''subclause (I)'' for ''clause (i)''.

1994—Subsec. (c)(5). Pub. L. 103–465, § 752(a), designated existing provisions as subpar. (A), inserted subpar. heading, and added subpar. (B).

Subsec. (c)(7)(A)(i)(I). Pub. L. 103–465, § 751(a)(10)(A), inserted ''(including the expected increase in current liability due to benefits accruing during the plan year)'' after ''current liability''.

Subsec. (c)(7)(B). Pub. L. 103–465, § 751(a)(10)(C), reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of subparagraphs (A) and (D), the term 'current liability' has the meaning given such term by subsection (*l*)(7) (without regard to subparagraph (D) thereof).''

Subsec. (c)(7)(E). Pub. L. 103–465, § 751(a)(10)(B), added subpar. (E).

Subsec. (c)(12). Pub. L. 103–465, § 753(a), added par. (12).

Subsec. (*l*)(1). Pub. L. 103–465, § 751(a)(1)(A), (2)(B), in introductory provisions, substituted ''to which this subsection applies under paragraph (9)'' for ''which has an unfunded current liability'', and amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''Such increase shall not exceed the amount necessary to increase the funded current liability percentage to 100 percent.''

Subsec. (*l*)(1)(A)(ii). Pub. L. 103–465, § 751(a)(2)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the sum of the charges for such plan year under subparagraphs (B) (other than clauses (iv) and (v) thereof), (C), and (D) of subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B)(i) of subsection (b)(3), plus''.

Subsec. (*l*)(2)(C). Pub. L. 103–465, § 751(a)(3), added subpar. (C).

Subsec. (*l*)(2)(D). Pub. L. 103–465, § 751(a)(7)(B)(i), added subpar. (D).

Subsec. (*l*)(3)(D), (E). Pub. L. 103–465, § 751(a)(4)(A), added subpars. (D) and (E).

Subsec. (*l*)(4)(B)(i). Pub. L. 103–465, § 751(a)(4)(B), (7)(B)(iii), inserted '', the unamortized portion of the additional unfunded old liability, the unamortized portion of each unfunded mortality increase,'' after ''old liability''.

Subsec. (*l*)(4)(C). Pub. L. 103–465, § 751(a)(5), substituted ''.40'' for ''.25'' in cl. (i) and ''60'' for ''35'' in cl. (ii).

Subsec. (*l*)(5)(A). Pub. L. 103–465, § 751(a)(6)(A)(i), substituted ''greatest of'' for ''greater of'' in introductory provisions.

Subsec. (*l*)(5)(A)(iii). Pub. L. 103–465, § 751(a)(6)(A)(ii)–(iv), added cl. (iii).

Subsec. (*l*)(5)(E). Pub. L. 103–465, § 751(a)(6)(B), added subpar. (E).

Subsec. (*l*)(7)(C). Pub. L. 103–465, § 751(a)(7)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''(C) INTEREST RATES USED.—The rate of interest used to determine current liability shall be the rate of interest used under subsection (b)(5).''

Subsec. (*l*)(9). Pub. L. 103–465, § 751(a)(1)(B), added par. (9).

Subsec. (*l*)(10). Pub. L. 103–465, § 751(a)(7)(B)(ii), added par. (10).

Subsec. (*l*)(11). Pub. L. 103–465, § 751(a)(8), added par. (11).

Subsec. (m)(1). Pub. L. 103–465, § 754(a), in introductory provisions, inserted ''which has a funded current liability percentage (as defined in subsection (*l*)(8)) for the preceding plan year of less than 100 percent'' before ''fails'' and substituted ''the plan year'' for ''any plan year''.

Subsec. (m)(4)(D)(ii). Pub. L. 103–465, § 751(a)(6)(C)(i), substituted ''greatest of'' for ''greater of'' in introductory provisions.

Subsec. (m)(4)(D)(ii)(III). Pub. L. 103–465, § 751(a)(6)(C)(ii)–(iv), added subcl. (III).

Subsec. (m)(5), (6). Pub. L. 103–465, § 751(a)(9)(A), added par. (5) and redesignated former par. (5) as (6).

Subsec. (n)(2). Pub. L. 103–465, § 768(a)(1), inserted at end ''This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section is in effect on the date of the enactment of the Retirement Protection Act of 1994).''

Subsec. (n)(3). Pub. L. 103–465, § 768(a)(2), reenacted par. (3) heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of paragraph (1), the amount of the lien shall be equal to the lesser of—

''(A) the amount by which the unpaid balances described in paragraph (1)(B) (including interest) exceed $1,000,000, or

''(B) the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

''(i) for plan years beginning after 1987, and

''(ii) for which payment has not been made before the due date.''

Subsec. (n)(4)(B). Pub. L. 103–465, § 768(a)(3), struck out ''60th day following the'' before ''due date''.

1989—Subsec. (b)(5)(B)(iii). Pub. L. 101–239, § 7881(d)(1)(A), struck out ''for purposes of this section and for purposes of determining current liability,'' before ''the interest rate'' in introductory provisions.

Subsec. (c)(9). Pub. L. 101–239, § 7881(a)(6)(A), substituted ''Annual'' for ''3-year'' in heading and ''every year'' for ''every 3 years'' in text.

Subsec. (c)(10)(A). Pub. L. 101–239, §7881(b)(1)(A), substituted ''Defined benefit plans'' for ''Plans'' in heading and ''defined benefit plan other'' for ''plan other'' in introductory provisions.

Subsec. (c)(10)(B). Pub. L. 101–239, §7881(b)(2)(A), substituted ''Other'' for ''Multiemployer'' in heading and ''plan not described in subparagraph (A)'' for ''multiemployer plan'' in text.

Subsec. (d)(1)(A)(ii). Pub. L. 101–239, §7881(b)(6)(A)(ii), substituted ''costs (including adjustments under subsection (b)(5)(B))'' for ''costs''.

Subsec. (f)(4)(A). Pub. L. 101–239, §7881(c)(1), substituted ''for benefit liabilities'' for ''the benefit liabilities''.

Subsec. (*l*)(3)(C)(ii)(II). Pub. L. 101–239, §7881(a)(1)(A), substituted ''reducing (but not below zero)'' for ''reducing''.

Subsec. (*l*)(4)(B)(i). Pub. L. 101–239, §7881(a)(2)(A), substituted ''liability and the unamortized portion of the unfunded existing benefit increase liability'' for ''liability''.

Subsec. (*l*)(5)(C). Pub. L. 101–239, §7881(a)(3)(A), substituted ''the first plan year beginning after December 31, 1988'' for ''October 17, 1987''.

Subsec. (*l*)(7)(D)(iii)(III). Pub. L. 101–239, §7881(a)(4)(A)(i), added subcl. (III).

Subsec. (*l*)(7)(D)(iv). Pub. L. 101–239, §7881(a)(4)(A)(ii), added cl. (iv).

Subsec. (*l*)(8)(A)(ii). Pub. L. 101–239, §7881(a)(5)(A)(i), struck out ''reduced by any credit balance in the funding standard account'' after ''under subsection (c)(2)''.

Subsec. (*l*)(8)(E). Pub. L. 101–239, §7881(a)(5)(A)(ii), added subpar. (E).

Subsec. (m)(1). Pub. L. 101–239, §7881(b)(3)(A), substituted ''defined benefit plan (other than'' for ''plan (other than'' in introductory provisions.

Subsec. (m)(1)(B). Pub. L. 101–239, §7881(b)(6)(A)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the rate under subsection (b)(5).''

Subsec. (m)(4)(D). Pub. L. 101–239, §7881(b)(4)(A), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''In the case of a plan with any unpredictable contingent event benefit liabilities—

''(i) such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B), and

''(ii) each required installment shall be increased by the greater of—

''(I) the amount of benefits described in subsection (*l*)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs, or

''(II) 25 percent of the amount determined under subsection (*l*)(5)(A)(ii) for the plan year.''

1988—Subsec. (*l*)(3)(C)(i), (iii). Pub. L. 100–647, §2005(a)(2)(A), (d)(1), amended cl. (i) identically, substituting ''October 29'' for ''October 17'' and amended cl. (iii) identically, substituting ''October 28'' for ''October 16''.

1987—Subsec. (b)(2). Pub. L. 100–203, §9303(a)(2), inserted at end ''For additional requirements in the case of plans other than multiemployer plans, see subsection (*l*).''

Subsec. (b)(2)(B)(iv). Pub. L. 100–203, §9307(a)(1)(A), substituted ''5 plan years (15 plan years in the case of a multiemployer plan)'' for ''15 plan years''.

Subsec. (b)(2)(B)(v). Pub. L. 100–203, §9307(a)(1)(B), substituted ''10 plan years (30 plan years in the case of a multiemployer plan)'' for ''30 plan years''.

Subsec. (b)(2)(C), (3)(B)(ii). Pub. L. 100–203, §9307(a)(1)(A), substituted ''5 plan years (15 plan years in the case of a multiemployer plan)'' for ''15 plan years''.

Subsec. (b)(3)(B)(iii). Pub. L. 100–203, §9307(a)(1)(B), substituted ''10 plan years (30 plan years in the case of a multiemployer plan)'' for ''30 plan years''.

Subsec. (b)(5). Pub. L. 100–203, §9307(e)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.''

Subsec. (c)(2)(B). Pub. L. 100–203, §9303(d)(1), inserted at end ''In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5).''

Subsec. (c)(3). Pub. L. 100–203, §9307(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.''

Subsec. (c)(7). Pub. L. 100–203, §9301(a), substituted ''Full-funding'' for ''Full funding'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of paragraph (6), the term full funding limitation means the excess (if any) of—

''(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

''(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).''

Subsec. (c)(10). Pub. L. 100–203, §9304(a)(1), amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.''

Subsec. (c)(11). Pub. L. 100–203, §9305(b)(1), added par. (11).

Subsec. (d)(1). Pub. L. 100–203, §9306(a)(1)(B), struck out ''substantial'' after ''in case of'' in heading, and substituted ''temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)'' for ''substantial business hardship'' in text.

Pub. L. 100–203, §9306(b)(1), substituted ''more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan)'' for ''more than 5 of any 15''.

Pub. L. 100–203, §9306(c)(1)(A), substituted ''The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be—'' and subpars. (A) and (B) for ''The interest rate used for purposes of computing the amortization charge described in section 412(b)(2)(C) for a variance granted under this subsection shall be the rate determined under section 6621(b).''

Subsec. (d)(2). Pub. L. 100–203, §9306(a)(1)(B), struck out ''substantial'' after ''Determination of'' in heading, and substituted ''temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan)'' for ''substantial business hardship'' in introductory provisions.

Subsec. (d)(4). Pub. L. 100–203, §9306(a)(1)(A), added par. (4).

Subsec. (d)(5). Pub. L. 100–203, §9306(a)(1)(C), added par. (5).

Subsec. (e). Pub. L. 100–203, §9306(c)(1)(B), substituted last two sentences for ''The interest rate applicable under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the rate determined under section 6621(b).''

Subsec. (f)(3)(C)(i). Pub. L. 100–203, § 9306(e)(1), substituted ''$1,000,000'' for ''$2,000,000'' at end.

Subsec. (f)(4)(A). Pub. L. 100–203, § 9306(d)(1), substituted ''plan, and each participant, beneficiary, and alternate payee (within the meaning of section 414(p)(8)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and the benefit liabilities.'' for ''plan.''

Subsec. (*l*). Pub. L. 100–203, § 9303(a)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 100–203, § 9304(b)(1), added subsec. (m).

Subsec. (n). Pub. L. 100–203, § 9304(e)(1), added subsec. (n).

1986—Subsec. (d)(1). Pub. L. 99–272, § 11015(b)(2)(A), inserted provision that the interest rate used for purposes of computing the amortization charge described in section 412(b)(2)(C) for a variance granted under this subsection be the rate determined under section 6621(b).

Subsec. (e). Pub. L. 99–272, § 11015(b)(2)(B), inserted provision that the interest rate applicable under any arrangement entered into by the Secretary in connection with an extension granted under this subsection be the rate determined under section 6621(b).

Subsec. (f). Pub. L. 99–272, § 11015(a)(2), substituted in heading ''Requirements relating to waivers and extensions'' for ''Benefits may not be increased during waiver or extension period'' and in par. (1) heading ''Benefits may not be increased during waiver or extension period'' for ''In general'', and added par. (3).

Pub. L. 99–272, § 11016(c)(4), added par. (4).

1984—Subsec. (a)(2). Pub. L. 98–369 struck out ''or 405(a)'' after ''section 403(a)''.

1980—Subsec. (a). Pub. L. 96–364, § 208(c), inserted provisions relating to plan years where multiemployer plan is in reorganization.

Subsec. (b). Pub. L. 96–364, § 203(1), (2), struck out in pars. (2)(B)(ii), (iii), and (3)(B)(i) provisions respecting applicability of multiemployer plans with 40 plan years and in pars. (2)(B)(iv) and (3)(B)(ii) provisions respecting applicability of multiemployer plans with 20 year plans and added pars. (6) and (7).

Subsecs. (j), (k). Pub. L. 96–364, § 203(3), added subsecs. (j) and (k).

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

Subsec. (h). Pub. L. 94–455, § 1901(a)(63), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974 in par. (5) and substituted reference to Sept. 1, 1974, for reference to the day before the date of enactment of the Employee Retirement Income Security Act of 1974 in the provisions following par. (6).

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

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 AND TERMINATION DATES OF 2006 AMENDMENT

Pub. L. 109–280, title I, § 111(b), Aug. 17, 2006, 120 Stat. 826, provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 2007.''

Pub. L. 109–280, title II, § 212(e), Aug. 17, 2006, 120 Stat. 917, as amended by Pub. L. 110–458, title I, § 102(b)(3)(B), (C), Dec. 23, 2008, 122 Stat. 5103, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 432 of this title and amending this section and section 4971 of this title] shall apply with respect to plan years beginning after 2007, except that the amendments made by subsection (b) [amending section 4971 of this title] shall apply to taxable years beginning after 2007, but only with respect to plan years beginning after 2007 which end with or within any such taxable year.

''(2) SPECIAL RULE FOR CERTAIN NOTICES.—In any case in which a plan's actuary certifies that it is reasonably expected that a multiemployer plan will be in critical status under section 432(b)(3) of the Internal Revenue Code of 1986, as added by this section, with respect to the first plan year beginning after 2007, the notice required under subparagraph (D) of such section may be provided at any time after the date of enactment [Aug. 17, 2006], so long as it is provided on or before the last date for providing the notice under such subparagraph.

''(3) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

''(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

''(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,

the amendments made by this section shall not apply to such benefit restorations to the extent that any restriction on the providing or accrual of such benefits would otherwise apply by reason of such amendments.''

Pub. L. 109–280, title II, § 221(c), Aug. 17, 2006, 120 Stat. 919, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, notwithstanding any other provision of this Act [see Tables for classification], the provisions of, and the amendments made by, sections 201(b), 202, and 212 [enacting section 432 of this title and section 1085 of Title 29, Labor, amending this section, section 4971 of this title, and sections 1082 and 1132 of Title 29, and enacting provisions set out as notes under this section and sections 1082 and 1084 of Title 29] shall not apply to plan years beginning after December 31, 2014.

''(2) FUNDING IMPROVEMENT AND REHABILITATION PLANS.—If a plan is operating under a funding improvement or rehabilitation plan under section 305 of such Act [probably means section 305 of the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, 29 U.S.C. 1085] or 432 of such Code [probably means section 432 of the Internal Revenue Code of 1986] for its last year beginning before January 1, 2015, such plan shall continue to operate under such funding improvement or rehabilitation plan during any period after December 31, 2014, such funding improvement or rehabilitation plan is in effect and all provisions of such Act or Code relating to the operation of such funding improvement or rehabilitation plan shall continue in effect during such period.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b)(1)–(3) of Pub. L. 108–218 applicable, except as otherwise provided, to plan years beginning after Dec. 31, 2003, see section 101(d) of Pub. L. 108–218, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 411(v)(1) of 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, § 651(c), June 7, 2001, 115 Stat. 129, provided that: ''The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, § 661(c), June 7, 2001, 115 Stat. 142, provided that: ''The amendments made by this sec-

tion [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1521(d)(1) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 1998.''

Section 1604(b)(4) of Pub. L. 105–34 provided that: ''The amendments made by this subsection [amending this section, section 6621 of this title, section 1082 of Title 29, Labor, and provisions set out as a note under section 411 of this title] shall take effect as if included in the sections of the Uruguay Round Agreements Act [Pub. L. 103–465] to which they relate.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 751(a)(1)–(9)(A), (10) of Pub. L. 103–465 applicable to plan years beginning after Dec. 31, 1994, see section 751(b)(1) of Pub. L. 103–465, set out as a note under section 401 of this title.

Section 752(b) of Pub. L. 103–465 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to changes in assumptions for plan years beginning after October 28, 1993.

''(2) CERTAIN CHANGES CEASE TO BE EFFECTIVE.—In the case of changes in assumptions for plan years beginning after December 31, 1992, and on or before October 28, 1993, such changes shall cease to be effective for plan years beginning after December 31, 1994, if—

''(A) such change would have required the approval of the Secretary of the Treasury had such amendment applied to such change, and

''(B) such change is not so approved.''

Section 753(b) of Pub. L. 103–465 provided that: ''The amendment made by this section [amending this section] shall apply to plan years beginning after December 31, 1994, with respect to collective bargaining agreements in effect on or after January 1, 1995.''

Section 754(b) of Pub. L. 103–465 provided that: ''The amendment made by this section [amending this section] shall apply to plan years beginning after the date of enactment of this Act [Dec. 8, 1994].''

Section 768(c) of Pub. L. 103–465 provided that: ''The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall be effective for installments and other payments required under section 412 of the Internal Revenue Code of 1986 or under part 3 of subtitle B [of title I] of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1081 et seq.] that become due on or after the date of enactment [Dec. 8, 1994].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100–203, §§9302–9346, to which such amendment relates, see section 7882 of Pub. L. 101–239, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective 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, see section 2005(e) of Pub. L. 100–647, as amended, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9301(c)(1), (2) of Pub. L. 100–203 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply to years beginning after December 31, 1987.

''(2) REGULATIONS.—The Secretary of the Treasury or his delegate shall prescribe such regulations as are necessary to carry out the amendments made by this section no later than August 15, 1988.''

Pub. L. 100–203, title IX, §9303(e), Dec. 22, 1987, 101 Stat. 1330–342, as amended by Pub. L. 101–239, title VII, §7881(a)(7), Dec. 19, 1989, 103 Stat. 2436, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and section 1082 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 1988.

''(2) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) [set out below] and (d) [amending this section and section 1082 of Title 29] shall apply with respect to years beginning after December 31, 1987.

''(3) SPECIAL RULE FOR STEEL COMPANIES.—

''(A) IN GENERAL.—For any plan year beginning before January 1, 1994, any increase in the funding standard account under [former] section 412(*l*) of the 1986 Code or section 302(d) of ERISA (as added by this section) [29 U.S.C. 1082(d)] with respect to any steel employee plan shall not exceed the sum of—

''(i) the required percentage of the current liability under such plan, plus

''(ii) the amount determined under subparagraph (C)(i) for such plan year.

''(B) REQUIRED PERCENTAGE.—For purposes of subparagraph (A), the term 'required percentage' means, with respect to any plan year, the excess (if any) of—

''(i) the sum of—

''(I) the funded current liability percentage as of the beginning of the 1st plan year beginning after December 31, 1988 (determined without regard to any plan amendment adopted after June 30, 1987), plus

''(II) 1 percentage point for the plan year for which the determination under this paragraph is being made and for each prior plan year beginning after December 31, 1988, over

''(ii) the funded current liability percentage as of the beginning of the plan year for which such determination is being made.

''(C) SPECIAL RULES FOR CONTINGENT EVENTS.—In the case of any unpredictable contingent event benefit with respect to which the event on which such benefits are contingent occurs after December 17, 1987—

''(i) AMORTIZATION AMOUNT.—For purposes of subparagraph (A)(ii), the amount determined under this clause for any plan year is the amount which would be determined if the unpredictable contingent event benefit liability were amortized in equal annual installments over 10 plan years (beginning with the plan year in which such event occurs).

''(ii) BENEFIT AND CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (B), in determining the funded current liability percentage for any plan year, there shall not be taken into account—

''(I) the unpredictable contingent event benefit liability, or

''(II) any amount contributed to the plan which is attributable to clause (i) (and any income allocable to such amount).

''(D) STEEL EMPLOYEE PLAN.—For purposes of this paragraph, the term 'steel employee plan' means any plan if—

''(i) such plan is maintained by a steel company, and

''(ii) substantially all of the employees covered by such plan are employees of such company.

''(E) OTHER DEFINITIONS.—For purposes of this paragraph—

''(i) STEEL COMPANY.—The term 'steel company' means any corporation described in section 806(b) of the Steel Import Stabilization Act [section 806(b) of Pub. L. 98–573, 19 U.S.C. 2253 note].

''(ii) OTHER DEFINITIONS.—The terms 'current liability', 'funded current liability percentage', and 'unpredictable contingent event benefit' have the meanings given such terms by [former] section 412(*l*) of the 1986 Code (as added by this section).

''(F) SPECIAL RULE.—The provisions of this paragraph shall apply in the case of a company which was originally incorporated on April 25, 1927, in Michigan and reincorporated on June 3, 1968, in Delaware in the same manner as if such company were a steel company.''

Section 9304(a)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section and section 1082 of Title 29, Labor] shall apply to plan years beginning after December 31, 1987.''

Section 9304(b)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section and section 1082 of Title 29] shall apply with respect to plan years beginning after 1988.''

Section 9304(e)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section and section 1082 of Title 29] shall apply to plan years beginning after December 31, 1987.''

Section 9305(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 414 and 4971 of this title and section 1082 of Title 29] shall apply with respect to plan years beginning after December 31, 1987.''

Pub. L. 100–203, title IX, § 9306(f), Dec. 22, 1987, 101 Stat. 1330–355, as amended by Pub. L. 101–239, title VII, § 7881(c)(3), Dec. 19, 1989, 103 Stat. 2439, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 1083, 1084, and 1085a of Title 29, Labor] shall apply in the case of—

''(A) any application submitted after December 17, 1987, and

''(B) any waiver granted pursuant to such an application.

''(2) SPECIAL RULE FOR APPLICATION REQUIREMENT.—

''(A) IN GENERAL.—The amendments made by subsections (a)(1)(A) and (a)(2)(A) [amending this section and section 1083 of Title 29] shall apply to plan years beginning after December 31, 1987.

''(B) TRANSITIONAL RULE FOR YEARS BEGINNING IN 1988.—In the case of any plan year beginning during calendar 1988, [former] section 412(d)(4) of the 1986 Code and section 303(d)(1) of ERISA [29 U.S.C. 1083(d)(1)] (as added by subsection (a)(1) [and (2)]) shall be applied by substituting '6th month' for '3rd month'.

''(3) SUBSECTION (b).—The amendments made by subsection (b) [amending this section and section 1083 of Title 29] shall apply to waivers for plan years beginning after December 31, 1987. For purposes of applying such amendments, the number of waivers which may be granted for plan years after December 31, 1987, shall be determined without regard to any waivers granted for plan years beginning before January 1, 1988.

''(4) SUBSECTION (d).—The amendments made by subsection (d) [amending this section and section 1083 of Title 29] shall apply to applications submitted more than 90 days after the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by section 9307(a)(1), (b)(1), (e)(1) of Pub. L. 100–203 applicable to years beginning after Dec. 31, 1987, except that subsec. (b)(2)(B)(iv) and (3)(B)(ii) of this section (as amended by section 9307(a)(1)(A) of Pub. L. 100–203) is applicable to gains and losses established in years beginning after Dec. 31, 1987, see section 9307(f) of Pub. L. 100–203, as amended, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–272, title XI, § 11015(a)(3), Apr. 7, 1986, 100 Stat. 267, provided that: ''The amendments made by this subsection [enacting former section 1085a of Title 29, Labor, and amending this section and section 1061 of Title 29] shall apply with respect to applications for waivers, extensions, and modifications filed on or after the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by sections 11015(b)(2) and 11016(c)(4) of 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.

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 1980 AMENDMENT

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.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(63) 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

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, 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.

REGULATIONS

Pub. L. 103–465, title VII, § 769, Dec. 8, 1994, 108 Stat. 5041, as amended by Pub. L. 105–34, title XV, § 1508(a), Aug. 5, 1997, 111 Stat. 1067; Pub. L. 108–218, title II, § 201(a), Apr. 10, 2004, 118 Stat. 608; Pub. L. 109–280, title I, § 115(d)(1), (e)(1), Aug. 17, 2006, 120 Stat. 856, provided that:

''(a) FUNDING RULES NOT TO APPLY TO CERTAIN PLANS.—Any changes made by this Act [Pub. L. 103–465] to section 412 of the Internal Revenue Code of 1986 or to part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1081 et seq.] shall not apply to—

''(1) a plan which is, on the date of enactment of this Act [Dec. 8, 1994], subject to a restoration payment schedule order issued by the Pension Benefit Guaranty Corporation that meets the requirements of section 1.412(c)(1)–3 of the Treasury Regulations, or

''(2) a plan established by an affected air carrier (as defined under section 4001(a)(14)(C)(ii)(I) of such Act [29 U.S.C. 1301(a)(14)(C)(ii)(I)]) and assumed by a new plan sponsor pursuant to the terms of a written agreement with the Pension Benefit Guaranty Corporation dated January 5, 1993, and approved by the United States Bankruptcy Court for the District of Delaware on December 30, 1992.

''(b) CHANGE IN ACTUARIAL METHOD.—Any amortization installments for bases established under [former] section 412(b) of the Internal Revenue Code of 1986 and section 302(b) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)] for plan years beginning after December 31, 1987, and before January 1, 1993, by reason of nonelective changes under the frozen entry age actuarial cost method shall not be included in the calculation of offsets under [former] section 412(*l*)(1)(A)(ii) of such Code and section 302(d)(1)(A)(ii) of such Act for the 1st 5 plan years beginning after December 31, 1994.''

[Pub. L. 109–280, title I, § 115(d)(2), Aug. 17, 2006, 120 Stat. 856, provided that: ''The amendment made by paragraph (1) [amending section 769 of Pub. L. 103–465, set out above] shall apply to plan years beginning after December 31, 2005.'']

[Pub. L. 109–280, title I, § 115(e)(2), Aug. 17, 2006, 120 Stat. 856, provided that: ''The amendment made by paragraph (1) [amending section 769 of Pub. L. 103–465, set out above] shall take effect on December 31, 2007, and shall apply to plan years beginning after such date.'']

[Pub. L. 108–218, title II, § 201(b), Apr. 10, 2004, 118 Stat. 608, provided that: ''The amendments made by this section [amending section 769 of Pub. L. 103–465, set

out above] shall apply to plan years beginning after December 31, 2003.'']

[Section 1508(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending section 769 of Pub. L. 103–465, set out above] shall apply to plan years beginning after December 31, 1996.'']

Pub. L. 100–203, title IX, §9303(c), Dec. 22, 1987, 101 Stat. 1330–342, provided that: ''Effective with respect to plan years beginning after December 31, 1987, the provisions of the regulations prescribed under section 412(c)(2) of the 1986 Code which permit asset valuations to be based on a range between 85 percent and 115 percent of average value shall have no force and effect with respect to plans other than multiemployer plans (as defined in section 414(f) of the 1986 Code). The Secretary of the Treasury or his delegate shall amend such regulations to carry out the purposes of the preceding sentence.''

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.

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

Pub. L. 109–280, title II, §206, Aug. 17, 2006, 120 Stat. 889, provided that: ''In the case of a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that—

''(1) increases benefits, and

''(2) provides for special withdrawal liability rules under section 4203(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1383[(f)]),

the amendments made by sections 201, 202, 211, and 212 of this Act [enacting sections 431 and 432 of this title and sections 1084 and 1085 of Title 29, Labor, and amending this section, section 4971 of this title, and sections 1081, 1082, and 1132 of Title 29] shall not apply to the benefit increases under any plan amendment adopted prior to June 30, 2005, that are funded pursuant to such agreement if the plan is funded in compliance with such agreement (and any amendments thereto).''

APPLICABILITY OF SECTION TO CERTAIN PLANS MAINTAINED BY COMMERCIAL AIRLINES

For special rules on applicability of this section to certain plans maintained by commercial airlines, see section 402 of Pub. L. 109–280, set out as a note under section 430 of this title.

EFFECT OF ELECTION

Pub. L. 108–218, title I, §102(c), Apr. 10, 2004, 118 Stat. 602, provided that: ''An election under section 302(d)(12) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(12)] or [former] section 412(*l*)(12) of the Internal Revenue Code of 1986 (as added by this section) with respect to a plan shall not invalidate any obligation (pursuant to a collective bargaining agreement in effect on the date of the election) to provide benefits, to change the accrual of benefits, or to change the rate at which benefits become nonforfeitable under the plan.''

SPECIAL RULE FOR UNAMORTIZED BALANCES UNDER EXISTING LAW

Pub. L. 105–34, title XV, §1521(d)(2), Aug. 5, 1997, 111 Stat. 1070, provided that: ''The unamortized balance (as of the close of the plan year preceding the plan's first year beginning in 1999) of any amortization base established under [former] section 412(c)(7)(D)(iii) of such Code [26 U.S.C. 412(c)(7)(D)(iii)] and section 302(c)(7)(D)(iii) of such Act [29 U.S.C. 1082(c)(7)(D)(iii)] (as repealed by subsection (c)(3)) for any plan year beginning before 1999 shall be amortized in equal annual installments (until fully amortized) over a period of years equal to the excess of—

''(A) 20 years, over

''(B) the number of years since the amortization base was established.''

ALTERNATIVE AMORTIZATION METHOD FOR CERTAIN MULTIEMPLOYER PLANS

Pub. L. 93–406, title II, §1013(d), Sept. 2, 1974, 88 Stat. 923, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—In the case of any multiemployer plan (as defined in section 414(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to which section 412 of such Code applies, if—

''(A) on January 1, 1974, the contributions under the plan were based on a percentage of pay,

''(B) the actuarial assumptions with respect to pay are reasonably related to past and projected experience, and

''(C) the rates of interest under the plan are determined on the basis of reasonable actuarial assumptions,

the plan may elect (in such manner and at such time as may be provided under regulations prescribed by the Secretary of the Treasury or his delegate) to fund the unfunded past service liability under the plan existing as of the date 12 months following the first date on which such section 412 first applies to the plan by charging the funding standard account with an equal annual percentage of the aggregate pay of all participants in the plan in lieu of the level dollar charges to such account required under clauses (i), (ii), and (iii) of [former] section 412(b)(2)(B) of such Code and section 302(b)(2)(B)(i), (ii), and (iii) of this Act [section 1082(b)(2)(B)(i), (ii), and (iii) of Title 29, Labor].

''(2) LIMITATION.—In the case of a plan which makes an election under paragraph (1), the aggregate of the charges required under such paragraph for a plan year shall not be less than the interest on the unfunded past service liabilities described in clauses (i), (ii), and (iii) of [former] section 412(b)(2)(B) of the Internal Revenue Code of 1986.''

§413. Collectively bargained plans, etc.

(a) Application of subsection (b)

Subsection (b) applies to—

(1) a plan maintained pursuant to an agreement which the Secretary of Labor finds to be a collective-bargaining agreement between employee representatives and one or more employers, and

(2) each trust which is a part of such plan.

(b) General rule

If this subsection applies to a plan, notwithstanding any other provision of this title—

(1) Participation

Section 410 shall be applied as if all employees of each of the employers who are parties to the collective-bargaining agreement and who are subject to the same benefit computation formula under the plan were employed by a single employer.

(2) Discrimination, etc.

Sections 401(a)(4) and 411(d)(3) shall be applied as if all participants who are subject to the same benefit computation formula and who are employed by employers who are parties to the collective bargaining agreement were employed by a single employer.

(3) Exclusive benefit

For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries, all plan participants shall be considered to be his employees.

(4) Vesting

Section 411 (other than subsection (d)(3)) shall be applied as if all employers who have been parties to the collective-bargaining agreement constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.

(5) Funding

The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.

(6) Liability for funding tax

For a plan year the liability under section 4971 of each employer who is a party to the collective bargaining agreement shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary—

(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

(B) then on the basis of their respective liabilities for contributions under the plan.

For purposes of this subsection and the last sentence of section 4971(a),[1] an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall not be treated as a liability for contributions under the plan.

(7) Deduction limitations

Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who is a party to the agreement, for the portion of his taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a manner consistent with the manner in which actual employer contributions for such plan year are determined) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

(8) Employees of labor unions

For purposes of this subsection, employees or employee representatives shall be treated as employees of an employer described in subsection (a)(1) if such representatives meet the requirements of sections 401(a)(4) and 410 with respect to such employees.

[1] See References in Text note below.

(9) Plans covering a professional employee

Notwithstanding subsection (a), in the case of a plan (and trust forming part thereof) which covers any professional employee, paragraph (1) shall be applied by substituting ''section 410(a)'' for ''section 410'', and paragraph (2) shall not apply.

(c) Plans maintained by more than one employer

In the case of a plan maintained by more than one employer—

(1) Participation

Section 410(a) shall be applied as if all employees of each of the employers who maintain the plan were employed by a single employer.

(2) Exclusive benefit

For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries all plan participants shall be considered to be his employees.

(3) Vesting

Section 411 shall be applied as if all employers who maintain the plan constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor.

(4) Funding

(A) In general

In the case of a plan established after December 31, 1988, each employer shall be treated as maintaining a separate plan for purposes of section 412 unless such plan uses a method for determining required contributions which provides that any employer contributes not less than the amount which would be required if such employer maintained a separate plan.

(B) Other plans

In the case of a plan not described in subparagraph (A), the requirements of section 412 shall be determined as if all participants in the plan were employed by a single employer unless the plan administrator elects not later than the close of the first plan year of the plan beginning after the date of enactment of the Technical and Miscellaneous Revenue Act of 1988 to have the provisions of subparagraph (A) apply. An election under the preceding sentence shall take effect for the plan year in which made and, once made, may be revoked only with the consent of the Secretary.

(5) Liability for funding tax

For a plan year the liability under section 4971 of each employer who maintains the plan shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary—

(A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and

(B) then on the basis of their respective liabilities for contributions under the plan.

(6) Deduction limitations

(A) In general

In the case of a plan established after December 31, 1988, each applicable limitation

provided by section 404(a) shall be determined as if each employer were maintaining a separate plan.

(B) Other plans

(i) In general

In the case of a plan not described in subparagraph (A), each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer, except that if an election is made under paragraph (4)(B), subparagraph (A) shall apply to such plan.

(ii) Special rule

If this subparagraph applies, the amounts contributed to or under the plan by each employer who maintains the plan (for the portion of the taxable year included within a plan year) shall be considered not to exceed any such limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

(7) Allocations

(A) In general

Except as provided in subparagraph (B), allocations of amounts under paragraphs (4), (5), and (6) among the employers maintaining the plan shall not be inconsistent with regulations prescribed for this purpose by the Secretary.

(B) Assets and liabilities of plan

For purposes of applying paragraphs (4)(A) and (6)(A), the assets and liabilities of each plan shall be treated as the assets and liabilities which would be allocated to a plan maintained by the employer if the employer withdrew from the multiple employer plan.

(Added Pub. L. 93–406, title II, §1014, Sept. 2, 1974, 88 Stat. 924; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96–364, title II, §208(d), Sept. 26, 1980, 94 Stat. 1290; Pub. L. 100–647, title I, §1011(h)(10), title VI, §6058(a)–(c), Nov. 10, 1988, 102 Stat. 3466, 3698, 3699; Pub. L. 101–508, title XI, §11704(a)(4), Nov. 5, 1990, 104 Stat. 1388–518.)

REFERENCES IN TEXT

The last sentence of section 4971(a), referred to in subsec. (b)(6), was struck out by Pub. L. 100–203, title IX, §9305(a)(2)(A), Dec. 22, 1987, 101 Stat. 1330–351.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(6), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. 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, Labor. 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 enactment of the Technical and Miscellaneous Revenue Act of 1988, referred to in subsec. (c)(4)(B), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

AMENDMENTS

1990—Subsec. (c)(7)(B). Pub. L. 101–508 substituted ''Assets'' for ''Asset'' in heading.

1988—Subsec. (b)(9). Pub. L. 100–647, §1011(h)(10), added par. (9).

Subsec. (c). Pub. L. 100–647, §6058(c), struck out at end ''Allocations of amounts under paragraphs (4), (5), and (6), among the employers maintaining the plan, shall not be inconsistent with regulations prescribed for this purpose by the Secretary.''

Subsec. (c)(4). Pub. L. 100–647, §6058(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.''

Subsec. (c)(6). Pub. L. 100–647, §6058(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who maintains the plan, for the portion of this taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.''

Subsec. (c)(7). Pub. L. 100–647, §6058(c), added par. (7).

1980—Subsec. (b)(6). Pub. L. 96–364 inserted provisions relating to withdrawal liability of employer.

1976—Subsecs. (b), (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(h)(10) 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 6058(d) of Pub. L. 100–647 provided that: ''Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to plan years beginning after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1980 AMENDMENT

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.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, 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.

§414. Definitions and special rules

(a) Service for predecessor employer

For purposes of this part—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained

by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary, be treated as service for the employer.

(b) Employees of controlled group of corporations

For purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the applicable limitations provided by section 404(a) shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary.

(c) Employees of partnerships, proprietorships, etc., which are under common control

For purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, under regulations prescribed by the Secretary, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).

(d) Governmental plan

For purposes of this part, the term ''governmental plan'' means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term ''governmental plan'' also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669). The term ''governmental plan'' includes a plan which is established and maintained by 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)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).

(e) Church plan

(1) In general

For purposes of this part, the term ''church plan'' means a plan established and maintained (to the extent required in paragraph (2)(B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501.

(2) Certain plans excluded

The term ''church plan'' does not include a plan—

(A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513); or

(B) if less than substantially all of the individuals included in the plan are individuals described in paragraph (1) or (3)(B) (or their beneficiaries).

(3) Definitions and other provisions

For purposes of this subsection—

(A) Treatment as church plan

A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(B) Employee defined

The term employee of a church or a convention or association of churches shall include—

(i) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(ii) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 and which is controlled by or associated with a church or a convention or association of churches; and

(iii) an individual described in subparagraph (E).

(C) Church treated as employer

A church or a convention or association of churches which is exempt from tax under section 501 shall be deemed the employer of any individual included as an employee under subparagraph (B).

(D) Association with church

An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

(E) Special rule in case of separation from plan

If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization described in clause (ii) of paragraph (3)(B), the church plan shall not fail to meet the requirements of this subsection merely because the plan—

(i) retains the employee's accrued benefit or account for the payment of benefits

to the employee or his beneficiaries pursuant to the terms of the plan; or

(ii) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section 72(m)(7)) at the time of such separation from service.

(4) Correction of failure to meet church plan requirements

(A) In general

If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 fails to meet one or more of the requirements of this subsection and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this subsection for the year in which the correction was made and for all prior years.

(B) Failure to correct

If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this subsection beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

(C) Correction period defined

The term ''correction period'' means—

(i) the period, ending 270 days after the date of mailing by the Secretary of a notice of default with respect to the plan's failure to meet one or more of the requirements of this subsection;

(ii) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

(iii) any additional period which the Secretary determines is reasonable or necessary for the correction of the default,

whichever has the latest ending date.

(5) Special rules for chaplains and self-employed ministers

(A) Certain ministers may participate

For purposes of this part—

(i) In general

A duly ordained, commissioned, or licensed minister of a church is described in paragraph (3)(B) if, in connection with the exercise of their ministry, the minister—

(I) is a self-employed individual (within the meaning of section 401(c)(1)(B), or

(II) is employed by an organization other than an organization which is described in section 501(c)(3) and with respect to which the minister shares common religious bonds.

(ii) Treatment as employer and employee

For purposes of sections 403(b)(1)(A) and 404(a)(10), a minister described in clause (i)(I) shall be treated as employed by the minister's own employer which is an organization described in section 501(c)(3) and exempt from tax under section 501(a).

(B) Special rules for applying section 403(b) to self-employed ministers

In the case of a minister described in subparagraph (A)(i)(I)—

(i) the minister's includible compensation under section 403(b)(3) shall be determined by reference to the minister's earned income (within the meaning of section 401(c)(2)) from such ministry rather than the amount of compensation which is received from an employer, and

(ii) the years (and portions of years) in which such minister was a self-employed individual (within the meaning of section 401(c)(1)(B)) with respect to such ministry shall be included for purposes of section 403(b)(4).

(C) Effect on non-denominational plans

If a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry participates in a church plan (within the meaning of this section) and in the exercise of such ministry is employed by an employer not otherwise participating in such church plan, then such employer may exclude such minister from being treated as an employee of such employer for purposes of applying sections 401(a)(3), 401(a)(4), and 401(a)(5), as in effect on September 1, 1974, and sections 401(a)(4), 401(a)(5), 401(a)(26), 401(k)(3), 401(m), 403(b)(1)(D) (including section 403(b)(12)), and 410 to any stock bonus, pension, profit-sharing, or annuity plan (including an annuity described in section 403(b) or a retirement income account described in section 403(b)(9)). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purpose of, and prevent the abuse of, this subparagraph.

(D) Compensation taken into account only once

If any compensation is taken into account in determining the amount of any contributions made to, or benefits to be provided under, any church plan, such compensation shall not also be taken into account in determining the amount of any contributions made to, or benefits to be provided under, any other stock bonus, pension, profit-sharing, or annuity plan which is not a church plan.

(E) Exclusion

In the case of a contribution to a church plan made on behalf of a minister described in subparagraph (A)(i)(II), such contribution shall not be included in the gross income of the minister to the extent that such contribution would not be so included if the minister was an employee of a church.

(f) Multiemployer plan

(1) Definition

For purposes of this part, the term ''multiemployer plan'' means a plan—

(A) to which more than one employer is required to contribute,

(B) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

(C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation.

(2) Cases of common control

For purposes of this subsection, all trades or businesses (whether or not incorporated) which are under common control within the meaning of subsection (c) are considered a single employer.

(3) Continuation of status after termination

Notwithstanding paragraph (1), a plan is a multiemployer plan on and after its termination date under title IV of the Employee Retirement Income Security Act of 1974 if the plan was a multiemployer plan under this subsection for the plan year preceding its termination date.

(4) Transitional rule

For any plan year which began before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, the term ''multiemployer plan'' means a plan described in this subsection as in effect immediately before that date.

(5) Special election

Within one year after the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, a multiemployer plan may irrevocably elect, pursuant to procedures established by the Pension Benefit Guaranty Corporation and subject to the provisions of section 4403(b) and (c) of the Employee Retirement Income Security Act of 1974, that the plan shall not be treated as a multiemployer plan for any purpose under such Act or this title, if for each of the last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980—

(A) the plan was not a multiemployer plan because the plan was not a plan described in section 3(37)(A)(iii) of the Employee Retirement Income Security Act of 1974 and section 414(f)(1)(C) (as such provisions were in effect on the day before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980); and

(B) the plan had been identified as a plan that was not a multiemployer plan in substantially all its filings with the Pension Benefit Guaranty Corporation, the Secretary of Labor and the Secretary.

(6) Election with regard to multiemployer status

(A) Within 1 year after the enactment of the Pension Protection Act of 2006—

(i) An election under paragraph (5) may be revoked, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, if, for each of the 3 plan years prior to the date of the enactment of that Act, the plan would have been a multiemployer plan but for the election under paragraph (5), and

(ii) a plan that meets the criteria in subparagraph (A) and (B) of paragraph (1) of this subsection or that is described in subparagraph (E) may, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, elect to be a multiemployer plan, if—

(I) for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan, the plan has met those criteria or is so described,

(II) substantially all of the plan's employer contributions for each of those plan years were made or required to be made by organizations that were exempt from tax under section 501, and

(III) the plan was established prior to September 2, 1974.

(B) An election under this paragraph shall be effective for all purposes under this Act[1] and under the Employee Retirement Income Security Act of 1974, starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under subparagraph (A)(ii).

(C) Once made, an election under this paragraph shall be irrevocable, except that a plan described in subparagraph (A)(ii) shall cease to be a multiemployer plan as of the plan year beginning immediately after the first plan year for which the majority of its employer contributions were made or required to be made by organizations that were not exempt from tax under section 501.

(D) The fact that a plan makes an election under subparagraph (A)(ii) does not imply that the plan was not a multiemployer plan prior to the date of the election or would not be a multiemployer plan without regard to the election.

(E) A plan is described in this subparagraph if it is a plan sponsored by an organization which is described in section 501(c)(5) and exempt from tax under section 501(a) and which was established in Chicago, Illinois, on August 12, 1881.

(F) MAINTENANCE UNDER COLLECTIVE BARGAINING AGREEMENT.—For purposes of this title and the Employee Retirement Income Security Act of 1974, a plan making an election under this paragraph shall be treated as maintained pursuant to a collective bargaining agreement if a collective bargaining agreement, expressly or otherwise, provides for or permits employer contributions to the plan by one or more employers that are signatory to such agreement, or participation in the plan by one or more employees of an employer that is signatory to such agreement, regardless of whether the plan was created, established, or maintained for such employees by virtue of

[1] So in original. Probably should be ''title''.

another document that is not a collective bargaining agreement.

(g) Plan administrator

For purposes of this part, the term ''plan administrator'' means—

(1) the person specifically so designated by the terms of the instrument under which the plan is operated;

(2) in the absence of a designation referred to in paragraph (1)—

(A) in the case of a plan maintained by a single employer, such employer,

(B) in the case of a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who maintained the plan, or

(C) in any case to which subparagraph (A) or (B) does not apply, such other person as the Secretary may by regulation, prescribe.

(h) Tax treatment of certain contributions

(1) In general

Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed—

(A) to an employees' trust described in section 401(a), or

(B) under a plan described in section 403(a), shall not be treated as having been made by the employer if it is designated as an employee contribution.

(2) Designation by units of government

For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments), where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

(i) Defined contribution plan

For purposes of this part, the term ''defined contribution plan'' means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(j) Defined benefit plan

For purposes of this part, the term ''defined benefit plan'' means any plan which is not a defined contribution plan.

(k) Certain plans

A defined benefit plan which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant shall—

(1) for purposes of section 410 (relating to minimum participation standards), be treated as a defined contribution plan.

(2) for purposes of sections 72(d) (relating to treatment of employee contributions as separate contract), 411(a)(7)(A) (relating to minimum vesting standards), 415 (relating to limitations on benefits and contributions under qualified plans), and 401(m) (relating to nondiscrimination tests for matching requirements and employee contributions), be treated as consisting of a defined contribution plan to the extent benefits are based on the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan, and

(3) for purposes of section 4975 (relating to tax on prohibited transactions), be treated as a defined benefit plan.

***(l)* Merger and consolidations of plans or transfers of plan assets**

(1) In general

A trust which forms a part of a plan shall not constitute a qualified trust under section 401 and a plan shall be treated as not described in section 403(a) unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust 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.

(2) Allocation of assets in plan spin-offs, etc.

(A) In general

In the case of a plan spin-off of a defined benefit plan, a trust which forms part of—

(i) the original plan, or

(ii) any plan spun off from such plan,

shall not constitute a qualified trust under this section unless the applicable percentage of excess assets are allocated to each of such plans.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means, with respect to each of the plans described in clauses (i) and (ii) of subparagraph (A), the percentage determined by dividing—

(i) the excess (if any) of—

(I) the sum of the funding target and target normal cost determined under section 430, over

(II) the amount of the assets required to be allocated to the plan after the spin-off (without regard to this paragraph), by

(ii) the sum of the excess amounts determined separately under clause (i) for all such plans.

(C) Excess assets

For purposes of subparagraph (A), the term ''excess assets'' means an amount equal to the excess (if any) of—

(i) the fair market value of the assets of the original plan immediately before the spin-off, over

(ii) the amount of assets required to be allocated after the spin-off to all plans (determined without regard to this paragraph).

(D) Certain spun-off plans not taken into account

(i) In general

A plan involved in a spin-off which is described in clause (ii), (iii), or (iv) shall not be taken into account for purposes of this paragraph, except that the amount determined under subparagraph (C)(ii) shall be increased by the amount of assets allocated to such plan.

(ii) Plans transferred out of controlled groups

A plan is described in this clause if, after such spin-off, such plan is maintained by an employer who is not a member of the same controlled group as the employer maintaining the original plan.

(iii) Plans transferred out of multiple employer plans

A plan as described in this clause if, after the spin-off, any employer maintaining such plan (and any member of the same controlled group as such employer) does not maintain any other plan remaining after the spin-off which is also maintained by another employer (or member of the same controlled group as such other employer) which maintained the plan in existence before the spin-off.

(iv) Terminated plans

A plan is described in this clause if, pursuant to the transaction involving the spin-off, the plan is terminated.

(v) Controlled group

For purposes of this subparagraph, the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*).

(E) Paragraph not to apply to multiemployer plans

This paragraph does not apply to any multiemployer plan with respect to any spin-off to the extent that participants either before or after the spin-off are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(F) Application to similar transaction

Except as provided by the Secretary, rules similar to the rules of this paragraph shall apply to transactions similar to spin-offs.

(G) Special rules for bridge banks[2]

For purposes of this paragraph, in the case of a bridge depository institution established under section 11(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(i))—

(i) such bank shall be treated as a member of any controlled group which includes any insured bank (as defined in section 3(h) of such Act (12 U.S.C. 1813(h)))—

(I) which maintains a defined benefit plan,

(II) which is closed by the appropriate bank regulatory authorities, and

(III) any asset and liabilities of which are received by the bridge depository institution, and

(ii) the requirements of this paragraph shall not be treated as met with respect to such plan unless during the 180-day period beginning on the date such insured bank is closed—

(I) the bridge depository institution has the right to require the plan to transfer (subject to the provisions of this paragraph) not more than 50 percent of the excess assets (as defined in subparagraph (C)) to a defined benefit plan maintained by the bridge depository institution with respect to participants or former participants (including retirees and beneficiaries) in the original plan employed by the bridge depository institution or formerly employed by the closed bank, and

(II) no other merger, spin-off, termination, or similar transaction involving the portion of the excess assets described in subclause (I) may occur without the prior written consent of the bridge depository institution.

(m) Employees of an affiliated service group

(1) In general

For purposes of the employee benefit requirements listed in paragraph (4), except to the extent otherwise provided in regulations, all employees of the members of an affiliated service group shall be treated as employed by a single employer.

(2) Affiliated service group

For purposes of this subsection, the term ''affiliated service group'' means a group consisting of a service organization (hereinafter in this paragraph referred to as the ''first organization'') and one or more of the following:

(A) any service organization which—

(i) is a shareholder or partner in the first organization, and

(ii) regularly performs services for the first organization or is regularly associated with the first organization in performing services for third persons, and

(B) any other organization if—

(i) a significant portion of the business of such organization is the performance of services (for the first organization, for organizations described in subparagraph (A), or for both) of a type historically performed in such service field by employees, and

(ii) 10 percent or more of the interests in such organization is held by persons who

[2] So in original. Probably should be ''bridge depository institutions''

are highly compensated employees (within the meaning of section 414(q)) of the first organization or an organization described in subparagraph (A).

(3) Service organizations

For purposes of this subsection, the term ''service organization'' means an organization the principal business of which is the performance of services.

(4) Employee benefit requirements

For purposes of this subsection, the employee benefit requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), (16), (17), and (26) of section 401(a), and

(B) sections 408(k), 408(p), 410, 411, 415, and 416.

(5) Certain organizations performing management functions

For purposes of this subsection, the term ''affiliated service group'' also includes a group consisting of—

(A) an organization the principal business of which is performing, on a regular and continuing basis, management functions for 1 organization (or for 1 organization and other organizations related to such 1 organization), and

(B) the organization (and related organizations) for which such functions are so performed by the organization described in subparagraph (A).

For purposes of this paragraph, the term ''related organizations'' has the same meaning as the term ''related persons'' when used in section 144(a)(3).

(6) Other definitions

For purposes of this subsection—

(A) Organization defined

The term ''organization'' means a corporation, partnership, or other organization.

(B) Ownership

In determining ownership, the principles of section 318(a) shall apply.

(n) Employee leasing

(1) In general

For purposes of the requirements listed in paragraph (3), with respect to any person (hereinafter in this subsection referred to as the ''recipient'') for whom a leased employee performs services—

(A) the leased employee shall be treated as an employee of the recipient, but

(B) contributions or benefits provided by the leasing organization which are attributable to services performed for the recipient shall be treated as provided by the recipient.

(2) Leased employee

For purposes of paragraph (1), the term ''leased employee'' means any person who is not an employee of the recipient and who provides services to the recipient if—

(A) such services are provided pursuant to an agreement between the recipient and any other person (in this subsection referred to as the ''leasing organization''),

(B) such person has performed such services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, and

(C) such services are performed under primary direction or control by the recipient.

(3) Requirements

For purposes of this subsection, the requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), (16), (17), and (26) of section 401(a),

(B) sections 408(k), 408(p), 410, 411, 415, and 416, and

(C) sections 79, 106, 117(d), 120, 125, 127, 129, 132, 137, 274(j), 505, and 4980B.

(4) Time when first considered as employee

(A) In general

In the case of any leased employee, paragraph (1) shall apply only for purposes of determining whether the requirements listed in paragraph (3) are met for periods after the close of the period referred to in paragraph (2)(B).

(B) Years of service

In the case of a person who is an employee of the recipient (whether by reason of this subsection or otherwise), for purposes of the requirements listed in paragraph (3), years of service for the recipient shall be determined by taking into account any period for which such employee would have been a leased employee but for the requirements of paragraph (2)(B).

(5) Safe harbor

(A) In general

In the case of requirements described in subparagraphs (A) and (B) of paragraph (3), this subsection shall not apply to any leased employee with respect to services performed for a recipient if—

(i) such employee is covered by a plan which is maintained by the leasing organization and meets the requirements of subparagraph (B), and

(ii) leased employees (determined without regard to this paragraph) do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

(B) Plan requirements

A plan meets the requirements of this subparagraph if—

(i) such plan is a money purchase pension plan with a nonintegrated employer contribution rate for each participant of at least 10 percent of compensation,

(ii) such plan provides for full and immediate vesting, and

(iii) each employee of the leasing organization (other than employees who perform substantially all of their services for the leasing organization) immediately participates in such plan.

Clause (iii) shall not apply to any individual whose compensation from the leasing organization in each plan year during the 4-year

period ending with the plan year is less than $1,000.

(C) Definitions

For purposes of this paragraph—

(i) Highly compensated employee

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

(ii) Nonhighly compensated work force

The term ''nonhighly compensated work force'' means the aggregate number of individuals (other than highly compensated employees)—

(I) who are employees of the recipient (without regard to this subsection) and have performed services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, or

(II) who are leased employees with respect to the recipient (determined without regard to this paragraph).

(iii) Compensation

The term ''compensation'' has the same meaning as when used in section 415; except that such term shall include—

(I) any employer contribution under a qualified cash or deferred arrangement to the extent not included in gross income under section 402(e)(3) or 402(h)(1)(B),

(II) any amount which the employee would have received in cash but for an election under a cafeteria plan (within the meaning of section 125), and

(III) any amount contributed to an annuity contract described in section 403(b) pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)).

(6) Other rules

For purposes of this subsection—

(A) Related persons

The term ''related persons'' has the same meaning as when used in section 144(a)(3).

(B) Employees of entities under common control

The rules of subsections (b), (c), (m), and (*o*) shall apply.

(*o*) Regulations

The Secretary shall prescribe such regulations (which may provide rules in addition to the rules contained in subsections (m) and (n)) as may be necessary to prevent the avoidance of any employee benefit requirement listed in subsection (m)(4) or (n)(3) or any requirement under section 457 through the use of—

(1) separate organizations,

(2) employee leasing, or

(3) other arrangements.

The regulations prescribed under subsection (n) shall include provisions to minimize the recordkeeping requirements of subsection (n) in the case of an employer which has no top-heavy plans (within the meaning of section 416(g)) and which uses the services of persons (other than employees) for an insignificant percentage of the employer's total workload.

(p) Qualified domestic relations order defined

For purposes of this subsection and section 401(a)(13)—

(1) In general

(A) Qualified domestic relations order

The term ''qualified domestic relations order'' means a domestic relations order—

(i) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(ii) with respect to which the requirements of paragraphs (2) and (3) are met.

(B) Domestic relations order

The term ''domestic relations order'' means any judgment, decree, or order (including approval of a property settlement agreement) which—

(i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(ii) is made pursuant to a State domestic relations law (including a community property law).

(2) Order must clearly specify certain facts

A domestic relations order meets the requirements of this paragraph only if such order clearly specifies—

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(B) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(C) the number of payments or period to which such order applies, and

(D) each plan to which such order applies.

(3) Order may not alter amount, form, etc., of benefits

A domestic relations order meets the requirements of this paragraph only if such order—

(A) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(B) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(4) Exception for certain payments made after earliest retirement age

(A) In general

A domestic relations order shall not be treated as failing to meet the requirements

of subparagraph (A) of paragraph (3) solely because such order requires that payment of benefits be made to an alternate payee—

(i) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(ii) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of the benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(iii) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of clause (ii), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(B) Earliest retirement age

For purposes of this paragraph, the term ''earliest retirement age'' means the earlier of—

(i) the date on which the participant is entitled to a distribution under the plan, or

(ii) the later of—

(I) the date the participant attains age 50, or

(II) the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(5) Treatment of former spouse as surviving spouse for purposes of determining survivor benefits

To the extent provided in any qualified domestic relations order—

(A) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of sections 401(a)(11) and 417 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(B) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 417(d).

(6) Plan procedures with respect to orders

(A) Notice and determination by administrator

In the case of any domestic relations order received by a plan—

(i) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(B) Plan to establish reasonable procedures

Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

(7) Procedures for period during which determination is being made

(A) In general

During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this paragraph referred to as the ''segregated amounts'') which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(B) Payment to alternate payee if order determined to be qualified domestic relations order

If within the 18-month period described in subparagraph (E) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(C) Payment to plan participant in certain cases

If within the 18-month period described in subparagraph (E)—

(i) it is determined that the order is not a qualified domestic relations order, or

(ii) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(D) Subsequent determination or order to be applied prospectively only

Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in subparagraph (E) shall be applied prospectively only.

(E) Determination of 18-month period

For purposes of this paragraph, the 18-month period described in this subparagraph is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(8) Alternate payee defined

The term ''alternate payee'' means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(9) Subsection not to apply to plans to which section 401(a)(13) does not apply

This subsection shall not apply to any plan to which section 401(a)(13) does not apply. For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies.

(10) Waiver of certain distribution requirements

With respect to the requirements of subsections (a) and (k) of section 401, section 403(b), section 409(d), and section 457(d), a plan shall not be treated as failing to meet such requirements solely by reason of payments to an alternative payee pursuant to a qualified domestic relations order.

(11) Application of rules to certain other plans

For purposes of this title, a distribution or payment from a governmental plan (as defined in subsection (d)) or a church plan (as described in subsection (e)) or an eligible deferred compensation plan (within the meaning of section 457(b)) shall be treated as made pursuant to a qualified domestic relations order if it is made pursuant to a domestic relations order which meets the requirement of clause (i) of paragraph (1)(A).

(12) Tax treatment of payments from a section 457 plan

If a distribution or payment from an eligible deferred compensation plan described in section 457(b) is made pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to such distribution or payment.

(13) Consultation with the Secretary

In prescribing regulations under this subsection and section 401(a)(13), the Secretary of Labor shall consult with the Secretary.

(q) Highly compensated employee

(1) In general

The term ''highly compensated employee'' means any employee who—

(A) was a 5-percent owner at any time during the year or the preceding year, or

(B) for the preceding year—

(i) had compensation from the employer in excess of $80,000, and

(ii) if the employer elects the application of this clause for such preceding year, was in the top-paid group of employees for such preceding year.

The Secretary shall adjust the $80,000 amount under subparagraph (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 ending September 30, 1996.

(2) 5-percent owner

An employee shall be treated as a 5-percent owner for any year if at any time during such year such employee was a 5-percent owner (as defined in section 416(i)(1)) of the employer.

(3) Top-paid group

An employee is in the top-paid group of employees for any year if such employee is in the group consisting of the top 20 percent of the employees when ranked on the basis of compensation paid during such year.

(4) Compensation

For purposes of this subsection, the term ''compensation'' has the meaning given such term by section 415(c)(3).

(5) Excluded employees

For purposes of subsection (r) and for purposes of determining the number of employees in the top-paid group, the following employees shall be excluded—

(A) employees who have not completed 6 months of service,

(B) employees who normally work less than 17½ hours per week,

(C) employees who normally work during not more than 6 months during any year,

(D) employees who have not attained age 21, and

(E) except to the extent provided in regulations, 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 the employer.

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) than that specified in such subparagraph.

(6) Former employees

A former employee shall be treated as a highly compensated employee if—

(A) such employee was a highly compensated employee when such employee separated from service, or

(B) such employee was a highly compensated employee at any time after attaining age 55.

(7) Coordination with other provisions

Subsections (b), (c), (m), (n), and (*o*) shall be applied before the application of this subsection.

(8) Special rule for nonresident aliens

For purposes of this subsection and subsection (r), 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)) shall not be treated as employees.

(9) Certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans

In the case of a church plan (as defined in subsection (e)), no employee shall be considered an officer, a person whose principal duties consist of supervising the work of other employees, or a highly compensated employee for any year unless such employee is a highly compensated employee under paragraph (1) for such year.

(r) Special rules for separate line of business

(1) In general

For purposes of sections 129(d)(8) and 410(b), an employer shall be treated as operating separate lines of business during any year if the employer for bona fide business reasons operates separate lines of business.

(2) Line of business must have 50 employees, etc.

A line of business shall not be treated as separate under paragraph (1) unless—

(A) such line of business has at least 50 employees who are not excluded under subsection (q)(5),

(B) the employer notifies the Secretary that such line of business is being treated as separate for purposes of paragraph (1), and

(C) such line of business meets guidelines prescribed by the Secretary or the employer receives a determination from the Secretary that such line of business may be treated as separate for purposes of paragraph (1).

(3) Safe harbor rule

(A) In general

The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

(i) not less than one-half, and

(ii) not more than twice,

the percentage which highly compensated employees are of all employees of the employer. An employer shall be treated as meeting the requirements of clause (i) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business.

(B) Determination may be based on preceding year

The requirements of subparagraph (A) shall be treated as met with respect to any line of business if such requirements were met with respect to such line of business for the preceding year and if—

(i) no more than a de minimis number of employees were shifted to or from the line of business after the close of the preceding year, or

(ii) the employees shifted to or from the line of business after the close of the preceding year contained a substantially proportional number of highly compensated employees.

(4) Highly compensated employee percentage defined

For purposes of this subsection, the term ''highly compensated employee percentage'' means the percentage which highly compensated employees performing services for the line of business are of all employees performing services for the line of business.

(5) Allocation of benefits to line of business

For purposes of this subsection, benefits which are attributable to services provided to a line of business shall be treated as provided by such line of business.

(6) Headquarters personnel, etc.

The Secretary shall prescribe rules providing for—

(A) the allocation of headquarters personnel among the lines of business of the employer, and

(B) the treatment of other employees providing services for more than 1 line of business of the employer or not in lines of business meeting the requirements of paragraph (2).

(7) Separate operating units

For purposes of this subsection, the term ''separate line of business'' includes an operating unit in a separate geographic area separately operated for a bona fide business reason.

(8) Affiliated service groups

This subsection shall not apply in the case of any affiliated service group (within the meaning of section 414(m)).

(s) Compensation

For purposes of any applicable provision—

(1) In general

Except as provided in this subsection, the term ''compensation'' has the meaning given such term by section 415(c)(3).

(2) Employer may elect not to treat certain deferrals as compensation

An employer may elect not to include as compensation any amount which is contributed by the employer pursuant to a salary reduction agreement and which is not includible in the gross income of an employee under section 125, 132(f)(4), 402(e)(3), 402(h), or 403(b).

(3) Alternative determination of compensation

The Secretary shall by regulation provide for alternative methods of determining compensation which may be used by an employer, except that such regulations shall provide that an employer may not use an alternative method if the use of such method discriminates in favor of highly compensated employees (within the meaning of subsection (q)).

(4) Applicable provision

For purposes of this subsection, the term ''applicable provision'' means any provision which specifically refers to this subsection.

(t) Application of controlled group rules to certain employee benefits

(1) In general

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) shall be treated as employed by a single employer for purposes of an applicable section. The provisions of subsection (*o*) shall apply with respect to the requirements of an applicable section.

(2) Applicable section

For purposes of this subsection, the term ''applicable section'' means section 79, 106, 117(d), 120, 125, 127, 129, 132, 137, 274(j), 505, or 4980B.

(u) Special rules relating to veterans' reemployment rights under USERRA and to differential wage payments to members on active duty

(1) Treatment of certain contributions made pursuant to veterans' reemployment rights

If any contribution is made by an employer or an employee under an individual account plan with respect to an employee, or by an employee to a defined benefit plan that provides for employee contributions, and such contribution is required by reason of such employee's rights under chapter 43 of title 38, United States Code, resulting from qualified military service, then—

(A) such contribution shall not be subject to any otherwise applicable limitation contained in section 402(g), 402(h), 403(b), 404(a), 404(h), 408, 415, or 457, and shall not be taken into account in applying such limitations to other contributions or benefits under such plan or any other plan, with respect to the year in which the contribution is made,

(B) such contribution shall be subject to the limitations referred to in subparagraph (A) with respect to the year to which the contribution relates (in accordance with rules prescribed by the Secretary), and

(C) such plan shall not be treated as failing to meet the requirements of section 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 401(m), 403(b)(12), 408(k)(3), 408(k)(6), 408(p), 410(b), or 416 by reason of the making of (or the right to make) such contribution.

For purposes of the preceding sentence, any elective deferral or employee contribution made under paragraph (2) shall be treated as required by reason of the employee's rights under such chapter 43.

(2) Reemployment rights under USERRA with respect to elective deferrals

(A) In general

For purposes of this subchapter and section 457, if an employee is entitled to the benefits of chapter 43 of title 38, United States Code, with respect to any plan which provides for elective deferrals, the employer sponsoring the plan shall be treated as meeting the requirements of such chapter 43 with respect to such elective deferrals only if such employer—

(i) permits such employee to make additional elective deferrals under such plan (in the amount determined under subparagraph (B) or such lesser amount as is elected by the employee) during the period which begins on the date of the reemployment of such employee with such employer and has the same length as the lesser of—

(I) the product of 3 and the period of qualified military service which resulted in such rights, and

(II) 5 years, and

(ii) makes a matching contribution with respect to any additional elective deferral made pursuant to clause (i) which would have been required had such deferral actually been made during the period of such qualified military service.

(B) Amount of makeup required

The amount determined under this subparagraph with respect to any plan is the maximum amount of the elective deferrals that the individual would have been permitted to make under the plan in accordance with the limitations referred to in paragraph (1)(A) during the period of qualified military service if the individual had continued to be employed by the employer during such period and received compensation as determined under paragraph (7). Proper adjustment shall be made to the amount determined under the preceding sentence for any elective deferrals actually made during the period of such qualified military service.

(C) Elective deferral

For purposes of this paragraph, the term ''elective deferral'' has the meaning given such term by section 402(g)(3); except that such term shall include any deferral of compensation under an eligible deferred compensation plan (as defined in section 457(b)).

(D) After-tax employee contributions

References in subparagraphs (A) and (B) to elective deferrals shall be treated as including references to employee contributions.

(3) Certain retroactive adjustments not required

For purposes of this subchapter and subchapter E, no provision of chapter 43 of title 38, United States Code, shall be construed as requiring—

(A) any crediting of earnings to an employee with respect to any contribution before such contribution is actually made, or

(B) any allocation of any forfeiture with respect to the period of qualified military service.

(4) Loan repayment suspensions permitted

If any plan suspends the obligation to repay any loan made to an employee from such plan for any part of any period during which such employee is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code), whether or not qualified military service, such suspension shall not be taken into account for purposes of section 72(p), 401(a), or 4975(d)(1).

(5) Qualified military service

For purposes of this subsection, the term ''qualified military service'' means any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

(6) Individual account plan

For purposes of this subsection, the term ''individual account plan'' means any defined contribution plan [3](including any tax-sheltered annuity plan under section 403(b), any simplified employee pension under section 408(k), any qualified salary reduction arrange-

[3] So in original. There is no closing parenthesis.

ment under section 408(p), and any eligible deferred compensation plan (as defined in section 457(b)).

(7) Compensation

For purposes of sections 403(b)(3), 415(c)(3), and 457(e)(5), an employee who is in qualified military service shall be treated as receiving compensation from the employer during such period of qualified military service equal to—

(A) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for absence during the period of qualified military service, or

(B) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(8) USERRA requirements for qualified retirement plans

For purposes of this subchapter and section 457, an employer sponsoring a retirement plan shall be treated as meeting the requirements of chapter 43 of title 38, United States Code, only if each of the following requirements is met:

(A) An individual reemployed under such chapter is treated with respect to such plan as not having incurred a break in service with the employer maintaining the plan by reason of such individual's period of qualified military service.

(B) Each period of qualified military service served by an individual is, upon reemployment under such chapter, deemed with respect to such plan to constitute service with the employer maintaining the plan for the purpose of determining the nonforfeitability of the individual's accrued benefits under such plan and for the purpose of determining the accrual of benefits under such plan.

(C) An individual reemployed under such chapter is entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the individual makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the individual would have been permitted or required to contribute had the individual remained continuously employed by the employer throughout the period of qualified military service. Any payment to such plan shall be made during the period beginning with the date of reemployment and whose duration is 3 times the period of the qualified military service (but not greater than 5 years).

(9) Treatment in the case of death or disability resulting from active military service

(A) In general

For benefit accrual purposes, an employer sponsoring a retirement plan may treat an individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer maintaining the plan as if the individual has resumed employment in accordance with the individual's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. In the case of any such treatment, and subject to subparagraphs (B) and (C), any full or partial compliance by such plan with respect to the benefit accrual requirements of paragraph (8) with respect to such individual shall be treated for purposes of paragraph (1) as if such compliance were required under such chapter 43.

(B) Nondiscrimination requirement

Subparagraph (A) shall apply only if all individuals performing qualified military service with respect to the employer maintaining the plan (as determined under subsections (b), (c), (m), and (*o*)) who die or became disabled as a result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.

(C) Determination of benefits

The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under subparagraph (A) for purposes of applying paragraph (8)(C) shall be determined on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of—

(i) the 12-month period of service with the employer immediately prior to qualified military service, or

(ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

(10) Plans not subject to title 38

This subsection shall not apply to any retirement plan to which chapter 43 of title 38, United States Code, does not apply.

(11) References

For purposes of this section, any reference to chapter 43 of title 38, United States Code, shall be treated as a reference to such chapter as in effect on December 12, 1994 (without regard to any subsequent amendment).

(12) Treatment of differential wage payments

(A) In general

Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation, and

(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

(B) Special rule for distributions

(i) In general

Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(h)(2)(A).

(ii) Limitation

If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

(C) Nondiscrimination requirement

Subparagraph (A)(iii) shall apply only if all employees of an employer (as determined under subsections (b), (c), (m), and (*o*)) performing service in the uniformed services described in section 3401(h)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5) of section 410(b) shall apply.

(D) Differential wage payment

For purposes of this paragraph, the term ''differential wage payment'' has the meaning given such term by section 3401(h)(2).

(v) Catch-up contributions for individuals age 50 or over

(1) In general

An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an eligible participant to make additional elective deferrals in any plan year.

(2) Limitation on amount of additional deferrals

(A) In general

A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of—

(i) the applicable dollar amount, or

(ii) the excess (if any) of—

(I) the participant's compensation (as defined in section 415(c)(3)) for the year, over

(II) any other elective deferrals of the participant for such year which are made without regard to this subsection.

(B) Applicable dollar amount

For purposes of this paragraph—

(i) In the case of an applicable employer plan other than a plan described in section 401(k)(11) or 408(p), the applicable dollar amount shall be determined in accordance with the following table:

For taxable years beginning in:	The applicable dollar amount is:
2002	$1,000
2003	$2,000
2004	$3,000
2005	$4,000
2006 and thereafter	$5,000.

(ii) In the case of an applicable employer plan described in section 401(k)(11) or 408(p), the applicable dollar amount shall be determined in accordance with the following table:

For taxable years beginning in:	The applicable dollar amount is:
2002	$500
2003	$1,000
2004	$1,500
2005	$2,000
2006 and thereafter	$2,500.

(C) Cost-of-living adjustment

In the case of a year beginning after December 31, 2006, the Secretary shall adjust annually the $5,000 amount in subparagraph (B)(i) and the $2,500 amount in subparagraph (B)(ii) 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 taken into account shall be the calendar quarter beginning July 1, 2005, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(D) Aggregation of plans

For purposes of this paragraph, plans described in clauses (i), (ii), and (iv) of paragraph (6)(A) that are maintained by the same employer (as determined under subsection (b), (c), (m) or (*o*)) shall be treated as a single plan, and plans described in clause (iii) of paragraph (6)(A) that are maintained by the same employer shall be treated as a single plan.

(3) Treatment of contributions

In the case of any contribution to a plan under paragraph (1)—

(A) such contribution shall not, with respect to the year in which the contribution is made—

(i) be subject to any otherwise applicable limitation contained in sections 401(a)(30), 402(h), 403(b), 408, 415(c), and 457(b)(2) (determined without regard to section 457(b)(3)), or

(ii) be taken into account in applying such limitations to other contributions or benefits under such plan or any other such plan, and

(B) except as provided in paragraph (4), such plan shall not be treated as failing to

meet the requirements of section 401(a)(4), 401(k)(3), 401(k)(11), 403(b)(12), 408(k), 410(b), or 416 by reason of the making of (or the right to make) such contribution.

(4) Application of nondiscrimination rules

(A) In general

An applicable employer plan shall be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features unless the plan allows all eligible participants to make the same election with respect to the additional elective deferrals under this subsection.

(B) Aggregation

For purposes of subparagraph (A), all plans maintained by employers who are treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as 1 plan, except that a plan described in clause (i) of section 410(b)(6)(C) shall not be treated as a plan of the employer until the expiration of the transition period with respect to such plan (as determined under clause (ii) of such section).

(5) Eligible participant

For purposes of this subsection, the term ''eligible participant'' means a participant in a plan—

(A) who would attain age 50 by the end of the taxable year,

(B) with respect to whom no other elective deferrals may (without regard to this subsection) be made to the plan for the plan (or other applicable) year by reason of the application of any limitation or other restriction described in paragraph (3) or comparable limitation or restriction contained in the terms of the plan.

(6) Other definitions and rules

For purposes of this subsection—

(A) Applicable employer plan

The term ''applicable employer plan'' means—

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

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

(iii) an eligible deferred compensation plan under section 457 of an eligible employer described in section 457(e)(1)(A), and

(iv) an arrangement meeting the requirements of section 408(k) or (p).

(B) Elective deferral

The term ''elective deferral'' has the meaning given such term by subsection (u)(2)(C).

(C) Exception for section 457 plans

This subsection shall not apply to a participant for any year for which a higher limitation applies to the participant under section 457(b)(3).

(w) Special rules for certain withdrawals from eligible automatic contribution arrangements

(1) In general

If an eligible automatic contribution arrangement allows an employee to elect to make permissible withdrawals—

(A) the amount of any such withdrawal shall be includible in the gross income of the employee for the taxable year of the employee in which the distribution is made,

(B) no tax shall be imposed under section 72(t) with respect to the distribution, and

(C) the arrangement shall not be treated as violating any restriction on distributions under this title solely by reason of allowing the withdrawal.

In the case of any distribution to an employee by reason of an election under this paragraph, employer matching contributions shall be forfeited or subject to such other treatment as the Secretary may prescribe.

(2) Permissible withdrawal

For purposes of this subsection—

(A) In general

The term ''permissible withdrawal'' means any withdrawal from an eligible automatic contribution arrangement meeting the requirements of this paragraph which—

(i) is made pursuant to an election by an employee, and

(ii) consists of elective contributions described in paragraph (3)(B) (and earnings attributable thereto).

(B) Time for making election

Subparagraph (A) shall not apply to an election by an employee unless the election is made no later than the date which is 90 days after the date of the first elective contribution with respect to the employee under the arrangement.

(C) Amount of distribution

Subparagraph (A) shall not apply to any election by an employee unless the amount of any distribution by reason of the election is equal to the amount of elective contributions made with respect to the first payroll period to which the eligible automatic contribution arrangement applies to the employee and any succeeding payroll period beginning before the effective date of the election (and earnings attributable thereto).

(3) Eligible automatic contribution arrangement

For purposes of this subsection, the term ''eligible automatic contribution arrangement'' means an arrangement under an applicable employer plan—

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

(B) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation

provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

(C) which meets the requirements of paragraph (4).

(4) Notice requirements

(A) In general

The administrator of a plan containing an arrangement described in paragraph (3) shall, within a reasonable period before each plan year, give to each employee to whom an arrangement described in paragraph (3) applies for such plan year 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.

(B) Time and form of notice

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

(i) the notice includes an explanation of 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) the employee has a reasonable period of time after receipt of the notice described in clause (i) and before the first elective contribution is made to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee.

(5) Applicable employer plan

For purposes of this subsection, the term ''applicable employer plan'' means—

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

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

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

(D) a simplified employee pension the terms of which provide for a salary reduction arrangement described in section 408(k)(6), and

(E) a simple retirement account (as defined in section 408(p)).

(6) Special rule

A withdrawal described in paragraph (1) (subject to the limitation of paragraph (2)(C)) shall not be taken into account for purposes of section 401(k)(3) or for purposes of applying the limitation under section 402(g)(1).

(x) Special rules for eligible combined defined benefit plans and qualified cash or deferred arrangements

(1) General rule

Except as provided in this subsection, the requirements of this title shall be applied to any defined benefit plan or applicable defined contribution plan which are[4] part of an eligible combined plan in the same manner as if each such plan were not a part of the eligible combined plan. In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately.

(2) Eligible combined plan

For purposes of this subsection—

(A) In general

The term ''eligible combined plan'' means a plan—

(i) which is maintained by an employer which, at the time the plan is established, is a small employer,

(ii) which consists of a defined benefit plan and an applicable defined contribution plan,

(iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable defined contribution plan to the extent necessary for the separate application of this title under paragraph (1), and

(iv) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

For purposes of this subparagraph, the term ''small employer'' has the meaning given such term by section 4980D(d)(2), except that such section shall be applied by substituting ''500'' for ''50'' each place it appears.

(B) Benefit requirements

(i) In general

The benefit requirements of this subparagraph are met with respect to the defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is the lesser of—

(I) 1 percent multiplied by the number of years of service with the employer, or

(II) 20 percent.

[4] So in original. Probably should be ''is''.

(iii) Special rule for applicable defined benefit plans

If the defined benefit plan under clause (i) is an applicable defined benefit plan as defined in section 411(a)(13)(B) which meets the interest credit requirements of section 411(b)(5)(B)(i), the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives a pay credit for the year which is not less than the percentage of compensation determined in accordance with the following table:

If the participant's age as of the beginning of the year is—	The percentage is—
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

(iv) Years of service

For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

(C) Contribution requirements

(i) In general

The contribution requirements of this subparagraph with respect to any applicable defined contribution plan forming part of an eligible combined plan are met if—

(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) shall apply for purposes of this clause.

(ii) Nonelective contributions

An applicable defined contribution plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

(D) Vesting requirements

The vesting requirements of this subparagraph are met if—

(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

(ii) in the case of an applicable defined contribution plan forming part of eligible combined plan—

(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

(II) 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 under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 411 shall apply to the extent not inconsistent with this subparagraph.

(E) Uniform provision of contributions and benefits

In the case of a defined benefit plan or applicable defined contribution plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all contributions and benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

(F) Requirements must be met without taking into account social security and similar contributions and benefits or other plans

(i) In general

The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) Social security and similar contributions

The requirements of this clause are met if—

(I) the requirements of subparagraphs (B) and (C) are met without regard to section 401(*l*), and

(II) the requirements of sections 401(a)(4) and 410(b) are met with respect to both the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan without regard to section 401(*l*).

(iii) Other plans and arrangements

The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) without being combined with any other plan.

(3) Nondiscrimination requirements for qualified cash or deferred arrangement

(A) In general

A qualified cash or deferred arrangement which is included in an applicable defined

contribution plan forming part of an eligible combined plan shall be treated as meeting the requirements of section 401(k)(3)(A)(ii) if the requirements of paragraph (2)(C) are met with respect to such arrangement.

(B) Matching contributions

In applying section 401(m)(11) to any matching contribution with respect to a contribution to which paragraph (2)(C) applies, the contribution requirement of paragraph (2)(C) and the notice requirements of paragraph (5)(B) shall be substituted for the requirements otherwise applicable under clauses (i) and (ii) of section 401(m)(11)(A).

(4) Satisfaction of top-heavy rules

A defined benefit plan and applicable defined contribution plan forming part of an eligible combined plan for any plan year shall be treated as meeting the requirements of section 416 for the plan year.

(5) Automatic contribution arrangement

For purposes of this subsection—

(A) In general

A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

(ii) meets the notice requirements under subparagraph (B).

(B) Notice requirements

(i) In general

The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

(ii) Reasonable period to make election

The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies—

(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions made at a different rate, and

(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

(iii) Annual notice of rights and obligations

The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of section 401(k)(12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

(6) Coordination with other requirements

(A) Treatment of separate plans

Section 414(k) shall not apply to an eligible combined plan.

(B) Reporting

An eligible combined plan shall be treated as a single plan for purposes of sections 6058 and 6059.

(7) Applicable defined contribution plan

For purposes of this subsection—

(A) In general

The term ''applicable defined contribution plan'' means a defined contribution plan which includes a qualified cash or deferred arrangement.

(B) Qualified cash or deferred arrangement

The term ''qualified cash or deferred arrangement'' has the meaning given such term by section 401(k)(2).

(Added Pub. L. 93–406, title II, § 1015, Sept. 2, 1974, 88 Stat. 925; amended Pub. L. 94–455, title XIX, §§ 1901(a)(64), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834; Pub. L. 95–600, title I, § 152(d), Nov. 6, 1978, 92 Stat. 2799; Pub. L. 96–364, title II, §§ 207, 208(a), title IV, § 407(b), Sept. 26, 1980, 94 Stat. 1288, 1289, 1305; Pub. L. 96–605, title II, § 201(a), Dec. 28, 1980, 94 Stat. 3526; Pub. L. 96–613, § 5(a), Dec. 28, 1980, 94 Stat. 3580; Pub. L. 97–248, title II, §§ 240(c), 246(a), 248(a), Sept. 3, 1982, 96 Stat. 520, 525, 526; Pub. L. 98–369, div. A, title IV, § 491(d)(26), (27), title V, § 526(a)(1), (b)(1), (d)(1), (2), title VII, § 713(i), July 18, 1984, 98 Stat. 850, 874, 875, 960; Pub. L. 98–397, title II, § 204(b), Aug. 23, 1984, 98 Stat. 1445; Pub. L. 99–514, title XI, §§ 1114(a), (b)(11), 1115(a), 1117(c), 1146(a), (b), 1151(e)(1), (i), title XIII, § 1301(j)(4), title XVIII, §§ 1852(f), 1898(c)(2)(A), (4)(A), (6)(A), (7)(A)(ii)–(vii), 1899A(12), Oct. 22, 1986, 100 Stat. 2448, 2451, 2452, 2462, 2491, 2506, 2507, 2657, 2868, 2951, 2953, 2954, 2958; Pub. L. 100–203, title IX, § 9305(c), Dec. 22, 1987, 101 Stat. 1330–352; Pub. L. 100–647, title I, §§ 1011(d)(8), (e)(4), (h)(5), (i)(1)–(4)(A), (j)(1), (2), 1011A(b)(3), 1011B(a)(16), (17), (19), (20), 1018(t)(8)(E)–(G), title II, § 2005(c)(1), (2), title III, §§ 3011(b)(4), (5), 3021(b)(1), (2)(A), title VI, § 6067(a), Nov. 10, 1988, 102 Stat. 3460, 3461, 3465, 3467, 3468, 3473, 3485, 3589, 3611, 3612, 3625, 3631, 3632, 3703; Pub. L. 101–140, title II, §§ 203(a)(6), 204(b)(2), Nov. 8, 1989, 103 Stat. 831, 833; Pub. L. 101–239, title VII, §§ 7811(m)(5), 7813(b), 7841(a)(2), Dec. 19, 1989, 103 Stat. 2412, 2413, 2427; Pub. L. 101–508, title XI, § 11703(b)(1), Nov. 5, 1990, 104 Stat. 1388–517; Pub. L. 102–318, title V, § 521(b)(20)–(22), July 3, 1992, 106 Stat. 311; Pub. L. 104–188, title I, §§ 1421(b)(9)(C), 1431(a), (b)(1), (c)(1)(A), (D), (E), 1434(b), 1454(a), 1461(a), 1462(a), 1704(n)(1), Aug. 20, 1996, 110 Stat. 1798, 1802, 1803, 1807, 1817, 1822, 1824, 1883; Pub. L. 105–34, title XV, § 1522(a), title XVI, § 1601(d)(6)(A), (7), (h)(2)(D)(i), (ii), Aug. 5, 1997, 111 Stat. 1070, 1089, 1090, 1092; Pub. L. 105–206, title VI, § 6018(c), July 22, 1998, 112 Stat. 822; Pub. L. 106–554, § 1(a)(7) [title III, § 314(e)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§ 631(a), 635(a)–(c), June 7, 2001, 115 Stat. 111, 117; Pub. L. 107–147, title IV, § 411(*o*)(3)–(8), Mar. 9, 2002, 116 Stat. 48, 49; Pub. L. 108–311, title IV,

§408(a)(15), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title I, §114(c), title IX, §§902(d)(1), 903(a), 906(a)(1), (b)(1)(C), title XI, §1106(b), Aug. 17, 2006, 120 Stat. 853, 1036, 1040, 1051, 1052, 1062; Pub. L. 110–28, title VI, §6611(a)(2), (b)(2), May 25, 2007, 121 Stat. 180, 181; Pub. L. 110–245, title I, §§104(b), 105(b)(1), June 17, 2008, 122 Stat. 1626, 1628; Pub. L. 110–289, div. A, title VI, §1604(b)(4), July 30, 2008, 122 Stat. 2829; Pub. L. 110–458, title I, §§101(d)(2)(E), 109(b)(4)–(c)(1), Dec. 23, 2008, 122 Stat. 5099, 5111.)

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 Railroad Retirement Act of 1935 or 1937, referred to in subsec. (d), means act Aug. 29, 1935, ch. 812, 49 Stat. 867, known as the Railroad Retirement Act of 1935. The Railroad Retirement Act of 1935 was amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and was known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–444, title I, Oct. 16, 1974, 88 Stat. 1305 and is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

The International Organizations Immunities Act (59 Stat. 669), referred to in subsec. (d), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. The Act also amended several other laws including the Internal Revenue Code of 1939. For exemption from taxation of income of international organizations and of the compensation of employees thereof, see sections 892 and 893 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (f)(3), (5), (6)(B), (F) and (*l*)(1), (2)(E), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Section 3(37)(A)(iii) of the Act is classified to section 1002(37)(A)(iii) of Title 29. Section 4403(b) and (c) of the Employee Retirement Income Security Act of 1974 probably means section 4303(b) and (c) of such Act which is classified to section 1453(b) and (c) 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 Multiemployer Pension Plan Amendments Act of 1980, referred to in subsec. (f)(4), (5), means the date of the enactment of Pub. L. 96–364, which was approved Sept. 26, 1980.

Effective date of the Multiemployer Pension Plan Amendments Act of 1980, referred to in subsec. (f)(5), probably means the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980, which was approved Sept. 26, 1980.

AMENDMENTS

2008—Subsec. (*l*)(2)(B)(i)(I). Pub. L. 110–458, §101(d)(2)(E), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the amount determined under section 431(c)(6)(A)(i) in the case of a multiemployer plan (and the sum of the funding shortfall and target normal cost determined under section 430 in the case of any other plan), over''.

Subsec. (*l*)(2)(G). Pub. L. 110–289, §1604(b)(4), which directed substitution of ''bridge depository institution'' for ''bridge bank'', was executed by making the substitution wherever appearing in text, to reflect the probable intent of Congress.

Subsec. (u). Pub. L. 110–245, §105(b)(1)(B), inserted ''and to differential wage payments to members on active duty'' after ''USERRA'' in heading.

Subsec. (u)(9) to (11). Pub. L. 110–245, §104(b), added par. (9) and redesignated former pars. (9) and (10) as (10) and (11), respectively.

Subsec. (u)(12). Pub. L. 110–245, §105(b)(1)(A), added par. (12).

Subsec. (w)(3)(B) to (D). Pub. L. 110–458, §109(b)(4), inserted ''and'' after comma at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: ''under which, in the absence of an investment election by the participant, contributions described in subparagraph (B) are invested in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(5) of the Employee Retirement Income Security Act of 1974, and''.

Subsec. (w)(5)(D), (E). Pub. L. 110–458, §109(b)(5), added subpars. (D) and (E).

Subsec. (w)(6). Pub. L. 110–458, §109(b)(6), inserted ''or for purposes of applying the limitation under section 402(g)(1)'' before period at end.

Subsec. (x)(1). Pub. L. 110–458, §109(c)(1), inserted at end ''In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately.''

2007—Subsec. (f)(6)(A)(ii)(I). Pub. L. 110–28, §6611(a)(2)(A), substituted ''for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan,'' for ''for each of the 3 plan years immediately before the date of enactment of the Pension Protection Act of 2006,''.

Subsec. (f)(6)(B). Pub. L. 110–28, §6611(a)(2)(B), substituted ''starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under subparagraph (A)(ii)'' for ''starting with the first plan year ending after the date of the enactment of the Pension Protection Act of 2006''.

Subsec. (f)(6)(E). Pub. L. 110–28, §6611(b)(2), substituted ''if it is a plan sponsored by an organization which is described in section 501(c)(5) and exempt from tax under section 501(a) and which was established in Chicago, Illinois, on August 12, 1881.'' for ''if it is a plan—

''(i) that was established in Chicago, Illinois, on August 12, 1881; and

''(ii) sponsored by an organization described in section 501(c)(5) and exempt from tax under section 501(a).''

Subsec. (f)(6)(F). Pub. L. 110–28, §6611(a)(2)(C), added subpar. (F).

2006—Subsec. (d). Pub. L. 109–280, §906(a)(1), inserted at end ''The term 'governmental plan' includes a plan which is established and maintained by 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)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).''

Subsec. (f)(6). Pub. L. 109–280, §1106(b), added par. (6).

Subsec. (h)(2). Pub. L. 109–280, §906(b)(1)(C), inserted ''or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments),'' after ''foregoing,''.

Subsec. (*l*)(2)(B)(i)(I). Pub. L. 109–280, §114(c), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the amount determined under section 412(c)(7)(A)(i) with respect to the plan, over''.

Subsec. (w). Pub. L. 109–280, §902(d)(1), added subsec. (w).

Subsec. (x). Pub. L. 109–280, § 903(a), added subsec. (x).

2004—Subsec. (q)(7). Pub. L. 108–311 substituted ''subsection'' for ''section''.

2002—Subsec. (v)(2)(D). Pub. L. 107–147, § 411(*o*)(3), added subpar. (D).

Subsec. (v)(3)(A)(i). Pub. L. 107–147, § 411(*o*)(4), substituted ''sections 401(a)(30), 402(h), 403(b), 408, 415(c), and 457(b)(2) (determined without regard to section 457(b)(3))'' for ''section 402(g), 402(h), 403(b), 404(a), 404(h), 408(k), 408(p), 415, or 457''.

Subsec. (v)(3)(B). Pub. L. 107–147, § 411(*o*)(5), substituted ''section 401(a)(4), 401(k)(3), 401(k)(11), 403(b)(12), 408(k), 410(b), or 416'' for ''section 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 403(b)(12), 408(k), 408(p), 408B, 410(b), or 416''.

Subsec. (v)(4)(B). Pub. L. 107–147, § 411(*o*)(6), inserted before period at end '', except that a plan described in clause (i) of section 410(b)(6)(C) shall not be treated as a plan of the employer until the expiration of the transition period with respect to such plan (as determined under clause (ii) of such section)''.

Subsec. (v)(5). Pub. L. 107–147, § 411(*o*)(7)(A), struck out '', with respect to any plan year,'' before ''a participant'' in introductory provisions.

Subsec. (v)(5)(A). Pub. L. 107–147, § 411(*o*)(7)(B), amended subpar. (A) generally. Prior to amendment, subpar (A) read as follows: ''who has attained the age of 50 before the close of the plan year, and''.

Subsec. (v)(5)(B). Pub. L. 107–147, § 411(*o*)(7)(C), substituted ''plan (or other applicable) year'' for ''plan year''.

Subsec. (v)(6)(C). Pub. L. 107–147, § 411(*o*)(8), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''This subsection shall not apply to an applicable employer plan described in subparagraph (A)(iii) for any year to which section 457(b)(3) applies.''

2001—Subsec. (p)(10). Pub. L. 107–16, § 635(b), substituted ''section 409(d), and section 457(d)'' for ''and section 409(d)''.

Subsec. (p)(11). Pub. L. 107–16, § 635(a), in heading substituted ''certain other plans'' for ''governmental and church plans'' and in text inserted ''or an eligible deferred compensation plan (within the meaning of section 457(b))'' after ''subsection (e))''.

Subsec. (p)(12), (13). Pub. L. 107–16, § 635(c), added par. (12) and redesignated former par. (12) as (13).

Subsec. (v). Pub. L. 107–16, § 631(a), added subsec. (v).

2000—Subsec. (s)(2). Pub. L. 106–554 substituted ''section 125, 132(f)(4), 402(e)(3)'' for ''section 125, 402(e)(3)''.

1998—Subsec. (q)(5). Pub. L. 105–206 made technical amendment to Pub. L. 104–188, § 1434(c)(1)(E). See 1996 Amendment note below.

1997—Subsec. (e)(5)(A). Pub. L. 105–34, § 1601(d)(6)(A), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''For purposes of this part—

''(i) IN GENERAL.—An employee of a church or a convention or association of churches shall include a duly ordained, commissioned, or licensed minister of a church who, in connection with the exercise of his or her ministry—

''(I) is a self-employed individual (within the meaning of section 401(c)(1)(B)), or

''(II) is employed by an organization other than an organization described in section 501(c)(3).

''(ii) TREATMENT AS EMPLOYER AND EMPLOYEE.—

''(I) SELF-EMPLOYED.—A minister described in clause (i)(I) shall be treated as his or her own employer which is an organization described in section 501(c)(3) and which is exempt from tax under section 501(a).

''(II) OTHERS.—A minister described in clause (i)(II) shall be treated as employed by an organization described in section 501(c)(3) and exempt from tax under section 501(a).''

Subsec. (e)(5)(C). Pub. L. 105–34, § 1522(a)(1), substituted ''not otherwise participating'' for ''not eligible to participate''.

Subsec. (e)(5)(E). Pub. L. 105–34, § 1522(a)(2), added subpar. (E).

Subsec. (n)(3)(C). Pub. L. 105–34, § 1601(h)(2)(D)(i), inserted ''137,'' after ''132,''.

Subsec. (q)(7), (9). Pub. L. 105–34, § 1601(d)(7), redesignated par. (7), relating to certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans, as (9).

Subsec. (t)(2). Pub. L. 105–34, § 1601(h)(2)(D)(ii), inserted ''137,'' after ''132,''.

1996—Subsecs. (b), (c). Pub. L. 104–188, § 1421(b)(9)(C), inserted ''408(p),'' after ''408(k),''.

Subsec. (e)(5). Pub. L. 104–188, § 1461(a), added par. (5).

Subsec. (m)(4)(B). Pub. L. 104–188, § 1421(b)(9)(C), inserted ''408(p),'' after ''408(k),''.

Subsec. (n)(2)(C). Pub. L. 104–188, § 1454(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''such services are of a type historically performed, in the business field of the recipient, by employees.''

Subsec. (n)(3)(B). Pub. L. 104–188, § 1421(b)(9)(C), inserted ''408(p),'' after ''408(k),''.

Subsec. (q)(1). Pub. L. 104–188, § 1431(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''IN GENERAL.—The term 'highly compensated employee' means any employee who, during the year or the preceding year—

''(A) was at any time a 5-percent owner,

''(B) received compensation from the employer in excess of $75,000,

''(C) received compensation from the employer in excess of $50,000 and was in the top-paid group of employees for such year, or

''(D) was at any time an officer and received compensation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for such year.

The Secretary shall adjust the $75,000 and $50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d).''

Subsec. (q)(2), (3). Pub. L. 104–188, § 1431(c)(1)(A), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''SPECIAL RULE FOR CURRENT YEAR.—In the case of the year for which the relevant determination is being made, an employee not described in subparagraph (B), (C), or (D) of paragraph (1) for the preceding year (without regard to this paragraph) shall not be treated as described in subparagraph (B), (C), or (D) of paragraph (1) unless such employee is a member of the group consisting of the 100 employees paid the greatest compensation during the year for which such determination is being made.''

Subsec. (q)(4). Pub. L. 104–188, § 1434(b)(1), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—The term 'compensation' means compensation within the meaning of section 415(c)(3).

''(B) CERTAIN PROVISIONS NOT TAKEN INTO ACCOUNT.—The determination under subparagraph (A) shall be made—

''(i) without regard to sections 125, 402(e)(3), and 402(h)(1)(B), and

''(ii) in the case of employer contributions made pursuant to a salary reduction agreement, without regard to section 403(b).''

Pub. L. 104–188, § 1431(c)(1)(A), redesignated par. (7) as (4).

Subsec. (q)(5). Pub. L. 104–188, § 1434(c)(1)(E), as amended by Pub. L. 105–206, § 6018(c), struck out ''under paragraph (4) or the number of officers taken into account under paragraph (5)'' after ''top-paid group'' in introductory provisions.

Pub. L. 104–188, § 1431(c)(1)(A), redesignated par. (8) as (5) and struck out former par. (5) which read as follows: ''SPECIAL RULES FOR TREATMENT OF OFFICERS.—

''(A) NOT MORE THAN 50 OFFICERS TAKEN INTO ACCOUNT.—For purposes of paragraph (1)(D), no more than 50 employees (or, if lesser, the greater of 3 employees or 10 percent of the employees) shall be treated as officers.

''(B) AT LEAST 1 OFFICER TAKEN INTO ACCOUNT.—If for any year no officer of the employer is described in

paragraph (1)(D), the highest paid officer of the employer for such year shall be treated as described in such paragraph.''

Subsec. (q)(6). Pub. L. 104–188, §1431(b)(1), (c)(1)(A), redesignated par. (9) as (6) and struck out former par. (6) which related to treatment of families of 5-percent owners or of highly compensated employees.

Subsec. (q)(7). Pub. L. 104–188, §1462(a), added par. (7) relating to certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans.

Pub. L. 104–188, §1431(c)(1)(A), redesignated par. (10), relating to coordination with other provisions, as (7). Former par. (7) redesignated (4).

Subsec. (q)(8) to (12). Pub. L. 104–188, §1431(c)(1)(A), redesignated pars. (8) to (11) as (5) to (8), respectively, and struck out par. (12) which related to simplified method for determining highly compensated employees.

Subsec. (r)(2)(A). Pub. L. 104–188, §1431(c)(1)(D), substituted ''subsection (q)(5)'' for ''subsection (q)(8)''.

Subsec. (s)(2). Pub. L. 104–188, §1434(b)(2), inserted ''not'' after ''elect'' in heading and in text.

Subsec. (u). Pub. L. 104–188, §1704(n)(1), added subsec. (u).

1992—Subsec. (n)(5)(C)(iii)(I). Pub. L. 102–318, §521(b)(20), substituted ''402(e)(3)'' for ''402(a)(8)''.

Subsec. (q)(7)(B)(i). Pub. L. 102–318, §521(b)(21), substituted ''402(e)(3)'' for ''402(a)(8)''.

Subsec. (s)(2). Pub. L. 102–318, §521(b)(22), substituted ''402(e)(3)'' for ''402(a)(8)''.

1990—Subsec. (n)(2)(B). Pub. L. 101–508 struck out ''(6 months in the case of core health benefits)'' after ''1 year''.

1989—Subsec. (n)(3)(C). Pub. L. 101–239, §7813(b), amended directory language of Pub. L. 100–647, §3011(b)(4), see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(6)(A), struck out ''89,'' after ''79,''.

Subsec. (p)(10). Pub. L. 101–239, §7811(m)(5), inserted ''section'' before ''403(b)''.

Subsec. (p)(11). Pub. L. 101–239, §7841(a)(2), added par. (11) and redesignated former par. (11) as (12).

Subsec. (r)(1). Pub. L. 101–140, §204(b)(2), substituted ''sections 129(d)(8) and 410(b)'' for ''section 410(b)''.

Pub. L. 101–140, §203(a)(6)(B), substituted ''section 410(b)'' for ''sections 89 and 410(b)''.

Subsec. (t)(2). Pub. L. 101–239, §7813(b), amended directory language of Pub. L. 100–647, §3011(b)(5), see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(6)(C), struck out ''89,'' after ''79,''.

1988—Subsec. (k)(2). Pub. L. 100–647, §1011A(b)(3), inserted ''72(d) (relating to treatment of employee contributions as separate contract),'' after ''purposes of sections''.

Subsec. (*l*). Pub. L. 100–647, §2005(c)(1), (2), substituted ''Merger'' for ''Mergers'' in heading, designated existing provision as par. (1), inserted par. (1) heading, and added par. (2).

Subsec. (*l*)(2)(G). Pub. L. 100–647, §6067(a), added subpar. (G).

Subsec. (m)(4)(A). Pub. L. 100–647, §1011(h)(5), substituted ''(16), (17), and (26)'' for ''and (16)''.

Subsec. (m)(4)(C), (D). Pub. L. 100–647, §1011B(a)(16), struck out subpars. (C) and (D) which read as follows:

''(C) section 105(h), and

''(D) section 125.''

Subsec. (n)(3)(A). Pub. L. 100–647, §1011(h)(5), substituted ''(16), (17), and (26)'' for ''and (16)''.

Subsec. (n)(3)(C). Pub. L. 100–647, §3011(b)(4), as amended by Pub. L. 101–239, §7813(b), struck out ''162(i)(2), 162(k),'' after ''132,'' and substituted ''505, and 4980B'' for ''and 505''.

Pub. L. 100–647, §1011B(a)(19), inserted ''162(i)(2), 162(k),'' after ''132,''.

Subsec. (*o*). Pub. L. 100–647, §1011(e)(4), inserted ''or any requirement under section 457'' after ''or (n)(3)''.

Subsec. (p)(4)(B). Pub. L. 100–647, §1018(t)(8)(E), substituted ''means the earlier of'' for ''means earlier of'' and struck out ''in'' at beginning of cls. (i) and (ii).

Subsec. (p)(9). Pub. L. 100–647, §1018(t)(8)(G), inserted at end ''For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies.''

Subsec. (p)(10). Pub. L. 100–647, §1018(t)(8)(F), inserted '', 403(b),'' after ''section 401''.

Subsec. (q)(1). Pub. L. 100–647, §1011(i)(1), inserted at end ''The Secretary shall adjust the $75,000 and $50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d).''

Subsec. (q)(1)(D). Pub. L. 100–647, §1011(d)(8), substituted ''50'' for ''150'' and ''415(b)(1)(A)'' for ''415(c)(1)(A)''.

Subsec. (q)(6)(C). Pub. L. 100–647, §1011(i)(2), added subpar. (C).

Subsec. (q)(8). Pub. L. 100–647, §1011(i)(4)(A), inserted ''or the number of officers taken into account under paragraph (5)'' after ''under paragraph (4)''.

Pub. L. 100–647, §1011(i)(3)(A)(ii), substituted ''Except as provided by the Secretary, the employer'' for ''The employer'' in last sentence.

Subsec. (q)(8)(F). Pub. L. 100–647, §1011(i)(3)(A)(i), struck out subpar. (F) which read as follows: ''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)).''

Subsec. (q)(11). Pub. L. 100–647, §1011(i)(3)(B), added par. (11).

Subsec. (q)(12). Pub. L. 100–647, §3021(b)(1), added par. (12).

Subsec. (r)(3). Pub. L. 100–647, §3021(b)(2)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

''(A) not less than one-half, and

''(B) not more than twice,

the percentage which highly compensated employees are of all employees of the employer. An employer shall be treated as meeting the requirements of subparagraph (A) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business.''

Subsec. (s). Pub. L. 100–647, §1011(j)(1), substituted ''any applicable provision'' for ''this part'' in introductory provisions.

Subsec. (s)(1). Pub. L. 100–647, §1011(j)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'compensation' means compensation for service performed for an employer which (taking into account the provisions of this chapter) is currently includible in gross income.''

Subsec. (s)(2) to (4). Pub. L. 100–647, §1011(j)(2), added par. (4), redesignated former pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''The Secretary shall prescribe regulations for the determination of the compensation of an employee who is a self-employed individual (within the meaning of section 401(c)(1)) which are based on the principles of paragraph (1).''

Subsec. (t)(1). Pub. L. 100–647, §1011B(a)(20), struck out ''of section 414'' before ''shall be treated'' and ''shall apply with''.

Subsec. (t)(2). Pub. L. 100–647, §3011(b)(5), as amended by Pub. L. 101–239, §7813(b), struck out ''162(i)(2), 162(k),'' after ''132,'' and substituted ''505, or 4980B'' for ''or 505''.

Pub. L. 100–647, §1011B(a)(17), inserted ''162(i)(2), 162(k),'' after ''132,''.

1987—Subsec. (b). Pub. L. 100–203 struck out ''the minimum funding standard of section 412, the tax imposed by section 4971, and'' after ''one such corporation,''.

1986—Subsec. (k)(2). Pub. L. 99–514, §1117(c), inserted reference to section 401(m) (relating to nondiscrimina-

tion tests for matching requirements and employee contributions).

Subsec. (m)(2)(B)(ii). Pub. L. 99–514, § 1114(b)(11), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, highly compensated employees, or owners''.

Subsec. (m)(5). Pub. L. 99–514, § 1301(j)(4), substituted ''section 144(a)(3)'' for ''section 103(b)(6)(C)''.

Subsec. (m)(7). Pub. L. 99–514, § 1852(f), amended directory language of Pub. L. 98–369, § 526(d)(2), to correct an error, and did not involve any change in text. See 1984 Amendment note below.

Subsec. (n)(1). Pub. L. 99–514, § 1151(i)(1), substituted ''requirements'' for ''pension requirements''.

Pub. L. 99–514, § 1146(b)(2), struck out ''except to the extent otherwise provided in regulations,'' after ''listed in paragraph (3),''.

Subsec. (n)(2)(B). Pub. L. 99–514, § 1151(i)(2), inserted ''(6 months in the case of core health benefits)'' after ''1 year''.

Subsec. (n)(3). Pub. L. 99–514, § 1151(i)(3), substituted ''Requirements'' for ''Pension requirements'' in heading, substituted ''requirements'' for ''pension requirements'' in text, and added subpar. (C).

Subsec. (n)(4). Pub. L. 99–514, § 1146(a)(2), substituted ''Time when first considered as employee'' for ''Time when leased employee is first considered as employee'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of any leased employee, paragraph (1) shall apply only for purposes of determining whether the pension requirements listed in paragraph (3) are met for periods after the close of the 1-year period referred to in paragraph (2); except that years of service for the recipient shall be determined by taking into account the entire period for which the leased employee performed services for the recipient (or related persons).''

Subsec. (n)(5). Pub. L. 99–514, § 1146(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''This subsection shall not apply to any leased employee if such employee is covered by a plan which is maintained by the leasing organization if, with respect to such employee, such plan—

''(A) is a money purchase pension plan with a nonintegrated employer contribution rate of at least 7½ percent, and

''(B) provides for immediate participation and for full and immediate vesting.''

Subsec. (n)(6). Pub. L. 99–514, § 1301(j)(4), substituted ''section 144(a)(3)'' for ''section 103(b)(6)(C)'' in subpar. (A).

Pub. L. 99–514, § 1146(a)(3), substituted ''Other rules'' for ''Related persons'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection, the term 'related persons' has the same meaning as when used in section 103(b)(6)(C).''

Subsec. (*o*). Pub. L. 99–514, § 1146(b)(1), inserted provision relating to regulations to minimize recordkeeping requirements in case of employer which has no top-heavy plans and uses the services of persons other than employees for an insignificant percentage of the employer's total workload.

Subsec. (p)(1)(B)(i). Pub. L. 99–514, § 1898(c)(7)(A)(ii), inserted ''former spouse,''.

Subsec. (p)(3)(B). Pub. L. 99–514, § 1899A(12), struck out the comma after ''benefits''.

Subsec. (p)(4)(A). Pub. L. 99–514, § 1898(c)(7)(A)(vi), substituted ''A'' for ''In the case of any payment before a participant has separated from service, a'' in introductory provisions and inserted ''in the case of any payment before a participant has separated from service,'' in cl. (i).

Subsec. (p)(4)(B). Pub. L. 99–514, § 1898(c)(7)(A)(vii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this paragraph, the term 'earliest retirement age' has the meaning given such term by section 417(f)(3), except that in the case of any defined contribution plan, the earliest retirement age shall be the date which is 10 years before the normal retirement age (within the meaning of section 411(a)(8)).''

Subsec. (p)(5). Pub. L. 99–514, § 1898(c)(7)(A)(v), struck out last sentence which read as follows: ''A plan shall not be treated as failing to meet the requirements of subsection (a) or (k) of section 401 which prohibit payment of benefits before termination of employment solely by reason of payments to an alternate payee pursuant to a qualified domestic relations order.''

Subsec. (p)(5)(A). Pub. L. 99–514, § 1898(c)(6)(A), inserted ''(and any spouse of the participant shall not be treated as a spouse of the participant for such purposes)''.

Subsec. (p)(5)(B). Pub. L. 99–514, § 1898(c)(7)(A)(iv), substituted ''the surviving former spouse'' for ''the surviving spouse''.

Subsec. (p)(6)(A)(i). Pub. L. 99–514, § 1898(c)(7)(A)(iii), substituted ''each alternate payee'' for ''any other alternate payee''.

Subsec. (p)(7)(A). Pub. L. 99–514, § 1898(c)(2)(A)(i), substituted ''shall separately account for the amounts (hereinafter in this paragraph referred to as the 'segregated amounts')'' for ''shall segregate in a separate account in the plan or in an escrow account the amounts''.

Subsec. (p)(7)(B). Pub. L. 99–514, § 1898(c)(2)(A)(ii), substituted ''the 18-month period described in subparagraph (E)'' for ''18 months'' and ''including any interest'' for ''plus any interest''.

Subsec. (p)(7)(C). Pub. L. 99–514, § 1898(c)(2)(A)(iii), substituted ''the 18-month period described in subparagraph (E)'' for ''18 months'' and ''including any interest'' for ''plus any interest''.

Subsec. (p)(7)(D). Pub. L. 99–514, § 1898(c)(2)(A)(iv), inserted ''described in subparagraph (E)''.

Subsec. (p)(7)(E). Pub. L. 99–514, § 1898(c)(2)(A)(v), added subpar. (E).

Subsec. (p)(9). Pub. L. 99–514, § 1898(c)(4)(A), added par. (9). Former par. (9) redesignated (11).

Subsec. (p)(10). Pub. L. 99–514, § 1898(c)(7)(A)(v), added par. (10).

Subsec. (p)(11). Pub. L. 99–514, § 1898(c)(4)(A), redesignated former par. (9) as (11).

Subsec. (q). Pub. L. 99–514, § 1114(a), added subsec. (q).

Subsecs. (r), (s). Pub. L. 99–514, § 1115(a), added subsecs. (r) and (s).

Subsec. (t). Pub. L. 99–514, § 1151(e)(1), added subsec. (t).

1984—Subsec. (h)(1)(B). Pub. L. 98–369, § 491(d)(26), struck out ''or 405(a)'' after ''section 403(a)''.

Subsec. (*l*). Pub. L. 98–369, § 491(d)(27), struck out ''or 405'' after ''section 403(a)''.

Subsec. (m)(6)(B). Pub. L. 98–369, § 526(a)(1), substituted ''section 318(a)'' for ''section 267(c)''.

Subsec. (m)(7). Pub. L. 98–369, § 526(d)(2), as amended by Pub. L. 99–514, § 1852(f), struck out par. (7) relating to regulations. See subsec. (*o*) of this section.

Subsec. (n)(2). Pub. L. 98–369, §§ 526(b)(1), 713(i), made identical amendments, substituting ''any person who is not an employee of the recipient and'' for ''any person'' in text preceding subpar. (A).

Subsec. (*o*). Pub. L. 98–369, § 526(d)(1), added subsec. (*o*).

Subsec. (p). Pub. L. 98–397 added subsec. (p).

1982—Subsecs. (b), (c). Pub. L. 97–248, § 240(c)(1), inserted reference to section 416.

Subsec. (m)(4)(B). Pub. L. 97–248, § 240(c)(2), inserted reference to section 416.

Subsec. (m)(5) to (7). Pub. L. 97–248, § 246(a), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (n). Pub. L. 97–248, § 248(a), added subsec. (n).

1980—Subsec. (e). Pub. L. 96–364, § 407(b), substituted provisions defining ''church plan'' with respect to general requirements, exclusion of certain plans, definitions and other provisions, and correction of failures to meet church plan requirements, for provisions defining ''church plan'' with respect to general requirements, certain unrelated business or multiemployer plans, and special temporary rules for certain church agencies under church plan.

Subsec. (f). Pub. L. 96–364, §207, substituted provisions setting forth definition, cases of common control, continuation of status after termination, transitional rule, and special election with respect to a multiemployer plan, for provisions setting forth definition and special rules with respect to a multiemployer plan.

Subsec. (*l*). 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. (m). Pub. L. 96–605 and Pub. L. 96–613 added an identical subsec. (m).

1978—Subsecs. (b), (c). Pub. L. 95–600 inserted ''408(k),'' after ''sections 401,'' wherever appearing.

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

Subsec. (f). Pub. L. 94–455, §1901(a)(64)(A), substituted ''Plan'' for ''plan'' in heading.

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

Subsec. (*l*). Pub. L. 94–455, §1901(a)(64)(B), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974.

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 section 104(b) of 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.

Amendment by section 105(b)(1) of Pub. L. 110–245 applicable to years beginning after December 31, 2008, see section 105(b)(3) of Pub. L. 110–245, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VI, §6611(c), May 25, 2007, 121 Stat. 181, provided that: ''The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall take effect as if included in section 1106 of the Pension Protection Act of 2006 [Pub. L. 109–280].''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(c) of Pub. L. 109–280 applicable to plan years beginning after 2007, see section 114(g)(1) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Amendment by section 902(d)(1) of Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109–280, set out as a note under section 401 of this title.

Pub. L. 109–280, title IX, §903(c), Aug. 17, 2006, 120 Stat. 1048, provided that: ''The amendments made by this section [amending this section and section 1060 of Title 29, Labor] shall apply to plan years beginning after December 31, 2009.''

Pub. L. 109–280, title IX, §906(c), Aug. 17, 2006, 120 Stat. 1052, provided that: ''The amendments made by this section [amending this section, section 415 of this title, and sections 1002 and 1321 of Title 29, Labor] shall apply to any year beginning on or after the date of the enactment of this Act [Aug. 17, 2006].''

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, §631(b), June 7, 2001, 115 Stat. 113, provided that: ''The amendment made by this section [amending this section] shall apply to contributions in taxable years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, §635(d), June 7, 2001, 115 Stat. 117, provided that: ''The amendment made by this section [amending this section] shall apply to transfers, distributions, and payments made 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 6018 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.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1522(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1997.''

Amendment by section 1601(d)(6)(A), (7), (h)(2)(D)(i), (ii) 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(b)(9)(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.

Section 1431(d) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section, sections 129, 401, 404, 408, and 416 of this title, and provisions set out as a note below] shall apply to years beginning after December 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendments shall be treated as having been in effect for years beginning in 1996.

''(2) FAMILY AGGREGATION.—The amendments made by subsection (b) [amending this section and sections 401 and 404 of this title] shall apply to years beginning after December 31, 1996.''

Section 1434(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply to years beginning after December 31, 1997.''

Section 1454(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, but shall not apply to any relationship determined under an Internal Revenue Service ruling issued before the date of the enactment of this Act [Aug. 20, 1996] pursuant to section 414(n)(2)(C) of the Internal Revenue Code of 1986 (as in effect on the day before such date) not to involve a leased employee.''

Amendment by section 1461(a) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, see section 1461(c) of Pub. L. 104–188, set out as a note under section 404 of this title.

Section 1462(c) of Pub. L. 104–188 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1704(n)(3) of Pub. L. 104–188 provided that: ''The amendments made by this subsection [amending this section and section 1108 of Title 29, Labor] shall be effective as of December 12, 1994.''

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 1990 AMENDMENT

Section 11703(b)(2) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [probably means par. (1), which amended this section] shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by sections 7811(m)(5) and 7813(b) 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 7841(a)(2) of Pub. L. 101–239 applicable to transfers after Dec. 19, 1989, in taxable years ending after such date, see section 7841(a)(3) of Pub. L. 101–239, set out as a note under section 408 of this title.

Amendment by section 203(a)(6) of 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.

Amendment by section 204(b)(2) of Pub. L. 101–140 applicable to years beginning after Dec. 31, 1988, see section 204(d)(1) of Pub. L. 101–140, set out as a note under section 129 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(8), (e)(4), (h)(5), (i)(1)–(4)(A), (j)(1), (2), 1011A(b)(3), 1011B(a)(16), (17), (19), (20), and 1018(t)(8)(E)–(G) 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(c)(3) of Pub. L. 100–647 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall apply with respect to transactions occurring after July 26, 1988.

''(B) The amendments made by this subsection shall not apply to any transaction occurring after July 26, 1988, if on or before such date the board of directors of the employer, approves such transaction or the employer took similar binding action.''

Amendment by section 3011(b)(4), (5) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of this title.

Amendment by section 3021(b)(1), (2)(A) of Pub. L. 100–647 applicable to years beginning after Dec. 31, 1986, see section 3021(d)(2) of Pub. L. 100–647, set out as a note under section 129 of this title.

Section 6067(c) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, § 7816(k), Dec. 19, 1989, 103 Stat. 2421, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 2005(c) of this Act [amending this section].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to plan years beginning after Dec. 31, 1987, see section 9305(d) of Pub. L. 100–203, set out as a note under section 412 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1114(c) of Pub. L. 99–514, as amended by Pub. L. 104–188, title I, § 1431(c)(2), Aug. 20, 1996, 110 Stat. 1803; Pub. L. 107–16, title VI, § 663(a), June 7, 2001, 115 Stat. 142, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by this section [amending this section and sections 106, 274, 423, and 501 of this title] shall apply to years beginning after December 31, 1986.

''(2) CONFORMING AMENDMENTS TO EMPLOYEE BENEFIT PROVISIONS.—The amendments made by paragraphs (2), (3), (4), (5), and (16) of subsection (b) [amending sections 117, 120, 127, 129, 132, and 505 of this title] shall apply to years beginning after December 31, 1987.

''(3) CONFORMING AMENDMENTS TO PENSION PROVISIONS.—The amendments made by paragraphs (7), (8), (9), (10), (11), (12), and (15) of subsection (b) [amending this section and sections 401, 404A, 406, 407, 411, 415, and 4975 of this title and section 1108 of Title 29, Labor] shall apply to years beginning after December 31, 1988.''

[Pub. L. 107–16, title VI, § 663(b), June 7, 2001, 115 Stat. 143, provided that: ''The repeal made by subsection (a) [repealing par. (4) of section 1114(c) of Pub. L. 99–514, set out above] shall apply to plan years beginning after December 31, 2001.'']

Section 1115(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1986.''

Amendment by section 1117(c) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and for annuity contracts under section 403(b) of this title, see section 1117(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Section 1146(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983.

''(2) SUBSECTION (a)(1).—The amendment made by subsection (a)(1) shall apply to services performed after December 31, 1986.

''(3) RECORDKEEPING REQUIREMENTS.—In the case of years beginning before the date of the enactment of this Act [Oct. 22, 1986], the last sentence of section 414(*o*) shall be applied without regard to the requirement that an insignificant percentage of the workload be performed by persons other than employees.''

Amendment by section 1151(e)(1), (i) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1301(j)(4) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

Amendment by section 1852(f) 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 1898(c)(2)(A), (4)(A), (6)(A), (7)(A)(ii)–(vii) 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.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 491(d)(26), (27) 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 526(a)(2) of Pub. L. 98–369 provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Section 526(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1983.''

Section 526(d)(3) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 713(i) 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

Amendment by section 240(c) of Pub. L. 97–248, applicable to years beginning after Dec. 31, 1983, see section 241(a) of Pub. L. 97–248, set out as a note under section 416 of this title.

Section 246(b) of Pub. L. 97–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983.''

Section 248(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 201(c) of Pub. L. 96–605 and section 5(c) of Pub. L. 96–613, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 105 and 125 of this title] shall apply to plan years ending after November 30, 1980.

''(2) PLANS IN EXISTENCE ON NOVEMBER 30, 1980.—In the case of a plan in existence on November 30, 1980, the amendments made by this section [amending this section and sections 105 and 125 of this title] shall apply to plan years beginning after November 30, 1980.''

Section 407(c) of Pub. L. 96–364 provided that: ''The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall be effective as of January 1, 1974.''

Amendment by sections 207 and 208(a) 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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by 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 AMENDMENT

Amendment by section 1901(a)(64) 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

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, 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.

REGULATIONS

Pub. L. 109–280, title X, §1001, Aug. 17, 2006, 120 Stat. 1052, provided that: ''Not later than 1 year after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of Labor shall issue regulations under section 206(d)(3) of the Employee Retirement Security Act of 1974 [29 U.S.C. 1056(d)(3)] and section 414(p) of the Internal Revenue Code of 1986 which clarify that—

''(1) a domestic relations order otherwise meeting the requirements to be a qualified domestic relations order, including the requirements of section 206(d)(3)(D) of such Act and section 414(p)(3) of such Code, shall not fail to be treated as a qualified domestic relations order solely because—

''(A) the order is issued after, or revises, another domestic relations order or qualified domestic relations order; or

''(B) of the time at which it is issued; and

''(2) any order described in paragraph (1) shall be subject to the same requirements and protections which apply to qualified domestic relations orders, including the provisions of section 206(d)(3)(H) of such Act and section 414(p)(7) of such Code.''

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1114, 1115, and 1117 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PROVISIONS RELATING TO PLAN AMENDMENTS PURSUANT TO PUB. L. 110–245

Pub. L. 110–245, title I, §105(c), June 17, 2008, 122 Stat. 1629, provided that:

''(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i).

''(2) AMENDMENTS TO WHICH SECTION APPLIES.—

''(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

''(i) pursuant to any amendment made by subsection (b)(1) [amending this section], 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 subparagraph shall be applied by substituting '2012' for '2010' in clause (ii).

''(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

''(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect, and

''(ii) such plan or contract amendment applies retroactively for such period.''

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.

SAMPLE LANGUAGE FOR SPOUSAL CONSENT AND QUALIFIED DOMESTIC RELATIONS FORMS

Section 1457 of Pub. L. 104–188 provided that:

''(a) DEVELOPMENT OF SAMPLE LANGUAGE.—Not later than January 1, 1997, the Secretary of the Treasury shall develop—

''(1) sample language for inclusion in a form for the spousal consent required under section 417(a)(2) of the Internal Revenue Code of 1986 and section 205(c)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1055(c)(2)] which—

''(A) is written in a manner calculated to be understood by the average person, and

''(B) discloses in plain form—

''(i) whether the waiver to which the spouse consents is irrevocable, and

''(ii) whether such waiver may be revoked by a qualified domestic relations order, and

''(2) sample language for inclusion in a form for a qualified domestic relations order described in section 414(p)(1)(A) of such Code and section 206(d)(3)(B)(i) of such Act [29 U.S.C. 1056(d)(3)(B)(i)] which—

''(A) meets the requirements contained in such sections, and

''(B) the provisions of which focus attention on the need to consider the treatment of any lump sum payment, qualified joint and survivor annuity, or qualified preretirement survivor annuity.

''(b) PUBLICITY.—The Secretary of the Treasury shall include publicity for the sample language developed under subsection (a) in the pension outreach efforts undertaken by the Secretary.''

SAFEHARBOR AUTHORITY

Section 1462(b) of Pub. L. 104–188 provided that: ''The Secretary of the Treasury may design nondiscrimination and coverage safe harbors for church plans.''

APPLICATION OF LINE OF BUSINESS TEST FOR PERIOD BEFORE GUIDELINES ISSUED

Section 204(b)(1) of Pub. L. 101–140 provided that: ''In the case of any plan year beginning on or before the date the Secretary of the Treasury or his delegate issues guidelines and begins issuing determinations under section 414(r)(2)(C) of the Internal Revenue Code of 1986, an employer shall be treated as operating separate lines of business if the employer reasonably determines that it meets the requirements of section 414(r) (other than paragraph (2)(C) thereof) of such Code.''

[Section 204(d)(3) of Pub. L. 101–140 provided that: ''The provisions of subsection (b)(1) [set out above] shall apply to years beginning after December 31, 1986.'']

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514 FOR FISCAL YEAR 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

STUDY REFLECTING ALLOCATION OF ASSETS

Section 6067(b) of Pub. L. 100–647 directed Secretary of the Treasury or his delegate, in consultation with Federal Deposit Insurance Corporation, to conduct a study with respect to proper method of allocating assets in case of a transaction to which the amendment made by such section and, not later than Jan. 1, 1990 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, § 11831(b), Nov. 5, 1990, 104 Stat. 1388–559) to report results of such study to Committee on Ways and Means of House of Representatives and to Committee on Finance of Senate.

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.

§ 415. Limitations on benefits and contribution under qualified plans

(a) General rule

(1) Trusts

A trust which is a part of a pension, profit-sharing, or stock bonus plan shall not constitute a qualified trust under section 401(a) if—

(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b), or

(B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of subsection (c).

(2) Section applies to certain annuities and accounts

In the case of—

(A) an employee annuity plan described in section 403(a),

(B) an annuity contract described in section 403(b), or

(C) a simplified employee pension described in section 408(k),

such a contract, plan, or pension shall not be considered to be described in section 403(a), 403(b), or 408(k), as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate.

(b) Limitation for defined benefit plans

(1) In general

Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—

(A) $160,000, or

(B) 100 percent of the participant's average compensation for his high 3 years.

(2) Annual benefit

(A) In general

For purposes of paragraph (1), the term ''annual benefit'' means a benefit payable

annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) are made.

(B) Adjustment for certain other forms of benefit

If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 417) shall not be taken into account.

(C) Adjustment to $160,000 limit where benefit begins before age 62

If the retirement income benefit under the plan begins before age 62, the determination as to whether the $160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by reducing the limitation of paragraph (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $160,000 annual benefit beginning at age 62.

(D) Adjustment to $160,000 limit where benefit begins after age 65

If the retirement income benefit under the plan begins after age 65, the determination as to whether the $160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by increasing the limitation of paragraph (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $160,000 annual benefit beginning at age 65.

(E) Limitation on certain assumptions

(i) For purposes of adjusting any limitation under subparagraph (C) and, except as provided in clause (ii), for purposes of adjusting any benefit under subparagraph (B), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.

(ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the interest rate assumption shall not be less than the greatest of—

(I) 5.5 percent,

(II) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in section 417(e)(3)) were the interest rate assumption, or

(III) the rate specified under the plan.

(iii) For purposes of adjusting any limitation under subparagraph (D), the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the plan.

(iv) For purposes of this subsection, no adjustments under subsection (d)(1) shall be taken into account before the year for which such adjustment first takes effect.

(v) For purposes of adjusting any benefit or limitation under subparagraph (B), (C), or (D), the mortality table used shall be the applicable mortality table (within the meaning of section 417(e)(3)(B)).

(vi) In the case of a plan maintained by an eligible employer (as defined in section 408(p)(2)(C)(i)), clause (ii) shall be applied without regard to subclause (II) thereof.

[(F) Repealed. Pub. L. 107–16, title VI, § 611(a)(5)(A), June 7, 2001, 115 Stat. 97]

(G) Special limitation for qualified police or firefighters

In the case of a qualified participant, subparagraph (C) of this paragraph shall not apply.

(H) Qualified participant defined

For purposes of subparagraph (G), the term ''qualified participant'' means a participant—

(i) in a defined benefit plan which is maintained by a State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision thereof,

(ii) with respect to whom the period of service taken into account in determining the amount of the benefit under such defined benefit plan includes at least 15 years of service of the participant—

(I) as a full-time employee of any police department or fire department which is organized and operated by the State, Indian tribal government (as so defined), or any political subdivision maintaining such defined benefit plan to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State, Indian tribal government (as so defined), or any political subdivision, or

(II) as a member of the Armed Forces of the United States.

(I) Exemption for survivor and disability benefits provided under governmental plans

Subparagraph (C) of this paragraph and paragraph (5) shall not apply to—

(i) income received from a governmental plan (as defined in section 414(d)) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled

by reason of personal injuries or sickness, or

(ii) amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.

(3) Average compensation for high 3 years

For purposes of paragraph (1), a participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401(c)(1), the preceding sentence shall be applied by substituting for ''compensation from the employer'' the following: ''the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)''.

(4) Total annual benefits not in excess of $10,000

Notwithstanding the preceding provisions of this subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitation of this subsection if—

(A) the retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed $10,000 for the plan year, or for any prior plan year, and

(B) the employer has not at any time maintained a defined contribution plan in which the participant participated.

(5) Reduction for participation or service of less than 10 years

(A) Dollar limitation

In the case of an employee who has less than 10 years of participation in a defined benefit plan, the limitation referred to in paragraph (1)(A) shall be the limitation determined under such paragraph (without regard to this paragraph) multiplied by a fraction—

(i) the numerator of which is the number of years (or part thereof) of participation in the defined benefit plan of the employer, and

(ii) the denominator of which is 10.

(B) Compensation and benefits limitations

The provisions of subparagraph (A) shall apply to the limitations under paragraphs (1)(B) and (4), except that such subparagraph shall be applied with respect to years of service with an employer rather than years of participation in a plan.

(C) Limitation on reduction

In no event shall subparagraph (A) or (B) reduce the limitations referred to in paragraphs (1) and (4) to an amount less than 1/10 of such limitation (determined without regard to this paragraph).

(D) Application to changes in benefit structure

To the extent provided in regulations, subparagraph (A) shall be applied separately with respect to each change in the benefit structure of a plan.

(6) Computation of benefits and contributions

The computation of—

(A) benefits under a defined contribution plan, for purposes of section 401(a)(4),

(B) contributions made on behalf of a participant in a defined benefit plan, for purposes of section 401(a)(4), and

(C) contributions and benefits provided for a participant in a plan described in section 414(k), for purposes of this section

shall not be made on a basis inconsistent with regulations prescribed by the Secretary.

(7) Benefits under certain collectively bargained plans

For a year, the limitation referred to in paragraph (1)(B) shall not apply to benefits with respect to a participant under a defined benefit plan (other than a multiemployer plan)—

(A) which is maintained for such year pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(B) which, at all times during such year, has at least 100 participants,

(C) under which benefits are determined solely by reference to length of service, the particular years during which service was rendered, age at retirement, and date of retirement,

(D) which provides that an employee who has at least 4 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions, and

(E) which requires, as a condition of participation in the plan, that an employee complete a period of not more than 60 consecutive days of service with the employer or employers maintaining the plan.

This paragraph shall not apply to a participant whose compensation for any 3 years during the 10-year period immediately preceding the year in which he separates from service exceeded the average compensation for such 3 years of all participants in such plan. This paragraph shall not apply to a participant for any period for which he is a participant under another plan to which this section applies which is maintained by an employer maintaining this plan. For any year for which the paragraph applies to benefits with respect to a participant, paragraph (1)(A) and subsection (d)(1)(A) shall be applied with respect to such participant by substituting one-half the amount otherwise applicable for such year under paragraph (1)(A) for ''$160,000''.

(8) Social security retirement age defined

For purposes of this subsection, the term ''social security retirement age'' means the age used as the retirement age under section 216(*l*) of the Social Security Act, except that such section shall be applied—

(A) without regard to the age increase factor, and

(B) as if the early retirement age under section 216(*l*)(2) of such Act were 62.

(9) Special rule for commercial airline pilots

(A) In general

Except as provided in subparagraph (B), in the case of any participant who is a commercial airline pilot, if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before age 62, paragraph (2)(C) shall be applied by substituting such age for age 62.

(B) Individuals who separate from service before age 60

If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(C) shall apply.

(10) Special rule for State, Indian tribal, and local government plans

(A) Limitation to equal accrued benefit

In the case of a plan maintained for its employees by any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments), the limitation with respect to a qualified participant under this subsection shall not be less than the accrued benefit of the participant under the plan (determined without regard to any amendment of the plan made after October 14, 1987).

(B) Qualified participant

For purposes of this paragraph, the term ''qualified participant'' means a participant who first became a participant in the plan maintained by the employer before January 1, 1990.

(C) Election

(i) In general

This paragraph shall not apply to any plan unless each employer maintaining the plan elects before the close of the 1st plan year beginning after December 31, 1989, to have this subsection (other than paragraph (2)(G)).

(ii) Revocation of election

An election under clause (i) may be revoked not later than the last day of the third plan year beginning after the date of the enactment of this clause. The revocation shall apply to all plan years to which the election applied and to all subsequent plan years. Any amount paid by a plan in a taxable year ending after the revocation shall be includible in income in such taxable year under the rules of this chapter in effect for such taxable year, except that, for purposes of applying the limitations imposed by this section, any portion of such amount which is attributable to any taxable year during which the election was in effect shall be treated as received in such taxable year.

(11) Special limitation rule for governmental and multiemployer plans

In the case of a governmental plan (as defined in section 414(d)) or a multiemployer plan (as defined in section 414(f)), subparagraph (B) of paragraph (1) shall not apply. Subparagraph (B) of paragraph (1) shall not apply to a plan maintained by an organization described in section 3121(w)(3)(A) except with respect to highly compensated benefits. For purposes of this paragraph, the term ''highly compensated benefits'' means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q)) of the organization described in section 3121(w)(3)(A). For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account.

(c) Limitation for defined contribution plans

(1) In general

Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of—

(A) $40,000, or

(B) 100 percent of the participant's compensation.

(2) Annual addition

For purposes of paragraph (1), the term ''annual addition'' means the sum of any year of—

(A) employer contributions,

(B) the employee contributions, and

(C) forfeitures.

For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) without regard to employee contributions to a simplified employee pension which are excludable from gross income under section 408(k)(6). Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2)) after separation from service which is treated as an annual addition.

(3) Participant's compensation

For purposes of paragraph (1)—

(A) In general

The term ''participant's compensation'' means the compensation of the participant from the employer for the year.

(B) Special rule for self-employed individuals

In the case of an employee within the meaning of section 401(c)(1), subparagraph (A) shall be applied by substituting ''the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)'' for ''compensation of the participant from the employer''.

(C) Special rules for permanent and total disability

In the case of a participant in any defined contribution plan—

(i) who is permanently and totally disabled (as defined in section 22(e)(3)),

(ii) who is not a highly compensated employee (within the meaning of section 414(q)), and

(iii) with respect to whom the employer elects, at such time and in such manner as the Secretary may prescribe, to have this subparagraph apply,

the term ''participant's compensation'' means the compensation the participant would have received for the year if the participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled. This subparagraph shall apply only if contributions made with respect to amounts treated as compensation under this subparagraph are nonforfeitable when made. If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii).

(D) Certain deferrals included

The term ''participant's compensation'' shall include—

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

(ii) 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.

(E) Annuity contracts

In the case of an annuity contract described in section 403(b), the term ''participant's compensation'' means the participant's includible compensation determined under section 403(b)(3).

[(4) Repealed. Pub. L. 107–16, title VI, § 632(a)(3)(E), June 7, 2001, 115 Stat. 114]

[(5) Repealed. Pub. L. 97–248, title II, § 238(d)(5), Sept. 3, 1982, 96 Stat. 513]

(6) Special rule for employee stock ownership plans

If no more than one-third of the employer contributions to an employee stock ownership plan (as described in section 4975(e)(7)) for a year which are deductible under paragraph (9) of section 404(a) are allocated to highly compensated employees (within the meaning of section 414(q)), the limitations imposed by this section shall not apply to—

(A) forfeitures of employer securities (within the meaning of section 409) under such an employee stock ownership plan if such securities were acquired with the proceeds of a loan (as described in section 404(a)(9)(A)), or

(B) employer contributions to such an employee stock ownership plan which are deductible under section 404(a)(9)(B) and charged against the participant's account.

The amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year shall not exceed the limitations imposed by this section, but such amount shall not be taken into account in determining whether any other amount exceeds the limitations imposed by this section.

(7) Special rules relating to church plans

(A) Alternative contribution limitation

(i) In general

Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of $10,000.

(ii) $40,000 aggregate limitation

The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed $40,000.

(B) Number of years of service for duly ordained, commissioned, or licensed ministers or lay employees

For purposes of this paragraph—

(i) all years of service by—

(I) a duly ordained, commissioned, or licensed minister of a church, or

(II) a lay person,

as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), shall be considered as years of service for 1 employer, and

(ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer.

(C) Foreign missionaries

In the case of any individual described in subparagraph (B) performing services outside the United States, contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such employee, when expressed as an annual addition to such employee's account, shall not be treated as exceeding the limitation of paragraph (1) if such annual addition is not in excess of $3,000. This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to community property laws) exceeds $17,000.

(D) Annual addition

For purposes of this paragraph, the term ''annual addition'' has the meaning given such term by paragraph (2).

(E) Church, convention or association of churches

For purposes of this paragraph, the terms ''church'' and ''convention or association of churches'' have the same meaning as when used in section 414(e).

(d) Cost-of-living adjustments

(1) In general

The Secretary shall adjust annually—

(A) the $160,000 amount in subsection (b)(1)(A),

(B) in the case of a participant who is separated from service, the amount taken into account under subsection (b)(1)(B), and

(C) the $40,000 amount in subsection (c)(1)(A),

for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.

(2) Method

The regulations prescribed under paragraph (1) shall provide for—

(A) an adjustment with respect to any calendar year based on the increase in the applicable index for the calendar quarter ending September 30 of the preceding calendar year over such index for the base period, and

(B) adjustment procedures which are similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act.

(3) Base period

For purposes of paragraph (2)—

(A) $160,000 amount

The base period taken into account for purposes of paragraph (1)(A) is the calendar quarter beginning July 1, 2001.

(B) Separations after December 31, 1994

The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer after December 31, 1994, is the calendar quarter beginning July 1 of the calendar year preceding the calendar year in which such separation occurs.

(C) Separations before January 1, 1995

The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer before January 1, 1995, is the calendar quarter beginning October 1 of the calendar year preceding the calendar year in which such separation occurs.

(D) $40,000 amount

The base period taken into account for purposes of paragraph (1)(C) is the calendar quarter beginning July 1, 2001.

(4) Rounding

(A) $160,000 amount

Any increase under subparagraph (A) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000. This subparagraph shall also apply for purposes of any provision of this title that provides for adjustments in accordance with the method contained in this subsection, except to the extent provided in such provision.

(B) $40,000 amount

Any increase under subparagraph (C) of paragraph (1) which is not a multiple of $1,000 shall be rounded to the next lowest multiple of $1,000.

[(e) Repealed. Pub. L. 104–188, title I, §1452(a), Aug. 20, 1996, 110 Stat. 1816]

(f) Combining of plans

(1) In general

For purposes of applying the limitations of subsections (b) and (c)—

(A) all defined benefit plans (whether or not terminated) of an employer are to be treated as one defined benefit plan, and

(B) all defined contribution plans (whether or not terminated) of an employer are to be treated as one defined contribution plan.

(2) Exception for multiemployer plans

Notwithstanding paragraph (1) and subsection (g), a multiemployer plan (as defined in section 414(f)) shall not be combined or aggregated—

(A) with any other plan which is not a multiemployer plan for purposes of applying subsection (b)(1)(B) to such other plan, or

(B) with any other multiemployer plan for purposes of applying the limitations established in this section.

(g) Aggregation of plans

Except as provided in subsection (f)(3),[1] the Secretary, in applying the provisions of this section to benefits or contributions under more than one plan maintained by the same employer, and to any trusts, contracts, accounts, or bonds referred to in subsection (a)(2), with respect to which the participant has the control required under section 414(b) or (c), as modified by subsection (h), shall, under regulations prescribed by the Secretary, disqualify one or more trusts, plans, contracts, accounts, or bonds, or any combination thereof until such benefits or contributions do not exceed the limitations contained in this section. In addition to taking into account such other factors as may be necessary to carry out the purposes of subsection (f), the regulations prescribed under this paragraph shall provide that no plan which has been terminated shall be disqualified until all other trusts, plans, contracts, accounts, or bonds have been disqualified.

(h) 50 percent control

For purposes of applying subsections (b) and (c) of section 414 to this section, the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears in section 1563(a)(1).

(i) Records not available for past periods

Where for the period before January 1, 1976, or (if later) the first day of the first plan year of the plan, the records necessary for the applica-

[1] See References in Text note below.

tion of this section are not available, the Secretary may by regulations prescribe alternate methods for determining the amounts to be taken into account for such period.

(j) Regulations; definition of year

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including, but not limited to, regulations defining the term ''year'' for purposes of any provision of this section.

(k) Special rules

(1) Defined benefit plan and defined contribution plan

For purposes of this title, the term ''defined contribution plan'' or ''defined benefit plan'' means a defined contribution plan (within the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is—

(A) a plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a),

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

(C) an annuity contract described in section 403(b), or

(D) a simplified employee pension.

(2) Contributions to provide cost-of-living protection under defined benefit plans

(A) In general

In the case of a defined benefit plan which maintains a qualified cost-of-living arrangement—

(i) any contribution made directly by an employee under such an arrangement shall not be treated as an annual addition for purposes of subsection (c), and

(ii) any benefit under such arrangement which is allocable to an employer contribution which was transferred from a defined contribution plan and to which the requirements of subsection (c) were applied shall, for purposes of subsection (b), be treated as a benefit derived from an employee contribution (and subsection (c) shall not again apply to such contribution by reason of such transfer).

(B) Qualified cost-of-living arrangement defined

For purposes of this paragraph, the term ''qualified cost-of-living arrangement'' means an arrangement under a defined benefit plan which—

(i) provides a cost-of-living adjustment to a benefit provided under such plan or a separate plan subject to the requirements of section 412, and

(ii) meets the requirements of subparagraphs (C), (D), (E), and (F) and such other requirements as the Secretary may prescribe.

(C) Determination of amount of benefit

An arrangement meets the requirement of this subparagraph only if the cost-of-living adjustment of participants is based—

(i) on increases in the cost-of-living after the annuity starting date, and

(ii) on average cost-of-living increases determined by reference to 1 or more indexes prescribed by the Secretary, except that the increase for any year will not be less than 3 percent of the retirement benefit (determined without regard to such increase).

(D) Arrangement elective; time for election

An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may at least be made in the year in which the participant—

(i) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or

(ii) separates from service.

(E) Nondiscrimination requirements

An arrangement shall not meet the requirements of this subparagraph if the Secretary finds that a pattern of discrimination exists with respect to participation.

(F) Special rules for key employees

(i) In general

An arrangement shall not meet the requirements of this paragraph if any key employee is eligible to participate.

(ii) Key employee

For purposes of this subparagraph, the term ''key employee'' has the meaning given such term by section 416(i)(1), except that in the case of a plan other than a top-heavy plan (within the meaning of section 416(g)), such term shall not include an individual who is a key employee solely by reason of section 416(i)(1)(A)(i).

(3) Repayments of cashouts under governmental plans

In the case of any repayment of contributions (including interest thereon) to the governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or under another governmental plan maintained by a State or local government employer within the same State, any such repayment shall not be taken into account for purposes of this section.

(4) Special rules for sections 403(b) and 408

For purposes of this section, any annuity contract described in section 403(b) for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). For purposes of this section, any contribution by an employer to a simplified employee pension plan for an individual for a taxable year shall be treated as an employer contribution to a defined contribution plan for such individual for such year.

***(l)* Treatment of certain medical benefits**

(1) In general

For purposes of this section, contributions allocated to any individual medical benefit ac-

count which is part of a pension or annuity plan shall be treated as an annual addition to a defined contribution plan for purposes of subsection (c). Subparagraph (B) of subsection (c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.

(2) Individual medical benefit account

For purposes of paragraph (1), the term ''individual medical benefit account'' means any separate account—

(A) which is established for a participant under a pension or annuity plan, and

(B) from which benefits described in section 401(h) are payable solely to such participant, his spouse, or his dependents.

(m) Treatment of qualified governmental excess benefit arrangements

(1) Governmental plan not affected

In determining whether a governmental plan (as defined in section 414(d)) meets the requirements of this section, benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account. Income accruing to a governmental plan (or to a trust that is maintained solely for the purpose of providing benefits under a qualified governmental excess benefit arrangement) in respect of a qualified governmental excess benefit arrangement shall constitute income derived from the exercise of an essential governmental function upon which such governmental plan (or trust) shall be exempt from tax under section 115.

(2) Taxation of participant

For purposes of this chapter—

(A) the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and

(B) the treatment of such amounts when so includible by the participant,

shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation not exempt from tax under this chapter and which does not meet the requirements for qualification under section 401.

(3) Qualified governmental excess benefit arrangement

For purposes of this subsection, the term ''qualified governmental excess benefit arrangement'' means a portion of a governmental plan if—

(A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit otherwise payable under the terms of the plan that exceeds the limitations on benefits imposed by this section,

(B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and

(C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits.

(n) Special rules relating to purchase of permissive service credit

(1) In general

If a participant makes 1 or more contributions to a defined benefit governmental plan (within the meaning of section 414(d)) to purchase permissive service credit under such plan, then the requirements of this section shall be treated as met only if—

(A) the requirements of subsection (b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of subsection (b), or

(B) the requirements of subsection (c) are met, determined by treating all such contributions as annual additions for purposes of subsection (c).

(2) Application of limit

For purposes of—

(A) applying paragraph (1)(A), the plan shall not fail to meet the reduced limit under subsection (b)(2)(C) solely by reason of this subsection, and

(B) applying paragraph (1)(B), the plan shall not fail to meet the percentage limitation under subsection (c)(1)(B) solely by reason of this subsection.

(3) Permissive service credit

For purposes of this subsection—

(A) In general

The term ''permissive service credit'' means service credit—

(i) recognized by the governmental plan for purposes of calculating a participant's benefit under the plan,

(ii) which such participant has not received under such governmental plan, and

(iii) which such participant may receive only by making a voluntary additional contribution, in an amount determined under such governmental plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii), may include service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan.

(B) Limitation on nonqualified service credit

A plan shall fail to meet the requirements of this section if—

(i) more than 5 years of nonqualified service credit are taken into account for purposes of this subsection, or

(ii) any nonqualified service credit is taken into account under this subsection before the employee has at least 5 years of participation under the plan.

(C) Nonqualified service credit

For purposes of subparagraph (B), the term ''nonqualified service credit'' means permis-

sive service credit other than that allowed with respect to—

(i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in subsection (k)(3)),

(ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an educational organization described in section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(iii) service as an employee of an association of employees who are described in clause (i), or

(iv) military service (other than qualified military service under section 414(u)) recognized by such governmental plan.

In the case of service described in clause (i), (ii), or (iii), such service will be nonqualified service if recognition of such service would cause a participant to receive a retirement benefit for the same service under more than one plan.

(D) Special rules for trustee-to-trustee transfers

In the case of a trustee-to-trustee transfer to which section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)—

(i) the limitations of subparagraph (B) shall not apply in determining whether the transfer is for the purchase of permissive service credit, and

(ii) the distribution rules applicable under this title to the defined benefit governmental plan to which any amounts are so transferred shall apply to such amounts and any benefits attributable to such amounts.

(Added Pub. L. 93–406, title II, § 2004(a)(2), Sept. 2, 1974, 88 Stat. 979; amended Pub. L. 94–455, title VIII, § 803(b)(4), (f), title XV, §§ 1501(b)(3), 1502(a)(1), 1511(a), title XIX, §§ 1901(a)(65), (b)(8)(D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1584, 1589, 1735–1737, 1741, 1775, 1794, 1834; Pub. L. 95–600, title I, §§ 141(f)(7), 152(g), 153(a), Nov. 6, 1978, 92 Stat. 2795, 2800; Pub. L. 96–222, title I, § 101(a)(7)(L)(i)(VII), (iv)(I), (10)(I), (J)(iii), (11), Apr. 1, 1980, 94 Stat. 199, 200, 203, 204; Pub. L. 96–605, title II, § 222(a), Dec. 28, 1980, 94 Stat. 3528; Pub. L. 97–34, title III, §§ 311(g)(4), (h)(3), 333(b)(1), Aug. 13, 1981, 95 Stat. 281, 282, 297; Pub. L. 97–248, title II, §§ 235(a)–(e), 238(d)(5), 251(c)(1), (2), 253(a), Sept. 3, 1982, 96 Stat. 505–507, 513, 530, 532; Pub. L. 98–21, title I, § 122(c)(5), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title I, § 15, title IV, § 491(d)(28)–(32), (e)(6), title (V), § 528(a), title VII, § 713(a)(1), (3), (d)(4)(B), (7), (k), July 18, 1984, 98 Stat. 505, 850, 853, 876, 955, 956, 958, 960; Pub. L. 99–514, title XI, §§ 1106(a)–(c)(1), (e)–(g), 1108(g)(5), 1114(b)(12), 1174(d)(1), (2), title XVIII, §§ 1847(b)(4), 1852(h)(2), (3), 1875(c)(9), (11), 1898(b)(15)(C), 1899A(13), Oct. 22, 1986, 100 Stat. 2420, 2422, 2424, 2425, 2434, 2451, 2518, 2856, 2869, 2895, 2951, 2958; Pub. L. 100–647, title I, §§ 1011(d)(2), (3), (6), (7), 1018(t)(3)(B), (8)(D), title VI, §§ 6054(a), 6059(a), Nov. 10, 1988, 102 Stat. 3459, 3460, 3588, 3589, 3696, 3699; Pub. L. 101–239, title VII, § 7304(c)(1), Dec. 19, 1989, 103 Stat. 2353; Pub. L. 102–318, title V, § 521(b)(23)–(25), July 3, 1992, 106 Stat. 311, 312; Pub. L. 103–465, title VII, §§ 732(b), 767(b), Dec. 8, 1994, 108 Stat. 5004, 5038; Pub. L. 104–188, title I, §§ 1434(a), 1444(a), (b)(1), (c), (d), 1446(a), 1449(b), 1452(a), (c)(1)–(6), 1704(t)(75), Aug. 20, 1996, 110 Stat. 1807, 1809–1811, 1814, 1816, 1891; Pub. L. 105–34, title XV, §§ 1526(a), (b), 1527(a), 1530(c)(3), (4), Aug. 5, 1997, 111 Stat. 1072–1074, 1078; 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, §§ 611(a), (b), (h), 632(a)(1), (3)(C)–(F), (b)(1), 641(e)(9), (10), 654(a), (b), June 7, 2001, 115 Stat. 96, 97, 100, 113–115, 121, 130, 131; Pub. L. 107–147, title IV, § 411(p)(4), Mar. 9, 2002, 116 Stat. 50; Pub. L. 108–218, title I, § 101(b)(4), Apr. 10, 2004, 118 Stat. 598; Pub. L. 108–311, title IV, §§ 404(b)(2), 408(a)(17), Oct. 4, 2004, 118 Stat. 1188, 1192; Pub. L. 109–135, title IV, §§ 407(b), 412(y), (z), Dec. 21, 2005, 119 Stat. 2635, 2638; Pub. L. 109–280, title III, § 303(a), title VIII, §§ 821(a)–(c), 832(a), 867(a), title IX, § 906(b)(1)(A), (B), Aug. 17, 2006, 120 Stat. 921, 997, 1003, 1025, 1051, 1052; Pub. L. 110–458, title I, §§ 103(b)(2)(B)(i), 108(g), 109(d)(1), 122(a), Dec. 23, 2008, 122 Stat. 5103, 5109, 5112, 5114.)

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 subsecs. (b)(8) and (d)(2)(B), 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. Sections 215(i)(2)(A) and 216(*l*) of the Act enacted sections 415(i)(2)(A) and 416(*l*) of Title 42, respectively. For complete classification of this Act to the Code, see Tables.

The date of the enactment of this clause, referred to in subsec. (b)(10)(C)(ii), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

Subsection (f)(3), referred to in subsec. (g), was redesignated subsection (f)(2) by Pub. L. 100–458, title I, § 108(g), Dec. 23, 2008, 122 Stat. 5109.

AMENDMENTS

2008—Subsec. (b)(2)(E)(v). Pub. L. 110–458, § 103(b)(2)(B)(i), amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: ''For purposes of adjusting any benefit or limitation under subparagraph (B), (C), or (D), the mortality table used shall be the table prescribed by the Secretary. Such table shall be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date the adjustment is being made (without regard to any other subparagraph of section 807(d)(5)).''

Subsec. (b)(2)(E)(vi). Pub. L. 110–458, § 122(a), added cl. (vi).

Subsec. (b)(10). Pub. L. 110–458, §109(d)(1), made technical correction to directory language of Pub. L. 109–280, §906(b)(1)(B)(ii). See 2006 Amendment note below.

Subsec. (f)(2), (3). Pub. L. 110–458, §108(g), redesignated par. (3) as par. (2) and struck out former par. (2) which related to annual compensation taken into account for defined benefit plans.

2006—Subsec. (b)(2)(E)(ii). Pub. L. 109–280, §303(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the applicable interest rate (as defined in section 417(e)(3)) shall be substituted for '5 percent' in clause (i), except that in the case of plan years beginning in 2004 or 2005, '5.5 percent' shall be substituted for '5 percent' in clause (i).''

Subsec. (b)(2)(H)(i). Pub. L. 109–280, §906(b)(1)(A)(i), substituted ''State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision'' for ''State or political subdivision''.

Subsec. (b)(2)(H)(ii)(I). Pub. L. 109–280, §906(b)(1)(A)(ii), substituted ''State, Indian tribal government (as so defined), or any political subdivision'' for ''State or political subdivision'' in two places.

Subsec. (b)(3). Pub. L. 109–280, §832(a), struck out ''both was an active participant in the plan and'' before ''had the greatest''.

Subsec. (b)(10). Pub. L. 109–280, §906(b)(1)(B)(ii), as amended by Pub. L. 110–458, §109(d)(1), substituted ''State, Indian tribal, and'' for ''State and'' in heading.

Subsec. (b)(10)(A). Pub. L. 109–280, §906(b)(1)(B)(i), inserted ''or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments),'' after ''foregoing,''.

Subsec. (b)(11). Pub. L. 109–280, §867(a), inserted at end ''Subparagraph (B) of paragraph (1) shall not apply to a plan maintained by an organization described in section 3121(w)(3)(A) except with respect to highly compensated benefits. For purposes of this paragraph, the term 'highly compensated benefits' means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q)) of the organization described in section 3121(w)(3)(A). For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account.''

Subsec. (n)(1). Pub. L. 109–280, §821(a)(1), substituted ''a participant'' for ''an employee'' in introductory provisions.

Subsec. (n)(3)(A). Pub. L. 109–280, §821(a)(2), inserted concluding provisions.

Subsec. (n)(3)(B)(i), (ii). Pub. L. 109–280, §821(c)(1), substituted ''nonqualified service credit'' for ''permissive service credit attributable to nonqualified service''.

Subsec. (n)(3)(C). Pub. L. 109–280, §821(c)(2), substituted ''service credit'' for ''service'' in heading and ''the term 'nonqualified service credit' means permissive service credit other than that allowed with respect to'' for ''the term 'nonqualified service' means service for which permissive service credit is allowed other than'' in introductory provisions.

Subsec. (n)(3)(C)(ii). Pub. L. 109–280, §821(c)(3), substituted ''or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed'' for ''as determined under State law''.

Subsec. (n)(3)(D). Pub. L. 109–280, §821(b), added subpar. (D).

2005—Subsec. (c)(7)(C). Pub. L. 109–135, §407(b), substituted ''$3,000. This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to community property laws) exceeds $17,000'' for ''the greater of $3,000 or the employee's includible compensation determined under section 403(b)(3)''.

Subsec. (*l*)(1). Pub. L. 109–135, §412(y), substituted ''individual medical benefit account'' for ''individual medical account''.

Subsec. (n)(3)(C). Pub. L. 109–135, §412(z), substituted ''clause'' for ''clauses'' in concluding provisions.

2004—Subsec. (b)(2)(E)(ii). Pub. L. 108–218 inserted before period at end '', except that in the case of plan years beginning in 2004 or 2005, '5.5 percent' shall be substituted for '5 percent' in clause (i)''.

Subsec. (c)(7)(C). Pub. L. 108–311, §408(a)(17), substituted ''subparagraph (B)'' for ''subparagraph (D)''.

Subsec. (d)(4)(A). Pub. L. 108–311, §404(b)(2), inserted at end ''This subparagraph shall also apply for purposes of any provision of this title that provides for adjustments in accordance with the method contained in this subsection, except to the extent provided in such provision.''

2002—Subsec. (c)(7). Pub. L. 107–147 amended heading and text of par. (7) generally, substituting provisions relating to special rules relating to church plans for provisions relating to certain contributions by church plans not treated as exceeding limit and adding provisions relating to foreign missionaries and definitions of ''church'' and ''convention or association of churches''.

2001—Subsec. (a)(2). Pub. L. 107–16, §632(a)(3)(C), struck out '', and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2)'' before period at end.

Subsec. (b)(1)(A). Pub. L. 107–16, §611(a)(1)(A), substituted ''$160,000'' for ''$90,000''.

Subsec. (b)(2)(A), (B). Pub. L. 107–16, §641(e)(9), substituted ''403(b)(8), 408(d)(3), and 457(e)(16)'' for ''and 408(d)(3)''.

Subsec. (b)(2)(C). Pub. L. 107–16, §611(a)(1)(B), (2), in heading substituted ''$160,000'' for ''$90,000'' and ''age 62'' for ''the social security retirement age'' and in text substituted ''age 62'' for ''the social security retirement age'' in two places, ''$160,000'' for ''$90,000'' in two places, and struck out at end ''The reduction under this subparagraph shall be made in such manner as the Secretary may prescribe which is consistent with the reduction for old-age insurance benefits commencing before the social security retirement age under the Social Security Act.''

Subsec. (b)(2)(D). Pub. L. 107–16, §611(a)(1)(B), (3), in heading substituted ''$160,000'' for ''$90,000'' and ''age 65'' for ''the social security retirement age'' and in text substituted ''age 65'' for ''the social security retirement age'' in two places and ''$160,000'' for ''$90,000'' in two places.

Subsec. (b)(2)(F). Pub. L. 107–16, §611(a)(5)(A), struck out subpar. (F), which related to the application of subpars. (C) and (D) in the case of a governmental plan, a plan maintained by a tax-exempt organization, or a qualified merchant marine plan and defined ''qualified merchant marine plan''.

Subsec. (b)(7). Pub. L. 107–16, §654(a)(2), inserted ''(other than a multiemployer plan)'' after ''defined benefit plan'' in introductory provisions.

Pub. L. 107–16, §611(a)(1)(C), substituted ''one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$160,000' '' for ''the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$90,000' '' in concluding provisions.

Subsec. (b)(9). Pub. L. 107–16, §611(a)(5)(B), amended par. (9) generally, substituting present provisions for provisions which provided that, in the case of any participant who was a commercial airline pilot, the rule of par. (2)(F)(i)(II) would apply, and if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration required an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before the social security retirement age, par. (2)(C) would be applied by substituting such age for the social security retirement age, and provisions which provided that if a participant separated from service before age 60, the rules of par. (2)(F) would apply.

Subsec. (b)(10)(C)(i). Pub. L. 107–16, §611(a)(5)(C), struck out ''applied without regard to paragraph (2)(F)'' before period at end.

Subsec. (b)(11). Pub. L. 107–16, § 654(a)(1), amended heading and text of par. (11) generally. Prior to amendment, text read as follows: ''In the case of a governmental plan (as defined in section 414(d)), subparagraph (B) of paragraph (1) shall not apply.''

Subsec. (c)(1)(A). Pub. L. 107–16, § 611(b)(1), substituted ''$40,000'' for ''$30,000''.

Subsec. (c)(1)(B). Pub. L. 107–16, § 632(a)(1), substituted ''100 percent'' for ''25 percent''.

Subsec. (c)(2). Pub. L. 107–16, § 641(e)(10), substituted ''408(d)(3), and 457(e)(16)'' for ''and 408(d)(3)'' in concluding provisions.

Subsec. (c)(3)(E). Pub. L. 107–16, § 632(a)(3)(D), added subpar. (E).

Subsec. (c)(4). Pub. L. 107–16, § 632(a)(3)(E), struck out par. (4), which related to special election for section 403(b) contracts purchased by educational organizations, hospitals, home health service agencies, certain churches, and other organizations.

Subsec. (c)(7). Pub. L. 107–16, § 632(a)(3)(F), amended par. (7) generally, redesignating cls. (i) and (ii) of subpar. (B) as subpars. (A) and (B), respectively, reenacting subpar. (C) without change, striking out former subpar. (A), which directed that any contribution or addition with respect to any participant, when expressed as an annual addition, which was allocable to the application of section 403(b)(2)(D) to such participant for such year, would be treated as not exceeding the limitations of par. (1), and striking out former subpar. (B), cl. (iii), which prohibited making of election under this subpar. for any year if an election had been made under former par. (4)(A) for such year.

Subsec. (d)(1)(A). Pub. L. 107–16, § 611(a)(4)(A), substituted ''$160,000'' for ''$90,000''.

Subsec. (d)(1)(C). Pub. L. 107–16, § 611(b)(2)(A), substituted ''$40,000'' for ''$30,000''.

Subsec. (d)(3)(A). Pub. L. 107–16, § 611(a)(4)(B), in heading substituted ''$160,000'' for ''$90,000'' and in text substituted ''July 1, 2001'' for ''October 1, 1986''.

Subsec. (d)(3)(D). Pub. L. 107–16, § 611(b)(2)(B), in heading substituted ''$40,000'' for ''$30,000'' and in text substituted ''July 1, 2001'' for ''October 1, 1993''.

Subsec. (d)(4). Pub. L. 107–16, § 611(h), reenacted heading without change and amended text of par. (4) generally. Prior to amendment, text read as follows: ''Any increase under subparagraph (A) or (C) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.''

Subsec. (f)(3). Pub. L. 107–16, § 654(b)(1), added par. (3).

Subsec. (g). Pub. L. 107–16, § 654(b)(2), substituted ''Except as provided in subsection (f)(3), the Secretary'' for ''The Secretary''.

Subsec. (k)(4). Pub. L. 107–16, § 632(b)(1), added par. (4).

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

1997—Subsec. (b)(2)(G). Pub. L. 105–34, § 1527(a), substituted ''participant, subparagraph (C) of this paragraph shall not apply.'' for ''participant—

''(i) subparagraph (C) shall not reduce the limitation of paragraph (1)(A) to an amount less than $50,000, and

''(ii) the rules of subparagraph (F) shall apply.

The Secretary shall adjust the $50,000 amount in clause (i) at the same time and in the same manner as under section 415(d).''

Subsec. (c)(6). Pub. L. 105–34, § 1530(c)(3), inserted concluding provisions ''The amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year shall not exceed the limitations imposed by this section, but such amount shall not be taken into account in determining whether any other amount exceeds the limitations imposed by this section.''

Subsec. (e)(6), (7). Pub. L. 105–34, § 1530(c)(4), added par. (6) and redesignated former par. (6) as (7).

Subsec. (k)(3). Pub. L. 105–34, § 1526(b), added par. (3).

Subsec. (n). Pub. L. 105–34, § 1526(a), added subsec. (n).

1996—Subsec. (a)(1). Pub. L. 104–188, § 1452(c)(1), inserted ''or'' at end of subpar. (A), struck out '', or'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''in any case in which an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the employer, the trust has been disqualified under subsection (g).''

Subsec. (b)(2)(E)(i). Pub. L. 104–188, § 1449(b)(1), substituted ''For purposes of adjusting any limitation under subparagraph (C) and, except as provided in clause (ii), for purposes of adjusting any benefit under subparagraph (B),'' for ''Except as provided in clause (ii), for purposes of adjusting any benefit or limitation under subparagraph (B) or (C),''.

Subsec. (b)(2)(E)(ii). Pub. L. 104–188, § 1449(b)(2), substituted ''For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3),'' for ''For purposes of adjusting the benefit or limitation of any form of benefit subject to section 417(e)(3),''.

Subsec. (b)(2)(I). Pub. L. 104–188, § 1444(c), added subpar. (I).

Subsec. (b)(5)(B). Pub. L. 104–188, § 1452(c)(2), struck out ''and subsection (e)'' after ''and (4)''.

Subsec. (b)(10)(C). Pub. L. 104–188, § 1444(d), designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

Subsec. (b)(11). Pub. L. 104–188, § 1444(a), added par. (11).

Subsec. (c)(3)(C). Pub. L. 104–188, § 1446(a), inserted at end ''If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii).''

Subsec. (c)(3)(D). Pub. L. 104–188, § 1434(a), added subpar. (D).

Subsec. (e). Pub. L. 104–188, § 1452(a), struck out subsec. (e) which related to limitation in case of a defined benefit plan and a defined contribution plan for same employee.

Subsec. (f)(1). Pub. L. 104–188, § 1452(c)(3), in introductory provisions, substituted ''subsections (b) and (c)'' for ''subsections (b), (c), and (e)''.

Subsec. (g). Pub. L. 104–188, § 1452(c)(4), in last sentence, substituted ''subsection (f)'' for ''subsections (e) and (f)''.

Subsec. (k)(1)(C) to (F). Pub. L. 104–188, § 1704(t)(75), inserted ''or'' at end of subpar. (C), redesignated subpar. (F) as (D), and struck out former subpars. (D) and (E) which read as follows:

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

''(E) an individual retirement annuity described in section 408(b), or''.

Subsec. (k)(2)(A)(i). Pub. L. 104–188, § 1452(c)(5), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''any contribution made directly by an employee under such arrangement—

''(I) shall not be treated as an annual addition for purposes of subsection (c), but

''(II) shall be so treated for purposes of subsection (e), and''.

Subsec. (k)(2)(A)(ii). Pub. L. 104–188, § 1452(c)(6), substituted ''subsection (c)'' for ''subsections (c) and (e)'' before ''shall not again''.

Subsec. (m). Pub. L. 104–188, § 1444(b)(1), added subsec. (m).

1994—Subsec. (b)(2)(E). Pub. L. 103–465, § 767(b), added cls. (i), (ii), and (v), redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively, and struck out former cl. (i) which read as follows: ''For purposes of adjusting any benefit or limitation under subparagraph (B) or (C), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.''

Subsec. (c)(1)(A). Pub. L. 103–465, § 732(b)(2), struck out ''(or, if greater, ¼ of the dollar limitation in effect under subsection (b)(1)(A))'' after ''$30,000''.

Subsec. (d). Pub. L. 103–465, § 732(b)(1), amended subsec. (d) generally, substituting present provisions for provisions authorizing annual cost-of-living adjustments, outlining base periods, and providing for a freeze on adjustment to defined contribution and benefit limits.

1992—Subsecs. (b)(2)(A), (B), (c)(2). Pub. L. 102–318 substituted ''402(c)'' for ''402(a)(5)''.

1989—Subsec. (c)(6). Pub. L. 101–239 substituted ''Special rule for employee stock ownership plans'' for ''Special limitation for employee stock ownership plan'' in heading and amended text generally, substituting introductory provisions and subpars. (A) and (B) for former subpars. (A) to (C).

1988—Subsec. (b)(2)(H)(ii). Pub. L. 100–647, §6059(a), substituted ''15'' for ''20''.

Subsec. (b)(5)(B). Pub. L. 100–647, §1011(d)(6), inserted ''and subsection (e)'' after ''paragraphs (1)(B) and (4)''.

Subsec. (b)(5)(D). Pub. L. 100–647, §1011(d)(2), substituted ''subparagraph (A)'' for ''this paragraph''.

Subsec. (b)(10). Pub. L. 100–647, §6054(a), added par. (10).

Subsec. (c)(6)(A). Pub. L. 100–647, §1011(d)(7), substituted ''paragraph (1)(A)'' for ''paragraph (c)(1)(A) (as adjusted for such year pursuant to subsection (d)(1))'' and for ''paragraph (c)(1)(A) (as so adjusted)''.

Subsec. (k). Pub. L. 100–647, §1018(t)(8)(D), repealed Pub. L. 99–514, §1899A(13), see 1986 Amendment note below.

Subsec. (k)(2)(C)(ii). Pub. L. 100–647, §1011(d)(3)(A), substituted ''to such increase'' for ''to the arrangement''.

Subsec. (k)(2)(D). Pub. L. 100–647, §1011(d)(3)(B), added subpar. (D) and struck out former subpar. (D) which read as follows: ''An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may be made in—

''(i) the year in which the participant—

''(I) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or

''(II) separates from service, or

''(ii) both such years.''

Subsec. (*l*)(1). Pub. L. 100–647, §1018(t)(3)(B), made technical correction to directory language of Pub. L. 99–514, §1852(h)(2). See 1986 Amendment note below.

1986—Subsec. (b)(2)(B). Pub. L. 99–514, §1898(b)(15)(C), substituted reference to section 417 for reference to section 401(a)(11)(G)(iii).

Subsec. (b)(2)(C). Pub. L. 99–514, §1106(b)(1)(A), substituted in heading and in two places in text ''the social security retirement age'' for ''age 62'' and substituted new last sentence for ''The reduction under this subparagraph shall not reduce the limitation of paragraph (1)(A) below—

''(i) if the benefit begins at or after age 55, $75,000, or

''(ii) if the benefit begins before age 55, the amount which is the equivalent of the $75,000 limitation for age 55.''

Subsec. (b)(2)(D). Pub. L. 99–514, §1106(b)(1)(A)(i), substituted in heading and in two places in text ''the social security retirement age'' for ''age 65''.

Subsec. (b)(2)(E)(iii). Pub. L. 99–514, §1875(c)(9), substituted ''this subsection'' for ''adjusting any benefit or limitation under subparagraph (B), (C), or (D)''.

Subsec. (b)(2)(F) to (H). Pub. L. 99–514, §1106(b)(2), added subpars. (F) to (H).

Subsec. (b)(5). Pub. L. 99–514, §1106(f), substituted ''Reduction for participation or service of less than 10 years'' for ''Reduction for service less than 10 years'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of an employee who has less than 10 years of service with the employer, the limitation referred to in paragraph (1), and the limitation referred to in paragraph (4), shall be the limitation determined under such paragraph (without regard to this paragraph), multiplied by a fraction, the numerator of which is the number of years (or part thereof) of service with the employer and the denominator of which is 10.''

Subsec. (b)(8). Pub. L. 99–514, §1106(b)(1)(B), added par. (8).

Subsec. (b)(9). Pub. L. 99–514, §1106(b)(3), added par. (9).

Subsec. (c)(1)(A). Pub. L. 99–514, §1106(a), amended subpar. (A) generally, inserting ''(or, if greater, ¼ of the dollar limitation in effect under subsection (b)(1)(A))''.

Subsec. (c)(2). Pub. L. 99–514, §1108(g)(5), substituted ''which are excludable from gross income under section 408(k)(6)'' for ''allowable as a deduction under section 219(a), and without regard to deductible employee contributions within the meaning of section 72(*o*)(5)'' in last sentence.

Pub. L. 99–514, §1106(e)(2), inserted at end ''Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2)) after separation from service which is treated as an annual addition.''

Subsec. (c)(2)(B). Pub. L. 99–514, §1106(e)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the lesser of—

''(i) the amount of the employee contributions in excess of 6 percent of his compensation, or

''(ii) one-half of the employee contributions, and''.

Subsec. (c)(3)(C). Pub. L. 99–514, §1875(c)(11), substituted ''any defined contribution plan'' for ''a profit-sharing or stock bonus plan''.

Subsec. (c)(3)(C)(i). Pub. L. 99–514, §1847(b)(4), substituted ''section 22(e)(3)'' for ''section 37(e)(3)''.

Subsec. (c)(3)(C)(ii). Pub. L. 99–514, §1114(b)(12), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, owner, or highly compensated''.

Subsec. (c)(4)(A) to (C). Pub. L. 99–514, §1106(b)(4), inserted ''a health and welfare service agency,'' after ''a home health service agency,''.

Subsec. (c)(6)(A). Pub. L. 99–514, §1174(d)(1), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii)''.

Subsec. (c)(6)(B)(iii), (iv). Pub. L. 99–514, §1174(d)(2)(A), struck out cls. (iii) and (iv) which read as follows:

''(iii) an employee described in this clause is any participant whose compensation for a year exceeds an amount equal to twice the amount described in paragraph (1)(A) for such year (as adjusted for such year pursuant to subsection (d)(1)), determined without regard to subparagraph (A) of this paragraph, and

''(iv) an individual shall be considered to own more than 10 percent of the employer's stock if, without regard to stock held under the employee stock ownership plan, he owns (after application of section 1563(e)) more than 10 percent of the total combined voting power of all classes of stock entitled to vote or more than 10 percent of the total value of shares of all classes of stock.''

Subsec. (c)(6)(C). Pub. L. 99–514, §1174(d)(2)(B), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii)''.

Subsec. (d)(1)(B), (C). Pub. L. 99–514, §1106(g)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B), which related to the $30,000 amount in subsection (c)(1)(A).

Subsec. (d)(2)(A). Pub. L. 99–514, §1106(g)(2)(A), substituted ''subparagraph (A)'' for ''subparagraphs (A) and (B)''.

Subsec. (d)(2)(B). Pub. L. 99–514, §1106(g)(2)(B), substituted ''subparagraph (B)'' for ''subparagraph (C)''.

Subsec. (d)(3). Pub. L. 99–514, §1106(g)(3), substituted ''subparagraph (A)'' for ''subparagraph (A) or (B)''.

Subsec. (k). Pub. L. 99–514, §1899A(13), which directed the general amendment of subsec. (k) by striking out par. (1) designation and redesignating subpars. (A) to (F) as pars. (1) to (6), respectively, was repealed by Pub. L. 100–647, §1018(t)(8)(D).

Subsec. (k)(2). Pub. L. 99–514, § 1106(c)(1), added par. (2) relating to contributions to provide cost-of-living protection under defined benefit plans.

Subsec. (*l*). Pub. L. 99–514, § 1852(h)(3), substituted ''a pension or annuity plan'' for ''a defined benefit plan'' in pars. (1) and (2)(A).

Pub. L. 99–514, § 1852(h)(2), as amended by Pub. L. 100–647, § 1018(t)(3)(B), inserted at end of par. (1) ''Subparagraph (B) of subsection (c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.''

1984—Subsec. (a)(2). Pub. L. 98–369, § 491(d)(28), struck out subpar. (D) which related to application of this section to a plan described in section 405(a), and in provision following subpar. (C) struck out ''405(a),'' after ''403(b),''.

Subsec. (b)(2)(A), (B). Pub. L. 98–369, § 491(d)(29), (30), substituted ''and 408(d)(3)'' for ''408(d)(3) and 409(b)(3)(C)''.

Subsec. (b)(2)(C). Pub. L. 98–369, § 713(a)(1)(A), substituted provision respecting determination as to whether $90,000 limitation has been satisfied by reducing the limitation of par. (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 62 for provision for such determination by adjusting the benefit so that it is equivalent to such a benefit beginning at age 62.

Subsec. (b)(2)(D). Pub. L. 98–369, § 713(a)(1)(B), substituted ''limit'' for ''limitation'' in heading, and in text substituted provision respecting determination as to whether $90,000 limitation has been satisfied by increasing the limitation of par. (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 65 for provision for such determination by adjusting the benefit so that it is equivalent to such a benefit beginning at age 65.

Subsec. (b)(2)(E). Pub. L. 98–369, § 713(a)(1)(C), provided in cls. (i) and (iii) for adjustment of any limitation and substituted in cl. (ii) ''any limitation'' for ''any benefit''.

Subsec. (c)(2). Pub. L. 98–369, § 491(d)(31), substituted ''and 408(d)(3)'' for ''405(d)(3), 408(d)(3), and 409(b)(3)(C)''.

Subsec. (c)(3)(C). Pub. L. 98–369, § 713(k), inserted in introductory text ''in a profit-sharing or stock bonus plan'', and substituted in last sentence ''if contributions made with respect to amounts treated as compensation under this subparagraph'' for ''if contributions made with respect to such participant''.

Subsec. (c)(6)(B)(ii). Pub. L. 98–369, § 491(e)(6), substituted ''section 409'' for ''section 409A''.

Subsec. (c)(6)(C). Pub. L. 98–369, § 713(d)(4)(B)(i)–(iii), substituted ''paragraph (9)'' for ''paragraph (10)'' of section 404(a), section ''404(a)(9)(A)'' for ''404(a)(10)(A)'', and section ''404(a)(9)(B)'' for ''404(a)(10)(B)''.

Subsec. (c)(7), (8). Pub. L. 98–369, § 713(d)(7)(A), redesignated par. (8) as (7), and struck out former par. (7) relating to certain level premium annuity contracts under plans benefiting owner-employees.

Subsec. (d)(2)(A). Pub. L. 98–369, § 15(b), substituted ''1986'' for ''1984''.

Subsec. (d)(3). Pub. L. 98–369, § 15(a), substituted ''January 1, 1988'' for ''January 1, 1986''.

Subsec. (e)(3)(B)(ii)(II). Pub. L. 98–369, § 713(d)(7)(B), struck out reference to subsec. (c)(8).

Subsec. (e)(6)(C). Pub. L. 98–369, § 713(a)(3), added subpar. (C).

Subsec. (k)(1). Pub. L. 98–369, § 491(d)(32), struck out subpars. (C) and (H), which included a qualified bond purchase plan described in section 405(a) and an individual retirement bond described in section 409 within the term ''defined contribution plan'' or ''defined benefit plan'', respectively, and redesignated subpars. (D) to (G) as (C) to (F), respectively.

Subsec. (*l*). Pub. L. 98–369, § 528(a), added subsec. (*l*).

1983—Subsec. (c)(3)(C)(i). Pub. L. 98–21 substituted ''section 37(e)(3)'' for ''section 105(d)(4)''.

1982—Subsec. (b)(1)(A). Pub. L. 97–248, § 235(a)(1), substituted ''$90,000'' for ''$75,000''.

Subsec. (b)(2)(C). Pub. L. 97–248, § 235(a)(3)(A), (e)(1), (2), inserted provisions relating to reduction under this subparagraph, and substituted ''$90,000'' for ''$75,000'' and ''62'' for ''55'', wherever appearing.

Subsec. (b)(2)(D), (E). Pub. L. 97–248, § 235(e)(3), (4), added subpars. (D) and (E).

Subsec. (b)(7). Pub. L. 97–248, § 235(a)(3)(B), substituted ''the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$90,000' '' for '' '37,500' for '75,000' ''.

Subsec. (c)(1)(A). Pub. L. 97–248, § 235(a)(2), substituted ''$30,000'' for ''$25,000''.

Subsec. (c)(3). Pub. L. 97–248, § 253(a), designated existing provisions as subpars. (A) and (B) and added subpar. (C).

Subsec. (c)(4). Pub. L. 97–248, § 251(c)(1), substituted '', home health service agencies, and certain churches, etc.'' for ''and home health service agencies'' in heading, in subpar. (A) inserted ''(as determined for purposes of section 403(b)(2))'' after ''by taking into account his service for the employer'', substituted ''a home health service agency, or a church, convention or association of churches, or an organization described in section 414(e)(3)(B)(ii)'' for ''or a home health service agency'' in subpars. (A), (B) and (C), respectively, and, in subpar. (D), added cl. (iv).

Subsec. (c)(5). Pub. L. 97–248, § 238(d)(5), struck out par. (5) relating to application with section 404(e)(4).

Subsec. (c)(8). Pub. L. 97–248, § 251(c)(2), added par. (8).

Subsec. (d)(1). Pub. L. 97–248, § 235(b)(1), substituted ''benefit amounts'' for ''primary insurance amounts'' in provision following subpar. (C).

Pub. L. 97–248, § 235(b)(3), substituted ''$90,000'' for ''$75,000'' in subpar. (A), and in subpar. (B) substituted ''$30,000'' for ''$25,000''.

Subsec. (d)(2)(A). Pub. L. 97–248, § 235(b)(2)(B), substituted ''1984'' for ''1974''.

Subsec. (d)(3). Pub. L. 97–248, § 235(b)(2)(A), added par. (3).

Subsec. (e)(1). Pub. L. 97–248, § 235(c)(1), substituted ''1.0'' for ''1.4''.

Subsec. (e)(2)(B). Pub. L. 97–248, § 235(c)(2)(A), substituted provisions that for purposes of this subsection, the defined benefit plan fraction for any year has a denominator which is the lesser of the product of 1.25 multiplied by the dollar limitation in effect under subsec. (b)(1)(A) for such year, or the product of 1.4 multiplied by the amount which may be taken into account under subsec. (b)(1)(B) with respect to such individual under the plan for such year, for provisions that such benefit plan fraction had a denominator which was the projected annual benefit of the participant under the plan (determined as of the close of the year) if the plan provided the maximum benefit allowable under subsec. (b).

Subsec. (e)(3)(B). Pub. L. 97–248, § 235(c)(2)(B), substituted provision that the defined contribution plan fraction for any year has a denominator which, determined for such year and for each prior year of service with the employer, is the lesser of either the product of 1.25 multiplied by the dollar limitation in effect under subsec. (c)(1)(A) for such year (determined without regard to subsec. (c)(6)), or the product of 1.4 multiplied by the amount which may be taken into account under subsec. (c)(1)(B) (or subsec. (c)(7) or (8), if applicable) with respect to such individual under such plan for such year, for provision that the denominator of such fraction was the sum of the maximum amount of annual additions to the participant's account which could have been made under subsec. (c) for such year and for each prior year of service with the employer (determined without regard to subsec. (c)(6)).

Subsec. (e)(6). Pub. L. 97–248, § 235(d), added par. (6).

1981—Subsec. (a)(2). Pub. L. 97–34, § 311(g)(4)(A), struck out in provision preceding subpar. (A) ''Except as provided in paragraph (3)'', redesignated former subpar. (E) as (C), and in subpar. (C) as so designated, inserted ''described in section 408(k), or'', redesignated former sub-

par. (F) as (D), struck out former subpars. (C), relating to an individual retirement account described under section 408(a), (D), relating to an individual retirement annuity described in section 408(b), and (G), relating to a retirement bond described in section 409, and in provision following subpar. (D), substituted ''such a contract, plan, or pension,'' for ''such contract, annuity plan, account, annuity, plan, or bond'' and ''408(k)'' for ''408(a), 408(b), or 409''.

Subsec. (a)(3). Pub. L. 97–34, §311(h)(3), struck out par. (3) which provided that par. (2) not apply to an account, annuity, or bond described in section 408(a), 408(b), or 409, established for the benefit of the spouse of the individual contributing to such account, or for such annuity or bond, if a deduction is allowed under section 220 to such individual with respect to such contribution for such year.

Subsec. (c)(2). Pub. L. 97–34, §311(g)(4)(B), included in provision following subpar. (C) references to sections 403(b)(8) and 405(d)(3) and inserted ''without regard to employee contributions to a simplified employee pension allowable as a deduction under section 219(a), and without regard to deductible employee contributions within the meaning of section 72(*o*)(5)''.

Subsec. (c)(6)(C). Pub. L. 97–34, §333(b)(1), added subpar. (C).

Subsec. (e)(5). Pub. L. 97–34, §311(g)(4)(C), struck out '', any individual retirement account described in section 408(a), any individual retirement annuity described in section 408(b), and any retirement bond described in section 409,'' before ''for the benefit''.

1980—Subsec. (b)(7). Pub. L. 96–222, §101(a)(11), substituted in subpar. (C) ''under which benefits are determined solely by reference to length of service, the particular years during which service was rendered, age at retirement, and date of retirement'' for ''benefits under which are determined by multiplying a specified amount (which is the same amount for each participant) by the number of the participant's years of service'' and inserted in text following subpar. (E) provisions requiring that this paragraph not apply to a participant for any period for which he is a participant under another plan to which this section applies which is maintained by an employer maintaining this plan.

Subsec. (c)(6)(A). Pub. L. 96–605 inserted '', or purchased with cash contributed,'' after ''securities contributed''.

Subsec. (c)(6)(B)(i). Pub. L. 96–222, §101(a)(7)(L)(i)(VII), (iv)(I), substituted ''a tax credit employee stock ownership plan'' for ''an ESOP'' and struck out ''leveraged'' before ''employee''.

Subsec. (e)(5). Pub. L. 96–222, §101(a)(10)(I), inserted provisions requiring that for purposes of this section, any contribution by an employer to a simplified employee pension for an individual for a taxable year be treated as an employer contribution to a defined contribution plan for such individual for such year.

1978—Subsec. (a)(2). Pub. L. 95–600, §152(g)(1), (2), as amended by Pub. L. 96–222, §101(a)(10)(J)(iii), added subpar. (E), redesignated former subpars. (E) and (F) as (F) and (G), respectively, and in provision following subpar. (G) as so redesignated, inserted ''408(k),'' after ''408(b),''.

Subsec. (b)(7). Pub. L. 95–600, §153(a), added par. (7).

Subsec. (c)(6)(B)(i). Pub. L. 95–600, §141(f)(7), substituted ''leveraged employee stock ownership plan (within the meaning of section 4975(e)(7)) or an ESOP'' for ''a plan which meets the requirements of section 4975(e)(7) or section 301(d) of the Tax Reduction Act of 1975''.

Subsec. (c)(6)(B)(ii). Pub. L. 95–600, §141(f)(7), substituted ''has the meaning given to such term by section 409A'' for ''means, in the case of an employee stock ownership plan within the meaning of section 4975(e)(7), qualifying employer securities within the meaning of section 4975(e)(8), but only if they are described in section 301(d)(9)(A) of the Tax Reduction Act of 1975, or, in the case of an employee stock ownership plan described in section 301(d)(2) of the Tax Reduction Act of 1975, employer securities within the meaning of section 301(d)(9)(A) of such Act''.

Subsec. (e)(5). Pub. L. 95–600, §152(g)(3), inserted ''any simplified employee pension,'' after ''section 408(b),''.

Subsec. (k)(1)(G), (H). Pub. L. 95–600, §152(g)(4), added subpar. (G) and redesignated former subpar. (G) as (H).

1976—Subsec. (a)(2). Pub. L. 94–455, §1501(b)(3)(A), substituted ''Except as provided in paragraph (3), in the case'' for ''In the case''.

Subsec. (a)(3). Pub. L. 94–455, §1501(b)(3)(B), added par. (3).

Subsec. (b)(2)(A). Pub. L. 94–455, §1901(a)(65)(A), inserted closing parenthesis after ''409(b)(3)(C)''.

Subsec. (b)(2)(B). Pub. L. 94–455, §§1901(a)(65)(B), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' and substituted ''section 401(a)(11)(G)(iii)'' for ''section 401(a)(11)(H)(iii)''.

Subsec. (b)(2)(C), (6). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(4). Pub. L. 94–455, §§1901(b)(8)(D), 1906(b)(13)(A), substituted ''educational organizations'' for ''educational institutions'' in the heading and ''educational organization'' for ''educational institution'' in subpars. (A), (B), and (C), struck out ''or his delegate'' after ''Secretary'' in subpar. (D)(i), and substituted ''For purposes of this paragraph the term 'educational organization' means an educational organization described in section 170(b)(1)(A)(ii)'' for ''For purposes of this paragraph the term 'educational institution' means an educational institution as defined in section 151(e)(4)'' in subpar. (D)(ii).

Subsec. (c)(5). Pub. L. 94–455, §1502(a)(1), added par. (5).

Subsec. (c)(6). Pub. L. 94–455, §803(f)(1), added par. (6).

Subsec. (c)(7). Pub. L. 94–455, §1511(a), added par. (7).

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

Subsec. (e)(3)(B). Pub. L. 94–455, §803(f)(2), substituted ''with the employer determined without regard to paragraph (6) of such subsection)'' for ''with the employer''.

Subsec. (e)(5). Pub. L. 94–455, §803(b)(4), substituted ''For purposes of this section'' for ''For purposes of this subsection''.

Subsecs. (g), (i), (j). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §103(b)(2)(B)(ii), Dec. 23, 2008, 122 Stat. 5103, provided that:

''(I) Except as provided in subclause (II), the amendment made by clause (i) [amending this section] shall apply to years beginning after December 31, 2008.

''(II) A plan sponsor may elect to have the amendment made by clause (i) apply to any year beginning after December 31, 2007, and before January 1, 2009, or to any portion of any such year.''

Amendment by sections 108(g) and 109(d)(1) 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 I, §122(b), Dec. 23, 2008, 122 Stat. 5114, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title III, §303(b), Aug. 17, 2006, 120 Stat. 921, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions made in years beginning after December 31, 2005.''

Pub. L. 109–280, title VIII, §821(d), Aug. 17, 2006, 120 Stat. 998, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a) and (c) [amending this section] shall take effect as if included in the amendments made by section 1526 of the Taxpayer Relief Act of 1997 [Pub. L. 105–34].

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall take effect as

if included in the amendments made by section 647 of the Economic Growth and Tax Relief Reconciliation Act of 2001 [see section 647(c) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 403 of this title].''

Pub. L. 109–280, title VIII, § 832(b), Aug. 17, 2006, 120 Stat. 1003, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2005.''

Pub. L. 109–280, title VIII, § 867(b), Aug. 17, 2006, 120 Stat. 1025, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2006.''

Amendment by section 906(b)(1)(A), (B) of Pub. L. 109–280 applicable to any year beginning on or after Aug. 17, 2006, see section 906(c) of Pub. L. 109–280, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 407(b) of Pub. L. 109–135 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 407(c) of Pub. L. 109–135, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 404(b)(2) 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.

Amendment by Pub. L. 108–218 applicable, except as otherwise provided, to plan years beginning after Dec. 31, 2003, see section 101(d) of Pub. L. 108–218, set out as a note under section 404 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, § 611(i), June 7, 2001, 115 Stat. 100, as amended by Pub. L. 107–147, title IV, § 411(j)(3), Mar. 9, 2002, 116 Stat. 47, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 401, 402, 404, 408, 457, 501, and 505 of this title] shall apply to years beginning after December 31, 2001.

''(2) DEFINED BENEFIT PLANS.—The amendments made by subsection (a) [amending this section] shall apply to years ending after December 31, 2001.''

''(3) SPECIAL RULE.—In the case of plan that, on June 7, 2001, incorporated by reference the limitation of section 415(b)(1)(A) of the Internal Revenue Code of 1986, section 411(d)(6) of such Code and section 204(g)(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(g)(1)] do not apply to a plan amendment that—

''(A) is adopted on or before June 30, 2002,

''(B) reduces benefits to the level that would have applied without regard to the amendments made by subsection (a) of this section, and

''(C) is effective no earlier than the years described in paragraph (2).''

Amendment by section 632(a)(1), (3)(C)–(F) 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, § 632(b)(2), June 7, 2001, 115 Stat. 115, provided that:

''(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to limitation years beginning after December 31, 1999.

''(B) EXCLUSION ALLOWANCE.—Effective for limitation years beginning in 2000, in the case of any annuity contract described in section 403(b) of the Internal Revenue Code of 1986, the amount of the contribution disqualified by reason of section 415(g) of such Code shall reduce the exclusion allowance as provided in section 403(b)(2) of such Code.''

Amendment by section 641(e)(9), (10) 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, § 654(c), June 7, 2001, 115 Stat. 131, provided that: ''The amendments 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 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 1997 AMENDMENT

Section 1526(c) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to permissive service credit contributions made in years beginning after December 31, 1997.

''(2) TRANSITION RULE.—

''(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 limitations of section 415(c)(1) of such Code shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the plan as in effect on the date of the enactment of this Act [Aug. 5, 1997].

''(B) ELIGIBLE PARTICIPANT.—For purposes of subparagraph (A), an eligible participant is an individual who first became a participant in the plan before the first plan year beginning after the last day of the calendar year in which the next regular session (following the date of the enactment of this Act) of the governing body with authority to amend the plan ends.''

Section 1527(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996.''

Amendment by section 1530(c)(3), (4) 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.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1434(a) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1997, see section 1434(c) of Pub. L. 104–188, set out as a note under section 414 of this title.

Section 1444(e) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending this section and section 457 of this title] shall apply to years beginning after December 31, 1994. The amendments made by subsection (d) [amending this section] shall apply with respect to revocations adopted after the date of the enactment of this Act [Aug. 20, 1997].

''(2) TREATMENT FOR YEARS BEGINNING BEFORE JANUARY 1, 1995.—Nothing in the amendments made by this section shall be construed to imply that a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) fails to satisfy the requirements of section 415 of such Code for any taxable year beginning before January 1, 1995.''

Section 1446(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 1449(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this sec-

tion and provisions set out as a note under section 411 of this title] shall take effect as if included in the provisions of section 767 of the Uruguay Round Agreements Act [Pub. L. 103–465].''

Section 1452(d) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 416 and 4980A of this title] shall apply to limitation years beginning after December 31, 1999.

''(2) EXCESS DISTRIBUTIONS.—The amendment made by subsection (b) [amending section 4980A of this title] shall apply to years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 732(b) of 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.

Amendment by section 767(b) of Pub. L. 103–465 applicable to plan years and limitation years beginning after Dec. 31, 1994, except that employer may elect to treat such amendment as effective on or after Dec. 8, 1994, with provisions relating to reduction of accrued benefits, exception, and timing of plan amendment, see section 767(d) of Pub. L. 103–465, as amended, set out as a note under section 411 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

Section 7304(c)(2) of Pub. L. 101–239 provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after July 12, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(2), (3), (6), (7) and 1018(t)(3)(B), (8)(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 6054(b) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, §7816(h), Dec. 19, 1989, 103 Stat. 2421, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by this section [amending this section] shall apply to years beginning after December 31, 1982.

''(2) ELECTION.—Section 415(b)(10)(C) of the 1986 Code (as added by subsection (a)) shall not apply to any year beginning before January 1, 1990.''

Section 6059(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply as if included in the amendments made by section 1106(b)(2) of the Reform Act [Pub. L. 99–514].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1106(i) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(d)(5), title VI, §6062(a), Nov. 10, 1988, 102 Stat. 3460, 3700, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 401, 402, 404, 416, and 818 of this title] shall apply to years beginning after December 31, 1986.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan in effect before March 1, 1986, pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the amendments made by this section (other than subsection (d)) shall not apply to contributions or benefits pursuant to such agreement in years beginning before October 1, 1991.

''(3) RIGHT TO HIGHER ACCRUED DEFINED BENEFIT PRESERVED.—

''(A) IN GENERAL.—In the case of an individual who is a participant (as of the 1st day of the 1st year to which the amendments made by this section apply) in a defined benefit plan which is in existence on May 6, 1986, and with respect to which the requirements of section 415 of the Internal Revenue Code of 1986 have been met for all plan years, if such individual's current accrued benefit under the plan exceeds the limitation of subsection (b) of section 415 of such Code (as amended by this section), then (in the case of such plan), for purposes of subsections (b) and (e) of such section, the limitation of such subsection (b)(1)(A) with respect to such individual shall be equal to such current accrued benefit.

''(B) CURRENT ACCRUED BENEFIT DEFINED.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'current accrued benefit' means the individual's accrued benefit (at the close of the last year to which the amendments made by this section do not apply) when expressed as an annual benefit (within the meaning of section 415(b)(2) of such Code).

''(ii) SPECIAL RULE.—For purposes of determining the amount of any individual's current accrued benefit—

''(I) no change in the terms and conditions of the plan after May 5, 1986, and

''(II) no cost-of-living adjustment occurring after May 5, 1986,

shall be taken into account. For purposes of subclause (I), any change in the terms and conditions of the plan pursuant to a collective bargaining agreement ratified before May 6, 1986, shall be treated as a change made before May 6, 1986.

''(4) TRANSITION RULE WHERE THE SUM OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLAN FRACTIONS EXCEEDS 1.0.—In the case of a plan which satisfied the requirements of section 415 of the Internal Revenue Code of 1986 for its last year beginning before January 1, 1987, the Secretary of the Treasury or his delegate shall prescribe regulations under which an amount is subtracted from the numerator of the defined contribution plan fraction (not exceeding such numerator) so that the sum of the defined benefit plan fraction and the defined contribution plan fraction computed under section 415(e)(1) of such Code does not exceed 1.0 for such year (determined as if the amendments made by this section were in effect for such year).

''(5) EFFECTIVE DATE FOR SUBSECTION (d).—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (d) [amending sections 401, 404, 416, and 818 of this title] shall apply to benefits accruing in years beginning after December 31, 1988.

''(B) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan described in paragraph (2), the amendments made by subsection (d) shall apply to benefits accruing in years beginning on or after the earlier of—

''(i) the later of—

''(I) the date determined under paragraph (2)(A), or

''(II) January 1, 1989, or

''(ii) January 1, 1991.

''(6) SPECIAL RULE FOR AMENDMENT MADE BY SUBSECTION (e).—The amendment made by subsection (e) [amending this section] shall not require the recomputation, for purposes of section 415(e) of the Internal Revenue Code of 1986, of the annual addition for any year beginning before 1987.''

[Section 6062(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending section 1106(i) of Pub. L. 99–514, set out above] shall take effect as if included in the provisions of section 1106 of the Reform Act [Pub. L. 99–514].'']

Amendment by section 1108(g)(5) 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 1114(b)(12) 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 1174(d)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to years beginning after December 31, 1986.''

Amendment by sections 1847(b)(4), 1852(h)(2), (3), and 1875(c)(9), (11) 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 1898(b)(15)(C) 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.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 15 of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 491(d)(28)–(32) 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 491(e)(6) 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.

Amendment by section 528(a) of Pub. L. 98–369 applicable to years beginning after Mar. 31, 1984, see section 528(c) of Pub. L. 98–369, set out as a note under section 401 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. 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.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 235(g) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(a)(10), Jan. 12, 1983, 96 Stat. 2404; Pub. L. 98–369, div. A, title VII, § 713(a)(2), (4), (f)(3), July 18, 1984, 98 Stat. 956, 959; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—

''(A) NEW PLANS.—In the case of any plan which is not in existence on July 1, 1982, the amendments made by this section [amending this section and section 404 of this title] shall apply to years ending after July 1, 1982.

''(B) EXISTING PLANS.—

''(i) In the case of any plan which is in existence on July 1, 1982, the amendments made by this section [amending this section and section 404 of this title] shall apply to years beginning after December 31, 1982.

''(ii) PLAN REQUIREMENTS.—A plan shall not be treated as failing to meet the requirements of section 401(a)(16) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for any year beginning before January 1, 1984, merely because such plan provides for benefit or contribution limits which are in excess of the limitations under section 415 of such Code, as amended by this section. The preceding sentence shall not apply to any plan which provides such limits in excess of the limitation under section 415 of such Code before such amendments.

''(2) AMENDMENTS RELATED TO COST-OF-LIVING ADJUSTMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section] shall apply to adjustments for years beginning after December 31, 1982.

''(B) ADJUSTMENT PROCEDURES.—The amendments made by subsections (b)(1) and (b)(2)(B) [amending this section] shall apply to adjustments for years beginning after December 31, 1985.

''(3) TRANSITION RULE WHERE THE SUM OF DEFINED CONTRIBUTION AND DEFINED BENEFIT PLAN FRACTIONS EXCEEDS 1.0.—In the case of a plan which satisfied the requirements of section 415 of the Internal Revenue Code of 1986 for the last year beginning before January 1, 1983, the Secretary of the Treasury or his delegate shall prescribe regulations under which an amount is subtracted from the numerator of the defined contribution plan fraction (not exceeding such numerator) so that the sum of the defined benefit plan fraction and the defined contribution plan fraction computed under section 415(e)(1) of the Internal Revenue Code of 1986 (as amended by the Tax Equity and Fiscal Responsibility Act of 1982) does not exceed 1.0 for such year. A similar rule shall apply with respect to the last plan year beginning before January 1, 1984, for purposes of applying section 416(h) of the Internal Revenue Code of 1986.

''(4) RIGHT TO HIGHER ACCRUED DEFINED BENEFIT PRESERVED.—

''(A) IN GENERAL.—In the case of an individual who is a participant before January 1, 1983, in a defined benefit plan which is in existence on July 1, 1982, and with respect to which the requirements of section 415 of such Code have been met for all years, if such individual's current accrued benefit under such plan exceeds the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1986 (as amended by this section), then (in the case of such plan) for purposes of subsections (b) and (e) of such section, the limitation of such subsection (b) with respect to such individual shall be equal to such current accrued benefit.

''(B) CURRENT ACCRUED BENEFIT DEFINED.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'current accrued benefit' means the individual's accrued benefit (at the close of the last year beginning before January 1, 1983) when expressed as an annual benefit (within the meaning of section 415(b)(2) of such Code as in effect before the amendments made by this Act). In the case of any plan described in the first sentence of paragraph (5), the preceding sentence shall be applied by substituting for 'January 1, 1983' the applicable date determined under paragraph (5).

''(ii) SPECIAL RULE.—For purposes of determining the amount of any individual's current accrued benefit—

''(I) no change in the terms and conditions of the plan after July 1, 1982, and

''(II) no cost-of-living adjustment occurring after July 1, 1982,

shall be taken into account. For purposes of subclause (I), any change in the terms and conditions of the plan pursuant to a collective bargaining agreement entered into before July 1, 1982, and ratified before September 3, 1982, shall be treated as a change made before July 1, 1982.

''(5) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained on the date of the enactment of this Act [Sept. 3, 1982] pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the amendments made by this section [amending this section and section 404 of this title] and section 242

[amending section 401 of this title and enacting a provision set out as a note under section 401 of this title] (relating to age 70½) 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 [Sept. 3, 1982]), or

''(B) January 1, 1986.

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 and section 242 shall not be treated as a termination of such collective bargaining agreement.''

Amendment by section 238(d)(5) 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.

Amendment by section 251(c)(1), (2) of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1981, see section 251(e)(3) of Pub. L. 97–248, set out as a note under section 403 of this title.

Amendment by section 253(a) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1981, see section 253(c) of Pub. L. 97–248, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(g)(4), (h)(3) of Pub. L. 97–34 applicable to years beginning after Dec. 31, 1981, see section 311(i)(4) of Pub. L. 97–34, set out as a note under section 219 of this title.

Section 333(b)(2) of Pub. L. 97–34 provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 222(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to years beginning after December 31, 1980.''

Section 101(b)(1)(G) of Pub. L. 96–222 provided that: ''The amendment made by subparagraph (I) of subsection (a)(10) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Apr. 1, 1980].''

Amendment by section 101(a)(7)(L)(i)(VII), (iv)(i), (10)(J)(iii), (11) of 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 141(f)(7) of Pub. L. 95–600 effective for years beginning after Dec. 31, 1978, and 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 141(g)(5) of Pub. L. 95–600, as added by Pub. L. 96–222, title I, §101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197, provided that: ''The amendment made by subsection (f)(7) [amending this section] shall apply to years beginning after December 31, 1978.''

Amendment by section 152(g) 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.

Section 153(b) of Pub. L. 95–600 provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 803(b)(4), (f) of Pub. L. 94–455 effective for years beginning after Dec. 31, 1975, see section 803(j) of Pub. L. 94–455, set out as a note under section 46 of this title.

Amendment by section 1501(b)(3) of Pub. L. 94–455 effective for 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.

Section 1502(b) of Pub. L. 94–455 provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply to years beginning after December 31, 1975. The amendment made by subsection (a)(2) [amending section 404 of this title] shall apply to taxable years beginning after December 31, 1975.''

Section 1511(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply for years beginning after December 31, 1975.''

Amendment by section 1901(a)(65), (b)(8)(D) 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; TRANSITION PROVISIONS

Section 2004(d) of Pub. L. 93–406, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—The amendments made by this section [enacting this section, amending sections 401, 403, 404, 405, and 805 of this title, and enacting provisions set out as notes under this section] shall apply to years beginning after December 31, 1975. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the provisions of this paragraph.

''(2) TRANSITION RULE FOR DEFINED BENEFIT PLANS.—In the case of an individual who was an active participant in a defined benefit plan before October 3, 1973, if—

''(A) the annual benefit (within the meaning of section 415(b)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) payable to such participant on retirement does not exceed 100 percent of his annual rate of compensation on the earlier of (i) October 2, 1973, or (ii) the date on which he separated from the service of the employer,

''(B) such annual benefit is no greater than the annual benefit which would have been payable to such participant on retirement if (i) all the terms and conditions of such plan in existence on such date had remained in existence until such retirement, and (ii) his compensation taken into account for any period after October 2, 1973, had not exceeded his annual rate of compensation on such date, and

''(C) in the case of a participant who separated from the service of the employer prior to October 2, 1973, such annual benefit is no greater than his vested accrued benefit as of the date he separated from the service,

then such annual benefit shall be treated as not exceeding the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1986.''

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.

PLANS MAY INCORPORATE SECTION 415 LIMITATIONS BY REFERENCE

Section 1106(h) of Pub. L. 99–514 provided that: ''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 limitations under section 415 of the Internal Revenue Code of 1986.''

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.

SPECIAL RULE FOR CERTAIN PLANS IN EFFECT ON SEPTEMBER 2, 1974

Section 2004(a)(3) of Pub. L. 93–406, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In any case in which, on the date of enactment of this Act [Sept. 2, 1974], an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the same employer, and the sum of the defined benefit plan fraction and the defined contribution plan fraction for the year during which such date occurs exceeds 1.4, the sum of such fractions may continue to exceed 1.4 if—

''(A) the defined benefit plan fraction is not increased, by amendment of the plan or otherwise, after

''(B) no contributions are made under the defined contribution plan after such date.

A trust which is part of a pension, profit-sharing, or stock bonus plan described in the preceding sentence shall not be treated as not constituting a qualified trust under section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on account of the provisions of section 415(e) of such Code, as long as it is described in the preceding sentence of this subsection.''

§ 416. Special rules for top-heavy plans

(a) General rule

A trust shall not constitute a qualified trust under section 401(a) for any plan year if the plan of which it is a part is a top-heavy plan for such plan year unless such plan meets—

(1) the vesting requirements of subsection (b), and

(2) the minimum benefit requirements of subsection (c).

(b) Vesting requirements

(1) In general

A plan satisfies the requirements of this subsection if it satisfies the requirements of either of the following subparagraphs:

(A) 3-year vesting

A plan satisfies the requirements of this subparagraph if an employee who has completed at least 3 years of service with the employer or employers maintaining the plan has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(B) 6-year graded vesting

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

Years of service	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100

(2) Certain rules made applicable

Except to the extent inconsistent with the provisions of this subsection, the rules of section 411 shall apply for purposes of this subsection.

(c) Plan must provide minimum benefits

(1) Defined benefit plans

(A) In general

A defined benefit plan meets the requirements of this subsection if the accrued benefit derived from employer contributions of each participant who is a non-key employee, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's average compensation for years in the testing period.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means the lesser of—

(i) 2 percent multiplied by the number of years of service with the employer, or

(ii) 20 percent.

(C) Years of service

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii) or (iii), years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a).

(ii) Exception for years during which plan was not top-heavy

A year of service with the employer shall not be taken into account under this paragraph if—

(I) the plan was not a top-heavy plan for any plan year ending during such year of service, or

(II) such year of service was completed in a plan year beginning before January 1, 1984.

(iii) Exception for plan under which no key employee (or former key employee) benefits for plan year

For purposes of determining an employee's years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when the plan benefits (within the meaning of section 410(b)) no key employee or former key employee.

(D) Average compensation for high 5 years

For purposes of this paragraph—

(i) In general

A participant's testing period shall be the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

(ii) Year must be included in year of service

The years taken into account under clause (i) shall be properly adjusted for years not included in a year of service.

(iii) Certain years not taken into account

Except to the extent provided in the plan, a year shall not be taken into account under clause (i) if—

(I) such year ends in a plan year beginning before January 1, 1984, or

(II) such year begins after the close of the last year in which the plan was a top-heavy plan.

(E) Annual retirement benefit

For purposes of this paragraph, the term ''annual retirement benefit'' means a benefit payable annually in the form of a single life annuity (with no ancillary benefits) beginning at the normal retirement age under the plan.

(2) Defined contribution plans

(A) In general

A defined contribution plan meets the requirements of the subsection if the employer contribution for the year for each participant who is a non-key employee is not less than 3 percent of such participant's compensation (within the meaning of section 415). Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph (and any reduction under this sentence shall not be taken into account in determining whether section 401(k)(4)(A) applies).

(B) Special rule where maximum contribution less than 3 percent

(i) In general

The percentage referred to in subparagraph (A) for any year shall not exceed the percentage at which contributions are made (or required to be made) under the plan for the year for the key employee for whom such percentage is the highest for the year.

(ii) Treatment of aggregation groups

(I) For purposes of this subparagraph, all defined contribution plans required to be included in an aggregation group under subsection (g)(2)(A)(i) shall be treated as one plan.

(II) This subparagraph shall not apply to any plan required to be included in an aggregation group if such plan enables a defined benefit plan required to be included in such group to meet the requirements of section 401(a)(4) or 410.

[(d) Repealed. Pub. L. 99–514, title XI, § 1106(d)(3)(B)(i), Oct. 22, 1986, 100 Stat. 2424]

(e) Plan must meet requirements without taking into account social security and similar contributions and benefits

A top-heavy plan shall not be treated as meeting the requirement of subsection (b) or (c) unless such plan meets such requirement without taking into account 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.

(f) Coordination where employer has 2 or more plans

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section where the employer has 2 or more plans including (but not limited to) regulations to prevent inappropriate omissions or required duplication of minimum benefits or contributions.

(g) Top-heavy plan defined

For purposes of this section—

(1) In general

(A) Plans not required to be aggregated

Except as provided in subparagraph (B), the term ''top-heavy plan'' means, with respect to any plan year—

(i) any defined benefit plan if, as of the determination date, the present value of the cumulative accrued benefits under the plan for key employees exceeds 60 percent of the present value of the cumulative accrued benefits under the plan for all employees, and

(ii) any defined contribution plan if, as of the determination date, the aggregate of the accounts of key employees under the plan exceeds 60 percent of the aggregate of the accounts of all employees under such plan.

(B) Aggregated plans

Each plan of an employer required to be included in an aggregation group shall be treated as a top-heavy plan if such group is a top-heavy group.

(2) Aggregation

For purposes of this subsection—

(A) Aggregation group

(i) Required aggregation

The term ''aggregation group'' means—

(I) each plan of the employer in which a key employee is a participant, and

(II) each other plan of the employer which enables any plan described in subclause (I) to meet the requirements of section 401(a)(4) or 410.

(ii) Permissive aggregation

The employer may treat any plan not required to be included in an aggregation group under clause (i) as being part of such group if such group would continue to meet the requirements of sections 401(a)(4)

and 410 with such plan being taken into account.

(B) Top-heavy group

The term ''top-heavy group'' means any aggregation group if—

(i) the sum (as of the determination date) of—

(I) the present value of the cumulative accrued benefits for key employees under all defined benefit plans included in such group, and

(II) the aggregate of the accounts of key employees under all defined contribution plans included in such group,

(ii) exceeds 60 percent of a similar sum determined for all employees.

(3) Distributions during last year before determination date taken into account

(A) In general

For purposes of determining—

(i) the present value of the cumulative accrued benefit for any employee, or

(ii) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.

(B) 5-year period in case of in-service distribution

In the case of any distribution made for a reason other than severance from employment, death, or disability, subparagraph (A) shall be applied by substituting ''5-year period'' for ''1-year period''.

(4) Other special rules

For purposes of this subsection—

(A) Rollover contributions to plan not taken into account

Except to the extent provided in regulations, any rollover contribution (or similar transfer) initiated by the employee and made after December 31, 1983, to a plan shall not be taken into account with respect to the transferee plan for purposes of determining whether such plan is a top-heavy plan (or whether any aggregation group which includes such plan is a top-heavy group).

(B) Benefits not taken into account if employee ceases to be key employee

If any individual is a non-key employee with respect to any plan for any plan year, but such individual was a key employee with respect to such plan for any prior plan year, any accrued benefit for such employee (and the account of such employee) shall not be taken into account.

(C) Determination date

The term ''determination date'' means, with respect to any plan year—

(i) the last day of the preceding plan year, or

(ii) in the case of the first plan year of any plan, the last day of such plan year.

(D) Years

To the extent provided in regulations, this section shall be applied on the basis of any year specified in such regulations in lieu of plan years.

(E) Benefits not taken into account if employee not employed for last year before determination date

If any individual has not performed services for the employer maintaining the plan at any time during the 1-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account.

(F) Accrued benefits treated as accruing ratably

The accrued benefit of any employee (other than a key employee) shall be determined—

(i) under the method which is used for accrual purposes for all plans of the employer, or

(ii) if there is no method described in clause (i), as if such benefit accrued not more rapidly than the slowest accrual rate permitted under section 411(b)(1)(C).

(G) Simple retirement accounts

The term ''top-heavy plan'' shall not include a simple retirement account under section 408(p).

(H) Cash or deferred arrangements using alternative methods of meeting nondiscrimination requirements

The term ''top-heavy plan'' shall not include a plan which consists solely of—

(i) a cash or deferred arrangement which meets the requirements of section 401(k)(12) or 401(k)(13), and

(ii) matching contributions with respect to which the requirements of section 401(m)(11) or 401(m)(12) are met.

If, but for this subparagraph, a plan would be treated as a top-heavy plan because it is a member of an aggregation group which is a top-heavy group, contributions under the plan may be taken into account in determining whether any other plan in the group meets the requirements of subsection (c)(2).

[(h) Repealed. Pub. L. 104–188, title I, § 1452(c)(7), Aug. 20, 1996, 110 Stat. 1816]

(i) Definitions

For purposes of this section—

(1) Key employee

(A) In general

The term ''key employee'' means an employee who, at any time during the plan year, is—

(i) an officer of the employer having an annual compensation greater than $130,000,

(ii) a 5-percent owner of the employer, or

(iii) a 1-percent owner of the employer having an annual compensation from the employer of more than $150,000.

For purposes of clause (i), no more than 50 employees (or, if lesser, the greater of 3 or 10 percent of the employees) shall be treated as officers. In the case of plan years beginning after December 31, 2002, the $130,000 amount in clause (i) shall be adjusted 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, 2001, and any increase under this sentence which is not a multiple of $5,000 shall be rounded to the next lower multiple of $5,000. Such term shall not include any officer or employee of an entity referred to in section 414(d) (relating to governmental plans). For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(5) shall be excluded.

(B) Percentage owners

(i) 5-percent owner

For purposes of this paragraph, the term ''5-percent owner'' means—

(I) if the employer is a corporation, any person who owns (or is considered as owning within the meaning of section 318) more than 5 percent of the outstanding stock of the corporation or stock possessing more than 5 percent of the total combined voting power of all stock of the corporation, or

(II) if the employer is not a corporation, any person who owns more than 5 percent of the capital or profits interest in the employer.

(ii) 1-percent owner

For purposes of this paragraph, the term ''1-percent owner'' means any person who would be described in clause (i) if ''1 percent'' were substituted for ''5 percent'' each place it appears in clause (i).

(iii) Constructive ownership rules

For purposes of this subparagraph—

(I) subparagraph (C) of section 318(a)(2) shall be applied by substituting ''5 percent'' for ''50 percent'', and

(II) in the case of any employer which is not a corporation, ownership in such employer shall be determined in accordance with regulations prescribed by the Secretary which shall be based on principles similar to the principles of section 318 (as modified by subclause (I)).

(C) Aggregation rules do not apply for purposes of determining ownership in the employer

The rules of subsections (b), (c), and (m) of section 414 shall not apply for purposes of determining ownership in the employer.

(D) Compensation

For purposes of this paragraph, the term ''compensation'' has the meaning given such term by section 414(q)(4).

(2) Non-key employee

The term ''non-key employee'' means any employee who is not a key employee.

(3) Self-employed individuals

In the case of a self-employed individual described in section 401(c)(1)—

(A) such individual shall be treated as an employee, and

(B) such individual's earned income (within the meaning of section 401(c)(2)) shall be treated as compensation.

(4) Treatment of employees covered by collective bargaining agreements

The requirements of subsections (b), (c), and (d) shall not apply with respect to any employee 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 1 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.

(5) Treatment of beneficiaries

The terms ''employee'' and ''key employee'' include their beneficiaries.

(6) Treatment of simplified employee pensions

(A) Treatment as defined contribution plans

A simplified employee pension shall be treated as a defined contribution plan.

(B) Election to have determinations based on employer contributions

In the case of a simplified employee pension, at the election of the employer, paragraphs (1)(A)(ii) and (2)(B) of subsection (g) shall be applied by taking into account aggregate employer contributions in lieu of the aggregate of the accounts of employees.

(Added Pub. L. 97–248, title II, §240(a), Sept. 3, 1982, 96 Stat. 514; amended Pub. L. 98–369, div. A, title V, §524(a)(1), (b)(1), (c)(1), title VII, §713(f)(1), (4), (5)(A), (6), July 18, 1984, 98 Stat. 872, 958–960; Pub. L. 99–514, title XI, §§1106(d)(3)(A), (B), 1118(a), title XVIII, §1852(d), Oct. 22, 1986, 100 Stat. 2424, 2463, 2867; Pub. L. 100–647, title I, §1011(d)(8), (i)(4)(B), (j)(3)(A), Nov. 10, 1988, 102 Stat. 3460, 3467, 3468; Pub. L. 104–188, title I, §§1421(b)(7), 1431(c)(1)(B), (C), 1452(c)(7), Aug. 20, 1996, 110 Stat. 1797, 1803, 1816; Pub. L. 107–16, title VI, §613(a)–(e), June 7, 2001, 115 Stat. 100–102; Pub. L. 107–147, title IV, §411(k), Mar. 9, 2002, 116 Stat. 47; Pub. L. 108–311, title IV, §408(a)(16), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title IX, §902(c), Aug. 17, 2006, 120 Stat. 1036.)

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 Federal Insurance Contributions Act, referred to in subsec. (e), is act Aug. 16, 1954, ch. 736, §§3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

The Social Security Act, referred to in subsec. (e), 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 chapter 7 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.

AMENDMENTS

2006—Subsec. (g)(4)(H)(i). Pub. L. 109–280, § 902(c)(1), inserted ''or 401(k)(13)'' after ''401(k)(12)''.

Subsec. (g)(4)(H)(ii). Pub. L. 109–280, § 902(c)(2), inserted ''or 401(m)(12)'' after ''401(m)(11)''.

2004—Subsec. (i)(1)(A). Pub. L. 108–311 substituted ''In the case of plan years'' for ''in the case of plan years'' in concluding provisions.

2002—Subsec. (c)(1)(C)(iii). Pub. L. 107–147, § 411(k)(1), substituted ''Exception for plan under which no key employee (or former key employee) benefits for plan year'' for ''Exception for frozen plan'' in heading.

Subsec. (g)(3)(B). Pub. L. 107–147, § 411(k)(2), substituted ''severance from employment'' for ''separation from service''.

2001—Subsec. (c)(1)(C)(i). Pub. L. 107–16, § 613(e)(A), substituted ''clause (ii) or (iii)'' for ''clause (ii)''.

Subsec. (c)(1)(C)(iii). Pub. L. 107–16, § 613(e)(B), added cl. (iii).

Subsec. (c)(2)(A). Pub. L. 107–16, § 613(b), inserted at end ''Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph (and any reduction under this sentence shall not be taken into account in determining whether section 401(k)(4)(A) applies).''

Subsec. (g)(3). Pub. L. 107–16, § 613(c)(1), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''For purposes of determining—

''(A) the present value of the cumulative accrued benefit for any employee, or

''(B) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 5-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.''

Subsec. (g)(4)(E). Pub. L. 107–16, § 613(c)(2), in heading substituted ''last year before determination date'' for ''last 5 years'' and in text substituted ''1-year period'' for ''5-year period''.

Subsec. (g)(4)(H). Pub. L. 107–16, § 613(d), added subpar. (H).

Subsec. (i)(1)(A). Pub. L. 107–16, § 613(a)(1)(D), in concluding provisions, substituted ''in the case of plan years beginning after December 31, 2002, the $130,000 amount in clause (i) shall be adjusted 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, 2001, and any increase under this sentence which is not a multiple of $5,000 shall be rounded to the next lower multiple of $5,000.'' for ''For purposes of clause (ii), if 2 employees have the same interest in the employer, the employee having greater annual compensation from the employer shall be treated as having a larger interest.''

Pub. L. 107–16, § 613(a)(1)(A), struck out ''or any of the 4 preceding plan years'' after ''plan year'' in introductory provisions.

Subsec. (i)(1)(A)(i). Pub. L. 107–16, § 613(a)(1)(B), added cl. (i) and struck out former cl. (i) which read as follows: ''an officer of the employer having an annual compensation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for any such plan year,''.

Subsec. (i)(1)(A)(ii)–(iv). Pub. L. 107–16, § 613(a)(1)(C), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: ''1 of the 10 employees having annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A) and owning (or considered as owning within the meaning of section 318) the largest interests in the employer,''.

Subsec. (i)(1)(B)(iii). Pub. L. 107–16, § 613(a)(2), struck out ''and subparagraph (A)(ii)'' after ''this subparagraph'' in introductory provisions.

1996—Subsec. (g)(4)(G). Pub. L. 104–188, § 1421(b)(7), added subpar. (G).

Subsec. (h). Pub. L. 104–188, § 1452(c)(7), struck out subsec. (h) which related to adjustments in section 415 limits for top-heavy plans.

Subsec. (i)(1)(A). Pub. L. 104–188, § 1431(c)(1)(C), substituted ''section 414(q)(5)'' for ''section 414(q)(8)'' in closing provisions.

Subsec. (i)(1)(D). Pub. L. 104–188, § 1431(c)(1)(B), substituted ''section 414(q)(4)'' for ''section 414(q)(7)''.

1988—Subsec. (i)(1)(A). Pub. L. 100–647, § 1011(i)(4)(B), inserted at end ''For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(8) shall be excluded.''

Subsec. (i)(1)(A)(i). Pub. L. 100–647, § 1011(d)(8), substituted ''50'' for ''150'' and ''415(b)(1)(A)'' for ''415(c)(1)(A)''.

Subsec. (i)(1)(D). Pub. L. 100–647, § 1011(j)(3)(A), added subpar. (D).

1986—Subsec. (a)(3). Pub. L. 99–514, § 1106(d)(3)(A), struck out par. (3) which read as follows: ''the limitation on compensation requirement of subsection (d).''

Subsec. (c)(2)(B)(ii), (iii). Pub. L. 99–514, § 1106(d)(3)(B)(ii), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: ''DETERMINATION OF PERCENTAGE.—The determination referred to in clause (i) shall be determined for each key employee by dividing the contributions for such employee by so much of his total compensation for the year as does not exceed $200,000.''

Subsec. (d). Pub. L. 99–514, § 1106(d)(3)(B)(i), repealed subsec. (d) which provided for a $200,000 limitation on the amount of annual compensation of each employee taken into account.

Subsec. (g)(4)(E). Pub. L. 99–514, § 1852(d)(2), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''If any individual has not received any compensation from any employer maintaining the plan (other than benefits under the plan) at any time during the 5-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account.''

Subsec. (g)(4)(F). Pub. L. 99–514, § 1118(a), added subpar. (F).

Subsec. (i)(1)(A). Pub. L. 99–514, § 1852(d)(1), inserted at end ''Such term shall not include any officer or employee of an entity referred to in section 414(d) (relating to governmental plans).''

1984—Subsec. (c)(2)(C). Pub. L. 98–369, § 524(c)(1), struck out subpar. (C) which provided that for purposes of this paragraph, any employer contribution attributable to a salary reduction or similar arrangement shall not be taken into account.

Subsec. (d)(2). Pub. L. 98–369, § 713(f)(5)(A), inserted ''at the same time and''.

Subsec. (f). Pub. L. 98–369, § 713(f)(6)(A), substituted ''required'' for ''require''.

Subsec. (g)(3). Pub. L. 98–369, § 713(f)(4), inserted at end ''The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.''

Subsec. (g)(4)(E). Pub. L. 98–369, § 524(b)(1), added subpar. (E).

Subsec. (i)(1)(A). Pub. L. 98–369, § 713(f)(1)(A), (C), substituted in provisions preceding cl. (i) ''an employee'' for ''any participant in an employer plan'' and inserted at end thereof provision for treatment of an employee with the greater annual compensation as having a larger interest in the employer where, for purposes of cl. (ii), 2 employees have the same interest in the employer.

Subsec. (i)(1)(A)(i). Pub. L. 98–369, § 524(a)(1), inserted ''having an annual compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A) for any plan year''.

Subsec. (i)(1)(A)(ii). Pub. L. 98–369, §713(f)(1)(B), required a key employee to have annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A).

Subsec. (i)(1)(B)(iii). Pub. L. 98–369, §713(f)(6)(B), substituted subparagraph ''(A)(ii)'' for ''(A)(ii)(II)''.

Subsec. (i)(1)(C). Pub. L. 98–369, §713(f)(1)(A), substituted in heading ''ownership in the employer'' for ''5-percent or 1-percent owners''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) 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, §613(f), June 7, 2001, 115 Stat. 102, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(7) 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(c)(1)(B), (C) 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.

Amendment by section 1452(c)(7) of Pub. L. 104–188 applicable to limitation years beginning after Dec. 31, 1999, see section 1452(d) of Pub. L. 104–188, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011(j)(3)(B) of Pub. L. 100–647 provided that: ''The amendment made by this paragraph [amending this section] shall apply to years beginning after December 31, 1988.''

Amendment by section 1011(d)(8), (i)(4)(B) 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.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(3)(A), (B) 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 1118(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, 1986.''

Amendment by section 1852(d) 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

Section 524(a)(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 524(b)(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, 1984.''

Section 524(c)(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, 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

Section 241 of Pub. L. 97–248 provided that:

''(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this part [part II (§§237–241) of subtitle C of title II of Pub. L. 97–248, enacting this section, amending sections 72, 401, 404, 408, 414, 415, and 1379 of this title, and repealing section 4972 of this title] shall apply to years beginning after December 31, 1983.

''(b) ALLOWANCE OF EXCLUSION OF DEATH BENEFIT FOR SELF-EMPLOYED INDIVIDUALS.—The amendment made by section 239 [amending section 101 of this title] shall apply with respect to decedents dying after December 31, 1983.''

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, 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.

§417. Definitions and special rules for purposes of minimum survivor annuity requirements

(a) Election to waive qualified joint and survivor annuity or qualified preretirement survivor annuity

(1) In general

A plan meets the requirements of section 401(a)(11) only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both),

(ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and

(iii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4) of this subsection.

(2) Spouse must consent to election

Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3) Plan to provide written explanations

(A) Explanation of joint and survivor annuity

Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary may prescribe), a written explanation of—

(i) the terms and conditions of the qualified joint and survivor annuity and of the qualified optional survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2), and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B) Explanation of qualified preretirement survivor annuity

(i) In general

Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(ii) Applicable period

For purposes of clause (i), the term ''applicable period'' means, with respect to a participant, whichever of the following periods ends last:

(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

(II) A reasonable period after the individual becomes a participant.

(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

(IV) A reasonable period ending after section 401(a)(11) applies to the participant.

In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.

(4) Requirement of spousal consent for using plan assets as security for loans

Each plan shall provide that, if section 401(a)(11) applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

(5) Special rules where plan fully subsidizes costs

(A) In general

The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if such benefit may not be waived (or another beneficiary selected) and if the plan fully subsidizes the costs of such benefit.

(B) Definition

For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(6) Applicable election period defined

For purposes of this subsection, the term ''applicable election period'' means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 180-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(7) Special rules relating to time for written explanation

Notwithstanding any other provision of this subsection—

(A) Explanation may be provided after annuity starting date

(i) In general

A plan may provide the written explanation described in paragraph (3)(A) after the annuity starting date. In any case to which this subparagraph applies, the applicable election period under paragraph (6) shall not end before the 30th day after the date on which such explanation is provided.

(ii) Regulatory authority

The Secretary may by regulations limit the application of clause (i), except that such regulations may not limit the period of time by which the annuity starting date precedes the provision of the written explanation other than by providing that the annuity starting date may not be earlier than termination of employment.

(B) Waiver of 30-day period

A plan may permit a participant to elect (with any applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the annuity starting date (or to waive the 30-day requirement under subparagraph (A)) if the distribution commences more than 7 days after such explanation is provided.

(b) Definition of qualified joint and survivor annuity

For purposes of this section and section 401(a)(11), the term ''qualified joint and survivor annuity'' means an annuity—

(1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(c) Definition of qualified preretirement survivor annuity

For purposes of this section and section 401(a)(11)—

(1) In general

Except as provided in paragraph (2), the term ''qualified preretirement survivor annuity'' means a survivor annuity for the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.

(2) Special rule for defined contribution plans

In the case of any defined contribution plan or participant described in clause (ii) or (iii) of section 401(a)(11)(B), the term ''qualified preretirement survivor annuity'' means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 411(a)).

(3) Security interests taken into account

For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

(d) Survivor annuities need not be provided if participant and spouse married less than 1 year

(1) In general

Except as provided in paragraph (2), a plan shall not be treated as failing to meet the requirements of section 401(a)(11) merely because the plan provides that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

(A) the participant's annuity starting date, or

(B) the date of the participant's death.

(2) Treatment of certain marriages within 1 year of annuity starting date for purposes of qualified joint and survivor annuities

For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(e) Restrictions on cash-outs

(1) Plan may require distribution if present value not in excess of dollar limit

A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed the amount that can be distributed without the participant's consent under section 411(a)(11). No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consents in writing to such distribution.

(2) Plan may distribute benefit in excess of dollar limit only with consent

If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 411(a)(11), and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3) Determination of present value

(A) In general

For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(B) Applicable mortality table

For purposes of subparagraph (A), the term ''applicable mortality table'' means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under subparagraph (A) of section 430(h)(3) (without regard to subparagraph (C) or (D) of such section).

(C) Applicable interest rate

For purposes of subparagraph (A), the term ''applicable interest rate'' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe.

(D) Applicable segment rates

For purposes of subparagraph (C), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 430(h)(2)(C) if—

(i) section 430(h)(2)(D) were applied by substituting the average yields for the month described in subparagraph (C) for the average yields for the 24-month period described in such section,

(ii) section 430(h)(2)(G)(i)(II) were applied by substituting ''section 417(e)(3)(A)(ii)(II)'' for ''section 412(b)(5)(B)(ii)(II)'', and

(iii) the applicable percentage under section 430(h)(2)(G) were determined in accordance with the following table:

In the case of plan years beginning in:	The applicable percentage is:
2008	20 percent
2009	40 percent
2010	60 percent
2011	80 percent.

(f) Other definitions and special rules

For purposes of this section and section 401(a)(11)—

(1) Vested participant

The term ''vested participant'' means any participant who has a nonforfeitable right (within the meaning of section 411(a)) to any portion of such participant's accrued benefit.

(2) Annuity starting date

(A) In general

The term ''annuity starting date'' means—

(i) the first day of the first period for which an amount is payable as an annuity, or

(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

(B) Special rule for disability benefits

For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

(3) Earliest retirement age

The term ''earliest retirement age'' means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(4) Plan may take into account increased costs

A plan may take into account in any equitable manner (as determined by the Secretary) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(5) Distributions by reason of security interests

If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (a)(4), nothing in this section or section 411(a)(11) shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(6) Requirements for certain spousal consents

No consent of a spouse shall be effective for purposes of subsection (e)(1) or (e)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (a)(1)(A) are met.

(7) Consultation with the Secretary of Labor

In prescribing regulations under this section and section 401(a)(11), the Secretary shall consult with the Secretary of Labor.

(g) Definition of qualified optional survivor annuity

(1) In general

For purposes of this section, the term ''qualified optional survivor annuity'' means an annuity—

(A) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(B) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(2) Applicable percentage

(A) In general

For purposes of paragraph (1), if the survivor annuity percentage—

(i) is less than 75 percent, the applicable percentage is 75 percent, and

(ii) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

(B) Survivor annuity percentage

For purposes of subparagraph (A), the term ''survivor annuity percentage'' means the percentage which the survivor annuity under the plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.

(Added Pub. L. 98–397, title II, §203(b), Aug. 23, 1984, 98 Stat. 1441; amended Pub. L. 99–514, title XI, §1139(b), title XVIII, §1898(b)(1)(A), (4)(A), (5)(A), (6)(A), (8)(A), (9)(A), (10)(A), (11)(A), (12)(A), (15)(A), (B), Oct. 22, 1986, 100 Stat. 2487, 2944, 2945, 2947–2951; Pub. L. 100–647, title I, §1018(u)(9), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 101–239, title VII, §7862(d)(1)(A), Dec. 19, 1989, 103 Stat. 2433; Pub. L. 103–465, title VII, §767(a)(2), Dec. 8, 1994, 108 Stat. 5038; Pub. L. 104–188, title I, §1451(a), Aug. 20, 1996, 110 Stat. 1815; Pub. L. 105–34, title X, §1071(a)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–147, title IV, §411(r)(1), Mar. 9, 2002, 116 Stat. 51; Pub. L. 109–280, title III, §302(b), title X, §1004(a), title XI, §1102(a)(1)(A), Aug. 17, 2006, 120 Stat. 920, 1053, 1056; Pub. L. 110–458, title I, §103(b)(2)(A), Dec. 23, 2008, 122 Stat. 5103.)

AMENDMENTS

2008—Subsec. (e)(3)(D)(i). Pub. L. 110–458 substituted ''subparagraph (C)'' for ''clause (ii)''.

2006—Subsec. (a)(1)(A)(ii), (iii). Pub. L. 109–280, §1004(a)(1), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (a)(3)(A)(i). Pub. L. 109–280, §1004(a)(3), inserted ''and of the qualified optional survivor annuity'' before comma at end.

Subsec. (a)(6)(A). Pub. L. 109–280, §1102(a)(1)(A), substituted ''180-day'' for ''90-day''.

Subsec. (e)(3). Pub. L. 109–280, §302(b), reenacted heading without change and amended text of par. (3) generally, substituting provisions relating to determination of present value by using the applicable mortality table and the applicable interest rate, provisions defining ''applicable mortality table'' and ''applicable interest rate'', and provisions relating to determination of the adjusted first, second, and third segment rates, for provisions relating to determination of present value, provisions defining ''applicable mortality table'' and ''applicable interest rate'', and provisions stating exception for a distribution from a plan that was adopted and in effect before the date of the enactment of the Retirement Protection Act of 1994.

Subsec. (g). Pub. L. 109–280, §1004(a)(2), added subsec. (g).

2002—Subsec. (e)(1). Pub. L. 107–147, §411(r)(1)(A), substituted ''exceed the amount that can be distributed without the participant's consent under section 411(a)(11)'' for ''exceed the dollar limit under section 411(a)(11)(A)''.

Subsec. (e)(2)(A). Pub. L. 107–147, §411(r)(1)(B), substituted ''exceeds the amount that can be distributed without the participant's consent under section 411(a)(11)'' for ''exceeds the dollar limit under section 411(a)(11)(A)''.

1997—Subsec. (e)(1), (2). Pub. L. 105–34 substituted ''dollar limit'' for ''$3,500'' in headings of pars. (1) and (2) and ''the dollar limit under section 411(a)(11)(A)'' for ''$3,500'' in text of pars. (1) and (2)(A).

1996—Subsec. (a)(7). Pub. L. 104–188 added par. (7).

1994—Subsec. (e)(3). Pub. L. 103–465 amended par. (3) generally, substituting present provisions for provisions directing that present value be calculated by using a rate no greater than the applicable interest rate or 120 percent of such rate, depending upon amount of vested accrued benefit, and defining ''applicable interest rate''.

1989—Subsec. (a)(3)(B)(ii). Pub. L. 101–239 added sentence at end and struck out former subcl. (V) which read as follows: ''A reasonable period after separation from service in case of a participant who separates before attaining age 35.''

1988—Subsec. (e)(3)(A). Pub. L. 100–647 substituted ''clause (ii)'' for ''subclause (II)'' in last sentence.

1986—Subsec. (a)(1). Pub. L. 99–514, §1898(b)(15)(A), substituted ''section 401(a)(11)'' for ''section 401(a)(ii)''.

Subsec. (a)(1)(B). Pub. L. 99–514, §1898(b)(4)(A)(i), substituted ''paragraphs (2), (3), and (4)'' for ''paragraphs (2) and (3)''.

Subsec. (a)(2)(A). Pub. L. 99–514, §1898(b)(6)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the spouse of the participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or''.

Subsec. (a)(3)(B). Pub. L. 99–514, §1898(b)(5)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Each plan shall provide to each participant, within the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35 (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).''

Subsec. (a)(4). Pub. L. 99–514, §1898(b)(4)(A)(ii), added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5), (6). Pub. L. 99–514, §1898(b)(4)(A)(ii), (11)(A), redesignated former par. (4) as (5) and inserted in subpar. (A) ''if such benefit may not be waived (or another beneficiary selected) and'' before ''if the plan''. Former par. (5) redesignated (6).

Subsec. (c)(1). Pub. L. 99–514, §1898(b)(15)(B), substituted ''survivor annuity for the life of'' for ''survivor annuity or the life of''.

Pub. L. 99–514, §1898(b)(1)(A), inserted ''In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.''

Subsec. (c)(2). Pub. L. 99–514, § 1898(b)(9)(A)(i), substituted ''the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 411(a))'' for ''the account balance of the participant as of the date of death''.

Subsec. (c)(3). Pub. L. 99–514, § 1898(b)(9)(A)(ii), added par. (3).

Subsec. (e)(3). Pub. L. 99–514, § 1139(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of paragraphs (1) and (2), the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall be determined as of the date of the distribution and by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.''

Subsec. (f)(1). Pub. L. 99–514, § 1898(b)(8)(A), substituted ''such participant's accrued benefit'' for ''the accrued benefit derived from employer contributions''.

Subsec. (f)(2). Pub. L. 99–514, § 1898(b)(12)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'annuity starting date' means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability).''

Subsec. (f)(5). Pub. L. 99–514, § 1898(b)(4)(A)(iii), added par. (5) and redesignated former par. (5) as (6).

Subsec. (f)(6), (7). Pub. L. 99–514, § 1898(b)(10)(A), added par. (6) and redesignated former par. (6) as (7).

Pub. L. 99–514, § 1898(b)(4)(A)(iii), redesignated former par. (5) as (6).

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 III, § 302(c), Aug. 17, 2006, 120 Stat. 921, provided that: ''The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2007.''

Pub. L. 109–280, title X, § 1004(c), Aug. 17, 2006, 120 Stat. 1055, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007.

''(2) 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 on or before the date of the enactment of this Act [Aug. 17, 2006], the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) January 1, 2008, or

''(ii) the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extension thereof after the date of enactment of this Act), or

''(B) January 1, 2009.''

Pub. L. 109–280, title XI, § 1102(a)(3), Aug. 17, 2006, 120 Stat. 1056, provided that: ''The amendments and modifications made or required by this subsection [amending this section and section 1055 of Title 29, Labor] shall apply to years beginning after December 31, 2006.''

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 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to plan years beginning after Aug. 5, 1997, see section 1071(c) of Pub. L. 105–34, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1451(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after December 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to plan years and limitation years beginning after Dec. 31, 1994, except that employer may elect to treat such amendment as effective on or after Dec. 8, 1994, with provisions relating to reduction of accrued benefits, exception, and timing of plan amendment, see section 767(d) of Pub. L. 103–465, as amended, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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 7863 of Pub. L. 101–239, set out as a note under section 106 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 1139(b) of Pub. L. 99–514 applicable to distributions in plan years beginning after Dec. 31, 1984, except that such amendments shall not apply to any distributions in plan years beginning after Dec. 31, 1984, and before Jan. 1, 1987, if such distributions were made in accordance with the requirements of the regulations issued under the Retirement Equity Act of 1984, Pub. L. 98–397, with additional provisions relating to reductions in accrued benefits, see section 1139(d) of Pub. L. 99–514, set out as a note under section 411 of this title.

Section 1898(b)(4)(C) of Pub. L. 99–514 provided that:

''(i) The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply with respect to loans made after August 18, 1985.

''(ii) In the case of any loan which was made on or before August 18, 1985, and which is secured by a portion of the participant's accrued benefit, nothing in the amendments made by sections 103 and 203 of the Retirement Equity Act of 1984 [sections 103 and 203 of Pub. L. 98–397, enacting this section and amending section 401 of this title and section 1055 of Title 29] shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

''(iii) For purposes of this subparagraph, any loan which is revised, extended, renewed, or renegotiated after August 18, 1985, shall be treated as made after August 18, 1985.

Section 1898(b)(6)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

Section 1898(b)(8)(C) of Pub. L. 99–514, as added by Pub. L. 101–239, title VII, § 7862(d)(2), Dec. 19, 1989, 103 Stat. 2434, provided that: ''The amendments made by this paragraph [amending this section and section 1055

of Title 29, Labor] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by section 1898(b)(1)(A), (5)(A), (9)(A), (10)(A), (11)(A), (12)(A), (15)(A), (B) 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.

EFFECTIVE DATE

Section 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 an Effective Date of 1984 Amendment note under section 1001 of Title 29, Labor.

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, 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.

SUBPART C—SPECIAL RULES FOR MULTIEMPLOYER PLANS

Sec.
418. Reorganization status.
418A. Notice of reorganization and funding requirements.
418B. Minimum contribution requirement.
418C. Overburden credit against minimum contribution requirement.
418D. Adjustments in accrued benefits.
418E. Insolvent plans.

AMENDMENTS

1980—Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1271, added subpart C heading ''Special Rules for Multiemployer Plans'' and items 418 to 418E.

§418. Reorganization status

(a) General rule

A multiemployer plan is in reorganization for a plan year if the plan's reorganization index for that year is greater than zero.

(b) Reorganization index

For purposes of this subpart—

(1) In general

A plan's reorganization index for any plan year is the excess of—

(A) the vested benefits charge for such year, over

(B) the net charge to the funding standard account for such year.

(2) Net charge to funding standard account

The net charge to the funding standard account for any plan year is the excess (if any) of—

(A) the charges to the funding standard account for such year under section 412(b)(2),[1] over

(B) the credits to the funding standard account under section 412(b)(3)(B).[1]

(3) Vested benefits charge

The vested benefits charge for any plan year is the amount which would be necessary to amortize the plan's unfunded vested benefits as of the end of the base plan year in equal annual installments—

(A) over 10 years, to the extent such benefits are attributable to persons in pay status, and

(B) over 25 years, to the extent such benefits are attributable to other participants.

(4) Determination of vested benefits charge

(A) In general

The vested benefits charge for a plan year shall be based on an actuarial valuation of the plan as of the end of the base plan year, adjusted to reflect—

(i) any—

(I) decrease of 5 percent or more in the value of plan assets, or increase of 5 percent or more in the number of persons in pay status, during the period beginning on the first day of the plan year following the base plan year and ending on the adjustment date, or

(II) at the election of the plan sponsor, actuarial valuation of the plan as of the adjustment date or any later date not later than the last day of the plan year for which the determination is being made,

(ii) any change in benefits under the plan which is not otherwise taken into account under this subparagraph and which is pursuant to any amendment—

(I) adopted before the end of the plan year for which the determination is being made, and

(II) effective after the end of the base plan year and on or before the end of the plan year referred to in subclause (I), and

(iii) any other event (including an event described in subparagraph (B)(i)(I)) which, as determined in accordance with regulations prescribed by the Secretary, would substantially increase the plan's vested benefit charge.

(B) Certain changes in benefit levels

(i) In general

In determining the vested benefits charge for a plan year following a plan year in which the plan was not in reorganization, any change in benefits which—

(I) results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits as a result of changes in a collective bargaining agreement, or

(II) results from any other change in a collective bargaining agreement,

[1] See References in Text note below.